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[PP. 2001-2500]

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
(Capital PCR: 2005-CP-18-1368)
The Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2014-000387

S.C. Supreme Court

Kenneth Simmons, #5066,

Respondent/Petitioner,

v.

State of South Carolina,

Petitioner/Respondent.

APPENDIX

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INDEX

INDEX	i

RECORD ON APPEAL FROM DIRECT APPEAL 1-3253

TRIAL TRANSCRIPT	1
INTRODUCTION OF CASE BY THE COURT	17
JURY QUALIFICATION	21
JURY <i>VOIR DIRE</i>	63
INDIVIDUAL JURY QUALIFICATION.....	74
RAY NASH	
Direct Examination by the Court	180
QUALIFICATION	194
FELIX ROSS	
Examination by the Court	212
QUALIFICATION	215
WILLIAM L. SILVERS, JR.	
Examination by the Court	220
Direct examination by the Solicitor	229
Cross examination by the Defense.....	231
Re-Direct examination by the Solicitor	239
QUALIFICATION	241
CHRISTOPHER BARTON	
Examination by the Court	246
Direct Examination by the Defense	255
Cross Examination by the Solicitor	257
Additional Examination by the Court.....	260
QUALIFICATION	263
PAUL RANDOLPH	
Examination by the Court	265
Direct Examination by the Solicitor	275
Cross Examination by the Defense.....	277

QUALIFICATION	280
HERBERT SIMMONS, JR.	
Examination by the Court	285
Direct Examination by the Defense	295
Cross Examination by the Solicitor	299
Re-Direct Examination by the Defense	302
QUALIFICATION	308
MARYANNE VALENTINO	
Examination by the Court	310
Direct Examination by the Solicitor	319
Cross Examination by the Defense	322
QUALIFICATION	325
DELORES EVANS	
Examination by the Court	327
Direct Examination by the Defense	335
Cross Examination by the Solicitor	340
Re-Direct Examination by the Defense	342
Re-Cross Examination by the Solicitor	344
QUALIFICATION	346
SHIRLEY PRINGLE	
Examination by the Court	349
Direct Examination by the Defense	355
Cross Examination by the Solicitor	358
QUALIFICATION	361
HUGH K. LESLEY, JR.	
Examination by the Court	363
Direct Examination by the Defense	368
Cross Examination by the Solicitor	369
Re-Direct Examination by the Defense	373
QUALIFICATION	374
EXCUSAL OF TWO JURORS	382

TONYA DENNIS	
Examination by the Court	385
Direct Examination by the Defense	391
Cross Examination by the Solicitor	394
QUALIFICATION	400
BENJAMIN J. DURHAM, III	
Examination by the Court	401
Direct Examination by the Defense	407
Cross Examination by the Solicitor	409
QUALIFICATION	413
J. SCOTT FIELDS	
Examination by the Court	414
Direct Examination by the Defense	419
Cross Examination by the Solicitor	421
QUALIFICATION	425
JAMES R. VANDELL	
Examination by the Court	425
Direct Examination by the Defense	433
Cross Examination by the Solicitor	435
Re-Direct Examination by the Defense	439
Re-Cross Examination by the Solicitor	440
QUALIFICATION	443
GREGORY M. ALLEN	
Examination by the Court	445
QUALIFICATION	446
ALICE POSTELL	
Examination by the Court	450
Direct Examination by the Solicitor	456
Cross Examination by the Defense	460
QUALIFICATION	464
MILTON HANDLER, JR.	
Examination by the Court	467
Direct Examination by the Defense	474
Cross Examination by the Solicitor	479

QUALIFICATION	483
BERNARD LEWIS	
Examination by the Court	485
Direct Examination by the Solicitor	491
Cross Examination by the Defense	494
QUALIFICATION	502
THEODORE M. ANZELL	
Examination by the Court	503
Direct Examination by the Defense	510
QUALIFICATION	516
RAY GREEN	
Examination by the Court	517
Direct Examination by the Solicitor	524
Cross Examination by the Defense	528
Re-Direct Examination by the Solicitor	534
Re-Cross Examination by the Defense	535
QUALIFICATION	537
REBADELL AHL	
Examination by the Court	540
Direct Examination by the Defense	545
Cross Examination by the Solicitor	548
QUALIFICATION	550
DEBORAH SHUFORD	
Examination by the Court	555
Direct Examination by the Defense	561
Cross Examination by the Solicitor	564
QUALIFICATION	567
SANDRA MALONE	
Examination by the Court	569
Direct Examination by the Solicitor	574
Cross Examination by the Defense	576
QUALIFICATION	577

EDWARD LIVINGSTON	
Examination by the Court	578
Direct Examination by the Solicitor	584
Cross Examination by the Defense	587
QUALIFICATION	589
PAUL T. MOORE	
Examination by the Court	592
Direct Examination by the Defense	597
Cross Examination by the Solicitor	601
Re-Direct Examination by the Defense	603
QUALIFICATION	607
MARK S. WILLIAMSON	
Examination by the Court	615
Direct Examination by the Solicitor	620
Cross Examination by the Defense	624
QUALIFICATION	629
LINDA WETHERELL	
Examination by the Court	631
Direct Examination by the Defense	639
QUALIFICATION	642
BRYAN SULLIVAN	
Examination by the Court	644
Direct Examination by the Solicitor	647
Cross Examination by the Defense	651
QUALIFICATION	655
DONALD SHORT	
Examination by the Court	657
Direct Examination by the Defense	658
Cross Examination by the Solicitor	667
QUALIFICATION	669
CHRISTOPHER CAMPEAU	
Examination by the Court	671
Direct Examination by the Solicitor	675
Cross Examination by the Defense	678

QUALIFICATION	682
JAMES A. BROOKS, JR.	
Examination by the Court	685
Direct Examination by the Defense	689
Cross Examination by the Solicitor	691
QUALIFICATION	692
SHARON T. MCSWAIN	
Examination by the Court	694
Direct Examination by the Solicitor	698
Cross Examination by the Defense	703
Re-Direct Examination by the Solicitor	705
QUALIFICATION	706
JAN H. WHITMORE	
Examination by the Court	708
Direct Examination by the Defense	714
Cross Examination by the Solicitor	717
QUALIFICATION	719
BRYAN R. TALLENT	
Examination by the Court	722
Direct Examination by the Solicitor	727
Cross Examination by the Defense	730
QUALIFICATION	733
AMY L. ARNONE	
Examination by the Court	735
Direct Examination by the Defense	742
Cross Examination by the Solicitor	745
QUALIFICATION	748
RONALD D. BOLES	
Examination by the Court	754
Direct Examination by the Solicitor	756
Examination by the Court	757
Cross Examination by the Defense	762
Re-Direct Examination by the Defense	765
QUALIFICATION	770

CAROLYN K. MCKNIGHT	
Examination by the Court	772
ALBERT S. NETTLES, JR.	
Examination by the Court	775
Direct Examination by the Defense	780
Cross Examination by the Solicitor	784
QUALIFICATION	787
PETER A. ARMSTRONG	
Examination by the Court	789
Direct Examination by the Solicitor	794
Cross Examination by the Defense	796
QUALIFICATION	799
ROBERT S. HUGHES	
Examination by the Court	802
Direct Examination by the Defense	807
Cross Examination by the Solicitor	812
QUALIFICATION	814
MILFORD E. CARTER	
Examination by the Court	815
Direct Examination by the Solicitor	821
Cross Examination by the Defense	823
QUALIFICATION	827
JOHN A. WASHINGTON	
Examination by the Court	829
Direct Examination by the Defense	833
Cross Examination by the Solicitor	838
QUALIFICATION	843
CURTIS J. TSAI	
Examination by the Court	850
Direct Examination by the Solicitor	855
Cross Examination by the Defense	859
QUALIFICATION	862

CARLESS B. TOMPKINS	
Examination by the Court	865
QUALIFICATION	867
MARTIN G. ROBERTSON	
Examination by the Court	868
QUALIFICATION	871
MICHAEL S. BRYANT	
Examination by the Court	872
Direct Examination by the Defense	881
Cross Examination by the Solicitor	885
QUALIFICATION	889
MELISSA BOUTEN	
Examination by the Court	889
Direct Examination by the Solicitor	894
Cross Examination by the Defense	897
QUALIFICATION	901
JOYCE W. EDDY	
Examination by the Court	902
QUALIFICATION	906
LEON A. COOK	
Examination by the Court	907
Direct Examination by the Solicitor	913
Cross Examination by the Defense	916
QUALIFICATION	918
MARK ZEIGLER	
Examination by the Court	920
Direct Examination by the Defense	926
QUALIFICATION	929
RICHARD L. DUBOSE	
Examination by the Court	931
Direct Examination by the Solicitor	936
Cross Examination by the Defense	939

QUALIFICATION	942
CHERL M. SIGWALD	
Examination by the Court	944
QUALIFICATION	945
RICHARD LARSON	
Examination by the Court	946
Direct Examination by the Defense	952
QUALIFICATION	953
JAMES MCCRAE	
Examination by the Court	957
QUALIFICATION	960
COLLOQUY.....	962

GUILT/INNOCENT PHASE

JURY SELECTION.....	969
REMARKS TO THE JURY BY THE COURT	1006
OPENING STATEMENT BY THE SOLICITOR.....	1032
OPENING STATEMENT BY THE DEFENSE	1044
INSTRUCTIONS TO THE JURY.....	1058
<u>IN CAMERA</u> COLLOQUY	1064
REMARKS TO THE JURY BY THE COURT	1071
DEBBIE S. BROWN	
Direct Examination by the Solicitor	1075
Cross Examination by the Defense	1079
VIRGINJA WILSON	
Direct Examination by the Solicitor	1083
Cross Examination by the Defense	1097

WILLIAM A. PENN, JR.	
Direct Examination by the Solicitor	1106
Cross Examination by the Defense	1111
JOHNNY BROOKE NEALY	
Direct Examination by the Solicitor	1112
Cross Examination by the Defense	1120
GEORGE MURRAY	
Direct Examination by the Solicitor	1122
Cross Examination by the Defense	1125
MICHAEL ALLEN TURNER	
Direct Examination by the Solicitor	1127
Cross Examination by the Defense	1130
RONALD BRUCE MANCHESTER	
Direct Examination by the Solicitor	1132
Cross Examination by the Defense	1156
Re-Direct Examination by the Solicitor.....	1187
CLAY ALLEN NICHOLS	
Direct Examination by the Solicitor	1193
Cross Examination by the Defense	1219
Re-Direct Examination by the Solicitor.....	1229
STEVEN M. DERRICK	
Direct Examination by the Solicitor	1261
EVERETT D. HOWARD	
Direct Examination by the Solicitor	1288
Cross Examination by the Defense	1298
MARGARET ANN BUSH	
Direct Examination by the Solicitor	1300
Cross Examination by the Defense	1303
SAMUEL JACKSON	
Direct Examination by the Solicitor	1304
NATHAN PERRYMAN	
Direct Examination by the Solicitor	1306
Cross Examination by the Defense	1309

EVERETT HOWARD	
Direct Examination by the Solicitor	1310
Cross Examination by the Defense	1318
ANN REESE	
Direct Examination by the Solicitor	1321
Cross Examination by the Defense	1328
<u>IN CAMERA</u> HEARING ON THE LAW	1333
CONTAINED CROSS-EXAMINATION	1353
MAYBELLE HENDRICKS	
Direct Examination by the Solicitor	1357
KENNETH M. MEARS	
Direct Examination by the Solicitor	1362
Cross Examination by the Defense	1396
ANN REESE	
Direct Examination by the Solicitor	1406
Cross Examination by the Defense	1408
MARY JOHNSON	
Direct Examination by the Solicitor	1416
IRA JEFFCOAT	
Direct Examination by the Solicitor	1419
MICHAEL LEONARD BAIRD	
Direct Examination by the Solicitor	1443
LAUREN CRANE	
Direct Examination by the Solicitor	1457
Cross Examination by the Defense	1471
MICHAEL LEONARD BAIRD	
Direct Examination by the Solicitor Cross Examination by the Defense	1482
Re-Direct Examination by the Solicitor	1483
Re-Cross Examination by the Defense	1484
Re-Direct Examination by the Solicitor	1484
Re-Cross Examination by the Defense	1485

DR. JOHN MICHAEL FOXWORTH	
Direct Examination by the Defense	1493
Cross Examination by the Solicitor	1505
Re-Direct Examination by the Defense	1511
Re-Cross Examination by the Solicitor	1547
Re-Direct Examination by the Defense	1597
DR. CHARLES BARTON SAYLOR	
Direct Examination by the Defense	1600
Cross Examination by the Solicitor	1611
Re-Direct Examination by the Defense	1627
DR. THOMAS WILLIAM BEHRMANN	
Direct Examination by the Defense	1631
Cross Examination by the Solicitor	1653
Re-Direct Examination by the Defense	1673
Re-Cross Examination by the Solicitor	1674
DR. JEFFREY VIDIC	
Direct Examination by the Defense	1676
<u>IN CAMERA HEARING ON LAW (FIFTH AMENDMENT</u>	
<u>AND RIGHT TO COUNSEL).....</u>	1691
DR. JEFFREY VIDIC	
Direct Examination by the Defense continued	1699
Cross Examination by the Solicitor	1703
Re-Direct Examination by the Defense	1709
DR. LESLIE N. SANDLER	
Direct Examination by the Defense	1712
Cross Examination by the Solicitor	1735
DR. LEWIS RANDOLPH WAID	
Direct Examination by the Defense	1747
Cross Examination by the Solicitor	1751
<u>IN CAMERA HEARING</u>	1758
DR. LEWIS RANDOLPH WAID (<u>IN CAMERA</u>)	
Direct Examination by the Defense	1775
Cross Examination by the Solicitor	1791
Re-Direct Examination by the Defense	1826

CAPTAIN BUTCH POLK (<u>IN CAMERA</u>)	
Examination by the Court	1835
KENNETH SIMMONS (<u>IN CAMERA</u>)	
Examination by the Court	1855
DR. RANDY WAID	
Direct Examination by the Defense	1866
Cross Examination by the Solicitor	1889
DR. LESLIE SANDLER	
Direct Examination by the Solicitor	1917
Cross Examination by the Defense	1921
Re-Direct Examination by the Solicitor	1922
CLOSING ARGUMENT BY THE SOLICITOR	1951
CLOSING ARGUMENT BY THE DEFENSE	2027
CHARGE TO THE JURY	2063
EXCEPTIONS/ADDITIONS	2094
ADDITIONAL CHARGE TO THE JURY	2103
COLLOQUY	2105
VERDICT	2111
POLLING OF THE JURY	2114
COLLOQUY	2117
PENALTY PHASE	
REMARKS TO THE JURY BY THE COURT	2133
OPENING STATEMENTS BY THE SOLICITOR	2137
KATHERINE GUILLIARD	
Direct Examination by the Solicitor	2142
VIRGINIA WILSON	
Direct Examination by the Solicitor	2151

RONALD BRUCE MANCHESTER	
Direct Examination by the Solicitor	2159
GLADYS SUDDETH	
Direct Examination by the Solicitor	2164
DR. CLAY ALLEN NICHOLS	
Direct Examination by the Solicitor	2170
JESSIE MAE WILSON	
Direct Examination by the Solicitor	2180
<u>IN CAMERA</u> COLLOQUY	2186
KENNETH SIMMONS	
Examination by the Court	2190
COLLOQUY	2198
OPENING REMARKS BY THE DEFENSE	2200
CALVIN LINNING, SR.	
Direct Examination by the Defense	2202
Cross Examination by the Solicitor	2212
CHARLIE WILSON	
Direct Examination by the Defense	2215
Cross Examination by the Solicitor	2223
GENE ALEX SIMMONS	
Direct Examination by the Defense	2229
Cross Examination by the Solicitor	2241
ANNETTE S. GEDDIS	
Direct Examination by the Defense	2242
Cross Examination by the Solicitor	2250
SANDRA FRANKLIN	
Direct Examination by the Defense	2252
Cross Examination by the Solicitor	2261
ROBIN BEECH SCHMIEDING	
Direct Examination by the Defense	2263

DORIS V. RUSSELL	
Direct Examination by the Defense	2277
Cross Examination by the Solicitor	2285
COLLOQUY.....	2288
KENNETH SIMMONS	
Examination by the Court	2290
CHARGE CONFERENCE.....	2292
CLOSING ARGUMENTS BY THE SOLICITOR	2301
CLOSING ARGUMENTS BY DEFENSE COUNSEL THEOS.....	2343
CLOSING REMARKS BY THE DEFENDANT.....	2347
CLOSING ARGUMENTS BY DEFENSE COUNSEL BELL.....	2348
CHARGE TO THE JURY	2359
COLLOQUY.....	2387
REQUESTS TO CHARGE CONFERENCE	2397
TESTIMONY REPLAYED.....	2407
EXCEPTIONS/ ADDITIONS TO CHARGES	2411
MOTIONS	2424
VERDICT	2454
POLLING OF THE JURY.....	2455
COLLOQUY.....	2458
SENTENCE	2467
COLLOQUY.....	2469
CERTIFICATE OF COURT REPORTER.....	2475
COMPETENCY HEARING (FEBRUARY 11-12, 1999)	2476

PAULA WALSH	
Direct Examination by the Solicitor	2488
Cross Examination by the Defense	2491
Re-Direct Examination by the Solicitor.....	2496
JAN HILTON	
Direct Examination by the Solicitor	2497
Cross Examination by the Defense	2501
Re-Direct Examination by the Solicitor.....	2510
PRISCILLA JOHNSON	
Direct Examination by the Solicitor	2511
Cross Examination by the Defense	2527
SIDNEY JACKSON	
Direct Examination by the Solicitor	2544
Cross Examination by the Defense	2557
Re-Direct Examination by the Solicitor.....	2576
EMMETT MCKINNEY, JR.	
Direct Examination by the Solicitor	2578
Cross Examination by the Defense	2581
LESLIE SANDLER	
Direct Examination by the Solicitor	2593
Cross Examination by the Defense	2597
Re-Direct Examination by the Solicitor.....	2604
Re-Cross Examination by the Defense	2632
DR. THOMAS MCABEE	
Direct Examination by the Defense	2673
Cross Examination by the Solicitor	2698
DR. THOMAS BEHRMANN	
Direct Examination by the Defense	2704
Cross Examination by the Solicitor	2724
DR. JEFFREY VIDIC	
Direct Examination by the Defense	2727
COLLOQUY.....	2741

<u>JACKSON V. DENNO HEARING</u>	2783
MARGARET BUSH (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2783
Cross Examination by the Defense	2786
SAMUEL JACKSON (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2789
Cross Examination by the Defense	2790
SGT. NATHAN PERRYMAN (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2791
Cross Examination by the Defense	2793
EVERETT HOWARD (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2798
Cross Examination by the Defense	2813
ANN REESE (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2832
Cross Examination by the Defense	2839
MAYBELLE HENDRICKS (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2857
Cross Examination by the Defense	2862
KENNY MEARS (<u>IN CAMERA</u>)	
Direct Examination by the Solicitor	2873
MOTIONS/JURY QUESTIONNAIRES.....	2916
APRIL 30, 1998, PRE-TRIAL TRANSCRIPT	3009
FEBRUARY 17, 1999, PRE-TRIAL TRANSCRIPT	3070
INDICTMENTS	3153
ORDER FOR EVALUATION AS TO COMPETENCY AND CRIMINAL RESPONSIBILITY ..	3163
REPORT OF FINDING MENTAL CAPACITY.....	3166
STATE'S EXHIBIT #17 (FIRST TAPED INTERVIEW WITH APPELLANT)	3170
STATE'S EXHIBIT #29 (HANDWRITTEN STATEMENT OF APPELLANT)	3198
STATE'S EXHIBIT #18 (TAPED INTERVIEW WITH APPELLANT)	3200

STATE'S EXHIBIT #19 (THIRD TAPED INTERVIEW WITH APPELLANT).....	3211
DEFENDANT'S REQUEST TO CHARGE #16-A (ROBBERY)	3221
POST-TRIAL MOTION TO SET ASIDE JURY'S RECOMMENDATION OF SENTENCE, OR IN THE ALTERNATIVE A NEW SENTENCING TRIAL	3222
ORDER	3225
NOTICE OF INTENT TO SEEK DEATH PENALTY	3234
JURY'S FINDING AS TO AGGRAVATING CIRCUMSTANCE.....	3235
RECOMMENDATION OF SENTENCE DEATH PENALTY	3237
AFFIRMATION OF DEATH SENTENCE	3238
SENTENCE	3239
TRIAL JUDGE'S REPORT	3240
CERTIFICATE OF COUNSEL FOR APPELLANT	3253

DIRECT APPEAL DOCUMENTS:

FINAL BRIEF OF APPELLANT (MAY 7, 2002)	3254
FINAL BRIEF OF RESPONDENT (MAY 7, 2002)	3310
FINAL REPLY BRIEF OF APPELLANT (MAY 7, 2002).....	3369
PETITION FOR WRIT OF CERTIORARI (<i>FRANKLIN, ET AL</i> ; JULY 17, 2002).....	3379
RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI (<i>FRANKLIN, ET AL</i> ; AUGUST 27, 2002)	3397
MOTION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>ATKINS V. VIRGINIA</u> (JULY 26, 2002)	3424
RESPONDENT'S RESPONSE TO MOTION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>ATKINS V. VIRGINIA</u> (AUGUST 26, 2002)	3429
SOUTH CAROLINA SUPREME COURT ORDER DENYING WITHOUT PREJUDICE MOTION TO ALLOW SUPPLEMENTAL BRIEFING (SEPTEMBER 19, 2002)	3439

PETITION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>FRANKLIN V. MAYNARD</u> (DECEMBER 12, 2003)	3440
ORDER DENYING PETITION TO ALLOW SUPPLEMENTAL BRIEFING IN LIGHT OF <u>FRANKLIN V. MAYNARD</u> (JANUARY 28, 2004)	3446
<u>STATE V. SIMMONS</u> , OPINION NO. 25838	3447
PETITION FOR REHEARING (JULY 15, 2004)	3459
ORDER DENYING PETITION FOR REHEARING (AUGUST 9, 2004)	3465
REMITTITUR (AUGUST 9, 2004)	3467
PETITION FOR STAY OF EXECUTION (AUGUST 12, 2004)	3468
RETURN TO PETITION FOR STAY OF EXECUTION (AUGUST 25, 2004)	3472
ORDER GRANTING PETITION FOR STAY OF EXECUTION (SEPTEMBER 9, 2004)	3476
PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA (NOVEMBER 8, 2004)	3478
BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF SOUTH CAROLINA (DECEMBER 15, 2004)	3547
SUPREME COURT OF THE UNITED STATES LETTER (JANUARY 24, 2005)	3581
 <u>POST CONVICTION RELIEF DOCUMENTS:</u>	
PETITION FOR STAY OF EXECUTION (JANUARY 27, 2005)	3582
RETURN TO PETITION FOR STAY OF EXECUTION (JANUARY 31, 2005)	3587
ORDER GRANTING PETITION FOR STAY OF EXECUTION (FEBRUARY 2, 2005)	3592
ORDER APPOINTING COUNSEL (MARCH 14, 2005)	3594
MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (MAY 4, 2005)	3597
RETURN TO MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (AUGUST 10, 2005)	3604
POST-CONVICTION RELIEF APPLICATION (AUGUST 29, 2005)	3611

ORDER DENYING MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (SEPTEMBER 8, 2005).....	3617
APPLICANT'S REQUEST FOR RECONSIDERATION OF APPLICANT'S MOTION TO SEEK FUNDING BY EX PARTE PROCEEDINGS/OR IN THE ALTERNATIVE, MOTION TO ALTER/AMEND THE JUDGMENT (SEPTEMBER 14, 2005).....	3624
RESPONDENT'S RETURN TO INITIAL APPLICANT FOR POST-CONVICTION RELIEF; MOTION TO DISMISS; MOTION FOR MORE DEFINITE STATEMENT; MOTION FOR STATUS CONFERENCE (NOVEMBER 7, 2005)	3632
ORDER DENYING APPLICANT'S REQUEST FOR RECONSIDERATION OF APPLICANT'S MOTION TO PERMIT APPLICANT TO SEEK FUNDING BY EX PARTE PROCEEDINGS (FEBRUARY 3, 2006).....	3652
APPLICANT'S MOTION TO COMPEL DISCOVERY FROM RESPONDENT (DECEMBER 12, 2006)	3658
RESPONSE TO APPLICANT'S MOTION TO COMPEL (DECEMBER 21, 2006).....	3693
ORDER DENYING MOTION TO COMPEL DISCOVERY FROM RESPONDENT (JANUARY 11, 2007)	3705
MOTION TO SUBSTITUTE COUNSEL (JANUARY 18, 2007)	3709
RESPONSE TO APPLICANT'S MOTION TO SUBSTITUTE COUNSEL (JANUARY 26, 2007)	3712
ORDER RELIEVING COUNSEL (MAY 14, 2007)	3715
FORM 4 ORDER APPOINTING COUNSEL (JUNE 5, 2007).....	3721
MOTION TO SUBSTITUTE COUNSEL (JULY 21, 2008)	3722
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF (DECEMBER 21, 2009)	3731
NOTICE OF INTENT TO RELY UPON AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE (JANUARY 14, 2010)	3736
APPLICANT'S PRE-HEARING BRIEF (JANUARY 21, 2010).....	3784

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 1-4, 2010	3817
STIPULATIONS	3820
TESTIMONY	
MARJORIE HAMMOCK	
Direct Examination by Ms. Paavola	3823
Cross Examination by Mr. Zelenka	3846
Re-Direct Examination by Ms. Paavola.....	3904
DR. MARC TASSE	
Direct Examination by Ms. Paavola	3916
Cross Examination by Mr. Zelenka	3971
Re-Direct Examination by Ms. Paavola.....	4014
Re-Cross Examination by Mr. Zelenka	4021
JAMES EVANS AIKEN	
Direct Examination by Ms. Paavola	4025
Cross Examination by Mr. Zelenka	4037
Re-Direct Examination by Ms. Paavola.....	4047
R. WALTER BAILEY	
Direct Examination by Mr. Zelenka	4049
Cross Examination by Mr. Morton	4071
STEVE LAMBERT	
Direct Examination by Mr. Young	4073
Cross Examination by Mr. Zelenka	4125
Re-Direct Examination by Mr. Young.....	4136
JERRY THEOS	
Direct Examination by Mr. Zelenka	4138
Cross Examination by Mr. Morton	4169
CERTIFICATE OF COURT REPORTER	4177
EXHIBITS FROM FEBRUARY 1-4, 2010 PCR HEARING:	
APPLICANT'S EXHIBIT #1 (PSYCHIATRIC EVALUATION)	4178
APPLICANT'S EXHIBIT #2 (PACKET, 14 DOCUMENTS – AFFIDAVITS).....	4190
APPLICANT'S EXHIBIT #3 (HAMMOCK, CURRICULUM VITAE)	4254

APPLICANT’S EXHIBIT #4 (SIMMONS FAMILY HISTORY).....	4257
APPLICANT’S EXHIBIT #5 (DR. TASSE, CURRICULUM VITAE).....	4258
APPLICANT’S EXHIBIT #6 (SUMMARY SIMMONS I.Q. TEST RESULTS).....	4281
APPLICANT’S EXHIBIT #7 (JAMES AIKEN, CURRICULUM VITAE).....	4282
APPLICANT’S EXHIBIT #8 (STEPHEN LAMBERT, CURRICULUM VITAE).....	4291
APPLICANT’S EXHIBIT #9 (LIFECODES FILE)	4295
APPLICANT’S EXHIBIT #10 (GULLIKSEN AFFIDAVIT).....	4456
APPLICANT’S EXHIBIT #13 (POWERPOINT PRESENTATION, APPLICANT).....	4457
APPLICANT’S EXHIBIT #15 (DQAI RESULTS – 3 PAGES)	4461
APPLICANT’S EXHIBIT #16 (SWAB RESULTS)	4464
APPLICANT’S EXHIBIT #18 (LIFECODE LETTER, 2/04/99).....	4465
STATE’S EXHIBIT #1 (LETTER/REPORT, 1/23/98)	4466
STATE’S EXHIBIT #2 (LETTER/WHITEHEAD, 2/02/98).....	4470
STATE’S EXHIBIT #3 (LETTER BAILEY/BEARD, 10/22/98)	4475
STATE’S EXHIBIT #4 (SANDLER CURRICULUM VITAE).....	4478
STATE’S EXHIBIT #5 (PSYCHIATRIC EVALUATION, 2/10/99)	4485
STATE’S EXHIBIT #6 (TIME LINE).....	4491
STATE’S EXHIBIT #7 (SUPPLEMENTAL MOTION).....	4515
STATE’S EXHIBIT #8 (LETTER).....	4518
STATE’S EXHIBIT #9 (LETTER).....	4519
STATE’S EXHIBIT #10 (LETTER).....	4520
STATE’S EXHIBIT #11 (LETTER).....	4521
STATE’S EXHIBIT #12 (LETTER).....	4522

STATE'S EXHIBIT #13 (LETTER, 2 PAGES)	4523
STATE'S EXHIBIT #14 (YUNGMAN REPORT).....	4525
STATE'S EXHIBIT #15 (LIST OF DEFENDANTS)	4531
STATE'S EXHIBIT #16 (LIST)	4534
STATE'S EXHIBIT #17 (LETTER, SIMMONS)	4535
ORDER TO COMPEL ATTENDANCE AND AUTHORIZING FUNDS FOR EXPERT SERVICES (MAY 18, 2010).....	4536
NOTICE OF INTENT TO RELY ON AFFIDAVIT OF DR. CHARLOTTE WORD & DR. ROBIN COTTON AS EVIDENCE IN REPLY (MARCH 17, 2011).....	4537
MEMORANDUM IN SUPPORT OF REPLY AFFIDAVIT (MARCH 17, 2011)	4596
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 15, 2011	4626
JAMES A. BELL	
Direct Examination by Mr. Zelenka	4633
Cross Examination by Mr. Morton	4644
WALTER M. BAILEY	
Direct Examination by Ms. Brown	4645
Cross Examination by Mr. Young	4655
Re-Direct Examination by Ms. Brown	4680
CERTIFICATE OF COURT REPORTER.....	4704
EXHIBITS FROM DECEMBER 15, 2011 PCR HEARING:	
APPLICANT'S EXHIBIT #19 (12/21/98 LETTER)	4705
APPLICANT'S EXHIBIT #20 (DNA INFORMATION).....	4706
APPLICANT'S EXHIBIT #21 (DNA INFORMATION).....	4707
STATE'S EXHIBIT #18 (DEPOSITION – MICHAEL LEONARD BAIRD).....	4708
(ORIGINAL, SEALED EXHIBIT ON FILE WITH THE CLERK'S OFFICE)	
STATE'S EXHIBIT #19 (DEPOSITION – LAUREN CRANE).....	4786
(ORIGINAL, SEALED EXHIBIT ON FILE WITH THE CLERK'S OFFICE)	

COURT’S EXHIBIT #1 (DEPOSITION – RICHARD LEO)	4873
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 2, 2012	4921
CHARLOTTE WORD	
Direct Examination by Ms. Paavola	4923
Cross Examination by Mr. Zelenka	4976
Re-Direct Examination by Ms. Paavola.....	4995
ROBIN COTTON	
Direct Examination by Ms. Paavola	4999
Cross Examination by Mr. Zelenka	5017
Re-Direct Examination by Ms. Paavola.....	5021
CERTIFICATE OF COURT REPORTER.....	5025
EXHIBITS FROM JULY 2, 2012 PCR HEARING:	
PLAINTIFF’S EXHIBIT A (C.V. OF DR. WORD).....	5026
PLAINTIFF’S EXHIBIT B (AFFIDAVIT OF DR. WORD).....	5044
PLAINTIFF’S EXHIBIT C (SUPPLEMENTAL AFFIDAVIT)	5099
PLAINTIFF’S EXHIBIT D (UPDATED/CORRECTED CHART)	5105
PLAINTIFF’S EXHIBIT E (P.M. TYPES).....	5106
PLAINTIFF’S EXHIBIT F (C.V. OF DR. COTTON).....	5110
APPLICANT’S POST-HEARING BRIEF (SEPTEMBER 19, 2012).....	5118
RESPONDENT’S POST-HEARING BRIEF (SEPTEMBER 20, 2012).....	5175
REPLY TO RESPONDENT’S POST-HEARING BRIEF (OCTOBER 11, 2012)	5233
RESPONDENT’S POST-HEARING REPLY BRIEF (OCTOBER 12, 2012).....	5251
ORDER GRANTING POST-CONVICTION RELIEF PURSUANT TO <u>ATKINS V.</u> <u>VIRGINIA</u> , 536 U.S. 304 (2002) (OCTOBER 15, 2013)	5293
RESPONDENT’S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (NOVEMBER 1, 2013)	5312
RESPONSE IN OPPOSITION TO RESPONDENT’S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (NOVEMBER 5, 2013).....	5335

RESPONDENT’S AMENDED MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (NOVEMBER 15, 2013).....	5340
LETTER FROM PAAVOLA IN RESPONSE TO RESPONDENT’S AMENDED MOTION TO ALTER (NOVEMBER 19, 2013)	5365
MOTION FOR RECONSIDERATION HEARING TRANSCRIPT DATED DECEMBER 4, 2013.....	5366
PROPOSED ORDER GRANTING RESPONDENT’S AMENDED MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (DECEMBER 31, 2013).....	5395
PROPOSED ORDER DENYING RESPONDENT’S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (DECEMBER 31, 2013)	5423
ORDER DENYING RESPONDENT’S MOTION TO ALTER OR AMEND PURSUANT TO RULE 59 (JANUARY 22, 2014)	5436

ADDITIONAL COURT DOCUMENTS:

INDICTMENTS AND SENTENCING SHEETS	5452

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #18a (CD 1 OF 2) [VIDEO DEPOSITION]
STATE’S EXHIBIT #18b (CD 2 OF 2) [VIDEO DEPOSITION]**

1. The first step is to identify the problem or question that needs to be answered.

CLOSING ARGUMENT BY MR. BAILEY

1 TIED HER UP?"

2 MR. SIMMONS: YES, SIR.

3 MR. MEARS: "WITH WHAT?"

4 MR. SIMMONS: "I GUESS A STOCKING."

5 MR. MEARS: "A STOCKING?"

6 MR. SIMMONS: "I CAN'T REMEMBER WHAT
7 I TIED HER UP WITH."

8 MR. MEARS: "WAS SHE ALIVE WHEN YOU
9 LEFT?"

10 MR. SIMMONS: "SHE WAS HALF AND
11 HALF; AND THEN I WENT TO THE TELEPHONE TO TRY TO
12 CALL 911."

13 BY MR. BAILEY

14 NEXT, CRIMINAL SEXUAL CONDUCT IN THE
15 FIRST DEGREE. BASICALLY THAT'S RAPE, CRIMINAL
16 SEXUAL CONDUCT IN THE FIRST DEGREE IS DEFINED AS
17 THE COMMISSION OF SEXUAL BATTERY.

18 THE COURT: MR. SOLICITOR, LET ME
19 INTERRUPT A MINUTE. WE'RE GOING TO HAND A CUP OF
20 WATER TO OUR NUMBER 12 JUROR. HE'S FEELING HIS
21 IMPORTANCE NOW. WOULD ANY OF THE OTHER REGULAR OR
22 THE TWO ALTERNATES LIKE TO HAVE A CUP OF ICE
23 WATER? ONE MORE. THE GENTLEMAN ON THE BACK ROW
24 THERE, MA'AM, IF YOU WOULD, PLEASE. WOULD ANYBODY
25 ELSE LIKE A DRINK OF WATER, PLEASE? LADIES AND

CLOSING ARGUMENT BY MR. BAILEY

1 GENTLEMEN, WE WANT YOU TO BE COMFORTABLE. ALL
2 RIGHT. THANK YOU. MR. SOLICITOR, PLEASE EXCUSE ME
3 FOR THE INTERRUPTION.

4 MR. BAILEY: THANK YOU, YOUR HONOR.

5 BY MR. BAILEY

6 CRIMINAL SEXUAL CONDUCT WOULD
7 INCLUDE SEXUAL BATTERY. SEXUAL BATTERY WOULD
8 INCLUDE SEXUAL INTERCOURSE OR ANY INTRUSION OF A
9 FEMALE'S VAGINA WITH ANY OBJECT, A PENIS OR ANY
10 OBJECT AGAINST HER WILL. NOW, IT BECOMES FIRST
11 DEGREE CRIMINAL SEXUAL CONDUCT WHEN THE PENETRATION
12 IS ACCOMPLISHED BY THE USE OF EXCESSIVE FORCE OR
13 THE VICTIM IS OVERCOME WITH THREAT OR THE USE OF A
14 DEADLY WEAPON. IT'S ALSO CHARACTERIZED AS FIRST
15 DEGREE CRIMINAL SEXUAL CONDUCT IF THE VICTIM OF
16 THAT SEXUAL BATTERY IS ALSO THE VICTIM OF FORCEFUL
17 CONFINEMENT, KIDNAPPING, ROBBERY, OR BURGLARY.

18 IN THIS CASE WHEN MRS. VIRGINIA
19 WILSON FOUND MRS. BOYD'S BODY, E.M.S. AND LAW
20 ENFORCEMENT ARRIVED. OF COURSE MRS. BOYD WAS LYING
21 ON HER BACK IN ADDITION TO BEING TIED UP. HER
22 PANTIES WERE PULLED DOWN AROUND HER KNEE LEVEL.
23 HER DRESS IS PULLED UP. AND MRS. WILSON TESTIFIED
24 WHAT SHE DID; THAT THERE WITH A DISCHARGE IN THE
25 VAGINAL AREA THAT SHE TRIED TO CLEAN UP. SHE TRIED

CLOSING ARGUMENT BY MR. BAILEY

1 TO CLEAN UP SOME OF THE BLOOD. DR. NICHOLS, THE
2 PATHOLOGIST, BASICALLY WENT TO THE CRIME SCENE; SAW
3 THE BODY; SAW THE BLOODY DISCHARGE FROM HER VAGINA;
4 AND WHEN HE DID THE AUTOPSY, HE SAID HE OBSERVED AN
5 EXTREME DEGREE OF VAGINAL HEMORRHAGING. BUT HE
6 TESTIFIED HIS OPINION WAS CONSISTENT WITH FORCIBLE
7 INTERCOURSE.

8 AS PART OF THAT AUTOPSY PROCEDURE --
9 THEY TAKE SWABS; GET A Q-TIP AND TAKE VAGINAL,
10 ORAL, RECTAL SWABS. AND HE DID THAT IN THIS CASE.
11 SOME OF HIS SWABS WERE GIVEN TO THE POLICE
12 OFFICER. SOME WENT BACK UP TO THE MEDICAL
13 UNIVERSITY. HE VISUALIZED SEMEN IN THE SLIDES THAT
14 HE PREPARED FROM SOME OF THOSE VAGINAL SWABS. NOW
15 THIS MATERIAL WAS SENT INITIALLY TO SLED BECAUSE
16 JUST A QUANTITY OF THE VAGINAL SWABS; THEY COULDN'T
17 DO THE TYPE DNA TESTS THAT SLED DOES. SO IT WAS
18 SENT UP TO LIFECODES LAB IN CONNECTICUT FOR DNA
19 ANALYSIS. AND LATER ON, AFTER SIMMONS WAS ARRESTED
20 IN DECEMBER, HIS BLOOD WAS ALSO SENT UP TO THE
21 LIFECODES LABORATORY.

22 NOW THE DNA EVIDENCE AS MR. IRA
23 JEFFCOAT FROM SLED -- GIVING YOU A LITTLE
24 INTRODUCTION TO DNA -- HE SAID THE P.C.R. PROCESS
25 IS NOT AS DISCRIMINATING AS SOME OTHER THINGS LIKE

CLOSING ARGUMENT BY MR. BAILEY

1 THE R.F.L.P. SO DNA IS NEVER GOING TO BE ABLE TO
2 TELL YOU WITH A HUNDRED PERCENT CERTAINTY THIS IS
3 THE PERSON WHO'S SEMEN IS FOUND HERE BASED ON DNA
4 MATCH BECAUSE THEY CAN'T POSSIBLY LOOK AT EACH DNA
5 ALLELE THEY DID NINE OF THEM IN THIS PARTICULAR
6 CASE. ALL THEY CAN DO IS SAY WHETHER OR NOT A
7 PERSON IS EXCLUDED FROM THAT DNA PROFILE OR NOT
8 EXCLUDED. THEN THEY CAN DO STATISTICAL
9 PROBABILITIES OF HOW OFTEN THAT PARTICULAR PROFILE
10 EXISTS IN THE POPULATION. AND THAT'S WHAT THESE
11 PEOPLE TESTIFIED TO. AND AGAIN, I'M NOT GOING TO
12 STAND UP HERE AND TELL YOU WITH 100 PERCENT
13 CERTAINTY THAT YOU SHOULD CONVICT ON DNA EVIDENCE
14 ALONE. IT'S JUST PART OF THE STATE'S CASE.

15 IN THIS CASE, AS I SAID THEY LOOKED
16 AT NINE DNA LOCATIONS. MRS. CRANE HAD THIS CHART
17 SHE TESTIFIED FROM. (INDICATING.) I'LL TRY TO
18 KIND OF GO OVER WHAT SHE SAID. Y'ALL WILL HAVE
19 THIS IN THE JURY ROOM. SO IF YOU CAN'T SEE IT TOO
20 WELL, YOU CAN SEE IT IN BETTER DETAIL BACK THERE.
21 YOU SEE ACROSS THE TOP -- AND THESE INITIALS HERE
22 ARE L.D.L.R. AND ALL THAT. THOSE WERE THE NINE
23 LOCATIONS ON THE DNA MOLECULE THAT THEY WERE ABLE
24 TO MEASURE THE DNA ALLELES, OR THE DIFFERENT -- AND
25 I THINK ONE OF THEM KIND OF COMPARED THAT LIKE AN

CLOSING ARGUMENT BY MR. BAILEY

1 A-B-O BLOOD TYPE. YOU HAVE LIKE A OR B OR
2 O-POSITIVE OR WHATEVER. IT'S MORE INVOLVED BUT
3 BASICALLY THE SAME PRINCIPLE. THEY CAN DETECT
4 THESE DIFFERENT ALLELES HERE.

5 NOW, WHAT THEY DID -- AS I SAID,
6 THEY CAN DETERMINE OR THEY SAID THEY CAN DETERMINE
7 THE FREQUENCY WITH WHICH THESE DIFFERENT ALLELES
8 EXIST IN POPULATION. FOR EXAMPLE, IF SOMEBODY'S
9 GOT BROWN EYES, THEY CAN STATISTICALLY DETERMINE
10 THAT THEY WERE 20 PERCENT OF THE POPULATION HAS
11 BROWN EYES. THAT'S THE KIND OF STUFF THEY'RE
12 DOING. AND ITS BASED THE BEST WAY AS I CAN PUT IT,
13 JUST KIND OF SUMMARIZING WHAT SHE SAID. SO YOU'VE
14 GOT NINE DIFFERENT LOCATIONS, AND THEY LOOK DOWN
15 ACROSS THE TOP HERE. AND, FOR EXAMPLE, THE FIRST
16 LINES IS THE DNA FROM LILLY BELL BOYD'S BLOOD. THE
17 SECOND LINE IS THE DNA FROM KENNETH SIMMONS'
18 BLOOD. LET ME POINT OUT ONE THING TO YOU -- AND I
19 THINK I MENTIONED THIS BEFORE. IF YOU WILL RECALL
20 FROM MRS. CRANE'S TESTIMONY. SHE WAS THE ANALYST.
21 SHE WAS THE ONE THAT WAS THERE. WHEN RON
22 MANCHESTER DROVE THIS STUFF UP, SHE ACCEPTED IT.
23 AFTER THE MURDER, SHE'S TESTIFIED THAT VAGINAL
24 SWABS OF MRS. BOYD'S BLOOD WERE BROUGHT UP THERE IN
25 1996, AND THEY WENT AHEAD AND THEY STARTED TO

CLOSING ARGUMENT BY MR. BAILEY

1 ANALYZE IT -- OR DID ANALYZE IT. AND THE DEFENSE
2 HAS PUT THIS CHART IN. Y'ALL WILL HAVE THAT IN
3 EVIDENCE AS STATE'S 16-A. AND THEY'VE DONE THIS
4 PROFILE ON JUST THE VAGINAL SWABS AND MRS. BOYD'S
5 BLOOD. THE DATE UP HERE IS NOVEMBER THE
6 EIGHTEENTH, 1996. SO I IMAGE MR. THEOS WILL BE
7 REFERRING TO THIS WHEN HE GIVES YOU HIS STATEMENT
8 -- I DON'T KNOW -- BUT BEAR IN MIND, AT THE TIME
9 THEY DID THIS, THEY DIDN'T HAVE KENNETH SIMMONS'
10 BLOOD.

11 YOU'LL NOTE DOWN HERE THAT ON THE
12 D.Q. ALPHA OVER HERE, ON THE VAGINAL SWAB THERE'S A
13 TWO HIGH WITH AN ASTERISK BESIDE IT. AND DOWN HERE
14 THEY SAY INDICATES THAT A 1.2 ALLELE MAY BE
15 PRESENT. AND MRS. CRANE SAID THAT A 1.2 ALLELE IS
16 A SUB-TYPE OF THIS NUMBER TWO ALLELE, AND THE TESTS
17 COULDN'T DIFFERENTIATE IT. SO BEFORE THEY EVEN
18 HAVE KENNETH SIMMONS' BLOOD, SHE'S SAYING THAT A
19 1.2 ALLELE MAY BE PRESENT OVER HERE. AND I'LL
20 MENTION THAT AGAIN IN A MINUTE.

21 OF COURSE THE REASON THEY CAN'T
22 DETERMINE WITH 100 PERCENT CERTAINTY THAT A
23 PARTICULAR PERSON LEFT A PARTICULAR DNA PROFILE IS
24 THAT CONCEIVABLY YOU COULD HAVE A COINCIDENTAL
25 MATCH. FOR EXAMPLE, IN MRS. BOYD'S BLOOD HERE, AT

CLOSING ARGUMENT BY MR. BAILEY

1 THE G.Y.P.A. LOCATION, SHE'S GOT AN A-B ALLELE.
2 KENNETH SIMMONS ALSO HAS AN A-B ALLELE. SO YOU
3 COULDN'T DIFFERENTIATE THERE. ON THIS NEXT ONE,
4 THE H.P.G.G., SHE HAS AN A-C ALLELE; HE HAS AN A-C
5 ALLELE. BUT OTHER ONES ARE DIFFERENT. THE FIRST
6 ONE, THE L.D.L.R., SHE'S GOT AN A-B; HE'S GOT A B.
7 OVER HERE IN THE D.7.S.8., SHE HAS A, HE'S GOT A-B.
8 ON G.T., SHE HAS A B AND HE HAS AN A-C AND SO ON.
9 THESE ARE DIFFERENT; THE D.Q. ALPHA. SO AGAIN,
10 IT'S NOT LIKE A FINGERPRINT WHERE YOU CAN GET 100
11 PERCENT CERTAINTY. WHAT THEY CAN TELL YOU IS
12 WHETHER OR NOT THE DNA THAT THEY HAVE FROM A
13 SUSPECT THROUGH THE BLOOD THAT WAS SENT UP THERE
14 CAN BE EXCLUDED AS A POSSIBLE DONOR OF THE DNA OF
15 THE SEMEN. AND IF THEY CAN'T BE EXCLUDED, THEN
16 THEY CAN LOOK AT THESE STATISTICAL PROBABILITIES.

17 AS WE SAID, THE DNA PROFILE IN LILLY
18 BELL BOYD'S BLOOD AND KENNETH SIMMONS' BLOOD IS
19 DIFFERENT IN TWO OF THE LOCATIONS HERE. NOW, AS
20 FAR AS THE FREQUENCY, HE EXPLAINED THAT TO YOU THAT
21 WHAT THEY DO IS DETERMINE -- AND THEY USE A CHART
22 FOR THAT -- THIS IS THE DNA PROFILE, THE FREQUENCY
23 DETERMINATION ON DNA PROFILE FOR KENNETH SIMMONS'
24 KNOWN BLOOD. AND ON THE -- FOR EXAMPLE, AN
25 H.L.H.D. FOR THE FIRST ONE, THE FREQUENCY OF

CLOSING ARGUMENT BY MR. BAILEY

1 OCCURRENCE IS OVER HERE. SO IN THE BLACK
2 POPULATION ON THAT DATA BASE, THE FREQUENCY OF THAT
3 OCCURRING IS THIS FIGURE HERE. (INDICATING.) SO
4 THAT PERCENTAGE OF PEOPLE IN THAT POPULATION WOULD
5 HAVE THIS DNA PROFILE IN D.Q. ALPHA. AND WHAT THEY
6 WOULD DO IS MULTIPLY THE FREQUENCY OF THE FIRST ONE
7 TIMES THE SECOND ONE. THE SUM OF THAT ARE THE
8 THIRD ONE; THE SUM OF THAT BY THE FOURTH ONE; AND
9 SO ON AND SO FORTH TO DETERMINE THE FREQUENCY AT
10 WHICH THAT ENTIRE DNA PROFILE EXISTS IN THE
11 POPULATION. IT'S LIKE THE PROBABILITY OF GETTING A
12 WOMAN, YOU ROLL A DICE; IT'S ONE OUT OF SIX. IF
13 YOU ROLL THEM TWICE, YOU MULTIPLY $1/6$ TIMES $1/6$,
14 AND ONE OUT OF 36; THE POSSIBILITY OF ROLLING A ONE
15 THREE TIMES WOULD BE $1/36$ TIMES $1/6$ WHICH WOULD BE
16 216 AND SO ON. THAT'S THE PROBABILITY THEY'RE
17 TALKING ABOUT. AND BASED ON THAT PROBABILITY RULE,
18 KENNETH SIMMONS' DNA PROFILE WOULD EXIST IN THE
19 POPULATION. THE FREQUENCY OF OCCURRENCE IS ONE IN
20 8,029,316. AGAIN, THIS IS KENNETH SIMMONS' BLOOD,
21 HIS KNOWN BLOOD.

22 LET'S JUST SEE HOW THIS THING
23 WORKS. THIS LINE HERE -- IF YOU RECALL THERE ARE
24 TWO VAGINAL SWABS. ONE WENT TO SLED. ONE WENT TO
25 THE MEDICAL UNIVERSITY. BOTH OF THEM ENDED UP

CLOSING ARGUMENT BY MR. BAILEY

1 GOING TO LIFECODES. AND THEY SAID WHEN YOU HAVE A
2 VAGINAL SWAB AND SOME MIXTURE OF SEMEN AND FEMALE
3 VAGINAL SECRETIONS AND THERE'S A METHOD THEY CAN
4 USE TO TRY TO SEPARATE THE MALE FRACTION FROM THE
5 FEMALE FRACTION, AND THEY CAN'T ALWAYS GET A
6 COMPLETE SEPARATION. SO ALL OF THESE ARE VAGINAL
7 SWABS. THIS LINE HERE IS THE MALE FRACTION OF THE
8 VAGINAL SWABS FROM M.U.S.C. THIS IS A MALE
9 FRACTION OF A VAGINAL SWAB THAT WENT TO SLED. THIS
10 LINE HERE WOULD BE THE FEMALE FRACTION OF THE
11 VAGINAL SWAB FROM M.U.S.C. AND THE BOTTOM LINE IS
12 THE FEMALE FRACTION OF THE VAGINAL SWABS THAT WENT
13 THROUGH SLED. AND YOU CAN LOOK AT THE FEMALE
14 FRACTION OF THE VAGINAL SWABS. DOWN HERE; THESE
15 A-B, A-B, A-C, A-A-D. AND LOOK UP HERE AT LILLY
16 BELL BOYD'S BLOOD, AND IT'S THE SAME. SOME DNA IN
17 THE FEMALE PORTION OF THE VAGINAL SWAB THAT CAME
18 FROM M.U.S.C. IS IDENTICAL TO HER BLOOD. THE SAME
19 WITH THE FEMALE FRACTION AND THE VAGINAL SWABS WENT
20 THROUGH SLED. THEY'RE THE SAME. EXPECT THAT
21 BECAUSE THEY ALL CAME FROM THE SAME PLACE; THEY
22 JUST GOT THERE IN TWO DIFFERENT ROUTES.

23 NOW THE MALE FRACTION; MRS. CRANE
24 TESTIFIED THEY COULDN'T GET A COMPLETE SEPARATION
25 IN IT. SO THE MALE FRACTION FROM BOTH LOCATIONS --

CLOSING ARGUMENT BY MR. BAILEY

1 THE ONE HERE; THE ONE HERE ARE THE SAME. SO LET'S
2 JUST TALK ABOUT THIS ONE. SHE TESTIFIED THAT THE
3 MALE FRACTION DID NOT COMPLETELY SEPARATE, BUT IT
4 WAS CONSISTENT WITH A COMBINATION OF THE DNA
5 PROFILE FROM LILLY BELL BOYD AND FROM KENNETH
6 KENNETH SIMMONS. AND YOU CAN LOOK AT THAT AND
7 TELL. YOU HAVE AN A-B HERE IN THIS MALE FRACTION.
8 LILLY BELL BOYD HAS AN A AND A-B. MR. SIMMONS HAS
9 A-B. OF COURSE THIS WOULD BE THE SAME. THEY BOTH
10 HAVE AN A-B, AND THERE'S AN A-B DOWN HERE; A-C,
11 A-C, A-C DOWN HERE. (INDICATING.) NOW, THIS FOURTH
12 ONE, LILLY BELL BOYD'S GOT AN A; MR. SIMMONS HAS
13 GOT AN A-B. YOU HAVE BOTH THE A AND THE B DOWN
14 HERE. THIS ONE OVER HERE IS THE B-C. THEY'RE
15 TOTALLY DIFFERENT. LILLY BELL BOYD'S GOT A B;
16 KENNETH SIMMONS HAS AN A-C. AND HERE YOU HAVE THE
17 B AND THE A-C. ON THESE LAST THREE, THEY'RE
18 IDENTICAL TO KENNETH SIMMONS' BLOOD, 10, 11, 10,
19 1L, 10, 11, 7, 8, AND 7, 8. GOING BACK TO THE D.Q.
20 ALPHA OVER HERE; MRS. BOYD'S BLOOD HAS GOT A 402
21 AND A 403. YOU'VE GOT THAT DOWN HERE. THERE'S
22 KENNETH -- SHE DOES NOT HAVE A 1.1. BUT KENNETH
23 SIMMONS HAS A 1.1; AND YOU FIND THAT HERE.

24 KENNETH SIMMONS HAS A 1.2.

25 THERE'S A TWO HERE. AND YOU RECALL AGAIN THAT BACK

CLOSING ARGUMENT BY MR. BAILEY

1 IN 1996 BEFORE THEY HAD MR. SIMMONS' BLOOD HERE,
2 THEY FOUND THIS SAME TWO ALLELE IN THE VAGINAL SWAB
3 HERE. AND SINCE THE 1.2 ALLELE IS THE SUB-TYPE
4 THAT MAY BE PRESENT; SO THERE'S NO DIFFERENCE IN
5 THIS 1.2 AND THIS TWO. SO THE BOTTOM LINE, LADIES
6 AND GENTLEMEN, IS EVERYTHING THAT'S IN THIS VAGINA
7 SWAB IS CONSISTENT WITH THE COMBINATION OF MRS.
8 BOYD'S BLOOD AND KENNETH SIMMONS' BLOOD. THERE'S
9 NOTHING INCONSISTENT. THERE'S NOTHING IN HERE THAT
10 IS NOT IN ONE OF THE OTHER OF MRS. BOYD'S BLOOD OR
11 KENNETH SIMMONS' BLOOD. SO KENNETH SIMMONS IS NOT
12 EXCLUDED AS A DONOR OF THAT DNA.

13 HE'S NOT EXCLUDED IN THE FREQUENCY
14 OF OCCURRENCE THAT KENNETH SIMMONS' BLOOD IN THE
15 BLACK POPULATION IS ONE OF 8,029,316. AND AGAIN,
16 I'M NOT ASKING Y'ALL FOR A CONVICTION BASED ON
17 DNA. DNA MERELY CORROBORATES KENNETH SIMMONS'
18 TESTIMONY, THE CONFESSION WHERE HE SAYS HE RAPED
19 HER. NOW, IF YOU WANT TO REALLY STRETCH YOUR
20 IMAGINATION OF THESE DNA FIGURES, YOU MIGHT SAY
21 SOMEBODY ELSE COULD HAVE THAT SAME DNA PROFILE.
22 AND I GUESS THAT'S CONCEIVABLE. BUT THE ONLY
23 PERSON WITH THAT CONSISTENT DNA PROFILE THAT
24 CONFESSED TO RAPING LILLY BELL BOYD IS KENNETH
25 SIMMONS. THAT'S ONE IN THE WORLD, AND HE'S THE

CLOSING ARGUMENT BY MR. BAILEY

ONLY ONE.

I'M AGAIN GOING TO PLAY PORTIONS OF
THESE TAPES THAT PERTAIN TO CRIMINAL SEXUAL CONDUCT
AND AGAIN ASK YOU TO LISTEN TO THAT BEARING IN MIND
THE ELEMENTS OF FIRST DEGREE CRIMINAL SEXUAL
CONDUCT.

(AT THIS TIME TAPE IS PLAYED FOR JURY AND IS AS
FOLLOWS:)

MR. MEARS: "HOW MANY TIMES DID YOU
HIT HER?"

MR. SIMMONS: "I THINK IT WAS TWO OR
THREE TIMES."

MR. MEARS: "WHERE DID YOU HIT HER
AT?"

MR. SIMMONS: "IN THE HEAD."

MR. MEARS: "THEN WHAT DID YOU DO?"

MR. SIMMONS: "AFTER THAT I HAD SEX
WITH HER."

MR. MEARS: "WAS SHE ALIVE AT THAT
TIME?"

MR. SIMMONS: "YES, SIR; SHE WAS
LIVING AT THAT TIME."

MR. MEARS: "YOU HAD SEX WITH HER?"

MR. SIMMONS: "YES, SIR."

MR. MEARS: "THEN WHAT DID YOU DO?"

CLOSING ARGUMENT BY MR. BAILEY

1 MR. SIMMONS: "I LEFT. I WAS REALLY
2 LOSST IN MY MIND."

3 MR. MEARS: "THEN WHAT?"

4 MR. SIMMONS: "SHE HAD GIVEN ME THE
5 ENVELOPE. SHE HAD THE ENVELOPE WHEN I HIT HER."

6 MR. MEARS: "THEN WHAT?"

7 MR. SIMMONS: "AND I PICKED UP THE
8 TELEPHONE, DIALED THE NUMBER, PUT THE TELEPHONE
9 BACK DOWN."

10 MR. MEARS: "DIALED WHAT NUMBER?"

11 MR. SIMMONS: "I WAS GOING TO DIAL
12 911, AND I PUT THE TELEPHONE BACK DOWN."

13 MR. MEARS: "WHY WERE YOU GOING TO
14 DIAL 911?"

15 MR. SIMMONS: "I REALIZED WHAT I HAD
16 DID. AND I KNEW I HAD MADE A BIG MISTAKE, THE
17 BIGGEST MISTAKE IN MY LIFE."

18 MR. MEARS: "HOW MANY TIMES DID YOU
19 RAPE HER?"

20 MR. SIMMONS: "SIR, ONLY ONCE; ONLY
21 ONCE."

22 MR. MEARS: "WAS SHE ALIVE, OR WAS
23 SHE DEAD, SIR?"

24 MR. SIMMONS: "SHE WAS LIVING, SIR."

25 MR. MEARS: "AFTER YOU HIT MRS. BOYD

CLOSING ARGUMENT BY MR. BAILEY

1 SEVERAL TIMES, WAS SHE CONSCIOUS OR WAS SHE
2 UNCONSCIOUS WHEN YOU RAPED HER?"

3 MR. SIMMONS: "SHE WAS HALF AND
4 HALF."

5 MR. MEARS: "DID SHE TRY TO FIGHT
6 BACK?"

7 MR. SIMMONS: "A LITTLE BIT; A
8 LITTLE BIT, SIR."

9 MR. MEARS: "DID YOU TIE HER HANDS
10 BEFORE YOU RAPED HER, OR DID YOU TIE HER HANDS
11 AFTER YOU RAPED HER OR?"

12 MR. SIMMONS: "AFTER."

13 MR. MEARS: "YOU RAPED HER AND THEN
14 TIED HER HANDS?"

15 MR. SIMMONS: "YES, SIR."

16 MR. MEARS: "WHY DID YOU TIE HER
17 HANDS?"

18 MR. SIMMONS: "BECAUSE I THOUGHT SHE
19 WAS GOING TO GET UP."

20 MR. MEARS: "YOU DIDN'T WANT HER TO
21 GET UP BEFORE YOU LEFT?"

22 MR. SIMMONS: "YES, SIR."

23 MR. MEARS: "YOU HIT HER SEVERAL
24 TIMES?"

25 MR. SIMMONS: "YES, SIR."

CLOSING ARGUMENT BY MR. BAILEY

1 MR. MEARS: "AND THEN RAPED HER?"

2 MR. SIMMONS: "YES, SIR."

3 MR. MEARS: "ONCE?"

4 MR. SIMMONS: "YES, SIR."

5 MR. MEARS: "AFTER SHE GAVE YOU THE
6 MONEY, YOU PUSHED HER?"

7 MR. SIMMONS: "YES, SIR."

8 MR. MEARS: "AND SHE HIT HER HEAD?"

9 MR. SIMMONS: "YES, SIR."

10 MR. MEARS: "AND THAT'S WHEN YOU
11 BEAT HER WITH THE STICK?"

12 MR. SIMMONS: "I HIT HER, SIR."

13 MR. MEARS: "AND WHAT ELSE
14 HAPPENED?"

15 MR. SIMMONS: "I TIED HER HANDS."

16 MR. MEARS: "AND YOU RAPED HER AFTER
17 YOU KNOCKED HER TO THE FLOOR?"

18 MR. SIMMONS: "YES, SIR."

19 MR. MEARS: "AND BEAT HER WITH THE
20 STICK?"

21 MR. SIMMONS: "YES, SIR."

22 MR. MEARS: "YOU RAPED HER?"

23 MR. SIMMONS: "YES, SIR."

24 MR. MEARS: "OKAY. AFTER YOU RAPED
25 HER, YOU TIED HER UP?"

CLOSING ARGUMENT BY MR. BAILEY

1 MR. SIMMONS: "YES, SIR."?

2 MR. MEARS: "WITH WHAT?"

3 MR. SIMMONS: "I GUESS A STOCKING.
4 I DON'T KNOW WHAT IT WAS. I CAN'T REMEMBER WHAT I
5 TIED HER WITH."

6 MR. MEARS: "WAS SHE ALIVE WHEN YOU
7 LEFT?"

8 MR. SIMMONS: "SHE WAS HALF AND HALF
9 WHEN I LEFT HER. I WENT TO THE TELEPHONE AND TRIED
10 TO CALL 911."

11 BY MR. BAILEY

12 ALL RIGHT. I WANT TO NEXT TALK TO
13 Y'ALL ABOUT MURDER, THE MOST SERIOUS CHARGE FACED
14 HERE. THE JUDGE WILL TELL YOU THAT MURDER IS THE
15 KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT.
16 THERE CAN BE NO QUESTION OF MALICE IN THIS CASE.
17 THIS CASE REEKS OF MALICE. MRS. BOYD DID NOTHING
18 TO DESERVE HAVING HER LIFE END IN THAT FASHION.
19 NOBODY DESERVES THAT FATE.

20 JUDGE PEEPLES IS GOING TO INSTRUCT
21 YOU THAT YOU CAN INFER MALICE FROM THE INTENTIONAL
22 USE OF A DEADLY WEAPON. ALSO I'M NOT GOING THE
23 DWELL ON MALICE BECAUSE IT IS JUST SO BLATANTLY
24 OBVIOUS. LIKE I SAID, THIS CASE REEKS OF MALICE.
25 AND MALICE IS A DEPRAVED STATE OF MIND, A HEART

CLOSING ARGUMENT BY MR. BAILEY

1 DEVOID OF SOCIAL DUTY. THE JUDGE WILL INSTRUCT YOU
2 ON THAT. KENNETH SIMMONS WAS READY. HE HAD A
3 PLAN. HE RODE HIS BIKE OUT TO MRS. BOYD'S HOUSE.
4 HE KNEW SHE WAS OLD; SHE WAS ALONE; SHE WAS
5 VULNERABLE. HE GOES THERE IN THE DARK TO WAIT FOR
6 HER TO COME OUT. HE PLANNED THIS THING. IT WASN'T
7 ANY OF THE SPUR OF THE MOMENT THING.

8 Y'ALL HEARD THE STATEMENT AND THE
9 CONFESSION ABOUT SIMMONS HITTING HER WITH A STICK.
10 YOU'VE HEARD MRS. WILSON TALK ABOUT THE LARGE
11 QUANTITY OF BLOOD THAT WAS PRESENT. YOU HEARD DR.
12 NICHOLS TESTIFY AS TO THE CAUSE OF DEATH. HE
13 EXPLAINED HOW MRS. BOYD'S HYOID BONE, THIS BONE HER
14 IN THE NECK, WAS FRACTURED. HE SAID THE MUSCLES
15 AROUND HER NECK WERE HEMORRHAGED WHICH MEANS THAT
16 SHE WAS ALIVE WHEN THAT BONE WAS FRACTURED. IF
17 YOU'RE DEAD YOU DON'T BLEED, YOU DON'T HEMORRHAGE.
18 AND HE TESTIFIED ABOUT PETECHIAL HEMORRHAGES OR
19 BLEEDING IN THE EYES. HE SAID THE COMBINATION OF
20 PETECHIAL HEMORRHAGING AND A FRACTURED HYOID BONE,
21 THE DAMAGE AROUND THE NECK AREA, THE MUSCLES, LED
22 HIM TO CONCLUDE THAT IN HIS PROFESSIONAL OPINION
23 MRS. BOYD WAS MANUALLY STRANGLED.

24 DR. NICHOLS ALSO TESTIFIED TO BLUNT
25 HEAD TRAUMA TO MRS. BOYD'S HEAD AND FACE,

CLOSING ARGUMENT BY MR. BAILEY

1 CONTUSIONS TO THE RIGHT SIDE OF HER FACE AND HER
2 EYES, ABRASION ON THE RIGHT SIDE OF HER NECK AND
3 LIPS. AND THE AUTOPSY OF THE SKULL, THERE WAS
4 BLOOD IN THE SUBDURAL AREA, THE SUBARACHNOID AREA
5 BELOW THE LEVEL OF THE SKULL WHERE SHE HAD BEEN
6 BEAT. HE TESTIFIED IN HIS PROFESSIONAL OPINION
7 THAT SHE HAD BEEN HIT MORE THAN ONE TIME; THAT SHE
8 COULD NOT HAVE SUSTAINED THAT DAMAGE FROM A FALL TO
9 THE FLOOR. FOURTEEN RIBS WERE BROKEN EITHER BY
10 STOMPING OR SLAMMING HER TO THE FLOOR IN HIS
11 OPINION. HE GAVE HIS OPINION AS TO THE CAUSE OF
12 DEATH AS A COMBINATION OF MANUAL STRANGULATION,
13 BLUNT FORCE TRAUMA. IN OTHER WORDS SHE WAS
14 STRANGLED AND BEATEN TO DEATH. AND I SUBMIT TO YOU
15 THE EVIDENCE THAT YOU'VE HEARD IS OVERWHELMING AND
16 BEYOND ANY REASONABLE DOUBT. MRS. BOYD WAS
17 MURDERED. MALICE AFORETHOUGHT! THERE COULDN'T BE
18 ANY MORE GRAPHIC EXAMPLE OF MALICE IN A HOMICIDE
19 CASE.

20 MR. SIMMONS IS ALSO CHARGED WITH
21 FIRST DEGREE BURGLARY. BURGLARY IS ENTERING
22 SOMEBODY'S HOUSE WITHOUT THEIR CONSENT WITH THE
23 INTENT TO COMMIT A CRIME IN THERE. IT BECOMES
24 FIRST DEGREE BURGLARY WHEN ANY ONE OF THE FOLLOWING
25 THINGS ARE PRESENT: YOU HAVE TO HAVE THE ENTERING

CLOSING ARGUMENT BY MR. BAILEY

1 OF SOMEBODY ELSE'S HOUSE WITHOUT THEIR CONSENT WITH
2 THE INTENT TO COMMIT A CRIME. IT IS FIRST DEGREE
3 IF THE INTRUDER GOES INTO THE HOUSE WITH A WEAPON,
4 OR IF THERE'S PHYSICAL INJURY TO THE VICTIM, OR IF
5 THE INTRUDER THREATENS THE USE OF A DEADLY WEAPON,
6 OR IT OCCURS IN THE NIGHTTIME. IN THIS CASE YOU
7 HAVE ALL THE EVIDENCE OF FIRST DEGREE BURGLARY.
8 HE'S ARMED WITH A DEADLY WEAPON, A STICK; CAUSES
9 PHYSICAL INJURY TO MRS. BOYD; HE RAPES AND MURDERS
10 HER AND BREAKS FOURTEEN RIBS AND RAPES HER. THE
11 ENTRY OCCURRED AT NIGHT. ACCORDING TO HIS
12 CONFESSION HE GOT THERE BETWEEN 5:00 AND 6:00 A.M.
13 AND REMEMBER CAPTAIN TURNER TESTIFIED THAT
14 SEPTEMBER THE FIRST OF 1996 IT WAS STILL DARK 6:00
15 A.M. SO THE LATEST TIME HE SAYS HE GOT THERE IT IS
16 STILL DARK. SO IT HAPPENED AT NIGHT.

17 AGAIN I'M GOING TO PLAY A BRIEF
18 PORTION OF THE TAPE AND ASK YOU TO THINK ABOUT THE
19 ELEMENTS OF BURGLARY.

20 (AT THIS TIME PORTION OF TAPE IS PLAYED FOR THE
21 JURY AS IS AS FOLLOWS:)

22 MR. SIMMONS: "ME AND DEREK DUGGINS
23 LEFT THE CLUB AND DRINKING SOME BEER, AND WE WALKED
24 TO MY HOUSE. WE WAS DRINKING SOME BEER ON THE WAY
25 TO THE HOUSE, ME AND HIM AND CHARLES TAYLOR. AND I

CLOSING ARGUMENT BY MR. BAILEY

1 LEFT THERE AFTER DEREK HAD FALL ASLEEP FOR A LITTLE
2 WHILE. SO I GOT ON MY BICYCLE AND WENT RIDING
3 EARLY THAT MORNING BETWEEN FIVE AND SIX O'CLOCK. I
4 WENT RIDING AROUND TO A DRUG SPOT AREA. I SAW MRS.
5 BOYD ON THE OTHER SIDE. I WENT THROUGH THE FRONT
6 GATE."

7 MR. MEARS: "OKAY. ABOUT WHAT TIME
8 WAS THIS, NOW?"

9 MR. SIMMONS: "BETWEEN FIVE O'CLOCK
10 AND SIX O'CLOCK."

11 MR. MEARS: "IS THAT IN THE
12 AFTERNOON OR IN THE MORNING?"

13 MR. SIMMONS: "IN THE MORNING;
14 SATURDAY MORNING."

15 MR. MEARS: "OKAY."

16 MR. SIMMONS: "I WENT IN THE BACK.
17 I WENT IN THE HOUSE AND CATCH HER COMING BACK
18 OUTSIDE AND PUSH HER BACK IN THE HOUSE."

19 MR. MEARS: "YOU WENT IN THE HOUSE
20 BEHIND HER?"

21 MR. SIMMONS: "YES, SIR. AS SHE WAS
22 COMING BACK OUT, I CATCH HER AND PUSH HER BACK IN
23 THE HOUSE."

24 MR. MEARS: "WHAT PART OF THE HOUSE
25 WAS THIS IN, NOW?"

CLOSING ARGUMENT BY MR. BAILEY

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MR. SIMMONS: "IT WAS IN THE BACK PORCH."

MR. MEARS: "OKAY."

MR. SIMMONS: "AND I PUSH HER BACK INSIDE THE HOUSE. AND I ASKED HER TO GIVE ME THE MONEY. SHE GRABBED THE MONEY AND START TO PULL BACK, AND I PUSH HER."

MR. MEARS: "DID YOU KNOW THAT THE HOUSE STAYED LOCKED AT ALL TIMES?"

MR. SIMMONS: "I KNEW IT WAS LOCKED AT ALL TIMES."

MR. MEARS: "HOW DID YOU KNOW THAT?"

MR. SIMMONS: "I USED TO GO BY THERE TO SMOKE DOPE."

MR. MEARS: "AND THE HOUSE WOULD BE LOCKED AT ALL TIMES?"

MR. SIMMONS: "YES, SIR. YOU COULD SEE AS YOU COME OUTSIDE."

MR. MEARS: "AND THIS HAPPENED EARLY THAT MORNING?"

MR. SIMMONS: "YES, SIR."

MR. MEARS: "ABOUT SIX O'CLOCK THAT MORNING?"

MR. SIMMONS: "YES, SIR."

MR. MEARS: "HOW DID YOU KNOW WHAT

CLOSING ARGUMENT BY MR. BAILEY

1 DOOR TO GO TO WHEN YOU WENT TO MRS. BOYD'S HOUSE?"

2 MR. SIMMONS: "HOW DO I KNOW?"

3 MR. MEARS: "YES?"

4 MR. SIMMONS: "I WENT TO THE FRONT
5 DOOR."

6 MR. MEARS: "YOU WENT TO THE FRONT
7 DOOR?"

8 MR. SIMMONS: "YES, SIR."

9 MR. MEARS: "AND WHAT DID YOU DO AT
10 THE FRONT DOOR?"

11 MR. SIMMONS: "THE DOOR WAS LOCKED."

12 MR. MEARS: "DID YOU KNOCK ON IT?"

13 MR. SIMMONS: "IT'S A STEEL DOOR."

14 MR. MEARS: "DID YOU KNOCK ON IT?"

15 MR. SIMMONS: "I SHOOK IT."

16 MR. MEARS: "THEN WHAT DID YOU DO?"

17 MR. SIMMONS: "I WENT AROUND TO THE
18 BACK."

19 MR. MEARS: WHEN YOU WENT AROUND TO
20 THE BACK, DID YOU SEE MRS. BOYD?"

21 MR. SIMMONS: "YES, SIR."

22 MR. MEARS: "SHE WAS COMING OUT THE
23 BACK DOOR?"

24 MR. SIMMONS: "YES, SIR."

25 MR. MEARS: "DID SHE HAVE ANYTHING

CLOSING ARGUMENT BY MR. BAILEY

IN HER HANDS?"

MR. SIMMONS: "A LITTLE CUP."

MR. MEARS: "A LITTLE CUP?"

MR. SIMMONS: "YES, SIR."

MR. MEARS: "NOW, THIS STICK THAT
YOU REFERRED TO THAT YOU GOT; DID YOU GET THE STICK
OFF THE TREE?"

MR. SIMMONS: "NO, SIR."

MR. MEARS: "WHERE DID YOU GET IT
FROM?"

MR. SIMMONS: "OFF THE BACK PORCH."

MR. MEARS: "OFF THE BACK PORCH?"

MR. SIMMONS: "YES, SIR."

MR. MEARS: "DESCRIBE IT TO ME."

MR. SIMMONS: "IT WAS A WOOD STICK."

MR. MEARS: "A LITTLE WHAT?"

MR. SIMMONS: "A LITTLE STICK; A
LITTLE WOOD STICK."

MR. MEARS: "ABOUT HOW LONG WAS IT?"

MR. SIMMONS: "ABOUT TWO FEET LONG."

MR. MEARS: "AND ABOUT WHAT SIZE IN
DIAMETER? JUST INDICATE. I MEAN, WHAT SIZE? THIS
SIZE?"

MR. SIMMONS: "YES, SIR."

MR. MEARS: "ARE YOU TALKING ABOUT MAYBE AN

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MR. SIMMONS: "YES, SIR."

BY MR. BAILEY

LADIES AND GENTLEMEN, THE ENORMOUS AMOUNT OF EVIDENCE IN THIS CASE FAR EXCEEDS A REASONABLE DOUBT, I SUBMIT TO YOU. AND WHAT YOU HAVE TO ASK YOURSELVES IS IS THAT CONFESSION. LOOK AT THE DETAILS IN THAT CONFESSION. IT'S OBVIOUS FROM TALKING ABOUT THE KITCHEN, THE HALLWAY, AND MRS. BOYD GOING INTO A ROOM AND GOING IN THE BACK DOOR, THAT KENNETH SIMMONS IS FAMILIAR WITH THE LAYOUT OF THAT HOUSE. HE SAID IN THE TAPE HE HAD

CLOSING ARGUMENT BY MR. BAILEY

1 NEVER BEEN IN THERE BEFORE THAT DAY. BUT MR.
2 TURNER TESTIFIED ABOUT HOW THAT HOUSE WAS LAID
3 OUT. AS YOU COME THROUGH THE BACK DOOR THROUGH A
4 HALLWAY, THE KITCHEN IS TO THE LEFT. AND THE
5 LIVING ROOM IS OVER TO THE RIGHT, AND THE BEDROOM
6 IS TO THE RIGHT THERE. AND YOU RECALL FROM THE
7 TAPE, HE'S TALKING ABOUT GOING IN THERE AND WAITING
8 IN THE HALLWAY WHILE SHE GOES AND GETS THE MONEY.
9 AND THEN THIS THING HAPPENED IN THE KITCHEN. WE
10 KNOW THE FRONT DOOR WAS LOCKED BECAUSE MRS. WILSON
11 TRIED TO GET IN THE FRONT DOOR. THAT'S WHAT
12 SIMMONS SAID. HE HAD TO GO AROUND TO THE BACK
13 DOOR. HE KNEW THAT SHE WAS TIED UP. HE KNEW THAT
14 SHE WAS TIED UP WITH HER HANDS BEHIND HER BACK. HE
15 KNEW THAT A STOCKING WAS INVOLVED. I MEAN, HE KNEW
16 DETAILS THAT HE COULD NOT HAVE KNOWN UNLESS HE WAS
17 THERE. EVEN, LIKE I SAID, THE BROWN ENVELOPE THAT
18 WE HAVE. AND I'M NOT SAYING THIS IS THE BROWN
19 ENVELOPE. THIS IS JUST A SAMPLE OF THE ENVELOPE
20 THEY USED AT THE BANK. SO THERE'S NO WAY HE COULD
21 HAVE CONFESSED TO THIS AND NOT DONE IT BECAUSE HE
22 HAD TOO MANY DETAILS, TOO MANY FACTS. HE HAD TO
23 HAVE BEEN THERE; AND HE HAD TO BE SMART ENOUGH TO
24 REMEMBER ALL THESE THERE DETAILS OVER A YEAR
25 LATER.

CLOSING ARGUMENT BY MR. BAILEY

1 NOW, WHEN I SIT DOWN IN A FEW
2 MINUTES, I APPRECIATE YOUR PATIENCE. I KNOW I WENT
3 LONGER THAN I SAID I WAS. BUT I'VE GOT TO TRY TO
4 GET EVERYTHING OUT. THIS IS MY ONLY CHANCE TO TALK
5 TO Y'ALL. THE DEFENSE GETS THE LAST STATEMENT. I
6 CAN'T GET UP AND TRY TO REFUTE ANYTHING THAT THEY
7 SAY. WHAT I'M ASKING Y'ALL TO DO ON BEHALF OF THE
8 STATE OF SOUTH CAROLINA IS TO BRING BACK A VERDICT
9 OF GUILTY TO THE CHARGE OF MURDER; GUILTY TO THE
10 CHARGE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST
11 DEGREE; GUILTY TO KIDNAPPING; GUILTY TO ARMED
12 ROBBERY; AND GUILTY TO BURGLARY IN THE FIRST
13 DEGREE; NOT BECAUSE I SAY HE'S GUILTY; NOT BECAUSE
14 THE INDICTMENT SAYS HE'S GUILTY; NOT BECAUSE OF
15 ANYTHING OTHER THAN THE EVIDENCE IN THIS CASE
16 PROVEN BEYOND A REASONABLE DOUBT THAT HE IS GUILTY
17 OF ALL THOSE CRIMES. THANK YOU VERY MUCH.

18 THE COURT: YES, SIR.

19 - - - - -

CLOSING ARGUMENT

21 BY MR. THEOS

22 MR. BAILEY DID TAKE A LITTLE LONGER
23 THAN HE SAID; AND I HOPE THAT I DO NOT TAKE AS LONG
24 AS MR. BAILEY. BUT IF I DO, AS MR. BAILEY SAID,
25 DON'T HOLD IT AGAINST US. WE'RE TRYING TO DO THE

CLOSING ARGUMENT - MR. THEOS

1 BEST WE CAN TO PRESENT OUR POSITIONS TO YOU. I
2 NOTICE THAT ONE JUROR IS STANDING UP.

3 THE COURT: THAT'S BECAUSE OF HIS
4 SURGERY SITUATION.

5 MR. THEOS: OH, I UNDERSTAND.

6 THE COURT: I TOLD HIM HE COULD SIT
7 UP FROM TIME TO TIME.

8 MR. THEOS: I UNDERSTAND THAT,
9 JUDGE.

10 THE COURT: YOU SIGNAL TO ME.
11 PROCEED. IF OTHERS WOULD LIKE TO STAND UP, THEY
12 MAY DO SO.

13 I TOLD YOU AT THE START THAT I WAS
14 FEARFUL. AND I WAS FEARFUL THAT YOU WOULD ALLOW
15 CERTAIN THINGS TO INTERFERE WITH YOUR ABILITY AND
16 YOUR DUTY TO BE IMPARTIAL, YOUR OATH TO BE
17 OBJECTIVE, YOUR OATH TO BE NEUTRAL. AND SOME OF
18 THOSE FEARS WERE BASED IN LARGE PART ON THIS SORT
19 OF PROCESS, THE PROCESS THAT WE TALKED TO YOU ABOUT
20 PENALTY; THE PROCESS THAT WE TALKED WITH YOU ABOUT
21 PUNISHMENT; THE FACT THAT YOU'VE BEEN SEQUESTERED.
22 THE FACT THAT THERE HAVE BEEN SLED AGENTS AROUND;
23 THE FACT THAT YOU MAY FEEL THAT THERE ARE CERTAIN
24 COMMUNITY EXPECTATIONS. AND MR. BAILEY SAID THAT
25 YOU MIGHT HAVE EXPECTATIONS THAT HE MIGHT WANT YOU

CLOSING ARGUMENT - MR. THEOS

1 TO DO SOMETHING, OR PERHAPS THE JUDGE OR I. NONE
2 OF US EXPECT ANYTHING FROM YOU EXCEPT THAT YOU
3 CAREFULLY CONSIDER EVERYTHING THAT'S BEEN PRESENTED
4 TO YOU.

5 AND REGARDLESS OF WHAT OPINIONS MAY
6 HAVE BEEN OFFERED, REGARDLESS OF WHAT THEORIES MAY
7 HAVE BEEN OFFERED, AS MR. BAILEY SAID THE IMPORTANT
8 THING IS TO LOOK AT THE EVIDENCE. LOOK AT THE
9 EVIDENCE AND SCRUTINIZE THAT EVIDENCE. LOOK AT THE
10 EVIDENCE ALONE. THE TRUTH LIES IN THE EVIDENCE.
11 AND THE TRUTH LIES IN THE FACTS.

12 NOW, WHAT HAS THE STATE PROVEN? THE
13 STATE'S PROVEN TWO THINGS. AND I BELIEVE I TOLD
14 YOU IN OPENING STATEMENT, OUR OPENING STATEMENT,
15 THAT THE STATE'S CASE WOULD HINGE ON TWO THINGS;
16 THE ISSUES RELATED TO THIS SUPPOSED CONFESSION AND
17 WHETHER OR NOT THIS DNA IS A MATCH FOR MR.
18 SIMMONS. NOW, THOSE ARE THE TWO ISSUES. WHAT HAS
19 MR. BAILEY SHOWN YOU IN HIS CASE? MR. BAILEY HAS
20 SHOWN YOU THAT MR. SIMMONS GAVE THREE DIFFERENT
21 STATEMENTS. HE'S SHOWN YOU THAT THE DNA THAT HE
22 WENT TO GREAT LENGTHS TO TRY TO EXPLAIN TO YOU IS
23 THAT THE DNA MAY BE MR. SIMMONS; THEN AGAIN IT MAY
24 NOT BE MR. SIMMONS'. AND HE'S ALSO PROVIDED YOU
25 PHYSICAL EVIDENCE; PHYSICAL EVIDENCE THAT YOU'VE

CLOSING ARGUMENT - MR. THEOS

1 HEARD ABOUT FROM VARIOUS POLICE OFFICERS AND
2 VARIOUS SCIENTISTS.

3 NOW, LET'S LOOK FIRST AT THE
4 STATEMENTS; NO QUESTION KENNETH SIMMONS GAVE THREE
5 STATEMENTS. HE SAID HE KILLED TWO MEN. HE SAID HE
6 KILLED SOMEBODY NAMED SHORTY. HE CAME UP WITH THIS
7 BIZARRE STORY AS HAS BEEN CHARACTERIZED ABOUT
8 KILLING SHORTY AND WITNESSING CERTAIN THINGS AND
9 HAVING HIS LIFE THREATENED. AND THEN THE FOURTH OR
10 FIFTH TIME HE WAS INTERVIEWED, HE STATED THAT HE
11 KILLED MRS. BOYD.

12 NOW, THE JUDGE IS GOING TO CHARGE
13 YOU. MR. BAILEY SKIMMED OVER IT IF HE TOUCHED IT
14 AT ALL. BUT THE JUDGE IS GOING TO CHARGE YOU WHY
15 IT IS IMPORTANT TO SCRUTINIZE THE CIRCUMSTANCES
16 SURROUNDING THE TAKING OF THE STATEMENT. AND I
17 WANT TO CLARIFY ONE ISSUE WITH YOU. OUR DEFENSE IS
18 NOT -- DOES NOT HINGE, AND IS NOT HINGING ON
19 WHETHER OR NOT MR. SIMMONS UNDERSTOOD HIS RIGHTS AT
20 THAT TIME THAT HE GAVE THOSE STATEMENTS. THAT'S
21 CERTAINLY ONE OF THE ISSUES. ANOTHER ISSUE IS
22 WHETHER OR NOT THAT STATEMENT THAT WAS ULTIMATELY
23 CHOSEN BY THE STATE TO PRESENT, WHETHER OR NOT THAT
24 STATEMENT IS RELIABLE; WHETHER OR NOT IT'S
25 CONSISTENT WITH THE FACTS AS THEY'VE BEEN PRESENTED

CLOSING ARGUMENT - MR. THEOS

1 FROM THE STAND, THE EVIDENCE THAT'S BEEN PRESENTED
2 FROM THE STAND.

3 NOW THE REASON THAT THERE IS AN
4 ISSUE RELATED TO WAIVER IS IMPORTANT AS WE'VE
5 TALKED ABOUT BEFORE. PEOPLE HAVE A RIGHT NOT TO
6 SAY THINGS. PEOPLE HAVE A RIGHT NOT TO TALK TO
7 PEOPLE. THE JUDGE WILL CHARGE YOU ALL ABOUT THAT
8 RIGHT. HE'LL EXPLAIN TO YOU WHY PEOPLE HAVE THOSE
9 RIGHTS. IF SOMEBODY DOESN'T UNDERSTAND THOSE
10 RIGHTS, THEN THEY CANNOT, AND SHOULD NOT, BE HELD
11 TO SPEAK. THEY SHOULDN'T -- AND IF THEY DO SPEAK
12 WITHOUT THAT UNDERSTANDING, THEN WHAT THEY'VE SAID
13 SHOULD NOT BE HELD AGAINST THEM. NOW, THIS ISN'T A
14 TECHNICAL DECISION. YOU SHOULD CONSIDER THE
15 EVIDENCE ABOUT MR. SIMMONS' UNDERSTANDING OR LACK
16 OF UNDERSTANDING. YES, HE GRADUATED FROM HIGH
17 SCHOOL. BUT THINK ABOUT HIS GRADE EQUIVALENCY AND
18 READING WHEN HE GRADUATED FROM HIGH SCHOOL. FIFTH
19 GRADE. SO WE'RE NOT STARTING AT THE LEVEL OF A
20 NORMAL HIGH SCHOOL GRADUATE WHICH HOPEFULLY IS
21 TWELFTH GRADE AND THIS SOPHISTICATED ABILITY TO
22 READ AND WRITE. HE'S STARTING WITH A FIFTH GRADE
23 LEVEL TO BEGIN WITH.

24 MR. SIMMONS STARTED AT THE FIFTH
25 GRADE LEVEL, AND THEN DETERIORATED OVER THE YEARS.

CLOSING ARGUMENT - MR. THEOS

1 AND HE GRADUATED FROM HIGH SCHOOL. HE PLAYED SOME
2 FOOTBALL. HE GOT MARRIED AT SOME POINT. HE HELD
3 VARIOUS JOBS. AND YOU'VE HEARD ABOUT THOSE JOBS.
4 THEY'RE NOT AS THEY WERE INDICATED INITIALLY, THAT
5 HE WAS A SKILLED CARPENTER OR HE WAS A BRICK MASON.

6 HE WAS A GOPHER FOR A CONSTRUCTION COMPANY. HE
7 WAS A ROLLER FOR A MASON. HE DIDN'T HOLD ANY JOB
8 THAT WOULD HAVE REQUIRED ANY THINKING OR ANY
9 INSIGHT OR ANY SKILL WHATSOEVER. WHEN YOU HAVE
10 SOMEBODY THAT'S GOT THE FUNCTIONING MENTALITY OF A
11 SECOND GRADER OR A SEVEN YEAR OLD, THEY HAVE
12 DIFFICULTY UNDERSTANDING. USE YOUR OWN LIFE
13 EXPERIENCES AS MR. BAILEY HAS TOLD YOU AND THE
14 JUDGE HAS TOLD YOU REPEATEDLY. WHEN YOU'RE
15 SPEAKING OF SOMEBODY WITH A SECOND GRADE ABILITY, A
16 SECOND GRADE ABILITY TO COMPREHEND AND FORMULATE
17 THEIR THOUGHT PROCESS, IT'S DIFFERENT; THEY'RE
18 DIFFERENT. IT DOESN'T REGISTER IN THE SAME WAY.

19 NOW, WHAT'S THE BEST EVIDENCE THAT
20 WE HAVE ABOUT MR. SIMMONS' ABILITY OR LACK OF
21 ABILITY TO READ OR WRITE BECAUSE A LOT HAS BEEN
22 MADE OF IT? I THINK MR. SIMMONS HAS AN ABILITY TO
23 READ TO A LIMITED EXTENT. MR. SIMMONS HAS AN
24 ABILITY TO WRITE TO A LIMITED EXTENT. AND PROBABLY
25 THE BEST EVIDENCE IS THE STATEMENT. AND YOU'LL

CLOSING ARGUMENT - MR. THEOS

1 HAVE THIS BACK THERE WITH YOU. BUT THIS STATEMENT
2 THAT HE GAVE AGENT MEARS. IN THIS STATEMENT --
3 YOU'VE HEARD IT READ -- AND I THINK YOU MAY HAVE
4 FOLLOWED IT ALONG. READ IT. READ IT CAREFULLY.
5 IS IT THE STATEMENT OF SOMEBODY THAT FUNCTIONS AT A
6 LEVEL THAT'S HIGHER THAN SECOND GRADE OR A SEVEN
7 YEAR OLD. IS IT THE PRODUCT OF SOMEBODY THAT CAN
8 READ, SOMEBODY THAT CAN WRITE, SOMEBODY THAT CAN
9 THINK CLEARLY TO THE EXTENT THAT THE STATE WOULD
10 HAVE YOU BELIEVE; OR IS IT THE PRODUCT OF SOMEBODY
11 AS DR. WAID SAID THAT IS OPERATING AT A VERY, VERY
12 LOW MENTAL CAPACITY. THIS IS THE BEST EVIDENCE OF
13 HIS ABILITY OR INABILITY TO READ OR WRITE. YOU
14 DON'T NEED AN EXPERT TO TELL YOU. Y'ALL LOOK AT
15 THIS AND USE YOUR EXPERIENCE TO MAKE A DECISION AS
16 TO WHAT THAT ABILITY IS USING THIS. AND KEEP IN
17 MIND THAT I DON'T SEE VERY MANY WORDS THAT ARE MORE
18 THAN ONE SYLLABLE. BUT YOU LOOK AT IT YOURSELVES
19 AND MAKE THAT DECISION. BUT KEEP IN MIND THAT
20 AGENT MEARS WAS THERE ASSISTING IN SPELLING AND ANY
21 OTHER QUESTIONS MR. SIMMONS HAD. AND KEEP IN MIND
22 THAT IT TOOK MR. SIMMONS APPROXIMATELY 45 MINUTES
23 TO WRITE WHAT AMOUNTS TO ABOUT A PAGE.

24 NOW, WHY MIGHT A CHILD OR SOMEBODY
25 WITH A CHILD'S MENTALITY OR A MENTALITY OF SUCH

CLOSING ARGUMENT - MR. THEOS

1 DIMINISHED CAPACITY SAY SOMETHING THAT WASN'T TRUE?
2 THINK ABOUT YOUR OWN EXPERIENCES. AND A CHILD IS
3 THAT COMPLETELY PUSHED AND PUSHED THAT YOU DID
4 THIS, YOU DID THIS, YOU DID THIS. AND THEY KNOW
5 DARN WELL THEY DIDN'T DO IT, BUT AT SOME POINT THEY
6 JUST THROW UP THEIR HANDS AND SAY, "OKAY, I DID
7 IT." "HOW DID YOU DO IT?" "HOW DO YOU SAY I DID
8 IT?" "HERE IT IS." NOW, YOU MIGHT THINK WE DON'T
9 KNOW THAT WE ACTUALLY BELIEVE THAT, MR. THEOS. BUT
10 IF YOU'LL LOOK AT THE DETAILS, OR THE LACK OF
11 DETAILS, IN THE STATEMENT THAT MR. SIMMONS GAVE.
12 NOW, I'LL GO INTO THAT IN A SECOND, BUT I WANT TO
13 TALK ABOUT THESE EXPERTS FIRST. BUT JUST TO
14 BRIEFLY MENTION; YOU'LL HAVE THOSE STATEMENTS. YOU
15 LOOK AT THOSE STATEMENTS; AND YOU LISTEN TO THOSE
16 TAPES; AND YOU LOOK AT THE PHYSICAL EVIDENCE THAT'S
17 BEEN PRESENTED. THERE ARE -- AND I'LL GO OVER WITH
18 YOU -- TWENTY OR MORE INCONSISTENCIES. NOW, I'LL
19 GO OVER THAT IN A SECOND. BUT WHY WOULD SOMEBODY
20 WHO'S CONFESSING TO SOMETHING HE DID WHICH IS
21 HORRIBLE IN THE WAY IT SOUNDS; MURDER, ROBBERY,
22 RAPE, ALL OF THESE THINGS. WHY WOULD SOMEBODY
23 THAT'S SAYING ALL THESE THINGS NOT ADMIT TO
24 EVERYTHING? WHY WOULD HE LEAVE OUT THE DETAILS?
25 WHY WOULD HE LEAVE OUT THINGS THAT ARE

CLOSING ARGUMENT - MR. THEOS

1 SIGNIFICANT? ASK YOURSELVES THAT QUESTION WHEN WE
2 GO BAG THROUGH THAT IN A FEW MINUTES.

3 BUT LET'S TALK FIRST ABOUT ONE
4 STATEMENT THAT I THINK WE CAN ALL DISREGARD, AND
5 THAT'S THE STATEMENT OF AGENT ANN REESE. DON'T YOU
6 FIND IT INCREDIBLE THAT THIS INVESTIGATION HAS BEEN
7 GOING ON FROM SEPTEMBER OF 1996, AND A SPECIAL TASK
8 FORCE WAS FORMED NOT TOO LONG AFTER THAT. THE
9 INVESTIGATION WENT ON FOR OVER TWO YEARS. AND
10 WE'RE HERE IN COURT THIS WEEK, ALMOST TWO AND A
11 HALF YEARS LATER -- MAYBE JUST AT TWO-AND-A-HALF
12 YEARS LATER -- AND AGENT REESE WHO'S GOT
13 APPROXIMATELY TWENTY YEARS OR SO IN LAW ENFORCEMENT
14 KNOWS THE SIGNIFICANCE AND THE IMPORTANCE OF MAKING
15 REPORTS, OF WRITING THINGS DOWN AND MAKING A RECORD
16 IN ORDER THAT THERE BE DOCUMENTATION AND TO REFRESH
17 HER RECOLLECTION BECAUSE THERE ARE SO MANY CASES.
18 DON'T YOU FIND IT INCREDIBLE THAT ABOUT A MONTH
19 BEFORE TRIAL SHE RECALLS SOMETHING THAT WAS SAID
20 TWO YEARS AGO?

21 NOW, THAT'S WHAT SHE TESTIFIED TO.
22 AND THEN WHEN I ASKED HER AGAIN ABOUT HER
23 RECOLLECTION, THEN SHE CHANGED IT. SHE SAID, "OH,
24 WELL I RECALLED IT EARLIER, I JUST DIDN'T SAY
25 ANYTHING TO ANYBODY." THINK ABOUT THAT. THIS BIG

CLOSING ARGUMENT - MR. THEOS

1 INVESTIGATION. SOMEBODY IS ARRESTED FOR MURDER AND
2 THEN SUPPOSEDLY CONFESSES IT; AND SHE JUST DOESN'T
3 TELL ANYBODY. SHE DIDN'T MAKE A REPORT. SHE
4 DOESN'T DO ANYTHING ABOUT IT. EXCUSE ME; SHE DID
5 TELL SOMEBODY. SHE SAID SHE SPOKE WITH MAYBELLE
6 HENDRICKS OF THE ST. GEORGE POLICE DEPARTMENT.
7 WELL, YOU HEARD MRS. HENDRICKS TESTIFY. DID SHE
8 SAY ANYTHING ABOUT IT? DID SHE SAY THAT THEY
9 TALKED ABOUT IT? NO! AND I SUBMIT TO YOU THE
10 REASON SHE DIDN'T IS BECAUSE THAT CONVERSATION
11 DIDN'T TAKE PLACE, AND AGENT REESE DIDN'T HEAR
12 ANYTHING. IT'S KIND OF IS SLICK WAY ON HER BEHALF
13 OF COMING IN HERE WITH SOMETHING ELSE JUST IN CASE;
14 JUST IN CASE YOU DON'T THINK THAT THIS OTHER STUFF
15 IS MOVING AT ALL.

16 NOW, LET LOOK'S AT THE EXPERTS IN
17 THEIR EVALUATIONS. THERE WERE TWO COURT ORDERED
18 EVALUATIONS. MR. BAILEY WOULD HAVE YOU BELIEVE
19 THAT THIS IS SOMETHING THAT I AND MR. BELL SORT OF
20 THOUGHT UP; LET'S GO HAVE MR. SIMMONS EVALUATED;
21 LET'S COME UP WITH THIS DEFENSE. WELL, THESE WERE
22 COURT ORDERED EVALUATIONS BY THE STATE HOSPITAL,
23 THE HALL INSTITUTE, AND BY THE SOUTH CAROLINA
24 DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS.
25 THESE WEREN'T BELL AND THEOS ORDERED EVALUATIONS.

CLOSING ARGUMENT - MR. THEOS

1 AND WHAT WAS THE RESULT OF THOSE EVALUATIONS? AND
2 CERTAINLY THERE WERE OTHER DOCTORS THAT LOOKED AT
3 THEM, THAT LOOKED AT MR. SIMMONS AND REVIEWED ALL
4 THESE RECORDS THAT MR. BELL AND I DID HIRE AND
5 ENGAGE TO DO THAT. BUT LET'S LOOK AT THESE
6 DOCTORS. AND I WILL NOT GO INTO TOO MUCH DETAIL ON
7 EACH ONE OF THEM. BUT DR. BEHRMANN WAS STRAIGHT
8 FORWARD AND TOLD YOU WHAT HIS DIAGNOSIS WAS. HE
9 WROTE A REPORT RELATED TO THAT DIAGNOSIS, AND THAT
10 WAS THAT MR. SIMMONS WAS MENTALLY RETARDED, MILD
11 PROVISIONAL, WHATEVER THAT MEANS. MENTAL
12 RETARDATION WAS A CONCERN. HE ALSO TOLD YOU THAT
13 MR. SIMMONS HAD POLY-SUBSTANCE ABUSE, OR THE ABUSE
14 OF ANY SUBSTANCES WHICH INCLUDED ALCOHOL.

15 HE ALSO TOLD YOU THAT IN THE FIRST
16 EVALUATION OF NOVEMBER THE 23RD OF 1998, MR.
17 SIMMONS WAS UNABLE TO ANSWER QUESTIONS TO HIS
18 SATISFACTION; WAS UNABLE TO EXPLAIN HIS
19 UNDERSTANDING HIS MIRANDA WARNINGS; WAS UNABLE TO
20 UNDERSTAND LEGAL CONCEPTS, AND FOR THAT REASON,
21 ALONG WITH THOUGHTS, THAT MAYBE MR. SIMMONS IS
22 MALINGERING; WE NEED TO CHECK CERTAIN THINGS OUT;
23 BUT CLEARLY THEY COULDN'T PROCEED AT THAT POINT.
24 SO WHAT DID THEY DO? THEY ADJOURNED. THE
25 EVALUATION WAS ENDED.

CLOSING ARGUMENT - MR. THEOS

1 AND THEN THERE WAS A SERIES OF
2 TESTS THAT WERE TO BE CONDUCTED TO DO TWO THINGS;
3 TO DETERMINE WHETHER OR NOT KENNETH SIMMONS WAS
4 FAKING -- MALINGERING IS A FANCY WORD FOR FAKING.
5 FAKING IS A SIMPLER TERM -- WHETHER HE'S FAKING,
6 AND TO TRY TO VERIFY HIS I.Q. IS HIS I.Q. IN THE
7 SIXTIES; IS HIS I.Q. IN THE SEVENTIES; IS HIS I.Q.
8 A HUNDRED? AND THAT'S ANOTHER THING THAT WE NEED
9 TO LOOK AT. THE SCHOOL RECORDS. YOU'LL HAVE THOSE
10 BACK THERE; BUT THERE ARE TWO ENTRIES THAT HAVE HIS
11 I.Q. AT 104 AND SOMETHING ELSE. AND THEN THERE ARE
12 TWO ENTRIES THAT HAVE IT IN THE SIXTIES. SO IT WAS
13 IMPORTANT FOR THOSE DOCTORS TO CONDUCT ANOTHER
14 I.Q.; LET'S CLARIFY ONCE AND FOR ALL WHAT HIS I.Q.
15 IS. THEY HAD DR. SAYLOR'S I.Q. TEST WHICH
16 REFLECTED -- I DON'T REMEMBER THE EXACT SCORE; BUT
17 SOMETHING IN THE UPPER SIXTIES. SO THEY DID BOTH
18 OF THOSE THINGS. AND THEY VERIFIED THE I.Q. TEST
19 THAT HAD BEEN CONDUCTED BY DR. SAYLOR, AND THAT IS
20 THAT IT WAS IN THE UPPER SIXTIES. AND THEY ALSO
21 VERIFIED IN THAT SERIES OF TESTS THAT THEY DID FOR
22 MALINGERING THAT MR. SIMMONS WAS NOT MALINGERING.
23 THAT WAS REAL STRAIGHT-FORWARD, REAL BLACK AND
24 WHITE.

25 THEY THEN -- THIS WAS ON NOVEMBER

CLOSING ARGUMENT - MR. THEOS

1 THE 23RD -- THEY THEN BROUGHT OUT SOME INFORMATION,
2 AND MR. BAILEY MADE A BIG DEAL OUT OF IT WITH YOU A
3 LITTLE WHILE AGO ABOUT MRS. SKAGGS. MRS. SKAGGS
4 APPARENTLY AT DR. VIDIC'S REQUEST, WENT AND SPOKE
5 WITH KENNETH. AND KENENTH SAID HE DIDN'T WANT TO
6 TALK WITH HER. HE WANTED TO TALK WITH HIS LAWYER
7 AT FIRST. WELL, AS YOU RECALL FROM DR. SANDLER'S
8 REPORT, KENNETH IS CAPABLE, ACCORDING TO HIM IN HIS
9 REPORT, KENNETH WAS INCAPABLE OF COMPREHENDING
10 THINGS INITIALLY BUT AFTER EDUCATION WAS CAPABLE.
11 AND I THINK THAT WAS FAIRLY CONSISTENT WITH THE
12 EXPERTS THAT INITIALLY HE HAD DIFFICULTY UPON
13 EXPLANATION IN EDUCATION HE COULD GRASP TO SOME
14 EXTENT AND COULD ACT ON THAT TO SOME EXTENT.
15 CLEARLY THAT IS IN FACT WHAT HAPPENED TWO TO THREE
16 HOURS WITH HIS LAWYERS, WITH THESE DOCTORS
17 EDUCATING AND TRYING TO EXPLAIN TO HIM WHAT THESE
18 RIGHTS WERE AND WHAT HE COULD OR COULD NOT DO. AND
19 WITH THAT HE WAS ABLE TO SAY "I'D LIKE TO SPEAK
20 WITH MR. THEOS.

21 NOW, IF HE HAD BEEN GIVEN AN
22 OPPORTUNITY TO EITHER EXPLAIN HIS UNDERSTANDING OF
23 THOSE RIGHTS BY AGENT MEARS, OR IF HE HAD BEEN
24 REQUESTED MORE SIGNIFICANTLY RATHER THAN JUST
25 READING OUT AND GETTING YES OR NO RESPONSES; OR IF

CLOSING ARGUMENT - MR. THEOS

1 HE HAD BEEN TRAINED AND EDUCATED AS DR. SANDLER
2 SAID HE NEEDED TO BE, THEN MAYBE AT THAT POINT HE
3 WOULD HAVE SAID THE SAME THING.

4 NOW, DR. VIDIC DIDN'T ADD VERY MUCH
5 TO WHAT DR. BEHRMANN SAID. TEST OF NO MALINGERING;
6 I.Q. IN THE SIXTIES. DR. SANDLER, AS I JUST
7 MENTIONED, SPOKE ABOUT CERTAIN THINGS AND THEN HE
8 REPORTED ABOUT OTHERS. AND WHAT HE SAID WAS MY
9 REPORT IS NOT EXACTLY IN LINE WITH MY TESTIMONY,
10 BUT I WAS RUSHED, AND I WAS TRYING TO GET IT IN AS
11 BEST I COULD AND THERE MAY BE SOME ERRORS IN IT.
12 WELL, THIS IS A SERIOUS MATTER. MR. SIMMONS IS ON
13 TRIAL FOR MURDER AND OTHER SERIOUS CHARGES IN A
14 CASE IN WHICH THE STATE IS SEEKING THE DEATH
15 PENALTY. AND DR. SANDLER HAS MADE SOME MISTAKES IN
16 HIS REPORT. THE ISSUE ISN'T THE MISTAKES IN THE
17 REPORT, THOUGH. THE ISSUE IS THE DIFFERENCES IN
18 HIS REPORT AND HIS CONCLUSIONS THERE VERSUS WHAT HE
19 TESTIFIED TO.

20 I'VE ALREADY GONE OVER WITH YOU
21 THOSE THINGS RELATED TO INABILITY TO UNDERSTAND AND
22 COMPREHEND EXCEPT AFTER EDUCATION; EXCEPT AFTER
23 EDUCATING. BUT THEN HE ALSO SAID THAT HE BASED --
24 IN HIS REPORT, HE SAID HE BASED VARIOUS DECISIONS
25 ON FACTORS AND SOME OF THOSE FACTORS THAT HE

CLOSING ARGUMENT - MR. THEOS

1 CONSIDERED; ALTHOUGH I DON'T WANT TO PUT WORDS IN
2 HIS MOUTH. AND Y'ALL REMEMBER IT DIFFERENTLY IF
3 I'M WRONG. BUT SOME OF THOSE FACTORS INCLUDED
4 KENNETH SIMMONS LEAD A BIBLE STUDY GROUP IN JAIL;
5 KENNETH SIMMONS READ NEWSPAPERS IN THE JAIL;
6 KENNETH SIMMONS -- I HEARD SOME REFERENCE TO A
7 MAGAZINE IN THE JAIL. AND KENNETH SIMMONS, NOT
8 JUST BEING A CHESS PLAYER BUT BEING A SKILLED CHESS
9 PLAYER AT THAT. WELL, HE ACKNOWLEDGED THAT IT
10 REALLY WASN'T CHESS, THAT IT WAS CHECKERS. AND
11 THEN HE TALKED ABOUT THESE OTHERS THINGS AND SORT
12 OF DOWN-PLAYED THEM. WELL, I ASSURE YOU IF THERE
13 WAS EVIDENCE THAT MR. SIMMONS WAS SKILLED IN
14 ANYTHING, CARD PLAYING, LEADING BIBLE DISCUSSION
15 GROUPS, READING, THOSE SORTS OF THINGS, YOU WOULD
16 HAVE HEARD IT FROM RIGHT HERE; YOU'D HAVE SEEN
17 THOSE PEOPLE OVER HERE TESTIFYING.

18 DR. SANDLER'S TESTIMONY BOILS DOWN
19 TO THIS ASSUMPTION; THAT HE BELIEVES THAT KENNETH
20 SIMMONS, IN HIS OWN WORDS, WAS PULLING HIS LEG.
21 THAT'S IT. TEST SCORES AS DR. WAID SAID, TEST
22 RESULTS; ALL OF HIS RESPONSES RELATED TO QUESTIONS;
23 THEY'RE ALL CONSISTENT. THEY'RE ALL CONSISTENT.
24 BUT DR. SANDLER JUST DOESN'T THINK THAT IT -- HE
25 JUST SORT OF DISREGARDS HIM AND SAYS I THINK HE'S

CLOSING ARGUMENT - MR. THEOS

1 MALINGERING. HE DOESN'T BASE IT ON THOSE TEST
2 RESULTS. HE DOESN'T BASE IT ON THE WAY HE
3 PERFORMS. HE DOESN'T BASE IT ON THE WAY HE
4 RESPONDS. IN FACT, IT CONTRADICTORY TO ALL THOSE
5 THINGS. BUT HE JUST HAS THAT FEELING THAT KENNETH
6 SIMMONS IS MALINGERING. NOW DR. SAYLOR AND DR.
7 WAID -- AND LET ME BACK UP FOR ONE SECOND. WE DID
8 CALL ALL THESE PEOPLE. WE WANTED YOU TO HEAR WHAT
9 EVERYBODY HAD TO SAY. THERE'S SOME CONFLICT JUST
10 AS MR. BAILEY SAID. THERE'S SOME CONFLICT AMONG
11 ALL THESE PEOPLE. AND I SUGGEST TO YOU PUT
12 TOGETHER FIVE OR SIX DOCTORS AND ASK THEM TO DO ONE
13 TASK. YOU'RE PROBABLY GOING TO GET AT LEAST THREE
14 OR FOUR DIFFERENT OPINIONS; MAYBE FIVE OR SIX. SO
15 I DON'T THINK THERE IS ANYTHING UNUSUAL ABOUT THAT.

16 MR. BAILEY: JUDGE, I'M GOING TO
17 HAVE TO OBJECT. THIS IS THE SECOND TIME HE'S USED
18 "I DON'T THINK." THAT'S HIS PERSONAL OPINION. I
19 HATE TO INTERRUPT YOU, BUT I THINK IT'S IMPROPER.

20 THE COURT: ALL RIGHT. THANK YOU.
21 PLEASE REFRAIN FROM GIVING YOUR OPINION.

22 BY MR. THEOS
23 CERTAINLY THERE ISN'T ANYTHING
24 UNUSUAL ABOUT DOCTORS DIFFERING ON THEIR OPINIONS.
25 DR. SAYLOR WAS STRAIGHT FORWARD, CAME IN, AND HE

CLOSING ARGUMENT - MR. THEOS

1 WAS A MAN OF VERY FEW WORDS. HE GAVE A SPECIFIC
2 TEST FOR MIRANDA. AND HE STATED IN VERY CERTAIN
3 TERMS THAT HE JUST DIDN'T UNDERSTAND. HE WENT
4 THROUGH WITH YOU WHAT HE WENT THROUGH WITH MR.
5 SIMMONS. AND HE DID THIS ABOUT THE SAME TIME THAT
6 DR. SANDLER AND DR. MCABEE PERFORMED THEIR TESTS IN
7 WHICH THEY RECEIVED THE SAME RESPONSES. AND AGAIN
8 I POINT THAT OUT BECAUSE DR. SANDLER REACHED A
9 CONCLUSION THAT WAS INCONSISTENT WITH THOSE
10 RESPONSES, AND DR. SAYLOR'S CONCLUSION WAS
11 CONSISTENT WITH THOSE RESPONSES.

12 DR. WAID, THE LAST EXPERT TO TESTIFY,
13 GAVE YOU EVIDENCE OF ALL OF THE TESTS; THE
14 NEUROPSYCHOLOGICAL TESTS THAT WERE CONDUCTED ON
15 KENNETH SIMMONS. THE REASON THOSE TESTS WERE
16 PERFORMED WAS TO DETERMINE WHAT HIS MENTAL CAPACITY
17 OR LACK OF MENTAL CAPACITY IS AND POSSIBLY WAS.
18 THE OTHER REASON WAS TO DETERMINE WHETHER OR NOT
19 KENNETH SIMMONS WAS CAPABLE OF UNDERSTANDING HIS
20 MIRANDA RIGHTS. AND THE LAST REASON HE GAVE THESE
21 TESTS -- AND AS YOU HEARD THERE WERE, HE SAID
22 ELEVEN OR TWELVE TESTS THAT HE CONDUCTED. WHAT YOU
23 HEARD WAS THE -- THE LAST REASON WAS TO DETERMINE
24 WHETHER OR NOT MR. SIMMONS WAS MALINGERING. HIS
25 CONCLUSIONS WERE BASED ON EVERYTHING; EVERYTHING

CLOSING ARGUMENT - MR. THEOS

1 THAT THESE OTHER DOCTORS HAD REVIEWED; EVERYTHING
2 THAT THESE OTHER DOCTORS HAD DONE; ALL THE TEST
3 DATA; ALL THE TEST REPORTS; AND MOREOVER BASED ON
4 HIS BATTERY OF NEUROPSYCHOLOGICAL TESTS. AND THAT
5 CONCLUSION WAS THAT ALTHOUGH MR. SIMMONS, AS I
6 INDICATED BEFORE, GRADUATED FROM HIGH SCHOOL AND
7 ACHIEVED CERTAIN THINGS BY A CERTAIN POINT IN LIFE,
8 THAT BECAUSE OF LONG-TERM DRUG USAGE AND ALCOHOL
9 USAGE, THERE WAS A DECLINE OVER THE LAST SEVENTEEN
10 YEARS OR SO, MAYBE EIGHTEEN YEARS. AND THAT
11 DECLINE WAS NOT FROM A NORMAL LEVEL AGAIN. THAT
12 DECLINE WAS FROM A LOWER LEVEL, A FIFTH GRADE LEVEL
13 ON DOWN TO WHERE MR. SIMMONS STANDS TODAY.

14 NOW, LET'S FORGET ABOUT THE DOCTORS
15 FOR A SECOND, AND LET'S THINK ABOUT WHAT DR.
16 BEHRMANN TESTIFIED TO BECAUSE MAYBE THIS IS THE
17 MOST INSIGHTFUL ABOUT MR. SIMMONS' ABILITY TO
18 COMPREHEND. REMEMBER DR. BEHRMANN'S TESTIMONY
19 RELATED TO THE EDUCATIONAL COMPETENCY TRAINING
20 PEOPLE AT THE STATE HOSPITAL OR HALL INSTITUTE. HE
21 WAS THERE FOR APPROXIMATELY THREE OR FOUR WEEKS.
22 AND DURING THAT TIME THEY HAD GROUPS, AS DR.
23 BEHRMANN SAID, MEET WITH THE PATIENTS. AND THOSE
24 GROUPS ARE DESIGNED TO TRY TO EDUCATE THE PATIENT,
25 MR. SIMMONS; TO TRY TO EDUCATE HIM AS TO WHAT THE

CLOSING ARGUMENT - MR. THEOS

1 COURT SYSTEM IS ALL ABOUT, WHAT THE ROLES OF
2 VARIOUS PEOPLE ARE, TERMS, JURY, JUDGE, LAWYERS,
3 ETC., AND ALSO TO TRY TO DETERMINE WHETHER THERE IS
4 AN UNDERSTANDING ON THE PART OF THAT PATIENT OF
5 MIRANDA; WHETHER THAT PERSON HAS THE ABILITY TO
6 UNDERSTAND AND WHETHER OR NOT THAT PERSON CAN MAKE
7 A KNOWING AND INTELLIGENT WAIVER. AND THE JUDGE,
8 AGAIN, WILL GO OVER WITH YOU WHAT THE CRITERIA ARE.

9 BUT THREE ARE THREE OR FOUR THINGS THAT MUST BE
10 MET BEFORE YOU CAN CONSIDER IT, AND THOSE THREE OR
11 FOUR THINGS MUST BE PROVEN TO YOU, NOT JUST
12 SLIGHTLY PROVEN TO YOU; THEY'VE GOT TO BE PROVEN TO
13 YOU BEYOND A REASONABLE DOUBT THAT ALL OF THOSE
14 CRITERIA ARE MET.

15 AND THINK ABOUT WHAT THOSE
16 COMPETENCY TRAINING AND THESE EDUCATION GROUPS,
17 WHAT THEY FOUND WITH MR. SIMMONS. THEY FOUND THAT
18 HE WAS MAKING SOME PROGRESS IN UNDERSTANDING THE
19 ROLES OF VARIOUS COURT PERSONNEL, BUT THEY FOUND
20 THAT HE WAS UNABLE TO UNDERSTAND HIS MIRANDA. AND
21 HE HAD DIFFICULTY UNDERSTANDING THAT; THAT HE HAD
22 PROBLEMS COMPREHENDING MORE COMPLEX ISSUES. AND
23 THEY WEREN'T HERE TO TESTIFY. THEY AREN'T DOCTORS
24 RENDERING OPINIONS. THEY ARE PEOPLE THAT ARE
25 OBSERVING MR. SIMMONS ON A DAILY BASIS, SPEAKING

CLOSING ARGUMENT - MR. THEOS

1 WITH HIM FREELY; FREELY AND CANDIDLY. AND IF MR.
2 SIMMONS HAD UNDERSTOOD, CERTAINLY THAT WOULD HAVE
3 BEEN IN THOSE NOTES. BUT THERE WAS NOTHING IN THAT
4 TIME FRAME THAT WOULD HAVE INDICATED ANYTHING
5 CONTRADICTORY TO WHAT HAS BEEN INDICATED THROUGHOUT
6 THE TESTING.

7 NOW, WHY DOES MR. BAILEY GO ON AND
8 ON AND ON RELATED TO DNA? WELL, WITHOUT THE DNA
9 MATCH, AS MR. BAILEY PUT IT, THEN THERE IS
10 ABSOLUTELY NO PHYSICAL EVIDENCE TO CORROBORATE THIS
11 STATEMENT THAT MR. SIMMONS GAVE. NONE! NO
12 PHYSICAL EVIDENCE. SO MR. BAILEY WENT TO GREAT
13 LENGTHS TO TALK WITH YOU ABOUT DNA. BUT IT REALLY
14 ISN'T THAT COMPLICATED. IT'S FAIRLY SIMPLE. FIRST
15 OF ALL MR. BAILEY MADE A POINT OF TELLING YOU THAT
16 THIS WAS DONE -- THIS EXHIBIT THAT WE INTRODUCED,
17 DEFENDANT'S 16; AND IT'S DATED 11/18/96 -- THAT
18 THIS WAS DONE BEFORE MR. SIMMONS WAS ARRESTED. AND
19 HE TRIED TO EXPLAIN -- TRIED TO EXPLAIN THAT FOR
20 THAT REASON YOU SHOULD SOMEHOW NOT CONSIDER -- I'M
21 NOT SURE SO I WON'T COMMENT ON IT. WHAT IS CLEAR,
22 HOWEVER, IS THAT DR. BAIRD AND MRS. CRANE TESTIFIED
23 VERY CANDIDLY, VERY FREELY, THEIR INDEPENDENT
24 AGENCY, LIFECODES. THEY HAVE NOTHING TO GAIN,
25 NOTHING TO LOSE. THEY WERE IN HERE TESTIFYING AS

CLOSING ARGUMENT - MR. THEOS

1 SCIENTISTS. AND WHAT THEY SAID -- AND I'LL USE THE
2 STATE'S EXHIBIT WHICH IS 24 -- WHAT THEY SAID IS
3 THAT IT MAY BE KENNETH SIMMONS; IT MAY NOT BE.
4 THEY CAN'T GIVE YOU ANY MORE CERTAINTY THAN THAT.
5 I GUESS THEY SHOULD JUST FLIP A COIN.

6 KENNETH SIMMONS' BLOOD WAS TESTED.
7 SHE DIDN'T TESTIFY THAT THIS MAY OR MAY NOT BE --
8 WAS AS OF 11/18/96. SHE SAYS IT'S AS OF TODAY AND
9 BASED UPON THE TESTS THAT THEY DID. AND THAT'S WHY
10 IT'S NOTED HERE IN HER REPORT. IT INDICATES THAT A
11 1.2 ALLELE MAY BE PRESENT. WELL, ALLELES ARE THOSE
12 THINGS THAT MAKE UP GENES. AND IF ONE OF THOSE
13 ALLELES IS NOT PRESENT, THEN THIS IS NOT MR.
14 SIMMONS'. AND WHAT SHE SAID, IF YOU RECALL, IS
15 THAT SHE CAN'T SAY WITH ANY MORE CERTAINTY THEN IT
16 MAY BE PRESENT OR IT MAY NOT BE PRESENT. AND IF
17 SHE CAN'T STATE WITH ANY MORE CERTAINTY THAT, THEN
18 ISN'T THAT REASONABLE DOUBT RELATED TO THAT?

19 DR. BAIRD WENT FURTHER, THOUGH. DR.
20 BAIRD SAID -- GAVE US ALL THESE NUMBERS, ONE IN
21 EIGHT MILLION. I WON'T READ THESE NUMBERS; BUT ONE
22 IN TREMENDOUS NUMBERS IN BOTH OF THESE RELATED TO
23 THE CAUCASIAN RACE AND RELATED TO THE BLACK RACE.
24 HE GAVE US THESE INCREDIBLE NUMBERS AND THESE
25 INCREDIBLE ODDS. BUT HE SAID THOSE NUMBERS DON'T

CLOSING ARGUMENT - MR. THEOS

1 MEAN A THING IF THE 1.2 ALLELE WAS NOT THERE. THEY
2 MEAN NOTHING AT ALL. IF THE 1.2 IS THERE, MR.
3 SIMMONS CANNOT BE EXCLUDED. IF IT'S NOT, HE MUST
4 BE EXCLUDED. AND IF HE MUST BE EXCLUDED, THEN MR.
5 SIMMONS COULD NOT PHYSICALLY AND SCIENTIFICALLY
6 HAVE BEEN THE DONOR OF THE SPERM THAT WAS FOUND.

7 THE PHYSICAL EVIDENCE IS WHAT I WANT
8 TO LASTLY GO OVER WITH YOU. AND WHAT WE -- I DON'T
9 KNOW IF YOU RECALL; BUT AT THE BEGINNING OF THE
10 CASE, I TOLD YOU WHAT THAT ONE JUROR HAD SAID IN
11 THE VOIR DIRE PROCESS; THAT HE DIDN'T CARE WHAT WE
12 SAID. HE DIDN'T CARE HOW THINGS APPEARED OR WHAT
13 WE REPRESENTED THE FACTS TO BE; HE WOULD LOOK ONLY
14 AT THE EVIDENCE. I ASK YOU TO DO THE SAME. LOOK
15 ONLY AT THE EVIDENCE. AND IF YOU DO, YOU WILL SEE
16 -- AND YOU HAVE THOSE STATEMENTS IN HAND WHEN YOU
17 DO. BUT IF YOU LOOK AT THE EVIDENCE -- AND LET'S
18 LOOK AT IT -- YOU'LL SEE THAT THERE ARE A
19 TREMENDOUS NUMBER OF INCONSISTENCIES IN THAT
20 PHYSICAL EVIDENCE AND IN THE STATEMENTS AND IN THE
21 HYPOTHESIS THAT KENNETH SIMMONS WAS PRESENT AND
22 COMMITTED THESE CRIMES.

23 NOW, THE FIRST IS WHAT MR. BAILEY
24 POINTED OUT ALMOST AT THE END, AND THAT IS DID THIS
25 HAPPEN IN THE DAYTIME, OR DID IT HAPPEN AT NIGHT?

CLOSING ARGUMENT - MR. THEOS

1 WELL, THAT'S JUST A LITTLE INCONSISTENCY THAT THE
2 STATE WANTS YOU TO OVERLOOK BECAUSE MR. SIMMONS
3 SAID IT HAPPENED AT A CERTAIN TIME ACCORDING TO ONE
4 OF THE STATEMENTS, AND WE KNOW IT DIDN'T HAPPEN AT
5 THAT TIME. BUT THEN AGAIN, THAT MAY BE IN CONFLICT
6 WITH WHAT DR. NICHOLS SAID BECAUSE DR. NICHOLS SAID
7 IT HAVE TO HAVE HAPPENED IN THE P.M. I THINK WERE
8 HIS WORDS.

9 MR. BAILEY: OBJECTION. YOUR HONOR,
10 HE'S MISQUOTING DR. NICHOLS.

11 MR. THEOS: I DON'T BELIEVE I AM,
12 YOUR HONOR.

13 THE COURT: ALL RIGHT GENTLEMEN, WE
14 ARE GOING TO BE GENTLEMEN. AND, LADIES AND
15 GENTLEMEN, ARGUMENT IS JUST THAT, ARGUMENT. AND I
16 WOULD INVITE YOU TO RECALL WHAT YOU RECALL THE
17 TESTIMONY TO BE. THANK YOU. PROCEED.

18 BY MR. THEOS
19 DID IT HAPPEN AT NIGHT; DID IT HAPPEN IN THE
20 MORNING; DID IT HAPPEN IN THE DAYTIME? LISTEN TO
21 THOSE TAPES; READ THOSE STATEMENTS; RECALL WHAT
22 TIME DR. NICHOLS SAID. SEE IF THEY ALL JIBE.

23 THE NUMBER OF BLOWS STRUCK,
24 ACCORDING TO THE STATEMENTS, TOGETHER WITH THE
25 STATEMENT, WAS IT TWO? WAS IT THREE? WAS IT AS

CLOSING ARGUMENT - MR. THEOS

1 AGENT MEARS SAID, OR TRIED TO GET KENNETH TO SAY AS
2 WE'VE JUST HEARD ON ONE OF THOSE RECORDINGS? WAS
3 IT SEVERAL AS HE SAID? DR. NICHOLS TESTIFIED THAT
4 IN HIS OPINION IT WAS SEVERAL, A NUMBER OF BLOWS.
5 BASED UPON THE NATURE OF THE INJURIES, AND BASED
6 UPON THE PHYSICAL EVIDENCE RELATED TO THOSE
7 INJURIES, THE HEMORRHAGING, THE SWELLING, AND SO
8 FORTH. THE OTHER THING RELATED TO THOSE INJURIES
9 IS BLOWS TO THE CHEST. NOW, READ THAT STATEMENT,
10 AND AGAIN KEEP IN MIND, WHY WOULD SOMEBODY ADMIT TO
11 DOING SOMETHING, SOMETHING THIS BAD AND NOT TALK
12 ABOUT IT, NOT JUST BE COMPLETELY TRUTHFUL,
13 ESPECIALLY IF AS MR. BAILEY HAS ARGUED, HE
14 UNDERSTOOD THAT HE IS GOING GET POSSIBLY LIFE
15 IMPRISONMENT OR THE DEATH PENALTY.

16 MR. BAILEY: JUDGE, AGAIN, I
17 APOLOGIZE. THIS IS THE SECOND TIME HE'S MADE A
18 REFERENCE TO THE PENALTY AND THE GUILT PHASE; AND I
19 THINK IT'S STARTING---

20 THE COURT: PLEASE CRAVE NO
21 REFERENCE TO THE PENALTY.

22 BY MR. THEOS
23 WHY WOULD SOMEBODY IN THAT SITUATION TELL PART OF
24 THE TRUTH? THAT DOESN'T MAKE ANY SENSE. SO THAT'S
25 WHAT THE STATEMENT WOULD HAVE YOU BELIEVE.

CLOSING ARGUMENT - MR. THEOS

1 NOW THE NUMBER -- WERE BLOWS STRUCK
2 ELSEWHERE? ACCORDING TO DR. NICHOLS THEY WERE.
3 ACCORDING TO DR. NICHOLS THERE WERE RIBS THAT WERE
4 FRACTURED. THEY WEREN'T FRACTURED FROM ONE OR TWO
5 BLOWS TO THE HEAD WITH A STICK. READ THE
6 STATEMENT; SEE IF THERE'S ANY REFERENCE TO THAT,
7 AND ASK YOURSELVES WHY THAT WOULD HAVE BEEN
8 OMITTED. THE NATURE OF THE BLOWS AND WHAT THE
9 BLOWS WERE STRUCK WITH. WE KNOW, ACCORDING TO DR.
10 NICHOLS' TESTIMONY, THAT THE BLOWS WERE STRUCK WITH
11 EITHER A BLUNT OBJECT OR A FIST. NOW CONSIDER A
12 STICK AS DESCRIBED IN THE STATEMENT. TWO INCHES IN
13 DIAMETER; A STICK, I WOULD SUBMIT TO YOU, IS NOT A
14 BLUNT OBJECT. A STICK IS AN OBJECT THAT WOULD
15 LEAVE A MARK. THERE WERE NO MARKS ON MRS. BOYD.
16 HOW WAS THE HOUSE ENTERED? LOOK AT ALL OF THE
17 DIFFERENT WAYS WHEN YOU READ THOSE TRANSCRIPTS AND
18 LISTEN TO THOSE TAPES, AS TO THE DIFFERENT VERSIONS
19 OF HOW THE HOUSE WAS ENTERED. WAS IT ENTERED --
20 DID MR. SIMMONS ENTER DIRECTLY THROUGH THE BACK
21 DOOR AS WAS STATED IN ONE OF THE TAPES? DID HE GO
22 TO THE FRONT DOOR AND SHAKE IT AND THEN GO TO THE
23 BACK DOOR? DID HE SLIP IN THE BACK DOOR AS HE SAID
24 IN ONE STATEMENT? DID HE CONFRONT HER ON THE PORCH
25 AS WAS STATED IN ANOTHER STATEMENT? YOU READ THOSE

CLOSING ARGUMENT - MR. THEOS

1 STATEMENTS AND SEE HOW MANY DIFFERENT VERSIONS OF
2 ENTERING THE HOUSE AND INITIAL CONFRONTATION THERE
3 WAS WITH MRS. BOYD.

4 NOW, ALSO CONSIDER THE ROUTE THAT
5 WAS TAKEN. MR. BAILEY HAS GONE TO GREAT LENGTHS TO
6 EXPLAIN TO YOU NOBODY WOULD HAVE BEEN ABLE TO
7 RECALL IN DETAIL ALL THE FACTS AND THE DETAILS
8 UNLESS THEY HAD BEEN THERE AND DONE THESE THINGS.
9 YOU READ THOSE STATEMENTS AND LISTEN TO THOSE TAPE
10 RECORDINGS REGARDING THE ROUTE TAKEN ONCE INSIDE
11 AND DETERMINE FOR YOURSELVES WHETHER THERE'S ANY
12 INCONSISTENCY IN EITHER WHAT HAPPENED ONCE INSIDE
13 THE DOOR. WAS IT IN THE HALLWAY INITIALLY? WAS IT
14 DOWN THE HALLWAY HALF-WAY? WAS IT IN THE KITCHEN?
15 WAS IT TOWARDS THE BEDROOM? WAS IT TOWARDS THE
16 LIVING ROOM? PAY CLOSE ATTENTION TO THE SUPPOSED
17 ROUTE TAKEN. WAS THE BACK DOOR OPEN OR CLOSED WHEN
18 MR. SIMMONS LEFT? IF YOU READ HIS STATEMENT AND
19 LISTEN TO IT, HE SAID THAT THE DOOR WAS CLOSED.
20 AND IF I'M WRONG, PLEASE USE YOUR OWN
21 RECOLLECTION. BUT HE SAID THAT THE DOOR WAS CLOSED
22 WHICH IS PRECISELY INCONSISTENT WITH HOW MRS.
23 WILSON TESTIFIED THAT THE DOOR WAS. IT WAS OPEN.
24 AND IF YOU REMEMBER, AGENT MEARS SAID "ARE YOU SURE
25 YOU CLOSED THE DOOR." AND THERE WAS A REASON FOR

CLOSING ARGUMENT - MR. THEOS

1 THAT BECAUSE IT WAS INCONSISTENT.

2 BLOOD VOLUME; BLOOD SPATTER.

3 THERE WERE TWO PEOPLE THAT TESTIFIED RELATED TO
4 BLOOD; OFFICER MANCHESTER AND MR. DERRICK FROM
5 SLED. ONE THING THAT WAS CLEAR AND CONSISTENT IN
6 BOTH IS THAT THERE WAS A LOT OF BLOOD AND THERE WAS
7 NO SPATTER, BUT THERE WAS A LOT OF BLOOD. AND ASK
8 YOURSELVES WHY THERE WAS NO REFERENCE TO MR.
9 SIMMONS' STATEMENT TO BLOOD IF IT WAS THAT MUCH AND
10 IT WAS THAT OBVIOUS AND THAT SIGNIFICANT. ROPE.
11 WAS THERE WAS NO ROPE MENTIONED IN EITHER
12 STATEMENT, ANY OF THE STATEMENTS? YES, THERE WAS
13 ROPE. YOU SAW IT. IT'S BEEN MARKED AS AN
14 EXHIBIT. IT'S BEEN INTRODUCED. THERE WAS ROPE.
15 WHY NOT MENTION THERE WAS ROPE? HOSE. YOU HEARD
16 IF ONE OF THE LAST BITS THAT MR. BAILEY PLAYED;
17 YOU'VE HEARD THAT MR. SIMMONS DIDN'T RECALL ANY
18 HOSE AND THEN AN ACKNOWLEDGMENT THAT OKAY, THERE
19 WAS HOSE.

20 MRS. WILSON FOUND MRS. BOYD WITH
21 SOMETHING COVERING HER MOUTH, AND SHE TOOK IT OFF.
22 WE'RE STILL NOT QUITE CLEAR ON WHAT IT WAS, BUT
23 CERTAINLY IT WAS SOMETHING. SHE DID WHAT SHE
24 SHOULD HAVE DONE. BUT WHY WAS THERE NO REFERENCE
25 TO THAT? IF YOU ACKNOWLEDGE STRIKING SOMEBODY,

CLOSING ARGUMENT - MR. THEOS

1 TYING SOMEBODY UP IN A CERTAIN WAY, HAVING SEX
2 WHICH LEADS TO THEIR DEATH; WHY NOT TALK ABOUT
3 EVERYTHING? THERE WAS NO MENTION OF THAT. DID THE
4 STICK COME OFF A TREE, OR DID IT COME OFF THE
5 PORCH? WE HAVE IT TWO DIFFERENT WAYS. THERE WAS
6 THE IGNORANCE ABOUT MONEY BEING TAKEN AND THE
7 AMOUNT OF THE MONEY BEING TAKEN. IF YOU ROB
8 SOMEBODY, DON'T YOU KNOW IF YOU GET MONEY, AND
9 DON'T YOU KNOW HOW MUCH YOU GET? AGAIN, IF YOU'RE
10 ADMITTING TO ALL THESE THINGS, WHAT DOES IT
11 MATTER? IGNORANCE OF THAT. WHERE WAS THE STICK
12 PUT; THIS STICK WHICH IS SUPPOSEDLY USED? WHERE
13 WAS IT PUT AND TAKEN AFTERWARDS? WAS IT PUT IN A
14 TRASH PILE, OR WAS IT PUT NEAR THE RAILROAD TRACKS?
15 LOOK AT THE TWO STATEMENTS; PUT IN TWO DIFFERENT
16 PLACES.

17 CIGARETTE BUTTS WERE FOUND. YOU'LL
18 HAVE THAT DOCUMENT, AND YOU'LL SEE -- IF YOU'LL
19 RECALL -- AND IT'S DEFENSE EXHIBIT FOURTEEN.

20 THE COURT: MR. THEOS; THE FOOD IS
21 HERE. WOULD YOU LIKE TO FINISH YOUR CLOSING OR
22 STOP AT THIS TIME TO ALLOW THE JURY TO EAT? I
23 DON'T KNOW HOW MUCH LONGER. I'LL GIVE YOU AS MUCH
24 TIME AS YOU NEED.

25 MR. THEOS: I'M NOT GOING TO BE TOO

CLOSING ARGUMENT - MR. THEOS

MUCH LONGER.

THE COURT: ALL RIGHT. GO AHEAD,
THEN; THAT'S FINE.

BY MR. THEOS

IF YOU'LL RECALL -- AND IT'S
DEFENDANT'S EXHIBIT FOURTEEN; OFFICER MANCHESTER
TESTIFIED THAT CERTAIN THINGS WERE SENT TO SLED.
AND YOU'LL HAVE THIS BACK THERE WITH YOU. BUT IF
YOU RECALL, THERE WERE CIGARETTES THAT WERE FOUND.
TWO; A CIGARETTE FILTER AND A HALF SMOKED
MARLBORO. CERTAINLY IF THOSE THINGS WERE IMPORTANT
ENOUGH TO SEND TO SLED FOR ANALYSIS, THEN THEY WERE
DEEMED TO BE EVIDENCE AND DEEMED TO BE EVIDENCE BY
THE STATE, THE ANALYSIS SHOULD HAVE BEEN
PERFORMED. BUT YOU'LL SEE THAT NO ANALYSIS WAS
PERFORMED ON EITHER.

YOU WILL SEE THAT THERE WERE
FINGERNAIL SCRAPINGS DONE FROM BOTH HANDS. NO
ANALYSIS WAS PERFORMED. YOU'LL SEE THAT A GREEN
AND WHITE DRESS WAS SENT FOR ANALYSIS; NO ANALYSIS
WAS PERFORMED. YOU'LL SEE THAT A GREEN UNDER-DRESS
WAS SENT TO SLED; NO ANALYSIS WAS PERFORMED. A
BLUE JACKET; NO ANALYSIS PERFORMED. PAPER TOWEL;
NO ANALYSIS PERFORMED. GREEN UNDER-DRESS; NO
ANALYSIS PERFORMED. BLOOD SOAKED TOWEL; NO

CLOSING ARGUMENT - MR. THEOS

1 ANALYSIS PERFORMED. THERE ARE A COUPLE OF OTHER
2 ITEMS THAT NO ANALYSIS WAS PERFORMED. AND THEN
3 THERE ARE SOME OTHER ITEMS THAT SPEAK FOR
4 THEMSELVES. AND I'D ASK YOU TO PAY CLOSE ATTENTION
5 TO THAT. WE HAVE NO WAY OF KNOWING WHAT THAT
6 ANALYSIS WOULD HAVE SHOWN. BUT THERE IS EVIDENCE.
7 AND THAT IS EVIDENCE THAT WAS SENT. AND IF WE HAD
8 THE BENEFIT OF THAT EVIDENCE, THEN WE MIGHT HAVE A
9 BETTER UNDERSTANDING AS TO WHAT TOOK PLACE.

10 NOW, THE FOOTPRINT MR. DERRICK GOT
11 UP AND TESTIFIED ABOUT THE FOOTPRINT; HE BROUGHT IN
12 THIS POSTER. LOOK AT IT; IT APPARENTLY WAS RIGHT
13 OUT OF THE BACK DOOR, ACCORDING TO HIS TESTIMONY,
14 AND ACCORDING TO OFFICER MANCHESTER'S; RIGHT OUT OF
15 THE BACK DOOR. LOOK AT THE PHOTOGRAPH. LOOK AT
16 THE FOOTPRINT. IF THAT'S THE SHOE, THEN SO BE IT.
17 BUT IT'S INTERESTING TO NOTE THAT THEIR ARGUMENT
18 RELATED TO THE SHOE IS SORT OF CONTRADICTORY TO
19 THEIR ARGUMENT RELATED TO THE FINGERPRINTS. AND
20 THAT IS THAT IF KENNETH SIMMONS CAME IN AND OUT, OR
21 WHOEVER IT WAS THAT CAME IN AND OUT, WENT THROUGH
22 THE BACK DOOR, THEY HAD TO HAVE TRAVELED AND
23 STEPPED IN THIS SAME AREA, THEN IT'S JUST BY CHANCE
24 THAT FOOTPRINT WASN'T LEFT, ALTHOUGH I DIDN'T HEAR
25 ANY TESTIMONY. I DIDN'T HEAR ANY TESTIMONY EXCEPT

CLOSING ARGUMENT - MR. THEOS

1 THAT THERE WAS AN ASSUMPTION THAT THE POLICE
2 OFFICER; THAT THE OTHER FOOTPRINT WAS LEFT BY A
3 POLICE OFFICER'S BOOT. IT'S INTERESTING THAT THAT
4 ANALYSIS DOESN'T HOLD TRUE TO THE PHONE; THE SAME
5 SORT OF ANALYSIS; THAT THE FOOTPRINT CAN REMAIN IN
6 THIS SAND OF MRS. BOYD EVEN THOUGH OTHER PEOPLE
7 WOULD HAVE WALKED; NOT ONLY THE PERSON THAT CAME IN
8 AND YOU. BUT ALL THESE OTHER PEOPLE, MRS. WILSON,
9 THE CRIME SCENE, AND SO FORTH. AND THE PHONE WAS
10 USED A COUPLE OF TIMES. AND WE'RE JUST SUPPOSED TO
11 DISREGARD THE FINGERPRINT.

12 NOW, A FINGERPRINT WAS LIFTED. TWO
13 FINGERPRINTS. ONE WAS OFFICER NEALEY'S. AND THAT
14 WAS CLEAR. HE USED THE PHONE AT SOME POINT. AND
15 THE OTHER ONE, THE OTHER FINGERPRINT THAT WAS
16 LIFTED IS NOT KENNETH SIMMONS'. AND YOU'LL HAVE
17 THIS REPORT. AND IT'S DATED FEBRUARY THE 25TH,
18 1998. THE PREVIOUSLY REPORTED, UNIDENTIFIED LATENT
19 FINGERPRINTS IN THIS CASE, ARE NOT THE FINGERPRINTS
20 OF KENNETH SIMMONS.

21 NOW, IF THIS WASN'T A SIGNIFICANT
22 PIECE OF EVIDENCE; IF THIS WASN'T SOMETHING THAT
23 THE POLICE AGENCIES AND THE SOLICITOR'S OFFICE AND
24 MR. BAILEY FELT WAS ABSOLUTELY A CRUCIAL PIECE OF
25 EVIDENCE TO IDENTIFY THE PERSON THAT DID THIS,

CLOSING ARGUMENT - MR. THEOS

1 BECAUSE AS HE SAID DNA IS NOT LIKE A FINGERPRINT.
2 FINGERPRINTS ARE ABSOLUTE, AND THEY'RE CERTAIN. IF
3 THEY DIDN'T THINK IT WAS THE PERPETRATOR, THE
4 PERSON THAT DID IT, THEY WOULDN'T HAVE SENT OFF FOR
5 ALL THIS TESTING. THAT WOULDN'T HAVE BEEN DONE.
6 BUT HE WANTS YOU TO BELIEVE THAT "WELL, IT WAS JUST
7 LEFT AT SOME POINT BY SOMEBODY AND WE JUST CAN'T
8 TELL YOU WHO IT IS; IT COULD HAVE BEEN ANYBODY."
9 THE PERSON THAT DID THIS LEFT THAT FINGERPRINT.

10 AND THE LAST THING RELATED TO THE
11 PHYSICAL EVIDENCE AND THE MEDICAL EVIDENCE. THE
12 STRANGULATION. IS THERE EVIDENCE OF
13 STRANGULATION? ACCORDING TO DR. NICHOLS, THERE
14 IS. MANUAL STRANGULATION; AND HE SAID THAT THERE
15 WAS SOME SORT OF MARK ON THE NECK OF MRS. BOYD. IS
16 THERE ANY OF THAT PRESENT IN THE ANY OF THE
17 REPORTED STATEMENTS BY MR. SIMMONS TO
18 STRANGULATION. AGENT MEARS IS ATTEMPTING TO -- OR
19 ATTEMPTS -- TO ASK HIM ABOUT IT. DID YOU PUT A
20 ROPE AROUND HER NECK? DID YOU DO ANYTHING ELSE?
21 DID YOU STRANGLE HER IN ANY WAY? AND YOU RECALL
22 THE RESPONSES. NO! NO! NO! WELL AGAIN, IF MR.
23 SIMMONS IS ADMITTING TO DOING THESE THINGS, THEN
24 WHY ON EARTH WOULD HE HIDE THAT AFTER ADMITTING TO
25 THESE OTHER THINGS? IT DOESN'T MAKE ANY SENSE.

CLOSING ARGUMENT - MR. THEOS

1 THERE ARE TOO MANY INCONSISTENCIES IN THE
2 STATEMENTS. THERE ARE TOO MANY INCONSISTENCIES IN
3 THE PHYSICAL EVIDENCE. THERE ARE TOO MANY
4 INCONSISTENCIES IN THE MEDICAL EVIDENCE THAT WOULD
5 POINT THE FINGER AT MR. SIMMONS AS HAVING BEEN
6 THERE AND DONE THIS; TOO MANY INCONSISTENCIES.

7 HOPEFULLY WE HAVEN'T REACHED THE
8 POINT THAT AN UNCORROBORATED STATEMENT IN AND OF
9 ITSELF WITH ABSOLUTELY NO PHYSICAL EVIDENCE TO
10 SUPPORT IT IS ENOUGH TO CONVICT SOMEBODY IN
11 DORCHESTER COUNTY, OR IN THIS STATE FOR THAT
12 MATTER. UNCORROBORATED! AND A STATEMENT THAT IS
13 GIVEN BY SOMEBODY WITH LIMITED MENTAL CAPACITY; AND
14 SOMEBODY THAT GIVES THREE DIFFERENT STATEMENTS
15 ABOUT WHAT HAPPENED. NOT JUST ONE; COHERENT,
16 LOGICAL, ALL ENCOMPASSING STATEMENT. BUT THREE
17 DIFFERENT STATEMENTS THAT ARE INCONSISTENT WITH THE
18 FACTS AND THE MEDICAL EVIDENCE. THE STATE'S CASE
19 IS BASED UPON ASSUMPTIONS; THE SAME TWO ASSUMPTIONS
20 I TOLD YOU ABOUT IN OPENING STATEMENT, AND PROOF
21 BEYOND A REASONABLE DOUBT IN A CRIMINAL CASE.

22 THE JUDGE WILL TELL YOU. YOU'VE
23 PROBABLY HEARD ABOUT PREPONDERANCE OF THE
24 EVIDENCE. IN CIVIL CASES THE SCALES OF JUSTICE --
25 IF YOU'LL KIND OF FOLLOW WITH ME -- START OUT THIS

CLOSING ARGUMENT - MR. THEOS

1 WAY: AND IF THE PLAINTIFF OR THE PERSON BRINGING
2 THE SUIT PROVES BY A PREPONDERANCE OR THE GREATER
3 WEIGHT OF THE EVIDENCE THAT SOMETHING IS SO, THEN
4 THEY'VE MET THEIR BURDEN. THEY'VE PROVED BY A
5 GREATER WEIGHT OF THE EVIDENCE. AND THE JURY WOULD
6 HAVE TO FIND FOR THAT PERSON THAT BROUGHT THE
7 SUIT. IN A CRIMINAL MATTER, HOWEVER, THE STATE,
8 MR. BAILEY, IS REQUIRED TO PROVE BEYOND A
9 REASONABLE DOUBT. AND THAT'S A MUCH GREATER
10 TIPPING OF THOSE SCALES. IT'S NOT BY A GREATER
11 WEIGHT OF THE EVIDENCE OR A SLIGHTER WEIGHT OF THE
12 EVIDENCE. IT'S A TREMENDOUS BURDEN. AS MR. BAILEY
13 SAYS, HE ACCEPTS THAT BURDEN. AND AS YOU ALL SAID
14 IN YOUR VOIR DIRE, YOU WOULD HOLD THAT BURDEN TO
15 THE STATE. AND I ASK YOU TO HOLD THAT BURDEN TO
16 THE STATE.

17 NOW, IF IT MAY BE MR. SIMMONS OR IT
18 MAY NOT BE MR. SIMMONS, AND WE HAVE NO MORE
19 CERTAINTY THAN THAT, THEN THERE IS REASONABLE
20 DOUBT, AND MR. BAILEY HAS FAILED TO PROVE HIS
21 CASE. AND I SUBMIT TO YOU THAT'S EXACTLY WHAT WE
22 HAVE, A MAYBE; AND NOTHING MORE. AND BASED UPON
23 THAT WE ASK YOU TO FIND MR. SIMMONS NOT GUILTY.
24 THANK YOU.

25 THE COURT: LADIES AND GENTLEMEN OF

CLOSING ARGUMENT - MR. THEOS

1 THE JURY; YOU'VE NOW HEARD THE FINAL SUMMATIONS OF
2 THE ATTORNEYS. PLEASE DO NOT DELIBERATE AS YES.
3 GO TO YOUR JURY ROOM, ENJOY YOUR LUNCH. AND IF
4 Y'ALL WANT A BREATH OF FRESH AIR BEFORE YOU COME
5 BACK IN TO HEAR MY CHARGE, TELL THE BAILIFF AND
6 THEY'LL TAKE YOU OUTSIDE. BUT Y'ALL LET ME KNOW
7 WHEN YOU'RE READY TO PROCEED, PLEASE. TO NOT
8 DELIBERATE AS OF YET. THANK YOU.

9 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

10 THE COURT: ALL RIGHT, GENTLEMEN AND
11 LADIES; I ASSUME YOU ORDERED SOME LUNCH, DID YOU
12 NOT? (COUNSEL ANSWER IN THE AFFIRMATIVE.)

13 THE COURT: SO WE'RE GOING TO BREAK
14 FOR LUNCH. AND AS SOON AS THE JURY IS READY, WE'LL
15 CALL THEM BACK TO CONTINUE. THANK YOU.

16 (WHEREUPON AT 2:10 P.M. COURT IS ADJOURNED FOR
17 LUNCH.) (LUNCH RECESS.)

18 - - - - -

19 THE COURT: GENTLEMEN, ARE YOU READY
20 TO PROCEED, PLEASE?

21 MR. BAILEY: THE STATE'S READY, YOUR
22 HONOR.

23 MR. THEOS: THE DEFENSE IS READY.

24 THE COURT: ALL RIGHT. AT THE BACK
25 DOOR NOW, GENTLEMEN; TELL THEM ANYONE THAT WANTS TO

CLOSING ARGUMENT - MR. THEOS

1 COME IN TO PLEASE DO SO. OTHERWISE WE ARE FIXING
2 TO LOCK THE DOORS. THE DEFENDANT IS IN WITH HIS
3 ATTORNEYS.

4 (AT THIS TIME JURY RETURNS TO OPEN COURT.)
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CHARGE TO THE JURY

HOPE YOU ENJOYED YOUR LUNCH. PLEASE
LET ME REMIND YOU AGAIN THE LAW PROHIBITS THE
TAKING OF NOTES DURING THE CHARGE BY THE COURT.
AND MADAM FORELADY AND LADIES AND GENTLEMEN OF THE
JURY; GIVE ME YOUR FULL ATTENTION, PLEASE. YOU'VE
BEEN VERY PATIENT AND THOUGHTFUL AND ATTENTIVE
THROUGHOUT THIS TRIAL, AND YOU'VE FOLLOWED VERY
CLOSELY THE ABLE ARGUMENTS OF THE LAWYERS THAT WERE
MADE IN THIS CASE ON BEHALF OF BOTH THE STATE AND
THE DEFENDANT. SO NOW IT BECOMES MY DUTY AS THE
TRIAL JUDGE IN THIS CASE UNDER OUR CONSTITUTION AND
OUR LAW TO INSTRUCT YOU AS TO THE LAW IN THE CASE.

AND, LADIES AND GENTLEMEN, IT'S YOUR
DUTY AS JURORS TO PLEASE ACCEPT THE LAW AS IS NOW
BEING GIVEN TO YOU BY THIS COURT AND APPLY IT TO
THE CASE PRECISELY AS I NOW STATE THAT LAW TO BE.
NOW, AS JURORS LADIES AND GENTLEMEN, IT IS YOUR
EXCLUSIVE DUTY TO DECIDE ALL OF THE ISSUES OF FACT
IN THIS CASE; AND FOR THAT PURPOSE YOU HAVE TO
DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND
TRUTH OF EVIDENCE WHICH YOU'VE HEARD. BOTH THE
STATE AND THE DEFENDANT HAVE A RIGHT TO EXPECT THAT
YOU WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE THE
EVIDENCE, AND THAT YOU WILL APPLY THE LAW TO THAT

CHARGE TO THE JURY

1 EVIDENCE TO THE END THAT BOTH THE STATE AND THE
2 DEFENDANT RECEIVE A FAIR AND IMPARTIAL TRIAL AT
3 YOUR HANDS.

4 NOW THROUGHOUT THE COURSE OF THIS
5 CHARGE, LADIES AND GENTLEMEN, WHEN I USE THE WORD
6 "DEFENDANT" I AM REFERRING TO MR. KENNETH
7 SIMMONS. NOW, LADIES AND GENTLEMEN, THERE ARE FIVE
8 INDICTMENTS AGAINST THIS DEFENDANT. EACH
9 INDICTMENT CONTAINS A SEPARATE CHARGE. YOU'RE
10 INSTRUCTED NOT TO TAKE INTO ACCOUNT THE FACT THAT
11 THE ACCUSED HAS BEEN CHARGED IN MORE THAN ONE
12 INDICTMENT. THAT MUST NOT BE HELD AGAINST HIM.
13 THE REASON FOR THIS IS THAT THE ACCUSED IS ENTITLED
14 TO A FAIR AND IMPARTIAL DETERMINATION ON EACH
15 INDICTMENT BASED UPON YOUR DETERMINATION OF THE
16 EVIDENCE ON EACH SEPARATE INDICTMENT. THE ACCUSED
17 IS NOT TO BE PREJUDICED BY THE FACT THAT THERE IS
18 MORE THAN ONE INDICTMENT AND MORE THAN ONE CHARGE
19 AGAINST HIM.

20 NOW, LADIES AND GENTLEMEN, I
21 INSTRUCT YOU THAT THESE INDICTMENTS; I AM NOT GOING
22 TO READ THEM TO YOU AT THIS TIME. THEY WERE READ
23 TO YOU AT THE OPENING OF THE TRIAL, AND YOU WILL
24 HAVE THE INDICTMENTS WITH YOU, AND YOU MAY GIVE
25 THEM SUCH READING AT THAT TIME AS YOU WISH BECAUSE

CHARGE TO THE JURY

1 YOU WILL HAVE THEM WITH YOU IN THE JURY ROOM. AND
2 AGAIN, THE INDICTMENTS ARE THE LEGAL DOCUMENTS
3 WHICH CONTAIN THE CHARGES AGAINST THE DEFENDANT,
4 KENNETH SIMMONS, AND THEY ARE NOT EVIDENCE IN THE
5 CASE. INDICTMENT 98-75 CHARGES KENNETH SIMMONS
6 WITH MURDER. INDICTMENT 98-76 CHARGES THE
7 DEFENDANT, KENNETH SIMMONS, WITH BURGLARY IN THE
8 FIRST DEGREE OF A DWELLING HOUSE. INDICTMENT 98-77
9 CHARGES KENNETH SIMMONS WITH THE OFFENSE OF ARMED
10 ROBBERY. INDICTMENT 98-78 CHARGES THE DEFENDANT,
11 KENNETH SIMMONS, WITH THE OFFENSE OF CRIMINAL
12 SEXUAL CONDUCT IN THE FIRST DEGREE. AND THE LAST
13 INDICTMENT, 98-79 CHARGES KENNETH SIMMONS WITH THE
14 OFFENSE OF KIDNAPPING. EACH OF THESE INDICTMENTS
15 ALLEGE THAT THE OFFENSES TOOK PLACE ON OR ABOUT
16 SEPTEMBER 1, 1996, IN DORCHESTER COUNTY, SOUTH
17 CAROLINA.

18 NOW, TO EACH OF THESE INDICTMENTS,
19 LADIES AND GENTLEMEN, THE DEFENDANT, KENNETH
20 SIMMONS, HAS PLED NOT GUILTY, AND THAT PLEA OF NOT
21 GUILTY CASTS THE BURDEN OF PROOF UPON THE STATE OF
22 SOUTH CAROLINA TO PROVE THE DEFENDANT GUILTY. A
23 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE
24 IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
25 ONESELF INNOCENT BECAUSE IN MANY INSTANCES THAT

CHARGE TO THE JURY

1 MIGHT NOT BE POSSIBLE. I INSTRUCT YOU THAT IT IS A
2 CARDINAL, IMPORTANT RULE OF THE LAW OF EVIDENCE
3 THAT A DEFENDANT IN A CRIMINAL TRIAL, NO MATTER
4 WHAT THE ENORMITY OF THE CHARGE MADE AGAINST HIM
5 MAY BE, WILL ALWAYS BE PRESUMED OR THOUGHT TO BE
6 INNOCENT OF THE CRIME FOR WHICH HE IS INDICTED
7 UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE
8 SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE
9 DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT
10 CEASE WHEN YOU RETIRE TO GO TO YOUR JURY ROOM BUT
11 RATHER IT ACCOMPANIES THE DEFENDANT FROM THE TIME
12 OF HIS ARREST THROUGHOUT THE TRIAL AND UNTIL YOU,
13 THE JURY, REACH A VERDICT OF GUILT BASED UPON THE
14 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
15 REASONABLE DOUBT.

16 OUR SUPREME COURT HAS SAID THAT THE
17 PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
18 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
19 DEFENDANT, AND IT REMAINS WITH HIM AND ASSIGNS HIM
20 TO THAT CLASS, THE INNOCENT, UNTIL THAT PRESUMPTIVE
21 ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED FROM HIS
22 PERSON BY EVIDENCE SATISFYING YOU OF THAT GUILT
23 BEYOND A REASONABLE DOUBT. SO, MADAM FORELADY AND
24 LADIES AND GENTLEMEN, YOU CAN SEE IT IS NOT JUST A
25 LEGAL THEORY, AND NEITHER IS IT JUST A LEGAL

CHARGE TO THE JURY

1 PHRASE, BUT RATHER IT IS A SUBSTANTIAL DOUBT THAT
2 EVERY PERSON IS ENTITLED TO, THAT IS THE
3 PRESUMPTION OF INNOCENCE UNTIL THE STATE HAS
4 REMOVED THAT PRESUMPTION OF INNOCENCE BY EVIDENCE
5 SATISFYING YOU OF THE GUILT OF THE DEFENDANT BEYOND
6 A REASONABLE DOUBT.

7 I INSTRUCT YOU THAT A REASONABLE
8 DOUBT IS A KIND OF DOUBT THAT WOULD CAUSE A
9 REASONABLE PERSON TO HESITATE TO ACT. IF YOU HAVE
10 SUCH A DOUBT IN YOUR MIND AS TO WHETHER OR NOT THE
11 STATE HAS PROVEN THIS DEFENDANT GUILTY, YOU SHOULD
12 RESOLVE THAT DOUBT IN HIS FAVOR AND WRITE A VERDICT
13 OF NOT GUILTY AND ACQUIT HIM. IF, HOWEVER, THE
14 STATE HAS SATISFIED YOU, THE JURY, OF HIS GUILT
15 BEYOND A REASONABLE DOUBT, IT WOULD EQUALLY BE YOUR
16 DUTY TO CONVICT HIM.

17 UNDER THE CONSTITUTION OF SOUTH
18 CAROLINA YOU, LADIES AND GENTLEMEN OF THE JURY, ARE
19 THE SOUL JUDGES OF THE FACTS IN THE CASE. IT IS MY
20 DUTY TO RULE UPON THE ADMISSIBILITY OF TESTIMONY,
21 BUT THE WEIGHT OR PROBATIVE VALUE OF THE EVIDENCE
22 IS ENTIRELY FOR YOU. IT IS YOUR DUTY TO WEIGH AND
23 CONSIDER THE EVIDENCE AND SO DETERMINE WHAT THE
24 FACTS ARE FROM THE TESTIMONY AS YOU HEARD IT FROM
25 THE WITNESSES UPON THE STAND. I CANNOT INTIMATE

CHARGE TO THE JURY

1 ANY OPINION THAT I HAVE OR MAY NOT HAVE ABOUT THE
2 FACTS OF THIS CASE, AND ANY INNUENDO OR INFERENCE
3 THAT YOU MAY HAVE GATHERED OR GARNERED OR GLEANED
4 FROM ANY ACTION OR RULING OR SAYING ON MY PART AS
5 TO WHAT I MAY THINK THE FACTS OF THIS CASE ARE OR
6 SHOULD BE, YOU WILL PLEASE DISREGARD THE SAME
7 BECAUSE THAT CERTAINLY WAS NOT MY INTENTION BECAUSE
8 YOU, THE JURY, ARE THE SOLE AND ONLY JUDGES OF THE
9 FACTS. YOU MUST THEREFORE PASS UPON THE
10 CREDIBILITY OR THE BELIEVABILITY OF THE WITNESSES.
11 YOU HAVE THE RIGHT TO BELIEVE ONE WITNESS AS
12 OPPOSED TO MANY; YOU MAY BELIEVE MANY AS OPPOSED TO
13 ONE; YOU MAY BELIEVE A PORTION OF WHAT A WITNESS
14 TELLS YOU AND DISREGARD THE REMAINDER, OR YOU MAY
15 REJECT A WITNESS' TESTIMONY IN ITS ENTIRETY
16 PROVIDED THERE IS A SOUND REASON IN THE RECORD FOR
17 SO DOING BECAUSE YOU CANNOT ARBITRARILY REJECT THE
18 TESTIMONY OF WITNESSES.

19 IN FURTHER TAKING INTO CONSIDERATION
20 THE CREDIBILITY OF WITNESSES, YOU MAY CONSIDER THE
21 INTEREST, THE BIAS, THE PREJUDICE THAT A WITNESS
22 MAY HAVE. YOU MAY FURTHER CONSIDER THE DEMEANOR OR
23 THE BEHAVIOR OF A WITNESS UPON THE STAND, ANYTHING
24 THAT'S IN THE RECORD THAT TENDS TO SHOW WHETHER OR
25 NOT A WITNESS IS TELLING THE TRUTH BECAUSE YOUR

CHARGE TO THE JURY

1 DURING A TRIAL; ONE IS DIRECT EVIDENCE; THE OTHER
2 IS CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
3 TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE
4 ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE WITNESS.
5 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
6 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF
7 A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION
8 BETWEEN THE WEIGHT AND VALUE TO BE GIVEN TO EITHER
9 DIRECT OR CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER
10 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
11 EVIDENCE THAN OF DIRECT EVIDENCE.

12 I CHARGE YOU FURTHER THAT SUSPICION,
13 HOWEVER STRONG, DOES NOT SUFFICE TO SUSTAIN A
14 CONVICTION AND POSSIBLE OR PROBABLE GUILT WILL NOT
15 SUSTAIN CONVICTION. YOU SHOULD WEIGH ALL OF THE
16 EVIDENCE IN THIS CASE. AFTER WEIGHING ALL THE
17 EVIDENCE, IF YOU'RE NOT CONVINCED OF THE GUILT OF
18 THE DEFENDANT BEYOND A REASONABLE DOUBT THEN YOU
19 MUST FIND THE DEFENDANT NOT GUILTY. I INSTRUCT YOU
20 FURTHER, LADIES AND GENTLEMEN OF THE JURY, THAT
21 ALTHOUGH LAY WITNESSES ARE LIMITED TO TESTIFYING
22 ABOUT FACTS WITHIN THEIR KNOWLEDGE AND ARE NOT
23 ALLOWED TO GIVE OPINIONS, CERTAIN WITNESSES WHO BY
24 TRAINING, EDUCATION, OR EXPERIENCE ARE CONSIDERED
25 AS EXPERTS IN A PARTICULAR FIELD. THEY MAY GIVE

CHARGE TO THE JURY

1 OPINIONS IN THAT FIELD BASED UPON THE FACTS OF A
2 MATTER. THEIR CONCLUSIONS AND THESE OPINIONS
3 CONSTITUTE EVIDENCE TO BE CONSIDERED BY YOU IN
4 CONNECTION WITH ALL OF THE OTHER TESTIMONY AND
5 EVIDENCE IN THE CASE. THAT IS TO SAY I.E., YOU MAY
6 CONSIDER THE EXPERT'S OPINION JUST AS YOU DO ALL
7 OTHER EVIDENCE IN THE CASE, AND IT'S FOR YOU, THE
8 JURY, TO GIVE IT SUCH WEIGHT AS YOU IN YOUR
9 EXPERIENCE AND DISCRETION MAY DETERMINE. BY THIS I
10 MEAN THAT YOU MAY WEIGH SUCH EVIDENCE AND ACCEPT OR
11 REJECT IT IN THE SAME MANNER THAT YOU TREAT ALL
12 OTHER EVIDENCE IN THE TRIAL OF THE CASE.

13 NOW, LADIES AND GENTLEMEN, WHILE THE
14 COURT GENERALLY DETERMINES THE ADMISSIBILITY OF
15 EVIDENCE, I INSTRUCT YOU THAT AS REGARDS THE
16 ALLEGED ORAL STATEMENT OR WRITTEN CONFESSION BY THE
17 DEFENDANT THAT YOU, LADIES AND GENTLEMEN OF THE
18 JURY, MAKE THE ULTIMATE DETERMINATION OF WHETHER OR
19 NOT THE DEFENDANT MADE THE STATEMENT AND IF HE DID
20 MAKE IT WHETHER IT WAS MADE BY THE DEFENDANT
21 VOLUNTARILY AND OF HIS OWN FREE WILL AND WITHOUT
22 ANY PROMISE OR HOPE OF REWARD OR ANY DURESS,
23 THREAT, OR COERCION, AND FINALLY JUST WHAT WEIGHT,
24 IF ANY, SHOULD GIVEN THERETO. BEFORE ANY
25 CONFESSION MAY BE RELIED UPON TO CONVICT A

CHARGE TO THE JURY

1 DEFENDANT, THE ACTUAL COMMISSION BY SOMEONE OF THE
2 CRIME CHARGED MUST BE INDEPENDENTLY PROVED UNLESS
3 FROM THE EVIDENCE, IN ADDITION TO AND INDEPENDENT
4 OF THAT PERTAINING TO ANY ALLEGED CONFESSION OR
5 ADMISSION ON THE PART OF THE DEFENDANT, IF YOU FIND
6 THAT IT HAS BEEN ESTABLISHED BEYOND A REASONABLE
7 DOUBT THAT THE CRIME CHARGED BY THE DEFENDANT WAS
8 COMMITTED BY SOMEONE, YOU SHALL NOT CONSIDER FOR
9 ANY PURPOSE THE EVIDENCE OFFERED AS TO SUCH
10 CONFESSION OR ADMISSION. THE ADDITIONAL
11 INDEPENDENT EVIDENCE, HOWEVER, NEED ONLY PROVE THAT
12 THE CRIME CHARGED WAS ACTUALLY COMMITTED. SUCH
13 INDEPENDENT EVIDENCE NEED NOT ESTABLISH THE
14 IDENTITY OF THE PERSON BY WHOM IT WAS COMMITTED.

15 I CHARGE YOU THAT YOU MUST DETERMINE
16 IF THE ALLEGED CONFESSION WAS A PRODUCT OF AN
17 ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY ITS
18 MAKER. IF YOU DETERMINE THAT IT WAS AND THE BURDEN
19 IS UPON THE STATE TO PROVE THIS FACT AS ALL OTHER
20 FACTS BEYOND A REASONABLE DOUBT, THEN YOU MAY GIVE
21 IT SUCH FURTHER CONSIDERATION AS YOU DEEM PROPER.
22 IF YOU DETERMINE THE ALLEGED CONFESSION WAS NOT THE
23 FREE AND VOLUNTARILY WILLED EXPRESSION OF THE
24 DEFENDANT, THEN YOU SHOULD NOT CONSIDER IT AT ALL.
25 IN DETERMINING WHETHER A DEFENDANT'S WILL WAS

CHARGE TO THE JURY

1 OVERCOME IN OBTAINING A CONFESSION, YOU SHOULD
2 CONSIDER BOTH THE CHARACTERISTICS OF THE ACCUSED
3 AND THE DETAILS OF THE INTERROGATION WHICH IS OFTEN
4 REFERRED TO AS THE TOTALITY OF THE CIRCUMSTANCES.
5 SOME OF THE FACTORS THAT YOU MAY CONSIDER WOULD BE
6 THE AGE OF THE ACCUSED, HIS EDUCATION OR LACK
7 THEREOF, HIS BACKGROUND AND ENVIRONMENT, THE ADVICE
8 OR LACK THEREOF TO THE ACCUSED OF HIS
9 CONSTITUTIONAL RIGHTS INCLUDING, BUT NOT LIMITED,
10 TO THE PROCEDURAL SAFEGUARDS KNOWN AS THE MIRANDA
11 WARNINGS CONCERNING THE RIGHT TO REMAIN SILENT,
12 THAT THE STATEMENT COULD BE USED AGAINST HIM, THE
13 RIGHT TO HAVE A LAWYER PRESENT, AND IF HE BE
14 INDIGENT OR COULD NOT AFFORD A LAWYER, THEN THAT
15 LAWYER WOULD BE APPOINTED TO REPRESENT HIM AND THAT
16 HE CAN STOP MAKING THIS STATEMENT AT ANY TIME.

17 YOU MAY FURTHER CONSIDER THE ABILITY
18 OF THE DEFENDANT TO UNDERSTAND AND COMPREHEND THE
19 MIRANDA WARNINGS AND WHETHER OR NOT HE KNOWINGLY
20 AND VOLUNTARILY GAVE UP HIS RIGHTS. OTHER FACTORS
21 TO CONSIDER ARE THE PLACE AND LENGTH OF DETENTION
22 AND THE NATURE OF QUESTIONING. YOU, THE JURY, MUST
23 CAREFULLY SCRUTINIZE ALL OF THE SURROUNDING
24 CIRCUMSTANCES, AND BEFORE YOU GIVE ANY WEIGHT TO
25 THE ALLEGED CONFESSION YOU MUST BE SATISFIED BEYOND

CHARGE TO THE JURY

1 A REASONABLE DOUBT THAT IT WAS MADE BY THE ACCUSED
2 UN-INFLUENCED BY PROMISE OF REWARD, THREAT OF
3 INJURY, OR DIMINUTION OF HIS RIGHTS. AND AS I HAVE
4 STATED, YOU MUST CONSIDER THE TOTALITY OF THE
5 CIRCUMSTANCES SUCH AS INTELLIGENCE, EDUCATION,
6 EXPERIENCE, AND ABILITY TO COMPREHEND THE MEANING
7 AND EFFECT OF THE STATEMENT. YOU MUST DETERMINE IF
8 THE DEFENDANT IN THIS CASE HAD THE ABILITY OR
9 CAPACITY TO COMPREHEND THE MEANING AND EFFECT OF
10 WAIVING HIS CONSTITUTIONAL RIGHTS, AND IF HE DID SO
11 AS WELL AS THE MEANING AND AFFECT OF THE ALLEGED
12 STATEMENT.

13 I INSTRUCT YOU, LADIES AND
14 GENTLEMEN, THAT A DECISION CAN BE MADE
15 INTELLIGENTLY WITH AN UNDERSTANDING OF THE
16 CONSEQUENCES WITHOUT THE DECISION ITSELF BEING A
17 WISE ONE. SO, LADIES AND GENTLEMEN, DURING THE
18 TRIAL OF THE CASE, EACH OF YOU HAVE CERTAIN DUTIES
19 TO PERFORM. AND AS I'VE TOLD YOU, MY
20 RESPONSIBILITY IS TO PRESIDE OVER THE TRAIL OF THIS
21 CASE, TO PASS UPON THE ADMISSIBILITY, AND YOU AS
22 JURORS ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE
23 WHICH HAS BEEN PRESENTED TO YOU IN THE TRIAL OF
24 THIS CASE.

25 NOW, LADIES AND GENTLEMEN, AS I HAVE

CHARGE TO THE JURY

1 SAID IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW
2 PRECISELY AS I AM NOW STATING IT TO YOU. IF YOU
3 BROUGHT WITH YOU INTO YOUR SERVICE AS JURORS FOR
4 THIS TRIAL SOME PRECONCEIVED IDEAS ABOUT WHAT YOU
5 THINK THE LAW IS, OR IF YOU BROUGHT WITH YOU SOME
6 PREFERENCE ABOUT WHAT YOU WOULD LIKE FOR THE LAW TO
7 BE, IF THESE PRECONCEIVED IDEAS AND THOSE
8 PREFERENCES DON'T AGREE WITH WHAT I'M NOW TELLING
9 YOU, IT'S YOUR OBLIGATION UNDER YOUR OATH TO
10 ABANDON YOUR PRECONCEIVED IDEA OR PREFERENCES ABOUT
11 THE LAW BECAUSE UNDER YOUR OATH YOU ARE OBLIGATED
12 TO ACCEPT THE LAW PRECISELY AS NOW BEING GIVEN TO
13 YOU BY THIS COURT.

14 FURTHER, YOU ARE THE SOUL AND
15 EXCLUSIVE JUDGES OF THE FACTS IN THIS CASE. OUR
16 CONSTITUTION OF SOUTH CAROLINA HAS DECLARED THAT A
17 TRIAL JUDGE SHALL NOT COMMENT UPON THE FACTS OF THE
18 CASE OR INTIMATE ANY OPINION ABOUT THE FACTS OF THE
19 CASE OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT
20 THE FACTS OF THE CASE BECAUSE YOU ARE THE SOUL
21 JUDGES OF THE FACTS AGAIN. SO PLEASE DO NOT INFER
22 FROM ANYTHING I'VE SAID DURING THE TRIAL OR
23 ANYTHING I SAY TO YOU NOW DURING THE COURSE OF THIS
24 CHARGE THAT I HAVE AN OPINION ABOUT THE FACTS OF
25 THIS CASE BECAUSE THE LAW DOES NOT ALLOW ME TO HAVE

CHARGE TO THE JURY

1 SUCH AN OPINION BECAUSE THAT IS SOLELY A MATTER FOR
2 YOUR CONSIDERATION AND DETERMINATION.

3 NOW, LADIES AND GENTLEMEN, AS I
4 MENTIONED TO YOU THERE WERE FIVE INDICTMENTS HERE.
5 EACH CONTAIN A CHARGE. THE FIRST CHARGE IN THE
6 FIRST INDICTMENT IS THAT OF MURDER. CODE SECTION
7 16-3-10 OF OUR CODE OF LAWS DESCRIBES MURDER AS THE
8 KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT
9 EITHER EXPRESS OR IMPLIED. NOW IN ORDER FOR THE
10 STATE TO PROVE THE DEFENDANT GUILTY OF MURDER, IT
11 MUST BE PROVEN BEYOND A REASONABLE DOUBT THAT THE
12 DEFENDANT DID KILL A PERSON AND THE KILLING WAS
13 DONE WITH MALICE AFORETHOUGHT. THE STATE IS NOT
14 REQUIRED TO PROVE ANY MOTIVE FOR THE KILLING, BUT
15 IT IS REQUIRED TO PROVE MALICE. AND AS ALL OF THE
16 ELEMENTS OF EACH OFFENSE, THE PROOF OF THOSE
17 ELEMENTS, EACH OF THEM AND ALL OF THEM, MUST BE
18 BEYOND A REASONABLE DOUBT. MALICE IS THE
19 INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST
20 CAUSE OR EXCUSE AND WITH THE INTENT TO INFLECT
21 INJURY. MALICE AFORETHOUGHT IS THE DELIBERATE AND
22 WELL FORMED PURPOSE TO DO THE UNLAWFUL ACT.
23 AFORETHOUGHT MEANS THE INTENTION TO DO THE UNLAWFUL
24 ACT WAS CONCEIVED OR PLANNED SOME TIME BEFORE THE
25 ACTUAL COMMISSION OF THE UNLAWFUL ACT. BUT I TELL

CHARGE TO THE JURY

1 YOU, MALICE NEED NOT EXIST FOR ANY PARTICULAR
2 LENGTH OF TIME PRIOR TO THE ACT. MALICE IS A WORD
3 THAT SUGGESTS A WICKEDNESS OR HATRED OR
4 DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG
5 WITHOUT JUST CAUSE OR EXCUSE OR LEGAL PROVOCATION.
6 MALICE NEED NOT BE IN THE MIND OF THE ONE DOING THE
7 ACT FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE
8 ACT OF KILLING IN ORDER TO RENDER THE KILLING
9 MURDER. IF IT IS PRESENT IN THE MIND OF THE ONE
10 DOING THE KILLING ANY LENGTH OF TIME BEFORE THE
11 ACT, THEN ITS PRESENCE WOULD BE SUFFICIENT TO
12 RENDER THE KILLING MURDER.

13 MALICE MAY BE EXPRESS OR
14 IMPLIED. MALICE IS SAID TO BE EXPRESS WHERE THERE
15 IS SHOWN A VIOLENT, DELIBERATE INTENTION TO
16 UNLAWFULLY TAKE AWAY THE LIFE OF ANOTHER HUMAN
17 BEING. MALICE MAY BE INFERRED WHERE NO EXCUSE OR
18 LEGAL PROVOCATION FOR THE KILLING APPEARS AND WHEN
19 CIRCUMSTANCES SURROUNDING A KILLING SHOW AN
20 ABANDONED HEART OR A MALIGNANT HEART FATALLY BENT
21 UPON MISCHIEF. THE LAW SAYS THAT IF ONE
22 INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON,
23 THE INFERENCE OF MALICE MAY ARISE.

24 A DEADLY WEAPON IS ANY OBJECT WHICH
25 REASONABLY COULD BE USED TO CAUSE BODILY HARM.

CHARGE TO THE JURY

1 MALICE MAY BE INFERRED FROM THE USE OF A DEADLY
2 WEAPON. YOU ARE PERMITTED TO INFER MALICE IN THE
3 CONDUCT OF A DEFENDANT AND THE USE OR HANDLING OF A
4 DEADLY WEAPON, IF SUCH CONDUCT RESULTS DIRECTLY IN
5 THE DEATH OF ANOTHER, AND IF SUCH CONDUCT WAS SO
6 INEXCUSABLE, SO AGGRAVATED, AND SO GROSSLY RECKLESS
7 AS TO SHOW AN ACTUAL INTENTIONAL DISREGARD TO HUMAN
8 LIFE. CONDUCT TO SHOW A DELIBERATE INTENTIONAL
9 DESIGN TO USE, EMPLOY, OR HANDLE A DEADLY WEAPON SO
10 AS TO ENDANGER THE LIFE OF ANOTHER OR OTHERS
11 WITHOUT JUST CAUSE OR EXCUSE IS SUFFICIENT TO RAISE
12 AN INFERENCE OF MALICE. AND IF THE FACTS ARE
13 PROVEN BEYOND A REASONABLE DOUBT SUFFICIENT TO
14 RAISE THAT INFERENCE OF MALICE FROM THE USE OF A
15 DEADLY WEAPON TO YOUR SATISFACTION, THIS INFERENCE
16 WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
17 INTO CONSIDERATION BY YOU ALONG WITH ALL THE OTHER
18 EVIDENCE IN THE CASE WEIGHING ON THE ISSUE OF
19 MALICE, AND YOU MAY GIVE IT SUCH WEIGHT AS YOU
20 DETERMINE IT SHOULD HAVE.

21 THE DEFENDANT IS NOT REQUIRED TO
22 PROVE THE ABSENCE OF MALICE, LADIES AND GENTLEMEN,
23 BUT RATHER THE STATE IS REQUIRED TO PROVE THE
24 PRESENCE OF MALICE AND TO PROVE THAT AS ALL OTHER
25 ELEMENTS BEYOND A REASONABLE DOUBT. I INSTRUCT YOU

CHARGE TO THE JURY

1 THAT AN OBJECT NOT NORMALLY CONSIDERED A DANGEROUS
2 OR DEADLY WEAPON OR DEADLY OBJECT MAY UNDER SOME
3 CIRCUMSTANCES BE USED IN A FASHION OR IN SUCH A
4 MANNER AS TO CONSTITUTE A DANGEROUS OR DEADLY
5 OBJECT. IT IS FOR YOU, THE JURY, TO DETERMINE AND
6 DECIDE IN THIS CASE BEYOND A REASONABLE DOUBT
7 WHETHER A DEADLY OR DANGEROUS OBJECT WAS USED.

8 UNDER THE LAW OF SOUTH CAROLINA, THE HAND OR FIST
9 OF A PERSON IS NOT NORMALLY CONSIDERED A DANGEROUS
10 OR DEADLY OBJECT; BUT UNDER SOME CIRCUMSTANCES A
11 HAND OR FIST OF A PERSON MAY BE USED IN SUCH A
12 FASHION OR IN SUCH A MANNER TO CONSTITUTE A
13 DANGEROUS OR DEADLY OBJECT.

14 IN ITS POPULAR SENSE, LADIES AND
15 GENTLEMEN, THE TERM MALICE CONVEYS THE MEANING OF
16 HATRED, ILL WILL, OR HOSTILITY TOWARD ANOTHER. IN
17 ITS LEGAL SENSE, HOWEVER, AS EMPLOYING THE
18 DESCRIPTION OF MURDER, IT DOES NOT OF NECESSITY
19 IMPORT ILL WILL TOWARD THE INDIVIDUAL INJURED BUT
20 IT SIGNIFIES RATHER A GENERAL MALIGNANT
21 RECKLESSNESS OF THE LIVES AND SAFETY OF OTHERS OR A
22 CONDITION OF THE MIND WHICH SHOWS A HEART DEVOID OF
23 SOCIAL DUTY AND FATALLY BENT UPON MISCHIEF. IN
24 OTHER WORDS, A MALICIOUS KILLING IS WHERE THE ACT
25 IS DONE WITHOUT LEGAL JUSTIFICATION, EXCUSE, OR

CHARGE TO THE JURY

1 EXTENUATION, AND MALICE HAS BEEN FREQUENTLY
2 SUBSTANTIALLY SO DEFINED AS CONSISTING OF THE
3 INTENTIONAL DOING OF A WRONGFUL ACT TOWARD ANOTHER
4 WITHOUT LEGAL JUSTIFICATION OR EXCUSE. YOU MAY
5 INFER MALICE BASED UPON EVIDENCE OF SUCH
6 RECKLESSNESS AND WANTONNESS AS TO INDICATE A
7 DEPRAVITY OF MIND AND DISREGARD OF HUMAN LIFE
8 NOTWITHSTANDING THE LACK OF OR THE ACTUAL INTENT TO
9 KILL OR INJURE ANOTHER.

10 NOW, LADIES AND GENTLEMEN, THE
11 SECOND INDICTMENT CHARGES THE DEFENDANT WITH
12 BURGLARY IN THE FIRST DEGREE. UNDER CODE SECOND
13 16-11-311 OF THE SOUTH CAROLINA CODE OF LAWS,
14 BURGLARY IN THE FIRST DEGREE IS DEFINED AS THE
15 ENTERING OF THE DWELLING HOUSE OF ANOTHER WITHOUT
16 CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN
17 AND THE DEFENDANT ENTERED OR REMAINED IN THE HOUSE
18 IN THE NIGHT TIME. THE COMMON LAW OF THE NIGHT
19 TIME IS THAT PERIOD BETWEEN SUNSET AND SUNRISE
20 DURING WHICH THE FACE OF A PERSON CANNOT BE
21 DISCERNED BY THE LIGHT OF THE SUN. THERE ARE FOUR
22 ESSENTIAL ELEMENTS TO THE REQUIREMENT OF THE
23 DEFENDANT ENTERING THE DWELLING HOUSE OF ANOTHER
24 WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME;
25 AND THEY ARE THAT; (1) THERE MUST BE AN ENTERING.

CHARGE TO THE JURY

1 THE STATE MUST PROVE THAT THERE WAS AN ENTERING,
2 THAT THE DEFENDANT ACTUALLY WENT INSIDE THE HOUSE
3 OR SOME PART OF IT; (2) THE ENTRY MUST BE WITHOUT
4 CONSENT. A PERSON IS GUILTY OF BURGLARY IF ONE
5 UNLAWFULLY ENTERS THROUGH AN UNLOCKED OR OPEN DOOR;
6 (3) THE PLACE ENTERED MUST BE A DWELLING HOUSE.
7 DWELLING HOUSE MEANS ANY BUILDING INHABITED BY A
8 PERSON OR PERSONS AND IN WHICH THEY CUSTOMARILY
9 SLEEP. AND FINALLY; (4) THE DEFENDANT MUST HAVE AN
10 INTENT TO COMMIT. THE MERE ENTRY INTO A DWELLING
11 HOUSE WITHOUT CONSENT IS NOT A VIOLATION OF THIS
12 BURGLARY STATUTE. IT IS ONLY WHERE THERE IS AN
13 INTENT TO COMMIT A CRIME THAT IT IS COMPLETE.
14 PROOF OF INTENT NECESSARILY RESTS UPON INFERENCE
15 FROM CONDUCT. IT IS ESSENTIAL THAT THE FELONIOUS
16 INTENT EXISTS AT THE TIME OF THE ENTRY. IT IS NOT
17 SUFFICIENT THAT THE FELONIOUS INTENT BE FORMED
18 AFTERWARDS.

19 NOW, LADIES AND GENTLEMEN, THE NEXT
20 INDICTMENT CHARGES THE DEFENDANT WITH THE OFFENSE
21 OF ARMED ROBBERY. IN OUR CODE OF LAWS, SECTION
22 16-11-330(A), AND I QUOTE IN PERTINENT PART: "A
23 PERSON WHO COMMITS ROBBERY WHILE ARMED WITH A
24 PISTOL, DIRK, SLINGSHOT, METAL KNUCKLES, RAZOR, OR
25 OTHER DEADLY WEAPON, OR WHILE ALLEGING EITHER BY

CHARGE TO THE JURY

1 ACTION OR WORDS THAT HE WAS ARMED WHILE USING A
2 REPRESENTATION OF A DEADLY WEAPON OR ANY OBJECT
3 WHICH A PERSON PRESENTS DURING THE COMMISSION OF
4 THE ROBBERY REASONABLY BELIEVED IT TO BE A DEADLY
5 WEAPON IS GUILTY OF ARMED ROBBERY."

6 NOW, LADIES AND GENTLEMEN, THE
7 OFFENSE OF ARMED ROBBERY ENCOMPASSES WITHIN IT THE
8 LESSOR OFFENSE OF LARCENY AND ROBBERY. SO IN ORDER
9 FOR YOU TO FULLY UNDERSTAND THE ELEMENTS OF THE
10 OFFENSE OF ARMED ROBBERY WHICH THE LAW CALLS
11 ROBBERY WHILE ARMED WITH A DEADLY WEAPON, I WILL
12 NECESSARILY DEFINE TO YOU THE CRIME OF LARCENY AND
13 THEN ROBBERY AND THEN WHAT CONSTITUTES ARMED
14 ROBBERY BECAUSE THE CRIME OF LARCENY AND ROBBERY
15 ARE ALL ENCOMPASSED IN THE LARGER OFFENSE OF ARMED
16 ROBBERY.

17 LARCENY IS THE SAME THING, LADIES
18 AND GENTLEMEN, AS STEALING. THAT'S WHAT WE MEAN IN
19 EVERY DAY SIMPLE LANGUAGE. AND IT IS THE WRONGFUL
20 TAKING AND CARRYING AWAY BY ANY PERSON OF SOMEBODY
21 ELSE'S GOODS OR PERSONAL PROPERTY WITH THE
22 FELONIOUS OR THE WRONGFUL INTENT TO PERMANENTLY
23 DEPRIVE THE RIGHTFUL OWNER OF THAT PROPERTY AND TO
24 CONVERT THAT PROPERTY TO THE TAKER'S OWN USE. IN
25 THE ESSENTIAL ELEMENTS OF THE CRIME OF LARCENY

CHARGE TO THE JURY

1 WHICH I'VE ALREADY TOLD YOU IS USUALLY CALLED
2 STEALING: (1) THAT THERE'S A WRONGFUL TAKING AND
3 THE POSSESSION OF SOMEBODY'S PERSONAL PROPERTY; (2)
4 IT'S GOT TO BE A CARRYING AWAY AND REMOVAL OF THAT
5 PERSONAL PROPERTY; (3) FELONIOUS WRONGFUL INTENT TO
6 STEAL ON THE PART OF THE TAKER SO AS TO PERMANENTLY
7 DEPRIVE THE OWNER OF SUCH GOODS AND TO CONVERT THAT
8 PROPERTY TO THE TAKER'S OWN USE. THAT IS WHAT IS
9 KNOWN AS LARCENY.

10 NOW, ROBBERY TAKES THAT ONE STEP
11 FURTHER BECAUSE THAT IS THE FELONIOUS TAKING AND
12 CARRYING AWAY OF SOMEBODY'S PERSONAL PROPERTY IN
13 THE PRESENCE OF THAT FIRST PERSON BY PUTTING THAT
14 PERSON IN FEAR OF VIOLENCE. SO IF ALL THE ELEMENTS
15 OF THE OFFENSE ARE MET, THE WRONGFUL TAKING AND
16 CARRYING AWAY OF THE PROPERTY WITH THE INTENT TO
17 REMOVE IT AND NOT GIVE IT BACK AND THE CRIME OF
18 LARCENY WOULD HAVE BEEN PROVEN. BUT ROBBERY
19 IMPLIES AND REQUIRES THE FELONIOUS TAKING FROM A
20 PERSON, PROPERTY OF SOMEONE ELSE FROM THAT PERSON
21 OR FROM THE PRESENCE OF THAT PERSON BY VIOLENCE OR
22 BY PUTTING THAT PERSON IN FEAR OF VIOLENCE.

23 NOW, FINALLY, IN ORDER TO RAISE A
24 CRIME OF ROBBERY, AS JUST EXPLAINED TO YOU, TO ROB
25 WHILE ARMED WITH A DEADLY WEAPON, THE LAW REQUIRES

CHARGE TO THE JURY

1 ONE MUST HAVE USED A DEADLY WEAPON TO ACCOMPLISH
2 THE PURPOSE OF THE ROBBERY AS I HAVE DEFINED THAT
3 TO YOU. SO IN ORDER FOR THE STATE TO PROVE THE
4 ELEMENTS OF THE CRIME OF ARMED ROBBERY, THEY MUST
5 SATISFY YOU FIRST BEYOND A REASONABLE DOUBT THE
6 PROPERTY TAKEN HAS TO BE THE SUBJECT OF LARCENY.
7 AND I TELL YOU THAT LAWFUL CURRENCY OF THE UNITED
8 STATES, OR MONEY, IS PERSONAL PROPERTY. SECOND,
9 THERE HAS TO BE A WRONGFUL TAKING AND CARRYING AWAY
10 OF THAT PERSONAL PROPERTY. THIRD, IT HAS TO BE
11 DONE WITH A FELONIOUS INTENT; THAT IS I.E., WITH
12 THE INTENT TO STEAL ON THE PART OF THE TAKER SO AS
13 TO PERMANENTLY DEPRIVE THE OWNER OF THAT PROPERTY
14 TO CONVERT IT TO THE TAKER'S OWN USE. FOURTH; THE
15 PROPERTY MUST BE TAKEN FROM THE PERSON OF ANOTHER,
16 OR IF IT IS TAKEN IN HIS PRESENCE IS TAKEN
17 CONSTRUCTIVELY FROM HIS PERSON, AND IT MUST BE NOT
18 ONLY WITHOUT CONSENT BUT IT MUST BE ACCOMPLISHED BY
19 VIOLENCE OR PUTTING THE PERSON IN FEAR OF
20 VIOLENCE. AND FINALLY, THE PERSON DOING THE TAKING
21 MUST BE ARMED WITH A DEADLY WEAPON OF SOME TYPE AS
22 I HAVE DEFINED THAT TERM TO YOU.

23 SO IF THE STATE SATISFIES ALL OF
24 THOSE ELEMENTS OF THE OFFENSE OF ARMED ROBBERY
25 BEYOND A REASONABLE DOUBT, IT IS ENTITLED TO A

CHARGE TO THE JURY

1 VERDICT OF GUILTY ON THAT CHARGE. IF THE STATE
2 FAILS TO MEET THE BURDEN AS TO ANY ONE OF THOSE
3 ELEMENTS, THE DEFENDANT IS ENTITLED TO A VERDICT OF
4 NOT GUILTY AS TO THAT CHARGE.

5 NOW NEXT, LADIES AND GENTLEMEN, THE
6 FOURTH CHARGE CONTAINED IN THE INDICTMENT IS THAT
7 OF CRIMINAL SEXUAL CONDUCT, AND IT'S NECESSARY THAT
8 I GIVE YOU CERTAIN DEFINITIONS AS FOUND IN TITLE
9 16-3-651 OF OUR CODE OF LAWS. ACTOR MEANS A PERSON
10 ACCUSED OF CRIMINAL SEXUAL CONDUCT. AGGRAVATED
11 FORCE MEANS THE ACTOR USES PHYSICAL FORCE OR
12 PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE
13 TO OVERCOME THE VICTIM. SEXUAL BATTERY MEANS
14 SEXUAL INTERCOURSE OR ANY INTRUSION HOWEVER SLIGHT
15 OF ANY PART OF A PERSON'S BODY OR OF ANY OBJECT
16 INTO THE GENITAL OPENINGS OF ANOTHER'S BODY. AND
17 VICTIM MEANS THE PERSON ALLEGING TO HAVE BEEN
18 SUBJECTED TO CRIMINAL SEXUAL CONDUCT.

19 I CHARGE YOU IT IS THE LAW OF THIS
20 STATE THAT A PERSON IS GUILTY OF CRIMINAL SEXUAL
21 CONDUCT IN THE FIRST DEGREE UNDER SECTION 16-3-652
22 OF OUR CODE OF LAWS IF THE ACTOR ENGAGES IN SEXUAL
23 BATTERY WITH THE VICTIM. SEXUAL BATTERY MEANS ANY
24 TYPE OF INTERCOURSE OR ANY INTRUSION, HOWEVER
25 SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY

CHARGE TO THE JURY

1 OBJECT INTO OR ON ANOTHER PERSON'S BODY. AND THE
2 STATE MUST PROVE EACH OF THESE BEYOND A REASONABLE
3 DOUBT. IN ORDER TO HAVE FIRST DEGREE CRIMINAL
4 SEXUAL CONDUCT, THERE MUST BE A SHOWING THAT THIS
5 SEXUAL BATTERY OCCURRED WITH ONE OF THE FOLLOWING
6 CIRCUMSTANCES: THAT THE ACTOR USED AGGRAVATED
7 FORCE TO ACCOMPLISH THE SEXUAL BATTERY, OR THE
8 VICTIM SUBMITS TO SEXUAL BATTERY BY THE ACTOR UNDER
9 CIRCUMSTANCES WHERE THE VICTIM IS ALSO THE VICTIM
10 OF FORCIBLE CONFINEMENT; KIDNAPPING, ROBBERY,
11 BURGLARY OR OTHER SIMILAR OFFENSES OR ACTS. AS I
12 HAVE TOLD YOU, AGGRAVATED FORCE IS DEFINED AS FORCE
13 OF PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED
14 NATURE TO OVERCOME THE VICTIM AND INCLUDES A THREAT
15 OF THE USE OF A DEADLY WEAPON.

16 FINALLY, LADIES AND GENTLEMEN, THE
17 FIFTH INDICTMENT CHARGES A VIOLATION OF CODE
18 SECTION 16-3-910 OF OUR CODE OF LAWS WHICH DEFINES
19 KIDNAPPING, AND IT STATES THAT WHOEVER SHALL
20 UNLAWFULLY SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP,
21 ABDUCT, OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS
22 WHATSOEVER WITHOUT AUTHORITY OF LAW SHALL BE GUILTY
23 OF KIDNAPPING. KIDNAPPING IS THE INTENTIONAL
24 TAKING OF A PERSON AND COMPELLING HER TO BE
25 DETAINED AGAINST HER WILL. IT IS A WILLFUL AND

CHARGE TO THE JURY

1 UNLAWFUL SEIZING OR TAKING OF A PERSON AGAINST HER
2 WILL WITH THE INTENT TO CAUSE HER TO BE CONFINED,
3 IMPRISONED, OR DETAINED. THE ESSENCE OF THE
4 OFFENSE OF KIDNAPPING IS THE UNLAWFUL HOLDING OR
5 IMPRISONMENT OF A PERSON. KIDNAPPING MEANS THE
6 CARRYING AWAY OF A PERSON BY UNLAWFUL FORCE AGAINST
7 THEIR WILL OR SEIZING AND DETAINING HER. SO THE
8 STATE MUST PROVE BEYOND A REASONABLE DOUBT THE
9 THREE ELEMENTS OF KIDNAPPING WHICH WOULD BE: (1)
10 TO UNLAWFULLY SEIZE, CONFINED, KIDNAP, OR ABDUCT;
11 (2) BY ANY MEANS WHATSOEVER AND; (3) WITHOUT
12 AUTHORITY OF LAW. THE OFFENSE OF KIDNAPPING
13 COMMENCES WHEN ONE IS WRONGFULLY AND UNLAWFULLY
14 DEPRIVED OF HER FREEDOM AND CONTINUES UNTIL HER
15 FREEDOM IS RESTORED.

16 LADIES AND GENTLEMEN, AT VARIOUS
17 TIMES DURING THIS CHARGE YOU'VE HEARD ME USE THE
18 WORD "INTENT." CRIMINAL INTENT IS A NECESSARY
19 ELEMENT OF EACH CRIME THAT HAS TO BE PROVEN BY THE
20 STATE BEYOND A REASONABLE DOUBT. AND CRIMINAL
21 INTENT IS ALSO A MATTER THAT HAS TO BE DETERMINED
22 BY YOU FROM THE CIRCUMSTANCES SURROUNDING THE
23 SITUATION. BECAUSE THERE'S NO WAY TO PROVE INTENT
24 TO A MATHEMATICAL CERTAINTY, THERE'S NO WAY TO SAY
25 THAT MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN

CHARGE TO THE JURY

1 AND SEE EXACTLY WHAT THE PERSON HAD IN MIND AT THE
2 TIME. SO THE LAW SAYS CRIMINAL INTENT MAY BE
3 INFERRED FROM THE CIRCUMSTANCES WHICH WERE SHOWN TO
4 HAVE EXISTED, AND THAT'S HOW YOU MAKE A
5 DETERMINATION AS TO WHETHER OR NOT THE ELEMENT
6 REQUIRING INTENT WAS ACTUALLY PRESENT. SO CRIMINAL
7 INTENT, THEN, IS A STATE OF MIND THAT OPERATES
8 JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME.
9 CRIMINAL INTENT IS A MENTAL STATE. IT IS A
10 CONSCIOUS WRONGDOING. IT'S UP TO YOU, THE JURY, TO
11 DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED
12 UPON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. AND
13 THE STATE HAS TO PROVE CRIMINAL INTENT BEYOND A
14 REASONABLE DOUBT JUST AS THE STATE MUST PROVE EVERY
15 OTHER ELEMENT BEYOND A REASONABLE DOUBT AS
16 PREVIOUSLY EXPLAINED TO YOU.

17 NOW, LADIES AND GENTLEMEN, I
18 INSTRUCT YOU THAT VOLUNTARY INTOXICATION, WHETHER
19 FROM ALCOHOL OR DRUGS, IS NEVER AN EXCUSE FOR OR A
20 DEFENSE TO CRIME REGARDLESS OF WHETHER THE CRIME IS
21 ONE INVOLVING GENERAL OR SPECIFIC INTENT. A PERSON
22 WHO VOLUNTARILY RENDERS HIMSELF INTOXICATED IS NO
23 LESS RESPONSIBLE FOR HIS ACTS WHILE IN SUCH
24 CONDITION. IF ONE VOLUNTARILY DRINKS INTOXICATING
25 LIQUORS, WINE, OR BEER OR IS UNDER THE INFLUENCE OF

CHARGE TO THE JURY

1 DRUGS AND BECOMES INTOXICATED AT WHATEVER DEGREE,
2 AND IF WHILE IN THAT CONDITION COMMITS AN ACT WHICH
3 WOULD BE A CRIME IF IT HAD BEEN COMMITTED BY A
4 SOBER PERSON, THE FACT OF DRUNKENNESS WOULD NOT
5 RELIEVE THE INTOXICATED PERSON FROM
6 RESPONSIBILITY.

7 NOW FINALLY, LADIES AND GENTLEMEN,
8 THE WORD YOU'VE BEEN WAITING TO HEAR IS IT'S ABOUT
9 TIME FOR YOU TO START YOUR DELIBERATIONS. IT WON'T
10 BE LONG. PLEASE BEAR IN MIND THAT YOU ARE NOT
11 PARTISANS OR ADVOCATES FOR THE STATE OR FOR THE
12 DEFENDANT. YOU DON'T SERVE AS JURORS TO REWARD
13 YOUR FRIENDS OR TO PUNISH YOUR ENEMIES. OBVIOUSLY
14 SUCH A PERVERTED SYSTEM OF JUSTICE WOULD BE
15 INTOLERABLE. YOU HAVE BEEN SELECTED BY BOTH THE
16 STATE AND THIS DEFENDANT TO BE FAIR AND IMPARTIAL
17 JURORS. IT IS YOUR DUTY, THEN, BY YOUR JOINT
18 DELIBERATIONS TO DETERMINE THE TRUTH OF THIS CASE
19 GIVING TO THE DEFENDANT THE BENEFIT OF EVERY
20 REASONABLE DOUBT ON EACH AND EVERY ISSUE AND THEN
21 TO THE FACTS WHICH YOU DETERMINE TO BE TRUE. YOU
22 TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN TO
23 YOU AND THEREBY ARRIVE AT A TRUE VERDICT WHICH
24 SPEAKS THE TRUTH OF THE CASE.

25 AND LADIES AND GENTLEMEN, THE WORD

CHARGE TO THE JURY

1 "VERDICT" IS DERIVED FROM THE LATIN PHRASE
2 VEREDICTO WHICH MEANS TO SPEAK THE TRUTH. YOUR
3 VERDICT HAS TO BE BASED ON EVIDENCE AND ON THE
4 LAW. IT CANNOT BE BASED ON PASSION OR PREJUDICE OR
5 SYMPATHY OR BIAS OR CAPRICE OR PREJUDICE. IT HAS
6 TO BE YOUR DETERMINATION OF TRUTH WRAPPED AND
7 ENFOLDED IN THE MANNER OF THE LAW THAT I HAVE JUST
8 GIVEN TO YOU. ONCE YOU'VE DONE THOSE THINGS,
9 LADIES AND GENTLEMEN, YOU WOULD HAVE DISCHARGED
10 THAT OATH THAT YOU TOOK EARLIER ON WEDNESDAY OF
11 THIS WEEK WHEN YOU STOOD AND YOU SAID THAT YOU
12 WOULD WELL AND TRULY DECIDE THIS CASE AND A TRUE
13 VERDICT RENDER ACCORDING TO THE LAW AND THE
14 EVIDENCE SO HELP YOU GOD. IN JUST A FEW MOMENTS
15 YOU WILL HAVE A CHANCE TO PUT THAT OATH INTO
16 PRACTICE; AND I HAVE EVERY CONFIDENCE, LADIES AND
17 GENTLEMEN, THAT YOU WILL FULFILL AND ACCOMPLISH
18 THAT OATH THAT YOU TOOK.

19 NOW, LADIES AND GENTLEMEN, AS TO THE
20 FORMS OF VERDICT, THEY'RE ON THE REVERSE SIDE OF
21 EACH OF THESE INDICTMENTS WHICH YOU WILL HAVE WITH
22 YOU WHEN YOU GO TO THE JURY ROOM. AND, MADAM
23 FORELADY, YOU, PLEASE MA'AM, WILL BE RESPONSIBLE
24 FOR FILLING OUT THE VERDICT FORMS FOR THE JURY.
25 AND PLEASE DERIVE NO INFERENCE FROM THE ORDER IN

CHARGE TO THE JURY

1 WHICH I WROTE THE FORMS OF VERDICT. OBVIOUSLY WHEN
2 YOU WRITE TWO THINGS, YOU HAVE TO WRITE IT IN SOME
3 ORDER.

4 NOW, LADIES AND GENTLEMEN, YOUR
5 VERDICT HAS TO BE UNANIMOUS. ALL TWELVE OF YOU
6 WILL HAVE TO AGREE AS TO EACH CHARGE, AND YOU WILL
7 WRITE A SEPARATE VERDICT BASED ON THE EVIDENCE FOR
8 EACH OF THE CHARGES. NOW, MADAM FORELADY, YOU'RE
9 NOT AUTHORIZED TO FILL OUT THE VERDICT FORM NOR TO
10 SIGN UNTIL ALL TWELVE OF YOUR MEMBER HAVE AGREED AS
11 TO WHAT THE VERDICT FORM SHOULD BE. AND I INSTRUCT
12 YOU TO CONSIDER AND EVALUATE THE EVIDENCE TO EACH
13 OF THE CHARGES INDEPENDENT OF THE OTHER.

14 YOUR VERDICT FORM ON ONE CHARGE DOES
15 NOT NECESSARILY DETERMINE YOUR VERDICT ON THE
16 OTHER. YOU CONSIDER THE EVIDENCE ON EACH OF THOSE
17 CHARGES. SO LADIES AND GENTLEMEN, I'M GOING TO
18 SEND YOU TO YOUR ROOM IN JUST A FEW MINUTES. AND
19 I'LL TELL YOU ONE MORE TIME; PLEASE DON'T DISCUSS
20 THIS CASE, AND DON'T START YOUR DELIBERATIONS FOR
21 JUST A FEW MORE MINUTES. I'M REQUIRED BY LAW TO
22 CONFER WITH THE LAWYERS TO SEE IF THEY HAVE ANY
23 EXCEPTIONS OR ADDITIONAL REQUESTS TO MY CHARGE, OR
24 PERHAPS I MAY HAVE FAILED TO INCLUDE SOMETHING IN
25 THE CHARGE, OR IN THE EVENT THAT I MAY HAVE

CHARGE TO THE JURY

1 MISSTATED ANYTHING. SO, LADIES AND GENTLEMEN, WHEN
2 WE SEND THE EXHIBITS INTO THE JURY ROOM TO YOU, IF
3 WE DON'T CALL YOU BACK OUT RIGHT NOW IN A MINUTE OR
4 TWO, THAT WILL BE YOUR SIGNAL FOR YOU TO COMMENCE
5 YOUR DELIBERATIONS. AND, LADIES AND GENTLEMEN,
6 ONCE YOU'VE BEGUN YOUR DELIBERATIONS YOU WILL
7 DELIBERATE UNTIL YOU REACH A VERDICT AT WHICH TIME
8 YOU JUST KNOCK ON THE DOOR, ADVISE THE BAILIFF.
9 WE'LL BRING YOU OUT TO RECEIVE THE VERDICT.

10 NOW IF DURING THE COURSE OF THE
11 DELIBERATIONS YOU HAVE ANY QUESTIONS THAT YOU WOULD
12 LIKE FOR US TO TRY TO ANSWER, YOU MUST, MADAM
13 FORELADY, WRITE THOSE QUESTIONS DOWN FOR US AND
14 SEND THEM OUT IN WRITTEN FORM AND WE'LL HAVE TO
15 DEAL WITH THEM OUTSIDE OF YOUR PRESENCE, AND THEN
16 WE'LL LET YOU KNOW WHETHER OR NOT WE CAN ANSWER
17 YOUR QUESTIONS. AND, IF SO, THEN WE'LL BRING YOU
18 OUT HERE AND TAKE THAT MATTER UP. SO IF FOR ANY
19 REASON DURING YOUR DELIBERATIONS IF ONE OR MORE OF
20 YOUR MEMBERS HAS TO LEAVE THE JURY ROOM TO BE
21 EXCUSED, FOR WHATEVER THE CASE MAY BE, PLEASE DO
22 NOT DELIBERATE IN THE ABSENCE OF ANY OF THE MEMBERS
23 OF THE JURY. ALL TWELVE MEMBERS HAVE TO BE THERE
24 IN ORDER FOR YOUR DELIBERATIONS TO TAKE PLACE. SO,
25 MADAM FORELADY, I'M GOING TO HAND YOU AT THIS TIME

CHARGE TO THE JURY

1 THE FIVE INDICTMENTS, AND YOU WILL NOTE THAT ON THE
2 REVERSE SIDE OF EACH OF THE INDICTMENTS I'VE
3 UNDERLINED THE WORD "VERDICT." I'VE WRITTEN
4 "GUILTY" AND "NOT GUILTY." PLEASE, AGAIN, DERIVE
5 NO INFERENCE IN THE ORDER IN WHICH I STATED THEM TO
6 YOU. YOU HAVE TO STATE THEM IN SOME ORDER. I'VE
7 WRITTEN "FORELADY" OVER THE WORD FOREMAN; AND ONCE
8 YOU HAVE ARRIVED AT A UNANIMOUS VERDICT, PLEASE
9 CIRCLE THE UNANIMOUS VERDICT, ONE OR THE OTHER.
10 WHEN YOU'VE SIGNED YOUR NAME AS FORELADY, THEN DATE
11 IT.

12 SO AT THIS TIME, LADIES AND
13 GENTLEMEN, I'M GOING TO EXCUSE YOU TO GO TO YOUR
14 ROOM. AND ONCE WE SEND THE EXHIBITS IN TO YOU, YOU
15 MAY COMMENCE YOUR DELIBERATIONS. BUT I NEED TO SEE
16 IF THE LAWYERS NEED TO TALK WITH ME ABOUT ANYTHING
17 FURTHER. AND, SIR, YOU CAN TAKE YOUR NOTE PAD WITH
18 YOU INTO THE JURY ROOM AND PENCILS IF YOU WOULD
19 LIKE TO TAKE THEM. AND, MA'AM, THERE SHOULD BE
20 COFFEE, SOFT DRINKS. AND IF THERE'S ANYTHING
21 WHATSOEVER THAT Y'ALL NEED, PLEASE LET US KNOW. WE
22 WANT TO MAKE YOUR STAY AS PLEASANT AS POSSIBLE.
23 (WHEREUPON AT 3:20 P.M. JURY RETIRES TO JURY ROOM.)

24 THE COURT: ONE OF THE JURORS HANDED
25 ME THE PAD OF THE JUROR, CAMPEAU, THAT HAD BEEN

MOTIONS

1 EXCUSED. I'LL JUST LEAVE IT SITTING HERE. ALL
2 RIGHT, ALL JURORS ARE OUT. ARE THERE ANY
3 EXCEPTIONS OR ADDITIONAL REQUESTS BY THE STATE,
4 PLEASE?

5 MR. BAILEY: YOUR HONOR, JUST ONE.
6 I WAS TAKING NOTES; AND ACCORDING TO MY NOTES, WHEN
7 YOU CHARGED BURGLARY, YOU CHARGED THE DEFINITION OF
8 BURGLARY. BUT I BELIEVE YOU MAY HAVE OMITTED
9 CHARGING 16-11-311, THE ELEMENTS OF FIRST DEGREE
10 BURGLARY.

11 THE COURT: I'M SORRY.

12 MR. BAILEY: I DID NOT SUBMIT A
13 CHARGE ON THAT, BUT I ASSUMED THAT WOULD BE IN THE
14 GENERAL CHARGE.

15 THE COURT: WELL, THE ONLY COMPONENT
16 THAT WOULD BE APPLICABLE WOULD BE THAT HE ENTERED
17 OR REMAINED IN THE NIGHT TIME BECAUSE HE DOESN'T
18 HAVE A PRIOR RECORD OF TWO OR MORE CONVICTIONS.
19 AND HE DIDN'T DISPLAY A KNIFE, RIFLE, OR REVOLVER.
20 OF COURSE I COULD HAVE CHARGED THEM "USED OR
21 THREATENED TO USE A DANGEROUS OBJECT." IS THAT
22 WHAT YOU'RE TALKING ABOUT?

23 MR. BAILEY: I WAS -- YOUR HONOR,
24 REFERRING TO ON THE SUPPLEMENT. I'VE GOT THE EXACT
25 STATUTE HERE IF I COULD PASS THAT UP.

MOTIONS

1 THE COURT: NO, I'VE GOT A COPY OF
2 THE STATUTE; 16-11-312?

3 MR. BAILEY: IT'S 311, YOUR HONOR.

4 THE COURT: 311?

5 MR. BAILEY: YES, SIR.

6 THE COURT: WHICH PART DO YOU SAY I
7 DID NOT CHARGE?

8 MR. BAILEY: A PERSON IS GUILTY OF
9 BURGLARY IN THE FIRST DEGREE IF A PERSON ENTERS THE
10 DWELLING WITHOUT CONSENT WITH INTENT TO COMMIT A
11 CRIME IN THE DWELLING, AND EITHER WHEN IN EFFECTING
12 OR WHILE IN THE DWELLING OR IMMEDIATE FLIGHT HE OR
13 ANOTHER PARTICIPANT IN THE CRIME (A) IS ARMED WITH
14 A DEADLY WEAPON; (B) CAUSES PHYSICAL INJURY TO A
15 PERSON WHO'S NOT A PARTICIPANT; (C) USES OR
16 THREATENS TO USE A DANGEROUS INSTRUMENT; (D)
17 DISPLAYS WHAT APPEARS TO BE A KNIFE, PISTOL,
18 REVOLVER, RIFLE OR SHOTGUN. THAT WOULD NOT APPLY;
19 THAT LAST ONE.

20 THE COURT: AND THEN DOWN TO THREE.
21 I DID CHARGE THREE. BUT YOU'RE CORRECT, MR.
22 SOLICITOR; I NEGLECTED TO CHARGE THE---

23 MR. BAILEY: 1 (A), (B), AND (C).

24 THE COURT: A, B, AND C IN THAT.

25 YOU ARE CORRECT IN THAT. I CAN BRING THEM BACK IN

MOTIONS

1 AND CHARGE THEM THAT. AND I THANK YOU FOR CALLING
2 THAT TO MY ATTENTION.

3 MR. BAILEY: THANK YOU, YOUR HONOR.

4 THE COURT: I'VE GOT SO MANY MARKS
5 IN MY LITTLE BOOK THAT I HAD TO CHECK. ANY OTHER
6 ADDITIONAL REQUESTS OR EXCEPTIONS?

7 MR. BAILEY: NO, SIR.

8 THE COURT: ALL RIGHT. BE GLAD TO
9 HEAR FROM YOU, PLEASE, MR. THEOS.

10 MR. THEOS: YES, SIR. YOUR HONOR,
11 AGAIN WE WOULD AT THIS TIME TAKE EXCEPTION TO YOUR
12 RULINGS RELATED TO THOSE CHARGES THAT WE WANTED
13 CHARGED BEFORE AND ASK THAT OUR CONTINUING
14 OBJECTION BE NOTED.

15 THE COURT: CERTAINLY.

16 MR. THEOS: AND LASTLY, WITH RESPECT
17 TO YOUR CHARGE ON CONFESSION; YOU WENT THROUGH
18 CERTAIN CRITERIA, BUT ONE OF THE THINGS THAT YOU
19 DIDN'T REFERENCE WAS THAT THE WAIVER MUST BE
20 KNOWINGLY AND INTELLIGENTLY MADE BY THE DEFENDANT.
21 YOU SAID KNOWINGLY, BUT INTELLIGENTLY WAS NOT PART
22 OF THAT CHARGE. AND I WOULD SUBMIT THAT THAT WOULD
23 BE AN APPROPRIATE---

24 THE COURT: OH, CERTAINLY. AND I
25 WAS OF THE VIEW THAT I HAD CHARGED IT. DO Y'ALL

MOTIONS

1 WANT TO BE LOOKING AT THE EXHIBITS AND MAKE SURE
2 THAT EVERYTHING IS IN ORDER FOR THE JURY, PLEASE?
3 (AT THIS TIME ATTORNEYS EXAMINE EXHIBITS.)

4 THE COURT: TELL THE TWO ALTERNATES
5 TO COME BACK IN THE COURTROOM, PLEASE, SIR.
6 GENTLEMEN, WHERE DO Y'ALL SUGGEST WE TAKE THE
7 ALTERNATES; JUST SEND THEM BACK TO THE MOTEL?

8 MR. BAILEY: WE COULD PUT THEM IN
9 THE GRAND JURY -- DURING DELIBERATIONS?

10 THE COURT: YES. I MEAN, I COULD
11 PUT THEM IN THE GRAND JURY ROOM; BUT, GEE, I HATE
12 FOR THEM JUST TO SIT AND LOOK AT THE WALL.

13 MR. BAILEY: NOTHING'S MORE BORING
14 THAN A MOTEL WITHOUT A TELEVISION, I GUESS.

15 THE COURT: WOULD Y'ALL HAVE ANY
16 OBJECTION TO THEIR BEING SENT TO THE -- LET THEM GO
17 BACK TO THE MOTEL?

18 MR. BAILEY: NO, SIR.

19 MR. THEOS: NO, SIR.

20 (AT THIS TIME ALTERNATE JURORS RETURN TO OPEN
21 COURT.)

22 THE COURT: MADAM COURT REPORTER; ON
23 THE RECORD, PLEASE. AND I'VE GOT A SLED AGENT
24 RIGHT HERE. GENTLEMEN, YOU'RE NOT ALLOWED TO ENTER
25 INTO THE FINAL DELIBERATIONS. WE CANNOT EXCUSE

MOTIONS

1 YOU. AND NORMALLY WHAT WE DO IS WE PUT YOU IN THE
2 OTHER JURY ROOM AND LET YOU LOOK AT THE WALLS AND
3 CHAT WITH EACH OTHER. BUT THE LAWYERS HAVE AGREED
4 TO ALLOW Y'ALL TO GO BACK TO YOUR MOTEL ROOM.
5 WOULD YOU PREFER TO DO THAT WHERE YOU CAN WATCH
6 TELEVISION AND LOUNGE AROUND? (ALTERNATE JURORS
7 ANSWER IN THE AFFIRMATIVE.) PLEASE, GENTLEMEN, IF
8 THIS CASE CONTINUES TO THE SECOND PHASE, WE WOULD
9 NEED YOU AS JURORS, AS ALTERNATES IN THAT, AND OF
10 COURSE, LORD FORBID, IF WE SHOULD HAVE SOME
11 EMERGENCY AND HAD TO EXCUSE ONE OF OUR REGULAR
12 TWELVE, PERHAPS WE WOULD HAVE TO CALL YOU IN FOR
13 SERVICE ON THAT. SO, PLEASE DON'T Y'ALL DISCUSS
14 THE CASE WITH EACH OTHER. DON'T Y'ALL DELIBERATE
15 THE CASE. DON'T Y'ALL ALLOW ANYONE TO TALK TO YOU
16 ABOUT THE CASE. AND THERE'S BEEN SOME
17 MISCOMMUNICATION, THROUGH NOBODY'S FAULT, ABOUT THE
18 USE OF THAT TELEPHONE. YOU'RE NOT ALLOWED TO CALL
19 YOUR FAMILY OR FRIENDS, AND THEY'RE NOT ALLOWED TO
20 CALL YOU EVEN THOUGH SOME OF THOSE CALLS HAVE BEEN
21 MADE WITH THE SLED PEOPLE MONITORING THEM, AND I
22 NEED TO EXPLAIN THAT TO THE FULL JURY. SO,
23 GENTLEMEN, IS THERE ANYTHING FURTHER WITH THE TWO
24 ALTERNATES HERE?

25 MR. BAILEY: NO, SIR.

MOTIONS

1 MR. THEOS: NO, SIR.

2 THE COURT: ALL RIGHT. THEN, IF
3 Y'ALL WOULD, MA'AM, ESCORT THEM TO THEIR ROOMS.
4 AND WE'VE GOT THEIR PHONE NUMBERS ON THAT LIST.
5 AND IF WE NEED YOU, WE'LL CALL YOU, AND WE'LL BE
6 BACK IN TOUCH WITH YOU AS SOON AS WE CAN. THANK
7 YOU SO MUCH.

8 (AT THIS TIME ALTERNATE JURORS ARE EXCUSED.)

9 THE COURT: GENTLEMEN, ARE Y'ALL IN
10 AGREEMENT ON THE EXHIBITS OF WHAT GOES IN AND WHAT
11 DOES NOT?

12 MR. BAILEY: I DON'T THINK WE'VE
13 FINISHED LOOKING THROUGH THEM YET, JUDGE.

14 THE COURT: WELL, Y'ALL GO AHEAD,
15 THEN, BECAUSE I TOLD THEM NOT TO START UNTIL WE---
16 (AT THIS TIME COURT REPORTER REVIEWS EXHIBITS WITH
17 COUNSEL.)

18 THE COURT: ARE Y'ALL STRAIGHT ON
19 THE EXHIBITS?

20 MR. THEOS: YES, SIR.

21 MR. BAILEY: YES, SIR.

22 THE COURT: ALL RIGHT GENTLEMEN; AS
23 I MENTIONED, THE SOLICITOR IS CORRECT. I DID NOT
24 CHARGE SUB-PARTS A, B, AND C OF THE FIRST DEGREE
25 BURGLARY STATUTE, AND I WILL BRING THEM BACK IN

MOTIONS

1 THERE TO CHARGE THEM THAT. NOW, FURTHER,
2 GENTLEMEN, MR. THEOS IS CORRECT THAT ON THE
3 CONFESSION I USED THE WORD "YOU MUST DETERMINE
4 WHETHER IT WAS MADE BY THE DEFENDANT VOLUNTARILY
5 AND OF HIS OWN FREE WILL WITHOUT ANY PROMISE, HOPE
6 OF REWARD." THEN AT ANOTHER TIME "IF YOU DETERMINE
7 THAT THE ALLEGED CONFESSION WAS NOT THE FREE AND
8 VOLUNTARY WILLED EXPRESSION OF THE DEFENDANT." AND
9 THEN I CHARGED THEM "YOU MAY FURTHER CONSIDER THE
10 ABILITY OF THE DEFENDANT TO UNDERSTAND AND
11 COMPREHEND THE MIRANDA WARNINGS AND WHETHER OR NOT
12 HE KNOWINGLY AND VOLUNTARILY GAVE UP HIS RIGHTS."
13 BUT I DID SAY THAT THEY COULD CONSIDER HIS
14 EDUCATION OR LACK THEREOF, BUT I DID NOT USE THE
15 WORD "INTELLIGENT" THAT I CAN SEE IN MY CHARGE.

16 MR. BAILEY: YOUR HONOR, I'M LOOKING
17 AT THE DEFENDANT'S REQUEST TO CHARGE NUMBER SIX
18 WHICH IS WHAT THEY ASKED YOU TO CHARGE, AND THE
19 WORD "INTELLIGENTLY" DOESN'T APPEAR IN THEIR
20 REQUEST TO CHARGE. SO I DON'T SEE HOW THEY CAN
21 REALLY COMPLAIN IF IT'S NOT IN YOUR GENERAL
22 CHARGE. TO JUST CHARGE THAT AT THIS JUNCTURE I
23 THINK, YOUR HONOR, WOULD OVERLY STRESS THAT POINT
24 AND I THINK PREJUDICE THE JURY.

25 THE COURT: WELL, I TOLD THEM THAT

MOTIONS

1 THEY COULD CONSIDER THE TOTALITY OF THE
2 CIRCUMSTANCES SUCH AS THE INTELLIGENCE, EDUCATION,
3 EXPERIENCE, AND ABILITY TO COMPREHEND THE MEANING
4 AND EFFECT OF THE STATEMENT. AND I THINK THAT
5 CLEARLY WOULD COVER IT. BUT I DID NOT USE THE
6 WORDS "KNOWING" AND "INTELLIGENTLY." I USED
7 "KNOWING" AND "VOLUNTARILY" BUT I TOLD THEM TO
8 CONSIDER THE INTELLIGENCE.

9 MR. THEOS: YOUR HONOR, OUR POSITION
10 WOULD BE WE SUBMITTED TWO OR THREE DIFFERENT
11 CHARGES ON THE ISSUE OF CONFESSION, AND ONE OF THEM
12 DID CONTAIN THE VERBIAGE---

13 THE COURT: ALL RIGHT, TELL ME WHICH
14 ONE, NOW. I'VE GOT THEM RIGHT HERE.

15 MR. THEOS: THE INITIAL---

16 THE COURT: WHAT NUMBER?

17 MR. THEOS: I PUT IT BACK UP, YOUR
18 HONOR. I THINK IT WAS NUMBER SIX.

19 MR. BAILEY: YOUR HONOR, HIS NUMBER
20 EIGHT DOES CONTAIN THE WORD "INTELLIGENTLY," BUT
21 THAT'S HIS INITIAL CHARGE AT THE TIME OF
22 ADMISSION. THE ONE HE SUBMITTED FOR THE BASIC
23 CHARGE, NUMBER SIX, IS THE ONE I WAS REFERRING TO.

24 THE COURT: I UNDERSTAND.

25 MR. BAILEY: IT DOES NOT CONTAIN THE

MOTIONS

WORD "INTELLIGENT."

THE COURT: WELL, THE COURT CONCEDES THAT I DID USE WORD "INTELLIGENCE" AS ONE OF THE CIRCUMSTANCES THEY CONSIDER, BUT ACCORDING TO MY NOTES I DID NOT USE "KNOWINGLY" AND "INTELLIGENTLY." I PUT "KNOWINGLY" AND "VOLUNTARILY." BUT I THINK TAKEN AS A WHOLE, I THINK THAT IS CLEAR TO THE JURY. BUT NOTE HIS OBJECTION.

MR. THEOS: YOUR HONOR, IF I MIGHT JUST -- I UNDERSTAND YOUR RULING, BUT IF I COULD JUST STATE ON THE RECORD. I THINK THAT THE EXPERTS THAT I CALLED UPON FOR THEIR EXPERT OPINIONS WERE BASED ON THE STANDARD OF KNOWINGLY AND INTELLIGENTLY MADE, AND I DID TELL THE JURY THAT THEY WOULD BE INSTRUCTED AS TO THAT FACT. THAT WAS ONE OF THE CRITERIA. AND IT WAS MY UNDERSTANDING THAT THE CHARGE WOULD CONTAIN THAT LANGUAGE BECAUSE IT'S MY UNDERSTANDING THAT IS IN FACT THE LAW.

THE COURT: NO, SIR. THE CHARGE THAT I GAVE YOU THAT I TOLD YOU I WAS GOING TO USE WAS WHAT I USED DURING THE TRIAL. BUT I ADDED TO THAT CHARGE, WHICH I DIDN'T GIVE DURING THE TRIAL, THE INTERMITTENT CHARGE "YOU MAY FURTHER CONSIDER THE ABILITY OF THE DEFENDANT TO UNDERSTAND AND

MOTIONS

1 COMPREHEND THE MIRANDA WARNINGS AND WHETHER OR NOT
2 HE KNOWINGLY AND VOLUNTARILY GAVE UP HIS RIGHTS."
3 I ADDED THAT TO THE CHARGE TO TRY TO COVER THE
4 THRUST OF WHAT -- NOT YOUR DEFENSE WAS -- BUT THEIR
5 PRESENTATION. AND I'M SATISFIED, OR I'M OF THE
6 VIEW, THAT WHEN I TOLD THEM TO CONSIDER HIS
7 INTELLIGENCE AND EDUCATION, HIS ABILITY AND
8 CAPACITY, THAT THAT COVERS IT. SO I DECLINE TO
9 CHARGE THEM FURTHER ON THAT.

10 ANYTHING ELSE, GENTLEMEN?

11 MR. BAILEY: NOT FROM THE STATE,
12 JUDGE.

13 MR. THEOS: NO, SIR.

14 THE COURT: ALL RIGHT. BRING THEM
15 OUT, PLEASE, AND IT WON'T TAKE LONG. AND THANK YOU
16 FOR CALLING BOTH THOSE MATTERS TO MY ATTENTION,
17 GENTLEMEN. AND THOSE ARE IN THE DISJUNCTIVE OR
18 RATHER THE CONJUNCTIVE AND; DO YOU AGREE --
19 SUB-PARTS; ANY ONE OF THEM?

20 MR. BAILEY: YES, SIR.

21 MR. THEOS: YES, SIR.

22 (WHEREUPON AT 3:45 P.M. JURY RETURNS TO OPEN
23 COURT.)

24 THE COURT: LADIES AND GENTLEMEN, I
25 TRUST THAT MY REGULAR TWELVE JURORS ARE HEALTHY,

ADDITIONAL CHARGE TO THE JURY

1 WEALTHY AND WISE SO THAT I MAY EXCUSE THE TWO
2 ALTERNATES FROM ENTERING INTO THE DELIBERATIONS.
3 DO ALL OF YOU FEEL COMFORTABLE, PLEASE? (ALL
4 JURORS ANSWER IN THE AFFIRMATIVE.)

5 THE COURT: HAVING THOUGHT SO, AND
6 UPON OBSERVING YOU, I HAVE SENT THOSE TWO ALTERNATE
7 JURORS TO THE MOTEL TO WATCH T.V. OR KICK IT
8 AROUND, AND THEY ARE NOT TO DISCUSS OR DELIBERATE
9 THE CASE IN ANY WAY.

ADDITIONAL CHARGE FROM THE COURT

11 BUT, LADIES AND GENTLEMEN, IT WAS
12 BROUGHT TO MY ATTENTION, AND PROPERLY SO, THAT WHEN
13 I INSTRUCTED YOU RELATIVE TO THE CHARGE ON BURGLARY
14 IN THE FIRST DEGREE THAT I FAILED TO -- THERE ARE
15 FOUR SUB-PARTS, AND I ONLY MENTIONED ONE OF THE
16 FOUR. SO I INSTRUCT YOU UNDER SECTION 16-11-311 OF
17 OUR CODE OF LAWS, BURGLARY IN THE FIRST DEGREE IS
18 DEFINED AS THE ENTERING OF THE DWELLING HOUSE OF
19 ANOTHER AND WITHOUT CONSENT WITH THE INTENT TO
20 COMMIT A CRIME THEREIN AND WHEN ENTERING OR WHILE
21 IN THE HOUSE THAT THE DEFENDANT IS ARMED WITH A
22 DEADLY WEAPON OR CAUSES PHYSICAL INJURY TO ANYONE
23 NOT PARTICIPATING IN THE CRIME, OR USES OR
24 THREATENS TO USE A DANGEROUS OBJECT, OR THE
25 DEFENDANT ENTERED AND REMAINED IN THE HOUSE IN THE

CONTINUED DELIBERATIONS

1 NIGHT TIME. SO, AGAIN, I'M SORRY TO HAVE HAD TO
2 BRING YOU BACK. BUT THOSE ARE SUB-PARTS OF THE
3 STATUTE THAT I COVERED IN MY EXPLANATION BUT NOT IN
4 MY INITIAL DEFINITION. SO WITH THAT, YOU'RE
5 EXCUSED TO GO TO YOUR ROOM. WE'LL SEND THOSE
6 EXHIBITS IN TO YOU AND YOU MAY COMMENCE YOUR
7 DELIBERATIONS.

8 (WHEREUPON AT 3:55 P.M. JURY RETIRES TO JURY ROOM TO
9 BEING DELIBERATIONS.)

10 THE COURT: ALL RIGHT, GENTLEMEN,
11 MAY I THANK YOU KINDLY FOR ANY AND ALL COOPERATION
12 AND COURTESIES. THE COURT WILL STAND AT EASE,
13 PLEASE.

14 (WHEREUPON AT 3:55 P.M. JURY COMMENCES
15 DELIBERATIONS.)

16 (RECESS.)

17 THE COURT: BRING THE DEFENDANT IN,
18 PLEASE, SIR. MADAM COURT REPORTER, IT'S NOW 7:22.
19 THE JURY WENT OUT AT ABOUT 3:30 BUT IT WAS FOUR
20 BEFORE WE GOT THE EXHIBITS AND THEY STARTED THEIR
21 DELIBERATIONS. I HAVE CONFERRED IN CHAMBERS WITH
22 COUNSEL; AND I WANT TO BE GUARDED AND CAREFUL THAT
23 I DON'T TRY AND RUSH THE JURY; BUT I THINK WE NEED
24 TO INQUIRE AS TO THEIR NEEDS RELATIVE TO THE
25 EVENING MEAL. AND THEY'VE HAD FOOD BROUGHT IN

CONTINUED DELIBERATIONS

1 ALREADY ONCE TODAY; AND THEY WERE HERE AT 8:25 THIS
2 MORNING. SO I'M OF THE VIEW THAT WE SHOULD BRING
3 THE JURY IN AND MAKE INQUIRY. ANY OBJECTION,
4 SOLICITOR?

5 MR. BAILEY: NO, SIR.

6 THE COURT: BY THE DEFENDANT?

7 MR. THEOS: NO, SIR.

8 THE COURT: AND NOTE FOR THE
9 RECORD, THE DEFENDANT IS PRESENT WITH HIS COUNSEL.
10 NOW, GENTLEMEN, UNLESS THEY LEAVE, I'M GOING TO GET
11 MY LAW CLERK -- AND MIKE, YOU MIGHT GET MATAI TO
12 HELP YOU. GIVE ONE TO THE DEFENDANT AND ONE TO THE
13 -- IT MAY BE A REDUNDANT, MUTE EFFORT.

14 (OFF-THE-RECORD DISCUSSION.)

15 (WHEREUPON AT 7:25 P.M. JURY RETURNS TO OPEN
16 COURT.)

17 THE COURT: MADAM FORELADY, LADIES
18 AND GENTLEMEN OF THE JURY; HAVE YOU ARRIVED AT A
19 VERDICT?

20 THE FORELADY: NO, SIR.

21 THE COURT: ALL RIGHT. MA'AM,
22 PLEASE UNDERSTAND -- I HOPE I DO NOT IN ANY WAY
23 CONFER THAT I'M TRYING TO RUSH YOU OR SLOW YOU
24 DOWN. BUT IT'S NOW TWENTY-FIVE AFTER SEVEN, AND
25 I'M CONCERNED ABOUT YOUR PHYSICAL NEEDS, HAVING

CONTINUED DELIBERATIONS

1 DINNER. AND I WANTED TO INQUIRE OF THE JURY AS TO
2 WHAT YOUR PLEASURE MIGHT BE. WE HAD FOOD BROUGHT
3 IN FROM GEORGIO'S FOR LUNCH. WE CAN HAVE FOOD
4 BROUGHT IN AT THIS TIME. Y'ALL CAN CONTINUE
5 DELIBERATIONS. WE CAN WAIT AND HAVE FOOD BROUGHT
6 IN LATER. OR IF YOU WOULD -- BECAUSE I KNOW Y'ALL
7 WERE KIND ENOUGH TO BE HERE AT 8:25 THIS MORNING;
8 AND EVERYONE'S WORKED HARD THIS WEEK. IF Y'ALL ARE
9 OF THE VIEW THAT YOU SHOULD CEASE YOUR
10 DELIBERATIONS AT THIS TIME, I THINK THEY DON'T
11 CLOSE THE GRILL, LT. EDWARDS, UNTIL TEN O'CLOCK AT
12 GILLIGAN'S. AND WE STILL ARE AMENABLE TO HAVING
13 Y'ALL TAKEN OVER TO YOUR CHOICE OF RESTAURANTS
14 TONIGHT FOR A GOOD MEAL. AND IT MATTERS NOT TO THE
15 COURT. BUT I WANT TO RESPOND TO YOUR WISHES.

16 THE FORELADY: WE'D LIKE TO CEASE
17 FOR THE EVENING AND COME BACK TOMORROW.

18 THE COURT: AND WOULD YOU LIKE TO
19 STILL GO TO GILLIGAN'S?

20 THE FORELADY: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. WHERE WOULD
22 Y'ALL LIKE TO DINE? SHONEY'S IN SUMMERVILLE?
23 (OFF-THE-RECORD DISCUSSION.)

24 THE COURT: LET ME INQUIRE AS TO
25 WHAT TIME Y'ALL WOULD LIKE TO COMMENCE YOUR

CONTINUED DELIBERATIONS

1 DELIBERATIONS IN THE MORNING BECAUSE WE'LL---

2 THE FORELADY: HOW ABOUT 8:30?

3 THE COURT: WELL, WE WILL THINK
4 ABOUT 8:30; BUT NINE O'CLOCK IS FINE.

5 THE FORELADY: EIGHT-THIRTY IS FINE.

6 THE COURT: OKAY. SO, BUSTER, LET
7 ME JUST LET YOU -- I DON'T KNOW THAT MUCH ABOUT THE
8 DINING FACILITIES IN ST. GEORGE. AND WHATEVER THEY
9 WANT WITHIN A FIVE MILE RADIUS. IF Y'ALL WILL TAKE
10 CARE OF IT. NOW, LADIES AND GENTLEMEN; PLEASE LET
11 ME BRING ONE MATTER TO YOUR ATTENTION. DUE TO THE
12 LACK OF COMMUNICATION OR UNDERSTANDING -- AND IT'S
13 NOBODY'S FAULT, PLEASE. LET ME MAKE THAT CLEAR.
14 THAT MEMORANDUM THAT WAS GIVEN TO YOU WHEN YOU WERE
15 QUALIFIED AS JURORS, YOU KNOW, SPECIFICALLY STATED
16 ON THERE TO INFORM YOUR FAMILY OR EMPLOYEE YOU
17 WOULD BE UNABLE TO MAKE ANY DIRECT CONTACT WITHIN
18 THE DURATION OF THE TRIAL; HOWEVER, A BAILIFF MAY
19 BE ALLOWED TO PLACE THE CALL FOR YOU. AND IT THEN
20 WE GAVE YOU THE NUMBER FOR YOUR FAMILY IN CASE OF
21 EMERGENCY. AND YOU WILL RECALL ON WEDNESDAY
22 AFTERNOON I READ THIS ORDER OF SEQUESTRATION THAT
23 LT. POLK HAD SAID TO THE OTHERS. AND, PLEASE, I
24 DON'T WANT TO BE UNACCOMODATING TO YOU IN ANY WAY.
25 BUT I JUST WANT TO TELL YOU THAT IN A DEATH PENALTY

CONTINUED DELIBERATIONS

1 CASE, IT'S JUST NOT PROPER FOR ANYONE TO HAVE
2 CONTACT WITH YOU. SO I'M GOING TO HAVE TO ASK YOU
3 TO PLEASE NOT CALL ANYONE OR IF ANYONE CALLS FROM
4 HOME, UNLESS IT'S AN EMERGENCY. AND LT. EDWARDS
5 HERE IS IN CHARGE OF THE DETAIL; AND HE HAS MY
6 NUMBER IF HE NEEDS TO CALL. I GRANT TO HIM THE
7 AUTHORITY TO MAKE DECISIONS ABOUT EMERGENCIES. BUT
8 IF YOU THINK IT'S SOMETHING YOU NEED TO TALK TO ME
9 ABOUT, I'VE TOLD HIM TO CALL ME ANY TIME OF THE
10 NIGHT; IT DOESN'T MATTER. BUT IN ANY EVENT, MAY I
11 ASK YOU TO PLEASE NOT TO USE THE PHONE TO CALL
12 ANYBODY OR ALLOW ANYBODY TO CALL Y'ALL. AND I
13 DON'T WANT Y'ALL TO THINK THAT'S SLED DECISION.
14 THAT'S NOT THE STATE'S DECISION. THAT'S NOT THE
15 DEFENDANT'S DECISION. I'M THE BAD GUY. IF YOU
16 WANT TO BLAME IT ON ANYONE, BLAME IT ON ME. SO,
17 LADIES AND GENTLEMEN OF THE JURY; IF IT'S
18 AGREEABLE, WE'LL JUST LEAVE YOUR PADS AND THINGS IN
19 THE JURY ROOM; AND WE'LL LOCK THE JURY ROOM. THE
20 EXHIBITS -- GENTLEMEN, YOU'LL AGREE THAT WE CAN
21 LEAVE THOSE IN THE JURY ROOM; AND OTHER THAN
22 SOMEONE GOING IN TO TIDY UP, SO TO SPEAK, THAT NO
23 ONE WITH BOTHER ANYTHING IN THE JURY ROOM?

24 MR. BAILEY: RIGHT.

25 THE COURT: IS THAT AGREEABLE?

CONTINUED DELIBERATIONS

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MR. THEOS: YES, SIR.

THE COURT: SO IS THERE ANYTHING
FURTHER FROM THE STATE BEFORE I EXCUSE THESE LADIES
AND GENTLEMEN FOR THE EVENING?

MR. BAILEY: NOTHING FROM THE STATE.

MR. THEOS: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT. AND, AGAIN,
I JUST THANK YOU SO KINDLY FOR ALL YOUR HARD WORK
AND EFFORTS. AND PLEASE CONTINUE. AND WE'RE GOING
TO EXCUSE YOU AT THIS TIME. YOU MIGHT WANT TO GO
BACK TO YOUR ROOM BECAUSE SOME OF YOU HAD YOUR
LEGAL PADS AND NOTES IN YOUR HAND, AND GET YOUR
COATS OR WHATEVER. WITH THAT, LADIES AND
GENTLEMEN, WE'RE GOING TO EXCUSE YOU FOR THE
EVENING. AND WE'LL BE HERE READY TO PROCEED AT
8:30 IN THE MORNING. Y'ALL REST GOOD, PLEASE.
(WHEREUPON AT 7:30 P.M. COURT IS ADJOURNED FOR THE
DAY.)

* * * * *

VERDICT

SUNDAY, FEBRUARY 28, 1999

THE COURT: GENTLEMEN, WOULD YOU
ALL APPROACH THE BENCH?

(AT THIS TIME, BENCH CONFERENCE IS HELD.)

THE COURT: THIS IS A PUBLIC TRIAL.
THIS IS A PUBLIC COURTROOM. EACH AND ALL ARE
WELCOME. BUT I MUST SHARE WITH YOU THAT THESE
JURORS HAVE BEEN THROUGH A TRAUMATIC EXPERIENCE.
THEY'VE BEEN AWAY FROM THEIR FAMILIES AND THEIR
HOMES AND FRIENDS, AND IT'S A VERY DIFFICULT
RESPONSIBILITY THAT THEY HAVE HAD. I MUST INSIST
ON PROPER DECORUM IN THIS COURTROOM. WHATEVER THAT
VERDICT MIGHT BE I JUST HAVE TO ASK YOU AT THIS
TIME IF YOU CANNOT CONTROL YOUR EMOTIONS TO PLEASE
LEAVE THE COURTROOM AT THIS TIME BECAUSE WHEN THAT
JURY VERDICT IS PUBLISHED, I DO NOT WANT TO HEAR A
PIN DROP ON THIS CARPET OR ANYTHING ELSE. SO
PLEASE AGAIN, I THANK YOU FOR BEING HERE. YOU'RE
WELCOME. BUT WE'RE NOT GOING TO TOLERATE ANY
DISPLAY OF EMOTIONS IN ANY WAY. AND UNDERSTAND, I
WANT PEOPLE TO HAVE EMOTIONS TO HAVE FEELINGS, BUT
WE CAN'T LET THE JURY KNOW THAT SOMEBODY IS
DISAPPOINTED BECAUSE THAT WOULDN'T BE PROPER. SO I
WOULD ASK YOU TO PLEASE HONOR THAT. BRING THE JURY

VERDICT

IN, PLEASE.

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

THE COURT: GOOD MORNING, MADAM
FORELADY LADIES AND GENTLEMEN OF THE JURY. PLEASE
I APOLOGIZE FOR THE DELAY, BUT YOUR FRIENDS AND
COMPANIONS, THE EXTRA JURORS, WANTED TO BE PRESENT
WHEN THE VERDICT WAS ANNOUNCED. WE HAD TO GET THEM
FROM THE HOTEL, AND THAT WAS THE HOLD-UP.

MADAM FORELADY AND LADIES AND
GENTLEMEN OF THE JURY; HAVE YOU ARRIVED AT A
VERDICT?

THE FORELADY: YES, SIR.

THE COURT: IN EACH OF THE FIVE
CASES?

THE FORELADY: YES, SIR.

THE COURT: PASS UP THE FORMS,
PLEASE. ALL RIGHT. MADAM CLERK, MAY I ASK THAT
YOU PLEASE PUBLISH THE VERDICT OF THE JURY?

THE CLERK: INDICTMENT
98-GS-18-875, THE STATE OF SOUTH CAROLINA VS.
KENNETH SIMMONS, INDICTED FOR MURDER; VERDICT,
GUILTY. INDICTMENT 98-GS-18-877, THE STATE OF
SOUTH CAROLINA VS. KENNETH SIMMONS, INDICTED FOR
ARMED ROBBERY; VERDICT, GUILTY. INDICTMENT NUMBER
98-GS-18-876, THE STATE OF SOUTH CAROLINA VS.

VERDICT

1 KENNETH SIMMONS, INDICTED FOR BURGLARY IN THE FIRST
2 DEGREE OF A DWELLING; VERDICT, GUILTY. INDICTMENT
3 NUMBER 98-GS-18-878, THE STATE OF SOUTH CAROLINA
4 VS. KENNETH SIMMONS, INDICTED FOR CRIMINAL SEXUAL
5 CONDUCT IN THE FIRST DEGREES; VERDICT, GUILTY.
6 INDICTMENT 98-GS-18-879, THE STATE OF SOUTH
7 CAROLINA VS. KENNETH SIMMONS, INDICTED FOR
8 KIDNAPPING; VERDICT, GUILTY. ALL OF THESE ARE
9 SIGNED BY JAN WHITMORE, FORELADY. IF THIS IS YOUR
10 VERDICT, PLEASE RAISE YOUR RIGHT HAND. (ALL JURORS
11 RAISE HANDS.)

12 THE COURT: THE RECORD REVEALS THAT
13 ALL TWELVE JURORS HAVE RAISED THEIR HANDS. DO YOU
14 DEEM IT NECESSARY FOR THE JURY TO BE POLLED?

15 MR. BAILEY: NO, SIR.

16 THE COURT: MR. THEOS?

17 MR. THEOS: YES, SIR.

18 THE COURT: MADAM CLERK, WOULD YOU
19 POLL THE JURY, PLEASE? GENTLEMEN, I WOULD INQUIRE
20 OF YOU; DO YOU WISH THEM POLLED AS TO EACH OF THE
21 FIVE INDICTMENTS OR DO YOU WISH THEM POLLED FOR THE
22 FIRST INDICTMENT OF MURDER? WE'LL BE GLAD TO HAVE
23 THEM POLLED ON EACH OF THE FIVE.

24 MR. THEOS: NO, SIR; JUST ONE
25 PERTAINING TO ALL THE INDICTMENTS.

POLLING OF THE JURY

1 THE COURT: ALL RIGHT, MADAM CLERK.

2 THE CLERK: LADIES AND GENTLEMEN, AS
3 I CALL YOUR NAME, PLEASE STAND. PAUL RANDOLPH, WAS
4 THIS YOUR VERDICT?

5 MR. RANDOLPH: YES, MA'AM.

6 THE CLERK: IS IT STILL YOUR
7 VERDICT?

8 MR. RANDOLPH: YES, MA'AM.

9 THE CLERK: HERBERT SIMMONS, JR.;
10 WAS THIS YOUR VERDICT?

11 MR. SIMMONS: YES, MA'AM.

12 THE CLERK: IS IT STILL YOUR
13 VERDICT?

14 MR. SIMMONS: YES, MA'AM.

15 THE CLERK: BENJAMIN DURHAM, III;
16 WAS THIS YOUR VERDICT?

17 MR. DURHAM: YES, MA'AM.

18 THE CLERK: IS IT STILL YOUR
19 VERDICT?

20 MR. DURHAM: YES, MA'AM.

21 THE CLERK: ALICE POSTELL; WAS THIS
22 YOUR VERDICT?

23 MRS. POSTELL: YES.

24 THE CLERK: IS IT STILL YOUR
25 VERDICT?

POLLING OF JURY

1 MRS. POSTELL: YES.

2 THE CLERK: MILTON HANDLER, JR.; IS

3 THIS YOUR VERDICT?

4 MR. HANDLER: YES, MA'AM.

5 THE CLERK: REBADELLE B. AHL; WAS

6 THIS YOUR VERDICT?

7 MRS. AHL: YES, MA'AM.

8 THE CLERK: IS IT STILL YOUR

9 VERDICT?

10 MRS. AHL: YES, MA'AM.

11 THE CLERK: DEBORAH SHUFER; WAS THIS

12 YOUR VERDICT?

13 MRS. SHUFER: YES, MA'AM.

14 THE CLERK: IS IT STILL YOUR

15 VERDICT?

16 MRS. SHUFER: YES, MA'AM.

17 THE CLERK: MARK WILLIAMSON; WAS

18 THIS YOUR VERDICT?

19 MR. WILLIAMSON: YES.

20 THE CLERK: IS IT STILL YOUR

21 VERDICT?

22 MR. WILLIAMSON: IT IS.

23 THE CLERK: BRYAN SULLIVAN; WAS THIS

24 YOUR VERDICT?

25 MR. SULLIVAN: YES, MA'AM.

POLLING OF JURY

1 THE CLERK: IS IT STILL YOUR
2 VERDICT?

3 MR. SULLIVAN: YES, MA'AM.

4 THE CLERK: DONALD SHORT, JR.; WAS
5 THIS YOUR VERDICT?

6 MR. SHORT: YES, MA'AM.

7 THE CLERK: IS IT STILL YOUR
8 VERDICT?

9 MR. SHORT: YES, MA'AM.

10 THE CLERK: JAN WHITMORE; WAS THIS
11 YOUR VERDICT?

12 MRS. WHITMORE: YES, MA'AM.

13 THE CLERK: IS IT STILL YOUR
14 VERDICT?

15 MRS. WHITMORE: YES, MA'AM.

16 THE CLERK: RONALD BOWLES; WAS THIS
17 YOUR VERDICT?

18 MR. BOWLES: YES, MA'AM.

19 THE CLERK: IS IS IT STILL YOUR
20 VERDICT?

21 MR. BOWLES: YES, MA'AM.

22 THE COURT: ALL RIGHT. THE RECORD
23 SHALL REFLECT THE JURY HAS BEEN POLLED, AND ALL
24 HAVE ANSWERED IN THE AFFIRMATIVE. IS THIS ANYTHING
25 FURTHER, MR. THEOS?

MOTIONS

1 MR. THEOS: NOT AT THIS TIME, YOUR
2 HONOR.

3 THE COURT: ANYTHING OTHER FURTHER,
4 MR. SOLICITOR?

5 MR. BAILEY: NO, SIR.

6 THE COURT: ALL RIGHT. IT APPEARS
7 TO BE TEN OF TEN, GENTLEMEN, TODAY BEING SUNDAY,
8 FEBRUARY THE 28TH. I WOULD LIKE TO TALK WITH THE
9 JURY AT THIS TIME. MAY I HAVE MY TWO ALTERNATES
10 PLEASE RETURN TO THE GROUP? MADAM FORELADY AND
11 LADIES AND GENTLEMEN OF THE JURY; PLEASE UNDERSTAND
12 THAT THE COMMENTS THAT I'M ABOUT TO MAKE TO YOU
13 ABOUT THE PLANS WE'VE MADE FOR YOU FOR TODAY,
14 TOMORROW, OR WHENEVER; THAT CERTAINLY THAT IS NOT
15 TO INFER IN ANY WAY WHAT I THOUGHT THE VERDICT
16 SHOULD HAVE BEEN OR WOULD BE. BUT WE JUST WANTED
17 TO BE PREPARED FOR WHATEVER VERDICT YOU MAY HAVE
18 RENDERED TODAY. BECAUSE OF THE -- WELL, THE SUN IS
19 TRYING TO SHINE OUTSIDE. BUT IT HAS BEEN RAINING
20 THIS MORNING. IN CONFERRING WITH LT. EDWARDS -- IS
21 HE IN THE COURTROOM? HE IS IN CHARGE OF THE
22 DETAILS UNLESS LT. POLK; AND IT MATTERS NOT. ALL
23 THE SLED AGENTS HAVE BEEN VERY NICE AND
24 ACCOMMODATING TO ME, AND CERTAINLY I'M SURE THEY
25 HAVE BEEN TO YOU. BUT WE THOUGHT THAT -- I DON'T

MOTIONS

1 THINK THE MALLS OPEN UNTIL ONE O'CLOCK. DO THE
2 BLUE LAWS APPLY IN CHARLESTON? THAT'S KIND OF AN
3 INDEPENDENT STATE. I DIDN'T KNOW. WE THOUGHT
4 ABOUT MAYBE TAKING YOU TO CHARLESTON AND LETTING
5 YOU GO TO AN ENCLOSED MALL, SO TO SPEAK, SHOP A
6 LITTLE BIT, AND THEN GET A GOOD MEAL AND TAKE YOU
7 TO PERHAPS A MOVIE WHERE THERE WERE EIGHT OR TEN
8 SELECTIONS RATHER THAN JUST ONE FEATURE BECAUSE ALL
9 OF YOU MAY NOT AGREE AS TO ONE MOVIE. YOU MAY HAVE
10 A DIFFERENT SELECTION. AND WHILE YOU'RE IN THE
11 CHARLESTON, PLEASE -- NOT TO INDICATE THAT ST.
12 GEORGE DOESN'T HAVE EXCELLENT FOOD. BUT YOU MAY
13 WANT SOMETHING A LITTLE DIFFERENT. YOU CAN EAT
14 WHILE YOU'RE IN THE CHARLESTON AREA.

15 NOW IF Y'ALL HAVE A PREFERENCE -- OR
16 MADAM FORELADY, IF Y'ALL WOULD LIKE TO GO BACK TO
17 YOUR JURY ROOM AND DISCUSS WHAT PLANS THAT YOU
18 WOULD LIKE TO HAVE, I APOLOGIZE THAT I WON'T BE
19 ABLE TO ALLOW YOU TO GO HOME AT THIS TIME. YOU
20 MUST REMAIN SEQUESTERED. AND IT'S ANTICIPATED THAT
21 WE WOULD THAT RECONVENE IN THE TRIAL OF THIS MATTER
22 IN THE MORNING AT TEN O'CLOCK WHICH WOULD MEET THE
23 REQUIREMENT OF THE 24 HOUR WAITING PERIOD, MR.
24 SOLICITOR, UNLESS FOR ANY REASON Y'ALL DECIDED YOU
25 WANTED TO START AT 9:00 OR 9:30. MR. THEOS, WE CAN

MOTIONS

1 TALK ABOUT THAT AND LET THE JURY KNOW. BUT IT'S
2 ANTICIPATED AT TEN O'CLOCK TOMORROW TO CONVENE?

3 MR. THEOS: YES, SIR.

4 THE COURT: SO Y'ALL PROBABLY
5 HAVEN'T HAD AN OPPORTUNITY TO THINK ABOUT IT. SO
6 IF YOU'D LIKE TO GO TO YOUR ROOM TO DISCUSS IT
7 AMONG YOURSELVES. AND, YOU KNOW -- YOU CAN'T GO TO
8 BLACKVILLE AND BARNWELL COUNTY TO EAT AT THE
9 MENNONITE BECAUSE THEY AREN'T OPEN ON SUNDAY. BUT
10 YOU HAVE THAT VAN, AND SEVERAL OF THE AGENTS HAVE
11 CARS. AND IF Y'ALL WANT TO GO TO COLUMBIA; IF YOU
12 WANT TO GO TO ORANGEBURG; IF YOU WANT TO GO TO
13 CHARLESTON. I'M NOT TRYING TO HERD YOU TO
14 CHARLESTON. MAYBE YOU DON'T WANT TO GO THERE. IT
15 MATTERS NOT TO ME. WOULD Y'ALL LIKE TO GO DISCUSS
16 IT, OR DO YOU KNOW NOW WHAT YOUR PLEASURE MIGHT BE?

17 THE FORELADY: WE'LL DISCUSS IT.

18 THE COURT: ALL RIGHT. SO MAY I
19 EXCUSE YOU TO GO TO YOUR ROOM SO Y'ALL CAN CONFER
20 IN PRIVATE WITHOUT MY INCONVENIENCE ON YOU. AND,
21 GENTLEMEN, DO Y'ALL HAVE ANY OBJECTION TO LT.
22 EDWARDS ONE OR MORE OF THE SLED AGENTS CONFERRING
23 WITH THE JURY ABOUT THAT; AND THEN THEY CAN JUST
24 CONFER WITH ME, AND WE CAN DECIDE THAT WITHOUT TO
25 NECESSITY OF PUTTING IT ON THE RECORD. WE'LL PUT

MOTIONS

1 IT ON THE RECORD NUNC PRO TUNC. I JUST DIDN'T WANT
2 TO KEEP THE COURT REPORTER WAITING AROUND.

3 MR. BAILEY: THAT'S FINE.

4 MR. BELL: THAT'S FINE, YOUR HONOR.

5 THE COURT: SO Y'ALL, IF YOU WOULD,
6 YOU'RE EXCUSED TO GO TO YOUR ROOM NOW. AND AGAIN,
7 LADIES AND GENTLEMEN, AS REGARDS THE PENALTY PHASE
8 WHICH WOULD BE THE NEXT SECOND PART OF THIS
9 BIFURCATED TRIAL AS WAS EXPLAINED TO EACH OF YOU
10 DURING THE VOIR DIRE OR INDIVIDUAL OATH PRECEDING,
11 PLEASE CONTINUE TO BE UNDER YOUR OATH AND UNDER THE
12 CONTINUING REQUEST AND ADMONITION NOT TO MAKE ANY
13 INQUIRY, NOT TO ALLOW ANYONE TO INFLUENCE YOU ABOUT
14 WHAT YOUR VERDICT SHOULD BE OR ANYTHING PERTAINING
15 TO THE PENALTY PHASE AND NOT TO ALLOW YOURSELF TO
16 BE EXPOSED TO ANY PUBLICITY, WHETHER BY THE PRINT
17 MEDIA, ELECTRONIC, RADIO, T.V., INTERNET, OR WHAT
18 HAVE YOU BECAUSE YOU ARE TO DECIDE THAT PHASE OF
19 THE CASE JUST AS YOU DID ON THE FIRST PHASE BASED
20 SOLELY, AND ONLY, UPON THE EVIDENCE ADDUCED DURING
21 THE TRIAL OF THE CASE AND FROM ANY TESTIMONY THAT
22 MIGHT BE ALLOWED INTO THE TRIAL OF THE CASE. SO
23 PLEASE DO NOT DISCUSS AMONG YOURSELVES ANYTHING
24 ABOUT THE PENALTY PHASE. THAT WOULDN'T BE PROPER.
25 YOU HAVEN'T HEARD THE TESTIMONY AND EVIDENCE. AND

AND IF THERE ARE ANY MATTERS, MA'AM, THAT I HAVE FAILED TO ADDRESS, IF Y'ALL HAVE ANY INQUIRIES; I'M GOING TO BE RIGHT HERE. I DON'T GET TO GO TO THE MALL OR MOVIES OR WHEREVER WITH YOU, BUT I WILL BE AVAILABLE. SO IF Y'ALL WILL RETURN TO YOUR ROOM AND TRY AND DECIDE A GAME PLAN FOR THE NEXT 24 COURT HOURS, PLEASE.

THE COURT: YES, SIR.

THE COURT: YES, SIR. A SLED AGENT
R FAMILY FOR YOU; THAT IS CORRECT --
OF EMPLOYMENT AS NEED BE.

THE COURT: MADAM COURT REPORTER,

LET THE RECORD REFLECT THAT THE JUROR WHO BECAME
MR. BOWLES, I BELIEVE IT IS, NUMBER TWELVE. HE WAS

MOTIONS

1 AN ALTERNATE; BUT NOW HE'S A REGULAR MEMBER OF THE
2 JURY. HE ASKED ME IF HE COULD KEEP HIS APPOINTMENT
3 TOMORROW AFTERNOON AT 3:30 OR 4:00 AT THE MEDICAL
4 UNIVERSITY IN CHARLESTON BECAUSE HE HAD HAD SURGERY
5 ON HIS KNEE LAST WEEK. AND I TOLD HIM NO. WHEN I
6 SAY LAST WEEK, I'M TALKING ABOUT THE WEEK OF THE
7 FIFTEENTH, NOT THE WEEK OF THE TWENTY-SEVENTH
8 BECAUSE HE'S BEEN WITH US SINCE MONDAY. I TOLD HIM
9 THAT THAT WOULD NOT BE POSSIBLE. AND HE SAID HE
10 WAS HAVING SOME DIFFICULTY WITH HIS LEG AND HE SAID
11 HE'D FEEL BETTER IF HE HAD AN APPOINTMENT. AND I
12 SAID THAT'S JUST NOT GOING TO BE POSSIBLE TOMORROW
13 AFTERNOON. AND HE ASKED IF HE COULD MAKE A CALL
14 ABOUT IT, AND I SAID IF HE COULD MAKE A CALL WITH
15 THE SLED AGENT MAKING IT FOR HIM THROUGH THE SLED
16 AGENT. BUT IT MAY BE, GENTLEMEN, THAT WE COULD --
17 I'M NOT SURE WHETHER HE'S SEEING AN ORTHOPAEDIC
18 SURGEON OR A GENERAL SURGEON. I KNOW IT'S AT THE
19 MEDICAL UNIVERSITY. AND IT'S DIFFICULT TO GET TO
20 THE MEDICAL UNIVERSITY FROM HERE IN LESS THAN AN
21 HOUR ANY TIME OF THE DAY, MR. THEOS; IS THAT
22 RIGHT?

23 MR. THEOS: YES, SIR; THAT'S
24 CORRECT. IN NO LESS THAN AN HOUR.

25 THE COURT: RIGHT. AND I TOLD HIM

MOTIONS

1 TO CHECK TO SEE IF PERHAPS HE COULD BE SEEN AT
2 EIGHT O'CLOCK IN THE MORNING. WOULD THERE BE ANY
3 OBJECTION IF HE'S IN THE CUSTODY AND CARE OF A SLED
4 AGENT IF HE HAD AN EIGHT O'CLOCK APPOINTMENT AT THE
5 MEDICAL UNIVERSITY IN THE MORNING?

6 MR. BAILEY: NO, SIR.

7 THE COURT: OF COURSE WE COULD HAVE
8 THE DOCTOR COME UP HERE. WE'RE PAYING A LOT OF
9 EXPERTS. WE'LL JUST ADD IT TO THE TAB, YOU MIGHT
10 SAY. WHAT SAY, MR. THEOS?

11 MR. THEOS: WE DON'T HAVE ANY
12 OBJECTION TO THAT.

13 THE COURT: ANY OBJECTION TO HIS
14 KEEPING HIS APPOINTMENT AT EIGHT IN THE MORNING --
15 HIS APPOINTMENT IS TOMORROW AFTERNOON AT EITHER
16 4:00 OR 4:30. BUT IF WE CAN GET THE DOCTOR TO GIVE
17 HIM AN APPOINTMENT AT EIGHT IN THE MORNING, YOU'D
18 HAVE NO OBJECTION TO HIM GOING TO THAT?

19 MR. THEOS: NO, SIR.

20 THE COURT: AND IN THE EVENT THAT HE
21 FEELS THAT HE NEEDS TO BE SEEN BY A DOCTOR, I WOULD
22 ASSUME, GENTLEMEN, THAT Y'ALL WOULD HAVE NO
23 OBJECTION TO HIM BEING SEEN BY A DOCTOR? IT'S NOT
24 A LIFE AND DEATH SITUATION, BUT SOMETIMES YOU CAN
25 GET STAFF INFECTIONS, WHATEVER, FROM SURGERY. AND

MOTIONS

1 I'D RATHER -- HE HAS BEEN MOVING ABOUT ON THOSE
2 CRUTCHES CONSIDERABLY; SO IT MAY BE THAT HE NEEDS
3 JUST TO HAVE IT CHECKED OUT. SO IS THERE ANY
4 OBJECTION IF THAT IS NECESSARY?

5 MR. BAILEY: NO, SIR.

6 MR. THEOS: NO, SIR.

7 THE COURT: ALL RIGHT. SO IS THERE
8 ANYTHING FURTHER FOR THE RECORD, PLEASE, MR.
9 BAILEY?

10 MR. BAILEY: NOT FROM THE STATE.

11 THE COURT: MR. THEOS?

12 MR. THEOS: NO, SIR, NOT AT THIS
13 TIME.

14 THE COURT: MR. BELL?

15 MR. BELL: NO, SIR.

16 THE COURT: ALL RIGHT. IT'S TEN
17 O'CLOCK. AND WE'LL TALK IN CHAMBERS FOR A MINUTE
18 ABOUT SEVERAL THINGS, GENTLEMEN, ABOUT PROCEDURE
19 AND SO FORTH. BUT UNLESS WE ADVISE YOU TO THE
20 CONTRARY, WE'LL CONVENE COURT -- IT'S PRECISELY TEN
21 NOW. IS THAT AGREEABLE WITH THE SOLICITOR?

22 MR. BAILEY: YES, SIR.

23 THE COURT: IS THAT AGREEABLE, MR.
24 BELL?

25 MR. BELL: IF WE HAVE THE TIME AND

MOTIONS

1 CAN LEAVE SHORTLY, YOUR HONOR.

2 THE COURT: I DON'T INTEND TO DETAIN
3 YOU. I WANT YOU TO GO TO CHURCH TODAY. ALL RIGHT,
4 LADIES AND GENTLEMEN, COURT WILL BE IN RECESS UNTIL
5 TEN O'CLOCK MONDAY MORNING, MARCH THE FIRST, 1999.
6 THANK YOU.

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11 (WHEREUPON AT 10:15 COURT WAS ADJOURNED FOR THE
12 DAY.)
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MOTIONS

MONDAY, MARCH 1, 1999

THE COURT: GENTLEMEN, AS I

UNDERSTOOD FROM OUR CONFERENCE IN CHAMBERS THAT THE
DEFENSE COUNSEL WAS DESIROUS OF NOT MAKING AN
OPENING STATEMENT AT THIS TIME BUT RATHER WAITING
FOR THE DEFENSE'S OPENING STATEMENT TO BE MADE AT
THE CONCLUSION OF THE PENALTY PHASE, OPENING OF
TESTIMONY OR EVIDENCE OF THE STATE; IS THAT
CORRECT?

MR. BELL: THAT'S CORRECT, YOUR
HONOR.

THE COURT: AND THERE'S NO OBJECTION
TO THAT?

MR. BAILEY: NO OBJECTION, YOUR
HONOR.

THE COURT: I HAVE NO OBJECTION TO
IT. I'VE NEVER DONE THAT BEFORE. BUT CERTAINLY I
HAVE NO PROBLEM WITH THAT. USUALLY THAT'S A
PROCEDURE FOLLOWED IN FEDERAL COURT. BUT I WOULD
JUST REMIND MR. THEOS AND BELL AND MR. SIMMONS THAT
THEY SHOULD NOT ATTEMPT TO MAKE A CLOSING ARGUMENT
IN RESPONSE TO THE EVIDENCE THAT THE STATE HAD
PRESENTED AT THAT TIME TO BE THE SAME AS CLOSING,
BUT CLOSING. I MEAN, FEEL FREE TO COMMENT AS YOU
SEE FIT.

MOTIONS

1 NOW FOR THE RECORD, GENTLEMEN AND
2 LADIES; LET THE RECORD REFLECT, PLEASE, THAT ON
3 SUNDAY, FEBRUARY THE 28TH AT APPROXIMATELY 9:30,
4 THE JURY ADVISED THE COURT THEY HAD ARRIVED AT A
5 VERDICT. IT WAS PROBABLY 9:45 -- AND THAT'S A.M.,
6 OF COURSE -- BEFORE THE JURY WAS BROUGHT INTO THE
7 COURTROOM. BUT CERTAINLY IT WAS PRIOR TO 10:00
8 A.M. WHEN I EXCUSED THE JURY. AND ON YOUR RECORDS,
9 MADAM COURT REPORTER, YOU DO PUT THE TIMES IN
10 THERE, DO YOU NOT? SO IT WILL REFLECT WITH
11 PRECISION AND SPECIFICITY THAT PARTICULAR TIME.
12 BUT IT IS NOW MONDAY, MARCH THE FIRST. IT IS NOW
13 10:06 BY THE CLOCK ON THE WALL. SO DO WE ALL AGREE
14 THAT THE STATUTORY 24 HOUR WAITING PERIOD HAS BEEN
15 ADHERED TO?

16 MR. BAILEY: THE STATE AGREES, YOUR
17 HONOR.

18 MR. BELL: THE DEFENSE AGREES, YOUR
19 HONOR.

20 THE COURT: THANK YOU. AND MR.
21 BELL, PLEASE REMIND ME THAT PRIOR TO COMMENCING THE
22 OPENING STATEMENTS IN THE PENALTY PHASE BY YOU
23 AND/OR MR. THEOS THAT AT THAT TIME, OR PRIOR TO
24 THOSE OPENING STATEMENTS, I WOULD LIKE ON THE
25 RECORD TO AGAIN ADVISE THE DEFENDANT, MR. SIMMONS

MOTIONS

1 OF HIS RIGHT TO MAKE AN OPENING STATEMENT, HIS
2 RIGHT TO TESTIFY OR NOT, AND HIS RIGHT TO MAKE A
3 CLOSING ARGUMENT OR NOT. AND I CAN DO THAT AT THIS
4 TIME, BUT I THINK YOU GENTLEMEN INDICATED THAT IT
5 WOULD PROBABLY BE BETTER TO WAIT UNTIL THE CLOSE OF
6 THE PENALTY PHASE, EVIDENCE OF THE STATE; CORRECT.

7 MR. BELL: CORRECT, YOUR HONOR.

8 THE COURT: ALL RIGHT. AND
9 GENTLEMEN, THE FIRST ORDER OF BUSINESS WHEN THE
10 JURY COMES IN WOULD BE TO OFFICIALLY EXCUSE THE
11 ALTERNATES, OR TO ACKNOWLEDGE THE NECESSARY EXCUSAL
12 OF THE FIRST ALTERNATE WHO HAD BECOME THE TWELFTH
13 JUROR. AND I HAVE THE DOCTOR'S STATEMENT FROM DR.
14 HARRY S. DEAMO. WELL, THAT'S HIS OFFICE. BUT IT'S
15 ACTUALLY DR. LANGDON A. HARTSOCK OF THE MEDICAL
16 UNIVERSITY WHICH STATES THAT MR. BOWLES REQUIRES
17 HOSPITALIZATION TODAY FOR ANTIBIOTICS AND SURGERY
18 FOR HIS LEG AND SHOULD BE EXCUSED FOR JURY DUTY.
19 AND I THINK IT WAS AGREED THAT WE WOULD EXCUSE THE
20 GENTLEMEN AND LET THE SECOND ALTERNATE BECOME THE
21 TWELFTH; CORRECT.

22 MR. BAILEY: THAT'S CORRECT, YOUR
23 HONOR.

24 MR. BELL: CORRECT, YOUR HONOR.

25 THE COURT: ALL RIGHT. IS THERE

MOTIONS

1 ANYTHING ELSE FOR THE RECORD? THERE ARE CERTAIN
2 MOTIONS, GENTLEMEN, THAT HAVE BEEN MADE PRIOR TO
3 THE COMMENCEMENT OF THE TRIAL. AND I AGAIN THANK
4 THE ATTORNEYS FOR THE DILIGENCE FOR THEIR
5 PREPARATION OF BOTH THE SOLICITOR ON BEHALF OF THE
6 STATE AND MR. BELL AND MR. THEOS ON BEHALF OF THE
7 DEFENDANT. EVERYONE HAS BEEN QUITE BUSY OF PAST
8 SEVEN DAYS. AND EVEN BEFORE THAT TIME I THINK THE
9 RECORD WILL REFLECT THAT ON JANUARY THE FOURTH, NOT
10 JUST THE USUAL TEN DAY STATUTORY EXCUSAL FOR THE
11 FEBURARY 22ND TRIAL COMMENCEMENT THAT MR. THEOS AND
12 MR. BELL HAD BEEN EXCUSED FROM ALL OTHER COURTS
13 SINCE JANUARY THE FOURTH OF 1999. AND I KNOW WE'VE
14 HAD AT LEAST FIVE DAYS OF HEARINGS PRIOR TO THE
15 COMMENCEMENT OF THE TRIAL ON THE 22ND AND SOME
16 TELEPHONE CONFERENCE CALLS RELATIVE TO VARIOUS
17 MATTERS. BUT THERE ARE CERTAIN MOTIONS THAT WERE
18 HEARD IN CHAMBERS AND AGREED UPON ABOUT RELIGIOUS
19 ARGUMENTS AND THE POLYGRAPH AND OTHER THINGS. AND
20 EACH OF YOU GENTLEMEN ARE AWARE OF THOSE RULINGS.
21 AND RATHER THAN DELAY THE JURY WHO HAS BEEN WAITING
22 FOR MORE THAN 24 HOURS NOW, I THINK THAT IT WOULD
23 BE PREFERABLE TO WAIT TO PUT THOSE MOTIONS IN THE
24 RECORD AFTER THE JURY LEAVES FOR THEIR FINAL
25 DELIBERATIONS. AND IN ADDITION THERETO, I NEED TO

MOTIONS

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1 AGAIN REVIEW AND PUT IN THE RECORD CERTAIN RULINGS
2 RELATIVE TO MY CHARGE, WHAT I DID AND DIDN'T
3 CHARGE, AND OBJECTIONS THAT HAVE ALREADY BEEN MADE
4 IN THE RECORD. SO IS IT AGREEABLE TO WAIT,
5 SOLICITOR, UNTIL A MORE APPROPRIATE TIME TO PUT
6 THOSE IN THE RECORD NUNC PRO TUNC, ALBEIT WITH AN
7 UNDERSTANDING THAT EACH OF YOU ARE AWARE OF WHAT
8 THOSE RULINGS MIGHT BE?

9 MR. BAILEY: YES, SIR.

10 MR. BELL: YES, SIR.

11 THE COURT: MR. SMITH, COULD I ASK
12 YOU TO AT THIS TIME TO TILT THAT BLIND A LITTLE FOR
13 ME OVER THERE? THE SUN IS GLARING OFF THE
14 WINDSHIELD, AND IT'S BLINDING ME.

15 MR. SMITH: YES, SIR.

16 THE COURT: THANK YOU. SO ANYTHING
17 FOR THE RECORD BEFORE WE BRING THE JURY IN, PLEASE?

18 MR. BAILEY: NOT FROM THE STATE,
19 YOUR HONOR.

20 MR. BELL: NOTHING FROM THE DEFENSE.

21 THE COURT: ALL RIGHT. PLEASE BRING
22 THE JURY IN.

23 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

24 THE COURT: GOOD MORNING MADAM
25 FORELADY AND LADIES AND GENTLEMEN. THANK YOU VERY

MOTIONS

1 KINDLY FOR BEING HERE PRESENT WITH US TODAY. AND I
2 HOPE YOU HAD A PLEASANT DAY YESTERDAY. AND WE
3 SHALL AT THIS TIME PROCEED. MADAM COURT REPORTER,
4 PLEASE LET THE RECORD REFLECT THAT LT. EDWARDS,
5 PURSUANT TO AGREEMENT OF COUNSEL AND APPROVAL OF
6 THE COURT ON YESTERDAY AFTER A DISCUSSION HERE AT
7 THE BENCH WITH THE ORIGINAL FIRST ALTERNATE JUROR
8 WHO BECAME THE TWELFTH JUROR AS A MEMBER OF THE
9 REGULAR PANEL OF TWELVE UPON MR. CAMPEAU BEING
10 EXCUSED, THAT THE JUROR, MR. RONALD BOLES, TOLD ME
11 THAT HE WAS HAVING SOME DIFFICULTY WITH HIS LEG.
12 THE RECORD SHOULD REFLECT THAT HE HAS BEEN ON
13 CRUTCHES. WE'VE HAD SEVERAL STOOLS THERE FOR HIM
14 TO USE TO PROP HIS LEG UP. AND AS I SAID, HE WAS
15 ON CRUTCHES. HE HAD HAD SURGERY, I BELIEVE IT WAS
16 THE WEDNESDAY BEFORE THE COMMENCEMENT OF THE TRIAL
17 ON MONDAY, THE 22ND, WHICH WOULD HAVE BEEN ON
18 FEBRUARY THE 17TH. AND HE WAS A COURAGEOUS,
19 COOPERATIVE CITIZEN IN THAT HE, EVEN WITH THAT
20 DIFFICULTY, HE WAS WILLING TO SERVE ON THE JURY.
21 AND HE HAD MADE THE COURT AWARE DURING THE VOIR
22 DIRE THAT HE HAD A DOCTOR'S APPOINTMENT AT FOUR
23 O'CLOCK TODAY, MARCH THE FIRST, WITH THE SURGEON AT
24 THE MEDICAL UNIVERSITY THAT HAD PERFORMED THE
25 SURGERY, AND HE WANTED TO ATTEMPT TO HAVE THAT

MOTIONS

1 APPOINTMENT FOR 8:00 A.M. THIS MORNING BECAUSE HE
2 WAS HAVING SOME DIFFICULTY AND IN SOME PAIN. AND
3 SO I AUTHORIZED SLED, LT. EDWARDS, TO CONTACT THE
4 DOCTOR AND SEE IF THEY COULD ARRANGE FOR AN
5 APPOINTMENT THIS MORNING AT EIGHT O'CLOCK, AND
6 HOPEFULLY HE COULD LEAVE M.U.S.C. AT NINE AND BE
7 BACK READY TO GO AT TEN. WELL, THIS MORNING AT
8 5:00 A.M., BECAUSE HE WAS HAVING DIFFICULTY WITH
9 HIS LEG AND WITH HIS FEET, THEY TOOK HIM TO
10 M.U.S.C. AND WENT TO THE EMERGENCY ROOM. AND THE
11 DOCTOR EXAMINED HIM AND FELT THAT HE SHOULD BE
12 HOSPITALIZED. I DO HAVE A DOCTOR'S STATEMENT HERE
13 FROM DR. LANGDON A. HARTSOCK, H-A-R-T-S-O-C-K, OF
14 THE MEDICAL UNIVERSITY, THIS DOCTOR'S STATEMENT
15 WHICH SETS FORTH THAT MR. BOLES REQUIRES
16 HOSPITALIZATION TODAY FOR ANTIBIOTICS AND SURGERY
17 FOR HIS LEG. HE SHOULD BE EXCUSED FROM JURY DUTY.
18 AND OF COURSE HE NOW HAS BEEN EXCUSED FROM JURY
19 DUTY. AND WHEN Y'ALL ARE AT LUNCH, MAYBE Y'ALL CAN
20 GET AN APPROPRIATE CARD AND ALL SIGN IT. WE'LL GET
21 THE ADDRESS AND MAIL IT TO HIM IF Y'ALL THINK WELL
22 OF THAT. BUT IT'S NOT A LIFE THREATENING
23 SITUATION. IT'S JUST SOMETHING THAT NEEDED
24 IMMEDIATE ATTENTION. SO WITH THE UNDERSTANDING AND
25 APPROVAL OF THE ATTORNEYS FOR THE STATE AND FOR THE

1 DEFENSE, MR. RONALD BOLES HAS NOW BEEN EXCUSED FROM
2 FURTHER JURY SERVICE. AND SO NOW THE ALTERNATE
3 NUMBER TWO, MR. ROBERT S. HUGHES, IF YOU'D RAISE
4 YOUR HAND. COULD I GET YOU TO EXCHANGE CHAIRS WITH
5 MR. MILFORD CARTER? AND YOU ARE SEATED WITH THE --
6 OR YOU CAN SIT THERE. SO YOU ARE NOW OFFICIALLY,
7 MR. HUGHES, PART AND PARCEL OF THE REGULAR TWELVE
8 MEMBER PANEL. AND MR. CARTER, I WOULD CONTINUE TO
9 ASK YOU TO GIVE CAREFUL ATTENTION TO THE TESTIMONY
10 AS I EXPECT THE REGULAR TWELVE TO DO. NOT THAT I
11 ANTICIPATE THAT YOU WILL BE CALLED IN TO SERVICE,
12 BUT THAT IS YOUR DUTY UNDER YOUR OATH. AND
13 GENTLEMEN, WE ALL AGREED THAT THE THREE ALTERNATES
14 WERE SWORN AND GIVEN THE SAME OATH AS REGULAR
15 JURORS ON WEDNESDAY, FEBRUARY THE 24TH?

16 MR. BAILEY: YES, SIR.

17 MR. BELL: YES, SIR.

18 THE COURT: SO IT'S UNNECESSARY, MR.
19 HUGHES, TO GIVE YOU A FURTHER INSTRUCTION OR CHARGE
20 AT THIS TIME. SO MADAM CLERK, IF YOU WOULD GIVE
21 THAT DOCTOR'S STATEMENT TO THE COURT REPORTER AND
22 HAVE HER MARK IT AS A COURT'S EXHIBIT TO BE A PART
23 AND PARCEL OF THE RECORD IN THIS CASE.

24 REMARKS TO THE JURY

25 BY THE COURT

1 MADAM FORELADY AND LADIES AND
2 GENTLEMEN OF THE JURY, AS I EXPLAINED TO YOU ON
3 MONDAY OF LAST WEEK AND DURING THE VOIR DIRE
4 PROCEEDINGS AND AGAIN IN OPENING STATEMENT BY THE
5 COURT ON WEDNESDAY OF LAST WEEK THAT IN A CAPITAL
6 MURDER CASE, IT IS ONE TRIAL BUT IS IT IN TWO
7 PHASES. YOU HAVE NOW COMPLETED THE GUILT PHASE OF
8 THE TRIAL, AND YOU HAVE RETURNED A VERDICT OF
9 GUILTY ON THE CHARGE OF MURDER. THE RECORD SHOULD
10 REFLECT THAT THE DEFENDANT, KENNETH SIMMONS, WAS
11 FOUND GUILTY OF MURDER ON SUNDAY, FEBRUARY THE
12 28TH, 1999, AT APPROXIMATELY 9:45 A.M. ON
13 YESTERDAY; THAT IT IS NOW 10:20 A.M. ON MONDAY,
14 MARCH THE FIRST, 1999. THE MANDATORY WAITING
15 PERIOD OF 24 HOURS AS REQUIRED BY THE STATUTE LAW
16 OF THIS STATE HAS BEEN OBSERVED. FURTHER THE
17 RECORD WILL REFLECT THAT THE JURY RETURNED VERDICTS
18 OF GUILTY ON THE OTHER FOUR INDICTMENTS FOR
19 KIDNAPPING, BURGLARY FIRST, CRIMINAL SEXUAL CONDUCT
20 FIRST, AND ON ARMED ROBBERY. SO LADIES AND
21 GENTLEMEN, IT NOW BECOMES NECESSARY TO PROCEED WITH
22 THE PENALTY PHASE OF THE TRIAL AT WHICH TIME YOU
23 TWELVE JURORS WILL DETERMINE THE PUNISHMENT THAT
24 THE COURT IS TO IMPOSE UPON THE DEFENDANT. SECTION
25 16-3-20 OF OUR SOUTH CAROLINA CODE OF LAWS AS

1 AMENDED PROVIDES IN PERTINENT PART THAT A PERSON
2 WHO IS CONVICTED OF OR WHO PLEADS GUILTY TO MURDER
3 MUST BE PUNISHED BY DEATH OR BY IMPRISONMENT FOR
4 LIFE. THAT LAW FURTHER PROVIDES THAT UPON
5 CONVICTION OF A DEFENDANT OF MURDER, THE COURT
6 SHALL CONDUCT A SEPARATE SENTENCING PROCEEDING TO
7 DETERMINE WHETHER THE DEFENDANT SHOULD BE SENTENCED
8 TO DEATH OR LIFE IMPRISONMENT. LADIES AND
9 GENTLEMEN, THE PURPOSE IN CONDUCTING THE PENALTY
10 PHASE PROCEEDING IN WHICH WE'RE NOW ENGAGED IS TO
11 DETERMINE WHETHER THE DEFENDANT, KENNETH SIMMONS,
12 SHOULD BE SENTENCED BY THE COURT TO DEATH OR TO
13 LIFE IMPRISONMENT WITHOUT PAROLE.

14 NOW, WITH RESPECT TO YOUR PARTICULAR
15 ROLE IN THIS PROCEEDING, YOU WILL BE ASKED TO
16 RECOMMEND TO THE COURT ONE OR THE OTHER, AND THAT
17 IS EITHER DEATH OR LIFE IMPRISONMENT WITHOUT
18 PAROLE. DURING THIS PROCEEDING, THE STATE AND THE
19 DEFENDANT WILL HAVE AN OPPORTUNITY TO INTRODUCE
20 ADDITIONAL EVIDENCE IN EXTENUATION, MITIGATION, OR
21 AGGRAVATION. AND BOTH SIDES WILL HAVE AN
22 OPPORTUNITY TO PRESENT ARGUMENTS FOR OR AGAINST THE
23 DEATH PENALTY OR LIFE IMPRISONMENT. SO LADIES AND
24 GENTLEMEN, AFTER THE LAST ARGUMENT HAS BEEN MADE TO
25 YOU CONCERNING PUNISHMENT THAT SHOULD BE IMPOSED

1 UPON THE DEFENDANT, THE COURT WILL THEN AT THAT
2 TIME CHARGE YOU IN FULL AS TO THE LAW OF THE CASE.
3 AND YOU WILL THEN RETIRE TO DETERMINE WHETHER A
4 DEATH SENTENCE OR LIFE SENTENCE IS TO BE RECOMMENDED.

5 PLEASE BEAR IN MIND THAT EVIDENCE
6 AND TESTIMONY THAT WAS INTRODUCED DURING THE GUILT
7 PHASE OF THE CASE IS A PART AND PARCEL OF THIS
8 PHASE AND IS AVAILABLE TO YOU FOR YOUR
9 CONSIDERATION AND FOR YOUR REVIEW AND INSPECTION.
10 YOU WILL HAVE THE EXHIBITS FROM THE GUILT PHASE
11 WITH YOU WHEN YOU GO INTO THE JURY ROOM FOR THE
12 PENALTY PHASE. AND YOU SHOULD FURTHER BEAR IN
13 MIND, LADIES AND GENTLEMEN, THAT YOU LADIES AND
14 GENTLEMEN ARE THE SOLE JUDGES OF THE FACTS IN THIS
15 CASE, AND I AM THE JUDGE OF THE LAW. AND YOU WILL
16 PLEASE GIVE CAREFUL ATTENTION TO THE WITNESSES WHO
17 TESTIFY UNDER OATH FROM THE WITNESS STAND. YOU MAY
18 TAKE INTO CONSIDERATION THEIR CREDIBILITY AND THE
19 BELIEVABILITY OF THE WITNESSES, AND YOU SHOULD GIVE
20 CONSIDERATION TO THE EXHIBITS AND SUCH WEIGHT AS
21 YOU DEEM SHOULD BE APPROPRIATE DURING THE TRIAL OF
22 THE CASE. SO I WOULD ASK, LADIES AND GENTLEMEN,
23 THAT WE WILL NOW PROCEED AND GIVE CAREFUL ATTENTION
24 TO THE TESTIMONY. AND, LADIES AND GENTLEMEN, YOU
25 WILL HEAR AN OPENING STATEMENT AT THIS TIME BY THE

OPENING REMARKS - MR. BAILEY

1 STATE. AND THEN THE STATE WILL PROCEED WITH ITS
2 TESTIMONY AND EVIDENCE. AND THEN THE DEFENDANT
3 WILL BE ALLOWED AN OPENING STATEMENT. AND THEN THE
4 DEFENDANT WILL PROCEED WITH ANY AND ALL EVIDENCE HE
5 WISHES TO PRESENT DURING THE PENALTY PHASE. AND
6 PLEASE, I REMIND YOU AGAIN, THAT YOU ARE NOT TO
7 DELIBERATE OR DECIDE THE CASE OR DISCUSS IT AMONG
8 YOURSELVES UNTIL I INSTRUCT YOU SO TO DO WHICH WILL
9 BE AT THE CONCLUSION OF ALL OF THE TESTIMONY AND
10 EVIDENCE AND AFTER THE CLOSING ARGUMENTS. SO,
11 THANK YOU. YOU MAY PROCEED. ANY EXCEPTIONS TO
12 OPENING COMMENTS OF THE COURT BY THE STATE?

13 MR. BAILEY: NO, SIR.

14 MR. BELL: NONE BY THE DEFENSE.

15 THE COURT: ALL RIGHT, GENTLEMEN,
16 YOU MAY PROCEED.

17 MR. BAILEY: THANK YOU, YOUR HONOR.

18 - - - - -

19 OPENING REMARKS

20 BY MR. BAILEY

21 AS YOU ALL KNOW, KENNETH SIMMONS
22 SITS BEFORE YOU NOW A CONVICTED MURDERER WITH
23 MALICE AFORETHOUGHT. YOU'VE ALSO FOUND HIM GUILTY
24 OF THE OTHER FIVE CRIMES THAT HE WAS INDICTED FOR
25 BY THE STATE OF SOUTH CAROLINA. THE JOB, AS YOU

OPENING REMARKS - MR. BAILEY

1 KNOW, IS THE NOT YET OVER. YOU'RE GOING TO HEAR
2 TESTIMONY AT THIS STAGE REGARDING THE APPROPRIATE
3 PUNISHMENT TO BE ADMINISTERED TO MR. SIMMONS.

4 AS YOU KNOW YOU HAVE TWO CHOICES IN
5 THIS STAGE OF THE PROCEEDING; LIFE WITHOUT PAROLE
6 OR THE DEATH PENALTY. YOU CAN CONSIDER AGGRAVATING
7 CIRCUMSTANCES AND ANY MITIGATING CIRCUMSTANCES THAT
8 YOU MAY FIND IN THIS CASE. AND YOU CAN ALSO
9 CONSIDER THE CHARACTERISTICS OF THE DEFENDANT, THE
10 CIRCUMSTANCES OF THE CRIME, AND OTHER THINGS IN
11 ADDITION TO THE STATUTORY AGGRAVATING
12 CIRCUMSTANCES.

13 NOW, AS Y'ALL KNOW BY NOW, THE STATE
14 HAS ALLEGED FIVE STATUTORY AGGRAVATING
15 CIRCUMSTANCES IN THIS CASE. ONE; THAT THE MURDER
16 OF LILLY BELL BOYD WAS COMMITTED WHILE IN THE
17 COMMISSION OF ARMED ROBBERY. NUMBER TWO; THAT THE
18 MURDER OF LILLY BELL BOYD WAS COMMITTED WHILE IN
19 THE COMMISSION OF KIDNAPPING. THREE; THAT THE
20 MURDER OF LILLY BELL BOYD WAS COMMITTED WHILE IN
21 THE COMMISSION OF CRIMINAL SEXUAL CONDUCT. FOUR;
22 THE MURDER OF LILLY BELL BOYD WAS COMMITTED WHILE
23 IN THE COMMISSION OF BURGLARY. AND FIVE; THAT THE
24 MURDER OF LILLY BELL BOYD WAS COMMITTED WHILE IN
25 THE COMMISSION OF PHYSICAL TORTURE.

OPENING REMARKS - MR. BAILEY

1 NOW, FOUR OF THESE FIVE AGGRAVATING
2 CIRCUMSTANCES HAVE ALREADY BEEN ESTABLISHED TO YOUR
3 SATISFACTION BEYOND A REASONABLE DOUBT BY YOUR
4 VERDICT OF GUILTY TO THOSE FOUR SEPARATE
5 INDICTMENTS THAT ALSO CONSTITUTE STATUTORY
6 AGGRAVATING CIRCUMSTANCES IN PHASE ONE OF THIS
7 TRIAL. SO WHEN I START THIS SECOND PHASE OF THE
8 TRIAL IN A FEW MINUTES, WHAT I'M GOING TO DO IS
9 INTRODUCE EVIDENCE OF THE FIFTH AGGRAVATING
10 CIRCUMSTANCE, PHYSICAL TORTURE. THE PHYSICAL
11 TORTURE IS NOT A SEPARATE CRIME THAT A PROSECUTOR
12 CAN SEEK AN INDICTMENT FOR LIKE THESE OTHER
13 AGGRAVATING CIRCUMSTANCES. BUT NEVERTHELESS IT IS
14 A STATUTORY AGGRAVATING CIRCUMSTANCE THAT WILL BE
15 COMING OUT OF THIS PHASE OF THE TRIAL BECAUSE THIS
16 IS THE ONLY PART OF THE TRIAL WHERE THAT TYPE OF
17 TESTIMONY CAN COME OUT.

18 IN ADDITION TO THE AGGRAVATING
19 CIRCUMSTANCES THAT I MENTIONED TO YOU, WHAT I'M
20 GOING TO DO IS INTRODUCE THREE OTHER TYPES OF
21 EVIDENCE. ONE WOULD BE CIRCUMSTANCES OF THE CRIMES
22 THAT OCCURRED WITH RESPECT TO LILLY BELL BOYD ON
23 SEPTEMBER THE FIRST, 1996, THAT MAY NOT HAVE COME
24 OUT TO THE FULLEST EXTENT POSSIBLE IN THE FIRST
25 PART OF THIS TRIAL. AND I SAID IN MY OPENING

OPENING REMARKS - MR. BAILEY

1 STATEMENT IN THE GUILT PHASE THAT THIS CASE WOULD
2 NOT BE A PRETTY CASE; IT WOULDN'T BE PLEASANT FOR
3 ME TO TALK ABOUT; IT WOULDN'T BE PLEASANT FOR Y'ALL
4 TO LISTEN TO. AND THAT IS GOING TO BE ESPECIALLY
5 TRUE IN THIS PART OF THE TRIAL. YOU'RE GOING TO
6 HEAR DETAILS, PHOTOGRAPHS THAT ARE GRAPHIC. BUT
7 IT'S A PART OF THE CASE. AND IT WILL BE COMING OUT
8 IN THIS STAGE OF THE TRIAL.

9 YOU'RE ALSO GOING TO HEAR ABOUT THE
10 CHARACTERISTICS OF KENNETH SIMMONS. SO YOU'LL KNOW
11 SOMETHING ABOUT THE MAN YOU SENTENCE, AND YOU'LL
12 LEARN SOMETHING ABOUT HIS CRIMINAL RECORD AS PART
13 OF THE TRIAL. THE OTHER THING Y'ALL ARE GOING TO
14 HEAR ABOUT THAT YOU HAVEN'T HEARD UP UNTIL NOW IS
15 CALLED VICTIM IMPACT EVIDENCE. Y'ALL ARE GOING GET
16 TO KNOW LILLY BELL BOYD TO THE EXTENT THAT YOU CAN
17 KNOW SOMEBODY WHO IS DEAD. AND THE ONLY WAY THAT I
18 CAN PRESENT HER TO YOU IS BY A PHOTOGRAPH AND BY
19 THE TESTIMONY OF FAMILY MEMBERS AND PEOPLE THAT
20 WERE CLOSE TO HER. AND THEY'LL TELL YOU ALL ABOUT
21 THE KIND OF PERSON SHE WAS AND WHAT HER LOSS MEANT
22 TO THEM.

23 NOW, SINCE FOUR OF THESE FIVE
24 AGGRAVATING CIRCUMSTANCES HAVE ALREADY BEEN PROVEN
25 TO YOU BEYOND A REASONABLE DOUBT IN THE FIRST PHASE

OPENING REMARKS - MR. BAILEY

1 OF THIS TRIAL, OBVIOUSLY IT WOULD BE ABSURD TO HAVE
2 TO DO IT ALL OVER AGAIN WHEN YOU JUST HEARD IT AND
3 FOUND HIM GUILTY. THIS STAGE OF THE TRIAL IS GOING
4 TO BE MUCH SHORTER. AND I FULLY EXPECT TO FINISH
5 THE STATE'S TESTIMONY IN THIS CASE BY LUNCH TIME
6 TODAY. THERE'S OBVIOUSLY NO NEED TO REPEAT
7 ANYTHING THAT Y'ALL HAVE HEARD BEFORE. SO AS THE
8 JUDGE SAID, WHEN YOU CONSIDER THIS CASE AND WHEN
9 YOU CONSIDER THE PUNISHMENT, YOU'LL CONSIDER
10 EVERYTHING; WHAT CAME OUT IN STAGE ONE AND WHAT
11 CAME OUT IN STAGE TWO.

12 AS THE JUDGE SAID, AFTER YOU'VE
13 HEARD ALL THE TESTIMONY, THE LAWYERS WILL GET ONE
14 LAST OPPORTUNITY TO SUBMIT IT TO YOU. THE JUDGE
15 WILL INSTRUCT YOU ON THE LAW THAT APPLIES TO THIS
16 PART OF THE TRIAL; AND YOU'LL GO BACK AND
17 DELIBERATE LIKE YOU DID BEFORE WITH THOSE TWO
18 OPTIONS; LIFE WITHOUT PAROLE OR THE DEATH PENALTY.
19 AND WHEN I MAKE MY CLOSING REMARKS TO YOU, I'M
20 GOING TO Y'ALL ON BEHALF OF THE STATE OF SOUTH
21 CAROLINA TO BRING BACK A VERDICT FOR THE DEATH
22 PENALTY. AND LISTENING TO THE TESTIMONY THROUGHOUT
23 THE REST OF THIS TRIAL, I CAN ONLY ASK YOU TO USE
24 YOUR GOOD COMMON SENSE AS YOU HAVE SO FAR. LISTEN
25 TO THE TESTIMONY; LISTEN TO THE JUDGE TELL YOU WHAT

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 THE LAW IS; AND PAY CLOSE ATTENTION BECAUSE THE
2 DECISION YOU WILL HAVE TO MAKE AT THE END OF THIS
3 TRIAL WILL BE PROBABLY MOST THE SERIOUS DECISION
4 THAT Y'ALL WILL HAVE TO MAKE IN YOUR LIFE TIME.
5 THANK YOU.

6 THE COURT: CALL YOUR FIRST WITNESS.

7 MR. BAILEY: THE STATE WOULD CALL
8 MRS. KATHERINE GUILYARD.

9 THE COURT: COME AROUND, PLEASE,
10 MRS. KATHERINE GILLIARD.

11 - - - - -

12 WHEREUPON,

13 KATHERINE GILLIARD, WHO AFTER BEING
14 FIRST DULY SWORN TO TELL THE TRUTH,
15 TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. MRS. GILLIARD, CAN YOU TELL THE JURY WHERE YOU
19 LIVE, PLEASE?

20 A. AT [REDACTED] IN SUMMERVILLE.

21 Q. HOW LONG HAVE YOU LIVED IN SUMMERVILLE?

22 A. ABOUT TEN YEARS.

23 Q. AND WAS LILLY BELL BOYD YOUR SISTER?

24 A. YES, SHE IS. SHE'S MY OLDEST SISTER.

25 Q. ALL RIGHT. AND AS FAR AS -- THERE'S BEEN

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 TESTIMONY, I THINK FROM MRS. WILSON, THAT THERE
2 WERE A LOT OF BROTHERS AND SISTERS IN YOUR FAMILY.
3 WHERE ARE YOU AS FAR AS -- MRS. BOYD WAS THE
4 OLDEST; IS THAT CORRECT?

5 A. YES; AND I'M THE SEVENTH CHILD.

6 Q. YOU'RE THE SEVENTH CHILD?

7 A. YES.

8 Q. OKAY. I WANT ASK YOU A LITTLE BIT ABOUT MRS.
9 BOYD'S BACKGROUND. Y'ALL WERE BORN IN RIDGEVILLE,
10 WEREN'T YOU?

11 A. YES, SIR.

12 Q. AND HOW FAR DID YOUR SISTER, LILLY BELL BOYD, GO IN
13 SCHOOL?

14 A. I DON'T KNOW EXACTLY HOW FAR SHE WENT TO SCHOOL,
15 BUT I KNOW SHE DIDN'T HAVE ALL THE SCHOOLING SHE
16 REALLY WANTED. SO SHE MOSTLY -- SHE TAUGHT HERSELF
17 A LOT. BUT I REMEMBER SHE HAD A LOT OF BOOKS, I
18 DON'T KNOW IF IT WAS 12 OR 24.

19 Q. OKAY.

20 A. BUT SHE WOULD SIT UP, YOU KNOW, LATE AT NIGHT AND
21 STUDY.

22 Q. SHE LIKED TO READ?

23 A. YES. AND SHE GOT A LOT OF HER SCHOOLING LIKE THAT.

24 Q. ALL RIGHT. NOW, WHAT TYPE OF WORK DID MRS. BOYD
25 DO?

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 A. SHE DID DOMESTIC; AND SHE DID A LOT OF OTHER ODDS
2 AND ENDS. AND SHE TRIED TO BE SOMETHING MORE LIKE
3 A NURSE'S AIDE LIKE.

4 Q. THIS WOULD HAVE BEEN BACK WHEN SHE WAS MUCH
5 YOUNGER?

6 A. WELL, WHEN SHE WAS MUCH YOUNGER SHE MOSTLY DID
7 DOMESTIC. BUT IN THE LATER YEARS, SHE WAS DOING
8 DIFFERENT TYPES OF WORK, BUT SHE USED TO TRY TO BE
9 A NURSING ASSISTANT. SHE DID A LOT OF THAT.

10 Q. DID MRS. BOYD EVER GET MARRIED?

11 A. YES. SHE WAS MARRIED ONCE.

12 Q. OKAY. DID SHE HAVE ANY CHILDREN?

13 A. NO, SIR; SHE DIDN'T HAVE NO CHILDREN.

14 Q. DO YOU KNOW ABOUT HOW LONG YOUR SISTER, LILLY BELL,
15 LIVED ON LUKE STREET IN SUMMERVILLE?

16 A. MY GUESS IT MUST BE ABOUT AT LEAST THIRTY YEARS, I
17 KNOW.

18 Q. ALL RIGHT.

19 A. I CAN'T BE TOO SURE.

20 Q. AND IN THE FIRST PART OF THIS TRIAL, THERE WERE
21 SOME PICTURES THAT WERE PUT IN EVIDENCE OF MRS.
22 BOYD'S HOUSE ON LUKE STREET?

23 A. YES, SIR.

24 Q. THERE WERE SOME BARS ON THE DOORS AND WINDOWS?

25 A. YES, IT WAS.

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 Q. DO YOU KNOW WHY SHE PUT THE BARS ON THE DOORS AND
2 WINDOWS?

3 A. MOSTLY WHY SHE PUT THEM ON THERE BECAUSE SHE HAD --
4 SOMEBODY BROKE INTO THE HOUSE ONCE. AND SHE
5 FIGURED THE BEST THING TO DO WAS TO BAR UP WINDOWS
6 TO KEEP THEM OUT.

7 Q. HOW FAR APART DID YOU LIVE FROM YOUR SISTER?

8 A. I WOULD GUESS IT WOULD BE ABOUT ONE-QUARTER OF A
9 BLOCK.

10 Q. OKAY. AND HOW OFTEN DID YOU GET TO SEE HER?

11 A. WELL, I MOSTLY SEE HER MOST EVERY DAY BECAUSE I
12 DON'T LIVE THAT FAR FROM HER. I MOSTLY SEE HER
13 OUTSIDE.

14 Q. ALL RIGHT.

15 A. SHE WAS VERY, VERY BUSY TRYING TO MAKE A LIVING.

16 Q. COULD YOU TELL THE JURY JUST IN YOUR OWN WORDS WHAT
17 KIND OF PERSON YOUR SISTER WAS?

18 A. WELL, SHE WAS A VERY NICE PERSON; VERY QUIET -- NOT
19 BECAUSE SHE WAS MY SISTER, BUT SHE WAS REALLY --
20 SHE WORKED HARD TO MAKE A LIVING FOR HERSELF SO SHE
21 WOULDN'T HAVE TO BOTHER ANYBODY ELSE. AND SHE DID
22 A GOOD JOB OF DOING THAT. ALTHOUGH SHE WAS A
23 LITTLE FRAIL, SHE WORKED HARD TO KEEP FROM
24 BOTHERING ANYBODY ELSE. SHE WAS A VERY NICE
25 PERSON.

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 Q. WAS SHE SELF-SUPPORTING AT 89 YEARS OLD?

2 A. YES, SIR.

3 Q. AND WHAT KIND OF THINGS DID SHE LIKE TO DO? YOU
4 TOLD US ABOUT SHE LIKED TO READ. WHAT ELSE DID SHE
5 LIKE TO DO?

6 A. SHE LIKED TO READ. AND SHE DID A LOT OF GARDENING
7 AND STUFF LIKE THAT. THAT'S ABOUT WHAT SHE WAS
8 DOING LATELY.

9 Q. ALL RIGHT. DID SHE HAVE SOME CHICKENS IN THE YARD
10 THAT SHE TOOK CARE OF?

11 A. YES. SHE TOOK CARE OF CHICKENS; FRUIT TREES; AND
12 VEGETABLES AND STUFF LIKE THAT.

13 Q. DID SHE HAVE A NICKNAME?

14 A. YES, SHE DID.

15 Q. WHAT WAS HER NICKNAME?

16 A. BIRDIE.

17 Q. DID SHE ALWAYS HAVE THAT NICKNAME?

18 A. AS FAR I CAN REMEMBER.

19 Q. DID YOU KNOW HOW SHE BECAME NICKNAMED BIRDIE?

20 A. NO, I DON'T KNOW.

21 Q. TO YOUR KNOWLEDGE, MRS. GUILLIARD, DID YOUR SISTER
22 EVER DO ANY HARM TO ANYBODY?

23 A. NO. I DON'T THINK SHE COULD HAVE; NO, SIR.

24 Q. HAVE YOU EVER HEARD HER RAISE HER VOICE TO ANYBODY
25 IN ANGER?

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

- 1 A. NO, I HAVEN'T.
- 2 Q. HAVE YOU EVER HEARD HER CURSE OR USE A HARSH WORD
- 3 TOWARD SOMEBODY?
- 4 A. NO, SHE DIDN'T TALK THAT MUCH AT ALL.
- 5 Q. MRS. GUILLIARD, HOW DID YOU FIND OUT THAT SOMETHING
- 6 HAD HAPPENED TO YOUR SISTER?
- 7 A. WELL, WHEN I WENT TO CHURCH ONE SUNDAY, I KNEW SHE
- 8 WAS LIVING ALONE. SHE ALWAYS WENT TO CHURCH ALL
- 9 SUMMER. SHE ATTENDED CHURCH REGULARLY. AND SO
- 10 THAT SUNDAY MORNING WE WENT TO CHURCH, AND SHE
- 11 WASN'T THERE. BUT I FIGURED SHE FELT BAD OR
- 12 SOMETHING AND STAYED HOME. SO AFTER THE SERVICE I
- 13 SAID WHEN I GO I WOULD STOP BACK BY HER HOUSE -- I
- 14 DIDN'T LIVE TOO FAR FROM THERE -- TO SEE WHAT WAS
- 15 WRONG. AND WHEN I WAS GOING, I SAW MY SISTER,
- 16 VIRGINIA WILSON, THERE SO I SAID "WELL, I'LL JUST
- 17 GO ON HOME; EVERYTHING MUST BE ALL RIGHT; I'LL COME
- 18 JUST COME BACK LATER ON." BUT JUST AS I GET IN THE
- 19 HOUSE GOOD, I HEARD THE AMBULANCE AND EVERYTHING
- 20 COMING UP. SO I WONDERED WHAT HAPPENED. AND MY
- 21 DAUGHTER; SHE CAME BACK. AND I SAID, "WHAT
- 22 HAPPENED ACROSS THERE?" AND SHE SAID, "SOMEBODY
- 23 HURT; SOMEBODY HURT." "THAT'S BIRDIE," SHE SAID.
- 24 AND SO I WAS GOING OVER THERE. I DIDN'T KNOW WHAT
- 25 HAPPENED. I JUST SAW SOMEBODY IN THE HOUSE. I

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 THOUGHT IT WAS A ROBBERY OR SOMETHING LIKE THAT.
2 BUT WHEN I GOT OVER THERE AND STARTED TO GO INSIDE,
3 I GOT AS FAR AS THE BACK DOOR; AND THE POLICE
4 WOULDN'T LET ME COME IN. SO THAT'S ALL I KNOW. I
5 FIGURED THEN THAT SOMETHING WAS REAL WRONG BECAUSE
6 THEY WOULDN'T LET ME IN THE HOUSE.

7 Q. WHEN DID YOU REALIZE THAT YOUR SISTER HAD BEEN
8 MURDERED?

9 A. WELL, I REALIZED IT ABOUT A FEW MINUTES AFTER THAT
10 BECAUSE SOMEONE SAID THAT THEY FIND HER ON THE
11 FLOOR; THAT THEY FIND HER TIED UP AND EVERYTHING
12 AND THE CONDITION THEY SAID SHE WAS IN. I WAS
13 PRETTY SURE SHE WASN'T ALIVE.

14 Q. MRS. GUILLIARD, COULD YOU TELL JURY, PLEASE, HOW
15 MRS. BOYD'S DEATH HAS AFFECTED YOU?

16 A. IT'S AFFECTED ME IN A LOT OF WAYS, IN MORE WAYS
17 THAN ONE. YOU KNOW, IT WAS VERY PAINFUL THAT I
18 HAVE TO LOOK OVER THERE EVERY DAY AND SEE WHAT SHE
19 WORKED FOR AND TRY TO LIVE SO HARD TO TAKE CARE OF
20 HERSELF; AND FOR SOMEBODY TO COME AND JUST TAKE IT
21 FROM HER LIKE THAT. SO IT'S VERY PAINFUL.

22 Q. DO YOU LIVE ALONE ALSO?

23 A. YES, I DO.

24 Q. HAS YOUR SISTER'S DEATH AFFECTED THE WAY THAT YOU
25 CARRY OUT YOUR LIFE NOW?

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 A. YES, SIR, A LOT BECAUSE ONE THING IT'S HELPED ME TO
2 BE MORE CAREFUL THAN I WAS BEFORE.

3 Q. ARE YOU MORE CAUTIOUS NOW?

4 A. YES; MORE CAUTIOUS; IT WAS VERY BAD.

5 Q. WHAT IS THE MOST DIFFICULT THING ABOUT HER DEATH
6 FOR YOU TO DEAL WITH?

7 A. MOST OF THE THINGS IS JUST SEEING SHE'S NOT THERE.
8 AND, YOU KNOW, TO SEE WHAT ALL HER LIFE, SHE WORKED
9 SO HARD TO GET THIS FAR. AND IT WAS SNATCH AWAY
10 FROM HER. SHE WAS PREPARED TO LIVE TO KEEP FROM
11 GETTING ON WELFARE AND KEEP FROM BEGGING ANYONE.
12 AND IN THIS LAST MINUTE IT WAS TAKEN AWAY FROM
13 HER. SO IT IS VERY PAINFUL TO THINK ABOUT.

14 Q. ALL RIGHT. WHEN DO YOU THINK OF HER NOW?

15 A. PARDON?

16 Q. WHEN DO YOU THINK OF HER NOW?

17 A. I THINK OF HER ALL THE TIME, SIR.

18 MR. BAILEY: JUDGE, THAT'S ALL I
19 HAVE.

20 THE COURT: YOU MAY CROSS-EXAMINE.

21 MR. BELL: NO QUESTIONS OF THIS
22 WITNESS, YOUR HONOR.

23 THE COURT: THANK YOU, MRS.
24 GUILLIARD. YOU MAY STEP DOWN.

25 MR. BAILEY: YOUR HONOR, BEFORE I

KATHERINE GUILLIARD - DIRECT/MR. BAILEY

1 CALL THE NEXT WITNESS, I'D LIKE TO PUBLISH MR.
2 SIMMONS' RECORDS WHICH HAS BEEN PRE-MARKED.

3 THE COURT: MA'AM, IF YOU'LL MARK
4 THESE. THIS WILL BE STATE'S -- AND THIS IS?

5 MR. BAILEY: YOUR HONOR, THIS WILL
6 BE STATE'S ONE; AND THEN THERE'S A SEPARATE ONE FOR
7 STATE'S TWO. IT'S BEEN PRE-MARKED.

8 THE COURT: ALL RIGHT. BUT NOT TO
9 CONFUSE THEM, IT'S STATE'S ONE; AND THE WE'RE
10 PUTTING "P.P.?" IS THAT WHAT WE AGREED UPON ON THE
11 STICKER, MA'AM?

12 STATE'S EXHIBIT NO. 1 & 2

13 ADMITTED AS EVIDENCE

14 THE COURT REPORTER: YES, SIR.

15 THE COURT: GOOD DEAL. THANK YOU.

16 MR. BAILEY: MAY I PUBLISH THIS TO
17 THE JURY, YOUR HONOR?

18 THE COURT: YOU MAY.

19 (AT THIS TIME EVIDENCE IS PUBLISHED TO THE JURY.)

20 MR. BAILEY: OKAY. LADIES AND
21 GENTLEMEN, THIS IS A SUMMARY OF MR. SIMMONS' PRIOR
22 CRIMINAL CONVICTION; SEPTEMBER OF 1981, CONVICTION
23 FOR FAILURE TO OBEY A LAWFUL ORDER. THE SAME DATE,
24 DISORDERLY CONDUCT; THE SAME DAY TRESPASSING; MARCH
25 THE 23RD, 1991, MARCH 23, 1991 CONVICTED FOR

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 RECEIVING STOLEN GOODS. OCTOBER THE FIFTH, 1991,
2 CONVICTION FOR FAILURE TO RETURN RENTED OBJECTS.
3 JANUARY THE FIRST, 1997, CONVICTED OF CRIMINAL
4 DOMESTIC VIOLENCE; AND THEN THERE'S A NOVEMBER OF
5 1997 CONVICTION FOR SHOPLIFTING THAT'S ON THE
6 SECOND DOCUMENT. YOUR HONOR, THE STATE WOULD NEXT
7 CALL VIRGINIA WILSON.

8 - - - - -

9 WHEREUPON,

10 VIRGINIA WILSON, WHO AFTER BEING
11 FIRST DULY SWORN TO TELL THE TRUTH,
12 TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. BAILEY:

15 Q. MRS. WILSON, YOU TESTIFIED IN THE FIRST PART OF
16 THIS TRIAL THAT YOU WERE THE YOUNGEST OF THE
17 FAMILY; IS THAT CORRECT?

18 A. YES, SIR.

19 Q. AND MRS. BOYD WAS THE OLDEST?

20 A. YES, SIR; SHE WAS LIKE A MOTHER TO ME.

21 Q. SHE WAS ABOUT, WHAT, SEVENTEEN WHEN YOU WERE BORN?

22 A. YES, SIR.

23 Q. AND WHERE WERE Y'ALL BROUGHT UP?

24 A. WE WERE BROUGHT UP OUT IN THE COUNTRY, OUT FROM
25 RIDGEVILLE, BETWEEN RIDGEVILLE AND THE HOLLY HILL

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 AREA.

2 Q. WHAT TYPE WORK DID YOUR PARENTS DO?

3 A. THEY WERE FARMERS.

4 Q. YOU TESTIFIED IN THE FIRST PART OF THE TRIAL, I
5 BELIEVE, THAT YOUR HOUSE WAS ABOUT A QUARTER OF A
6 MILE FROM MRS. BOYD'S HOUSE?

7 A. YES, SIR.

8 Q. OKAY. AND I THINK YOU SAID THAT YOU VISITED HER
9 ONCE OR TWICE A WEEK; IS THAT CORRECT?

10 A. YES, SIR.

11 Q. OKAY.

12 A. AT LEAST TWICE A WEEK.

13 Q. MRS. WILSON, COULD YOU DESCRIBE TO THE JURY IN YOUR
14 OWN WORDS THE KIND OF PERSON YOUR SISTER WAS?

15 A. WELL, I THOUGHT OF HER AS A SOFT, GENTLE-LIKE
16 PERSON, HARD WORKING, WILLING TO SHARE,
17 PARTICULARLY IN MY CASE TO MAKE ME COMFORTABLE AS
18 POSSIBLE. AND A SELF-HELP PERSON BECAUSE AT THE
19 STAGE WHERE -- WELL, YOU KNOW, AFTER SHE HAD WORKED
20 A WHILE IN NEW YORK AND CAME BACK WITH MY MOTHER,
21 SHE WOULD -- IF SHE COULD GET A DAYS WORK OUT IN
22 THE COUNTRY LIKE PICKING BEANS OR SOMETHING LIKE
23 THAT, SHE WOULD TO HELP HERSELF RATHER THAN HAVING
24 TO DEPEND ON PEOPLE OR TO BOTHER ANYBODY.

25 Q. DID SHE WORK HARD ALL OF HER LIFE?

2 Q. OKAY. AND DURING HER LATER YEARS, DID SHE CONTINUE
3 TO WORK IN THE YARD AND TAKE CARE OF HER CHICKENS?

9 Q. WHAT DID SHE DO WITH THE THINGS SHE GREW IN THE
0 YARD?

14 Q. ALL RIGHT. AND SHE HAD CHICKENS THAT SHE CARED
15 FOR?

17 Q. WHAT DID SHE DO WITH THE CHICKENS?

20 Q. ALL RIGHT. WHAT TYPE OF THINGS DID Y'ALL DO
21 TOGETHER, YOU AND YOUR SISTER? THERE'S A SENIOR
22 CITIZENS CENTER, I BELIEVE, NEARBY; IS THERE NOT?

23 A. YES, SIR. THAT WAS IN PINE RIDGE. WE WENT THERE
24 -- WELL, SHE WENT JUST ABOUT PROBABLY MORE
25 FREQUENTLY THAN I DID AT THAT TIME. BUT WE WOULD

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 GO THERE, AND THEY WOULD HAVE ACTIVITIES FOR SENIOR
2 CITIZENS. AND SHE WOULD PARTICIPATE IN THOSE.

3 Q. AND IS THERE A HOMELESS SHELTER OUT IN THE
4 BROWNSVILLE NEIGHBORHOOD?

5 A. I THINK THERE IS. I DON'T KNOW -- YES, SIR.

6 Q. WOULD SHE TAKE EGGS THERE ON OCCASION FOR THE
7 PEOPLE THERE?

8 A. I THINK SHE DID.

9 Q. NOW DID YOUR SISTER HAVE ANY VICES? DID SHE DRINK,
10 SMOKE, OR ANYTHING OF THAT NATURE?

11 A. NO, SIR; NEVER.

12 Q. AND MRS. GUILLIARD SAID SHE HAD THE NICKNAME
13 BIRDIE. HOW DID SHE GET THAT NICKNAME?

14 A. YES, SIR. I ONLY LEARNED OF THAT RECENTLY BECAUSE
15 ONE TIME I COMMENT THAT THE BIRDIE WAS CROSSING THE
16 STREET. I WAS DRIVING; AND I MADE SOME COMMENT
17 THIS OLD BIRDIE. AND I STOPPED TO LET HER KNOW
18 THAT I WAS TALKING TO THE BIRD ON THE STREET. AND
19 I SAID, "WELL, HOW DID YOU GET THAT ANYWAY?" I
20 SAID "WHY DID THEY CALL YOU BIRDIE?" AND SHE SAID
21 THAT OUR FATHER STARTED THAT BECAUSE HER LEGS WERE
22 SO SPRAWNY AT THAT TIME. SHE HAD LIKE BIRD LEGS.

23 Q. AND SHE CARRIED THAT NICKNAME ALL HER LIFE?

24 A. YES, SIR.

25 Q. TO YOUR KNOWLEDGE, MRS. WILSON, DID YOUR SISTER

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 EVER HARM ANYBODY?

2 A. NO, SIR. IN MY OBSERVATION, SHE TRIED TO HELP
3 PEOPLE. SHE HELPED THE WHOLE FAMILY WHEN SHE WAS
4 WORKING AND IN NEED.

5 Q. DID YOU EVER HEAR HER CURSE OR RAISE HER VOICE?

6 A. NO, SIR.

7 Q. NOW YOU TOLD THE JURY ABOUT FINDING YOUR SISTER ON
8 THE KITCHEN FLOOR THAT SUNDAY MORNING TIED UP AND
9 BOUND AND GAGGED. AND YOU DID KNOW THAT SHE WAS
10 DEAD AT FIRST, DID YOU?

11 A. I DID NOT KNOW. I THINK I DID NOT KNOW. MAYBE I
12 WASN'T ACCEPTING IT. BUT NO, SIR; I DID NOT KNOW
13 IT AT THAT TIME.

14 Q. WHEN DID YOU REALIZE SHE WAS DEAD, MRS. WILSON?

15 A. WELL, IT PROBABLY TOOK ME A LONG WHILE. BUT I
16 FINALLY, WHEN I WAS SPEAKING TO THE GUY THAT WAS
17 TRYING TO RESUSCITATE HER -- WELL, HE JUST DID IT A
18 LITTLE WHILE AND CAME OVER THERE AND WAS TALKING TO
19 THE MAN, TO HIS HEAD MAN, I GUESS. AND I ATTEMPTED
20 TO ASK HIM -- YOU KNOW, I TOLD HIM WHY DON'T THEY
21 GO AHEAD WITH THE REVIVING. AND HE INDICATED THAT
22 SHE WAS -- YOU KNOW, THAT HE COULDN'T ANYTHING. SO
23 I URGED HIM TO JUST TRY, OR TO TRY AGAIN. AND THEN
24 HE TOLD ME -- HE SAID TO HIS LEADER THAT SHE WASN'T
25 EVEN TAKING AIR. AND THAT WAS DEVASTATING.

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 Q. COULD YOU TELL THE JURY, PLEASE MRS. WILSON, HOW
2 MRS. BOYD'S HAS AFFECTED YOUR LIFE?

3 A. IT OVERWHELMED ME. I'LL JUST PUT IT THAT WAY. IT
4 WAS OVERWHELMING; AND IT TOOK -- IT WAS REALITY. I
5 KNOW I HAD TO FACE REALITY, BUT IT TOOK ME SO LONG
6 TO REALLY ADJUST TO IT BECAUSE, LIKE I SAID BEFORE,
7 WHEN YOU GUYS OR SOMEBODY BRING ME BACK HOME, YOU
8 HAD A TENDENCY LIKE TO WAIT FOR ME TO GET IN. AND
9 I COULDN'T HELP BUT TRY AND VISUALIZE HER COMING
10 INTO HER HOUSE AND BEING SURPRISED BY SOMEONE, YOU
11 KNOW. AND IT AFFECTS ME BECAUSE A LOT OF TIMES
12 WHEN I GO OUT, IF THERE'S OCCASION THAT I'M OUT
13 AFTER DARK AND HAVE OCCASION TO CALL SOMEBODY OUT
14 AFTER DARK, THE FIRST THING I DID WHEN I GET IN WAS
15 TO CALL BECAUSE I USED TO TELL HER BASICALLY WHERE
16 I'M GOING WITH MY GARDEN GROUP OR SOMETHING. BUT
17 ONE OF FIRST THINGS I DID WAS TO CALL HER, YOU
18 KNOW, AND LET HER KNOW I'M HOME NOW. AND EVERY
19 TIME IF I'M OUT AND IT'S AFTER DARK AND I WALK IN
20 THE HOUSE, AND I THINK ABOUT THE IDEA THAT I
21 USUALLY CALL HER AND LET HER KNOW THAT HERE I AM.
22 AND THIS WAS A REALITY, I WOULDN'T BE ABLE TO CALL
23 HER TO TALK WITH HER.

24 Q. DO YOU LIVE ALONE, MRS. WILSON?

25 A. YES, SIR, I DO.

VIRGINIA WILSON - DIRECT/MR. BAILEY

1 Q. WHAT'S THE HARDEST THING ABOUT HER DEATH FOR YOU TO
2 DEAL WITH?

3 A. IT JUST SEEMS LIKE THE WHOLE THING IS HARD. BUT,
4 YOU KNOW, SOMETIMES YOU WANT TO RELAX AND GET IT
5 OUT OF YOUR MIND. YOU THINK ABOUT OTHER
6 ACTIVITIES. BUT IT JUST LOOKS LIKE I KEEP GOING
7 BACK TO THAT. I WAKE UP IN THE MORNING; BASICALLY
8 THAT'S THE FIRST THING I THINK ABOUT. THAT IS A
9 REALITY OF LIFE THAT IT HAPPENED.

10 STATE'S EXHIBIT NO. 9 (PENALTY)

11 MARKED FOR IDENTIFICATION

12 Q. I'M GOING TO HAND YOU WHAT'S BEEN MARKED STATE'S
13 PENALTY PHASE NUMBER NINE AND ASK YOU IF THIS IS A
14 PICTURE OF YOUR SISTER?

15 A. YES, SIR.

16 Q. ALL RIGHT. AND WHY WAS THAT PICTURE TAKEN?

17 A. THEY HAD -- THE FACILITY WAS COMING TO THE CHURCH,
18 AND WE WERE TAKING PICTURES OF THE WHOLE -- YOU
19 KNOW, INDIVIDUALLY AND IN VARIOUS GROUPS SUCH AS
20 HERS.

21 Q. THIS WAS TAKEN FOR THE CHURCH DIRECTORY?

22 A. YES, SIR.

23 MR. BAILEY: YOUR HONOR, MAY I
24 PUBLISH THIS TO THE JURY?

25 THE COURT: YOU MAY.

VIRGINIA WILSON - DIRECT/MR. BAILEY

STATE'S EXHIBIT NO. 9 (PENALTY)

ADMITTED AS EVIDENCE

THE COURT: THAT'S WITHOUT
OBJECTION, GENTLEMEN. WE PRE-MARKED EXHIBITS SO AS
TO MOVE THINGS ALONG; AND CERTAIN EXHIBITS ARE IN
EVIDENCE WITHOUT LAYING THE USUAL FOUNDATION.

MR. BAILEY: THAT'S ALL I HAVE OF
MRS. WILSON.

THE COURT: YOU MAY CROSS-EXAMINE IF
YOU PLEASE.

MR. BELL: NO QUESTIONS OF THIS
WITNESS, YOUR HONOR.

THE COURT: THANK YOU, MRS. WILSON.
YOU MAY STEP DOWN, PLEASE, MA'AM. CALL YOUR NEXT
WITNESS, PLEASE.

MR. BAILEY: THE STATE CALLS RON
MANCHESTER.

THE COURT: COME AROUND, PLEASE, MR.
MANCHESTER. PUT YOUR LEFT HAND ON THE BIBLE AND
RAISE YOUR RIGHT.

WHEREUPON,

RONALD BRUCE MANCHESTER, WHO AFTER
BEING FIRST DULY SWORN TO TELL THE
TRUTH, TESTIFIED AS FOLLOWS:

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

DIRECT EXAMINATION

BY MR. BAILEY:

Q. OFFICER MANCHESTER, YOU TESTIFIED IN THE FIRST
PHASE OF THIS TRIAL; IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU TESTIFIED THAT YOU WERE THE CRIME SCENE
TECHNICIAN WITH THE SUMMERVILLE POLICE DEPARTMENT,
AND THAT YOU WENT OUT TO THE HOME OF MRS. BOYD ON
SEPTEMBER FIRST, 1996; IS THAT CORRECT?

A. YES, SIR; THAT'S CORRECT.

Q. AND WHILE AT THAT HOME, DID YOU TAKE PHOTOGRAPHS OF
THE INTERIOR OF THE HOUSE?

A. YES, SIR, I DID.

Q. AND IS THAT CUSTOMARY POLICE PROCEDURE TO DO THAT
AS A CRIME SCENE TECHNICIAN?

A. YES, SIR.

Q. ALL RIGHT. AND DO SOME OF THOSE PHOTOGRAPHS
INCLUDE THE KITCHEN AREA WHERE MRS. BOYD'S BODY
WAS?

A. YES, SIR.

Q. ALL RIGHT. AND DID YOU ALSO TAKE A VIDEO TAPE OF
THE INSIDE OF MRS. BOYD'S HOUSE?

A. YES, SIR. I DID.

MR. BAILEY: YOUR HONOR, I HAVE
WHAT'S BEEN PRE-MARKED AS STATE'S THREE WHICH IS A

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

PORTION OF A VIDEO TAPE TAKEN BY MR. MANCHESTER.

AND I WOULD OFFER THAT AT THIS TIME.

THE COURT: ALL RIGHT. AND THAT'S
WITHOUT OBJECTION, GENTLEMEN?

MR. BELL: MAY I APPROACH THE BENCH,
YOUR HONOR?

THE COURT: CERTAINLY.

(AT THIS TIME, BENCH CONFERENCE IS HELD.)

THE COURT: ALL RIGHT. YOU MAY
PROCEED. STATE'S NUMBER THREE.

STATE'S EXHIBIT NO. 3 (PENALTY)

ADMITTED AS EVIDENCE

(AT THIS TIME, STATE'S EXHIBIT NUMBER THREE
(PENALTY PHASE) IS PLAYED FOR THE JURY.)

Q. OFFICER MANCHESTER, DOES THAT DEPICT THE FRONT
YARD; THE FRONT OF THE HOUSE?

A. YES, SIR, IT DOES.

Q. ALL RIGHT, SIR. IF YOU CAN JUST NARRATE FOR THE
JURY, PLEASE, WHAT THEY'RE SEEING THERE?

A. IT STARTED FROM ACTUALLY OUTSIDE THE CRIME SCENE.
AND I WAS PANNING IN FRONT OF THE RESIDENCE AND.
THEN I'M WALKING UP TO THE FRONT DOOR OF THE
RESIDENCE.

Q. CAN YOU DESCRIBE THE DOORS AND WINDOWS OF THE
RESIDENCE?

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

1 A. THEY'RE COVERED WITH THIS PROTECTED GUARD; AND AS
2 YOU'LL SEE, THE FRONT DOOR IS LOCKED AND CLOSED AND
3 SECURED. THERE'S A PATH TO THE RIGHT OF HOUSE THAT
4 GOES AROUND TO THE BACK. THAT'S THE BACK PORCH
5 AREA. (INDICATING.)

6 Q. IS THAT THE GENERAL AREA WHERE YOU FOUND THE
7 FOOTPRINT?

8 A. YES, SIR; RIGHT IN THAT DIRT AREA WHICH IS GOING
9 BACK TO THE CHICKEN COUPE BACK THERE. I ENTER THE
10 BACK DOOR. THIS IS THE BACK HALL-WAY AREA I WAS
11 TELLING YOU ABOUT WHERE THE KITCHEN TABLE SITS AT
12 AND TELEPHONE. AFTER ENTERING INTO THE HALLWAY TO
13 THE LEFT, IT OPENS INTO THE KITCHEN AREA WHICH IS
14 WHERE MRS. BOYD WAS FOUND. THIS VIDEOTAPE IS USED
15 IN CONJUNCTION WITH THE PHOTOGRAPHS AND THE SKETCH
16 FOR US TO VIEW LATER FOR ANY EVIDENCE.

17 Q. IS THAT THE STOCKING SHOWN IN THERE?

18 A. YES. THAT WAS USED TO TIE HER HANDS BEHIND HER
19 BACK. THAT'S THE BLACK ROPE LIKE MATERIAL THAT WAS
20 USED TO TIE HER FEET TOGETHER. THAT'S THE MATERIAL
21 THAT WAS USED TO CLEAN UP THE BLOOD AROUND THE FACE
22 AND STUFF BY THE VICTIM'S FAMILY.

23 Q. MR. MANCHESTER, DID YOU ALSO TAKE STILL PHOTOGRAPHS
24 OF MRS. BOYD'S BODY?

25 A. YES, SIR, I DID.

STATE'S EXHIBIT NO. 4 (PENALTY)

ADMITTED AS EVIDENCE

Q. I'M GOING TO HAND YOU A PHOTOGRAPH THAT'S BEEN
MARKED STATE'S PENALTY PHASE FOUR AND ASK IF THAT'S
A PHOTOGRAPH THAT YOU TOOK?

A. YES, SIR, IT IS.

Q. IS THAT AN ACCURATE DEPICTION OF MRS. BOYD'S BODY
AS YOU OBSERVED IT PRIOR TO THE BEING REMOVED FOR
THE AUTOPSY?

A. YES, SIR, IT IS.

MR. BAILEY: YOUR HONOR, I'D LIKE TO
PUBLISH THIS TO THE JURY.

THE COURT: YOU MAY DO SO.

STATE'S EXHIBIT NO. 5 (PENALTY)

ADMITTED AS EVIDENCE

Q. I SHOW YOU STATE'S FIVE, MR. MANCHESTER, AND ASK
YOU IF THAT'S AN ACCURATE DEPICTION OF WHAT YOU
FOUND?

A. YES, SIR, IT IS.

MR. BAILEY: MAY I PUBLISH THIS,
YOUR HONOR?

THE COURT: YOU MAY. ARE THERE ANY
OTHER PHOTOGRAPHS, BECAUSE IF THEY ARE, YOU COULD
BE PUBLISHING THEM.

MR. BAILEY: YES, SIR; THERE'S ONE

RONALD BRUCE MANCHESTER - DIRECT/MR. BAILEY

MORE, YOUR HONOR.

THE COURT: ONE MORE. BUT GO AHEAD
AND ASK HIM ABOUT THE NEXT ONE SO YOU CAN ASK THEM
TOGETHER. IT MIGHT SAVE A LITTLE TIME, PLEASE, IF
YOU DON'T MIND.

MR. BAILEY: YES, SIR.

Q. STATE'S SIX IS AN ACCURATE DEPICTION OF MRS. BOYD'S
AS YOU OBSERVED IT ON SEPTEMBER THE FIRST?

A. YES, SIR.

STATE'S EXHIBIT NO. 6 (PENALTY)

ADMITTED AS EVIDENCE

MR. BAILEY: YOUR HONOR, I HAVE
NOTHING FURTHER OF MR. MANCHESTER.

THE COURT: YOU MAY CROSS-EXAMINE IF
YOU PLEASE.

MR. BAILEY: NO QUESTIONS OF THIS
WITNESS, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY STEP
DOWN.

MR. BAILEY: YOUR HONOR, WE WOULD
CALL MRS. GLADYS SUDDETH.

THE COURT: PLEASE PUT YOUR LEFT
HAND ON THE BIBLE, PLEASE, MA'AM, AND RAISE YOUR
RIGHT.

- - - - -

GLADYS SUDDETH - DIRECT/MR. BAILEY

WHEREUPON,

GLADYS SUDDETH, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MRS. SUDDETH, TELL THE JURY WHERE YOU LIVE.

A. I LIVE AT [REDACTED] IN SUMMERVILLE, SOUTH
CAROLINA.

Q. DID YOU KNOW LILLY BELL BOYD?

A. YES, I DID.

Q. ALL RIGHT. HOW LONG DID YOU KNOW MRS. BOYD?

A. I GUESS IT WOULD BE AROUND TWENTY-FIVE YEARS
BECAUSE IT WAS BACK IN THE SEVENTIES.

Q. HOW DID Y'ALL MEET?

A. WELL, I USED TO SEE HER COMING TO CHURCH, BUT I WAS
NOT CLOSE TO HER, AND WE HAD A BIBLE CLASS. MR.
SMITH WAS TEACHING WHAT THE BIBLE TEACH; AND HE
GAVE US AN ASSIGNMENT TO DO. AND IN COMING TO THE
CLASS, SHE KNEW ALL THE BIBLE; THE BOOKS---

Q. LET ME INTERRUPT YOU JUST A SECOND.

A. SORRY.

Q. I JUST WANTED TO ESTABLISH WHERE Y'ALL MET.

A. OH; AT A BIBLE CLASS.

Q. OKAY. DID YOU EVER VISIT WITH MRS. BOYD IN HER

GLADYS SUDDETH - DIRECT/MR. BAILEY

1 HOME?

2 A. YES, SIR, I DID.

3 Q. AND COULD YOU DESCRIBE MRS. BOYD'S YARD?

4 A. YES, SIR. WHEN I VISITED HER, SHE HAD ALL THESE --
5 FIRST OF ALL SHE HAD THESE RARE VEGETABLES LIKE
6 BROCCOLI AND ASPARAGUS AND CAULIFLOWER AND BRUSSEL
7 SPOUTS AND SOME OTHERS; PURPLE LOOKING THINGS THAT
8 I WAS NOT ACCUSTOMED TO GROWING HERE. AND THEN SHE
9 HAD BANANA TREES, AND SHE HAD PEAR TREES, AND SHE
10 HAD CORN AND SUGAR PEAS AND ALSO A STALK OF COTTON
11 THAT SHE GREW IN THE BACK YARD. AND THEN SHE TOOK
12 ME AROUND TO THE FRONT YARD; AND SHE HAD ALL THESE
13 RARE STRAWBERRIES AND DIFFERENT FLOWERS.

14 Q. ALL RIGHT. DO YOU DO ANY GARDENING YOURSELF?

15 A. YES, I DO. I'M A VERY FLOWER AND VEGETABLE
16 PERSON. I DO A LOT OF FLOWERS.

17 Q. HAD YOU SEEN THE KIND OF VEGETATION AND FLOWERS AND
18 THINGS THAT MRS. BOYD HAD GROWN BEFORE?

19 A. NO. A LOT OF THEM I DID SEE BEFORE. BUT
20 AFTERWARDS I SAW SOME; BUT NOT BEFORE.

21 Q. DID SHE TAKE PRIDE IN WHAT SHE GREW IN HER YARD?

22 A. YES, SHE DID.

23 Q. THE VEGETABLES THAT SHE GREW IN THE YARD, WHAT DID
24 SHE DO WITH THEM?

25 A. I THINK SHE CANNED SOME; AND THEN SHE -- SHE SHARED

GLADYS SUDDETH - DIRECT/MR. BAILEY

1 SOME WITH HER FRIENDS AND NEIGHBORS. I KNOW SHE
2 SHARED SOME BANANAS WITH ME.

3 Q. DID YOU VISIT WITH MRS. BOYD IN HER HOUSE?

4 A. YES, I DID.

5 Q. OKAY. COULD YOU TELL THE JURY HOW THOSE VISITS
6 WENT; WHAT Y'ALL DID TOGETHER?

7 A. WELL, SHE INVITED ME IN. AND I SAT DOWN. AND SHE
8 HAD ONE OF THESE -- I GUESS YOU WOULD CALL IT AN
9 OLD TIME SLIDE -- MOVIE SLIDES. IT'S A GADGET THAT
10 YOU PUT UP HERE, AND THEN YOU PUT THE PICTURES IN
11 THE SIDE AND YOU WORK IT AND IT COMES OVER AND IT
12 MAGNIFIES THE PICTURES. AND I THINK IT HAD A LOT
13 OF RELIGIOUS PICTURES. AND IN REVIEWING THESE
14 PICTURES; AND THEN SHE SERVED ME PEPSI COLA AND
15 COOKIES. AND SHE WAS VERY, YOU KNOW, INVITATING --
16 OR; I CAN'T REMEMBER THE WORD.

17 Q. ALL RIGHT. SHE WAS A GOOD HOSTESS?

18 A. YES, SHE WAS A VERY GOOD HOSTESS. AND I WAS
19 SURPRISED BECAUSE SHE WAS VERY QUIET. SHE DIDN'T
20 TALK VERY MUCH.

21 Q. COULD YOU DESCRIBE HER PERSONALITY OTHER THAN BEING
22 A VERY QUIET, RESERVED PERSON? COULD YOU TELL THE
23 JURY WHAT IT WAS ABOUT HER THAT ATTRACTED HER TO
24 YOU?

25 A. WELL, HER QUIETNESS AND WHAT SHE KNEW ABOUT THE

GLADYS SUDDETH - DIRECT/MR. BAILEY

1 BIBLE.

2 Q. WELL, I'M SORRY. JUST---

3 A. THAT'S ALL RIGHT. HER QUIET MANNERISM. SHE WAS
4 VERY QUIET.

5 Q. ALL RIGHT. AND DID YOU HAVE AN OCCASION WHERE YOU
6 HAD A FIRE OUT AT YOUR HOUSE AT ONE TIME?

7 A. YES, SIR, I DID. I HAD A FIRE. AND ONE DAY SHE
8 CAME UP TO MY HOUSE. SHE WAS DRIVING A CAR;
9 DRIVING A CAR SHE BOUGHT. AND SHE TURNED AROUND.
10 AND SHE SAID "COME OUT HERE; I'VE GOT SOMETHING FOR
11 YOU." AND SHE GAVE ME SOME PILLOWCASES. AND SHE
12 SAID "I'M NOT COMING IN, I HAVE TO GO." SO SHE
13 LEFT, AND SHE WENT. AND SHE GAVE ME THESE
14 PILLOWCASES.

15 Q. MRS. SUDDETH, DO YOU RECALL WHEN THE LAST TIME IT
16 WAS THAT YOU TALKED TO MRS. BOYD?

17 A. I TALKED TO HER, I THINK IT WAS THAT THURSDAY. I'M
18 NOT SURE IF IT WAS THAT THURSDAY OR THAT FRIDAY
19 BEFORE SHE, YOU KNOW, THIS ACCIDENT HAPPENED.

20 Q. AND DID SHE CALL YOU, OR DID YOU CALL HER?

21 A. I THINK I CALLED HER BECAUSE I HAD A HABIT OF
22 CALLING HER, ESPECIALLY IN THE WINTER TIME TO SEE
23 IF SHE WAS ALL RIGHT.

24 Q. ALL RIGHT. AND THAT SUNDAY DID YOU ATTEND CHURCH,
25 SEPTEMBER THE FIRST?

GLADYS SUDDETH - DIRECT/MR. BAILEY

1 A. YES, I DID. I WENT TO SUNDAY SCHOOL AND CHURCH.

2 Q. DID YOU MISS HER AT CHURCH THAT DAY?

3 A. SHE WAS NOT THERE. AND I THOUGHT TO MYSELF; I
4 SAID, "WELL, IT'S A STRANGE THING; SHE'S ALWAYS
5 HERE," YOU KNOW.

6 Q. HOW DID YOU FIND OUT THAT MRS. BOYD HAD BEEN
7 MURDERED IN HER OWN HOME?

8 A. WELL, WHEN I WENT HOME, ONE OF THE CHURCH MEMBERS
9 CALLED ME. AND SHE ASKED ME "DID YOU HEAR ABOUT
10 MRS. LILLY BELL?" I SAID, "NO." SHE SAID SHE HAD
11 BEEN MURDERED. I SAID I COULDN'T IMAGINE THAT SHE
12 HAD BEEN MURDERED BECAUSE SHE WASN'T AN OUTGOING
13 PERSON. I COULDN'T IMAGINE HOW SHE WOULD BE
14 MURDERED. SO I WAS STUNNED LIKE; SHOCKED. SO I
15 STARTED GETTING DRESSED REAL FAST AND RAN OUT TO
16 WHERE HER HOUSE WAS, YOU KNOW.

17 Q. ALL RIGHT. AND COULD YOU TELL THE JURY IF MRS.
18 BOYD'S DEATH HAS AFFECTED THE WAY YOU'VE LIVED
19 SINCE THEN?

20 A. WELL, IT MADE ME BE VERY PRECAUTIOUS BECAUSE IF I
21 WENT TO CHURCH AND IT WAS DARK BEFORE I GOT BACK OR
22 LATE, I WOULD HAVE ONE OF MY NEPHEWS OR SOMEBODY
23 COME INSIDE WITH ME. AND I WOULD LOOK UNDER ALL
24 THE BEDS AND IN ALL THE CLOSETS. AND THEN I WOULD
25 LET THEM OUT AND GO BACK TO BED.

GLADYS SUDDETH - DIRECT/MR. BAILEY

1 Q. MRS. SUDDETH, DID YOU SPEAK AT MRS. BOYD'S SERVICE?

2 A. YES. I ASKED THE FAMILY; I SAID, "IS THERE
3 ANYTHING I CAN DO" BECAUSE SHE WAS MY GOOD FRIEND.
4 AND THEY SAID "WELL, YOU CAN GIVE REMARKS AT THE
5 FUNERAL." AND THAT WAS WHAT I DID. I GAVE REMARKS
6 TELLING WHAT I JUST TOLD THE COURT.

7 Q. ALL RIGHT. AND DO YOU MISS HER NOW?

8 A. YES, I DO. I MISS HER WHEN I'M GOING TO CHURCH,
9 COMING OUT THAT ROAD SHE WOULD BE COMING WALKING,
10 COMING TO CHURCH. AND WHEN I GET THERE, YOU KNOW,
11 SHE'S NOT IN HER SEAT.

12 Q. MRS. SUDDETH, THAT'S ALL I HAVE. THANK YOU VERY
13 MUCH.

14 THE COURT: YOU MAY CROSS.

15 MR. BELL: NO QUESTIONS OF THIS
16 WITNESS, YOUR HONOR.

17 THE COURT: THANK YOU, MA'AM. YOU
18 MAY STEP DOWN, PLEASE.

19 MRS. SUDDETH: THANK YOU.

20 MR. BAILEY: WE CALL DR. NICHOLS.

21 - - - - -

22 WHEREUPON,

23 CLAY ALLEN NICHOLS, M.D., WHO AFTER
24 BEING FIRST DULY SWORN TO TELL THE
25 TRUTH, TESTIFIED AS FOLLOWS:

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

DIRECT EXAMINATION

BY MR. BAILEY:

Q. DR. NICHOLS, YOU TESTIFIED IN THE GUILT PHASE OF THIS TRIAL THAT YOU CONDUCTED THE AUTOPSY OF MRS. BOYD ON SEPTEMBER THE SECOND, 1996; IS THAT CORRECT?

A. THAT'S CORRECT; YES, SIR.

Q. ALL RIGHT, SIR. AND I BELIEVE YOU ALSO TESTIFIED THAT IT WAS A NORMAL PROCEDURE IN AN AUTOPSY TO TAKE PHOTOGRAPHS OF THE BODY; IS THAT CORRECT?

A. YES, IT IS.

Q. ALL RIGHT, SIR. AND WOULD REFERRING TO THESE PHOTOGRAPHS BE OF ASSISTANCE TO YOU IN EXPLAINING THE TESTIMONY HERE TODAY?

A. YES, IT WOULD.

Q. ALL RIGHT, SIR. I'M GOING TO HAND YOU TWO PHOTOGRAPHS AND ASK IF YOU CAN IDENTIFY THESE AS BEING PHOTOGRAPHS THAT WERE TAKEN BY YOU IN YOUR PRESENCE AT THE AUTOPSY---

MR. BAILEY: THIS IS STATE'S SEVEN AND EIGHT, YOUR HONOR.

STATE'S EXHIBIT NO. 7 & 8

ADMITTED AS EVIDENCE

A. YES, SIR.

MR. BAILEY: YOUR HONOR, MAY I

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

PUBLISH THESE?

THE COURT: LET THEM LOOK AT THEM
FIRST. WHAT WAS THE DATE OF THE PHOTOGRAPHS,
PLEASE?

DR. NICHOLS: IT WAS THE DAY OF THE
AUTOPSY, SIR.

THE COURT: WHICH WAS?

DR. NICHOLS: SEPTEMBER THE SECOND.

THE COURT: THANK YOU.

Q. I'M GOING TO HAND THESE TO MR. BELL -- FIRST OF ALL
STATE'S EIGHT -- AND ASK HIM TO PUT THOSE ON
PROJECTOR.

THE COURT: I'M SORRY. REPEAT THAT.
YOU'RE GOING TO HAND WHAT TO MR. BELL?

MR. BAILEY: STATE'S EIGHT TO PUT ON
THE PROJECTOR. AND I WAS GOING TO ASK DR. NICHOLS
SOME QUESTIONS REGARDING THE PHOTOGRAPHS.

THE COURT: ALL RIGHT.

Q. IN REGARD TO THAT PHOTOGRAPH, DOCTOR; IF YOU COULD
REFER TO STATE'S EIGHT UP THERE. YOU TESTIFIED
PREVIOUSLY ABOUT BLOWS TO MRS. BOYD'S HEAD. DOES
THAT PICTURE DEPICT THE AREA WHERE THOSE BLOWS WERE
RECEIVED?

A. YES, IT DOES. WOULD IT BE POSSIBLE FOR ME TO STAND
IN FRONT OF THIS MONITOR?

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 Q. YES, SIR.

2 A. THIS DEPICTS A FACIAL VIEW OR A STANDARD MUG SHOT
3 THAT WAS TAKEN DURING THE AUTOPSY THAT SHOWS
4 EXTENSIVE INJURY TO BOTH THE RIGHT SIDE OF THE FACE
5 WHERE THE EYES ARE BLACKENED IN THIS PARTICULAR
6 PHOTOGRAPH. YOU CAN SEE MASSIVE SWELLING OVER HERE
7 ON THE LEFT CHEEK. THE LEFT CHEEK HAS BEEN
8 LACERATED. AND ALTHOUGH DIFFICULT TO SEE BECAUSE
9 OF THE SHADOWS OR THE COLORATION OF THE SKIN, THERE
10 IS A LARGE PIECE OF SKIN ESSENTIALLY ON THE RIGHT
11 CHEEK BEHIND THE RIGHT EAR, ALL THE WAY OUT TO THE
12 RIGHT SIDE OF THE CHIN. AND I THINK FURTHER, IF
13 YOU TILT IT 90 DEGREES TO THE RIGHT, YOU CAN SEE
14 THAT THERE IS MASSIVE DISTORTION TO THE LEFT SIDE
15 OF THE FACE DUE TO THE INJURY.

16 Q. AND IF YOU CAN, USING THAT PHOTOGRAPH JUST TO
17 DEMONSTRATE -- OF COURSE IT DOESN'T SHOW IT -- BUT
18 THE LEVEL OF THE SUBDURAL SUBARACHNOID BLEEDING
19 THAT YOU TESTIFIED TO IN THE GUILT PHASE. WHERE
20 WOULD THAT BE?

21 A. THAT WOULD BE UNDERNEATH HER SKULL AREA. THE
22 SUBDURAL HEMORRHAGE WAS ON BOTH SIDES AS WELL AS
23 THE TOP OF HER HEAD. AND SUBDURAL HEMORRHAGE WAS
24 LOCATED UNDERNEATH HER SKULL.

25 Q. ALL RIGHT, SIR. AND YOU TESTIFIED OR TOUCHED ON

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 THIS, I BELIEVE, IN THE GUILT PHASE. BUT IS THERE
2 A WAY THAT YOU CAN TELL WHETHER OR NOT SHE WAS
3 ALIVE WHEN SHE RECEIVED THOSE BLOWS?

4 A. YES; SHE WAS ALIVE. IN ORDER FOR HEMORRHAGE TO BE
5 THERE, THE PERSON HAD TO HAVE A BEATING HEART AND A
6 BLOOD PRESSURE. SO SHE WAS ALIVE WHEN SHE RECEIVED
7 THESE BLOWS.

8 Q. ALL RIGHT, SIR. AND ASSUMING THAT SHE WAS
9 CONSCIOUS WHEN SHE RECEIVED THOSE BLOWS, DO YOU
10 HAVE AN OPINION TO A REASONABLE DEGREE OF MEDICAL
11 CERTAINTY AS TO WHETHER OR NOT THOSE BLOWS WOULD
12 HAVE BEEN PAINFUL?

13 A. YES. THEY WOULD BE PAINFUL; VERY PAINFUL.

14 Q. ALL RIGHT, SIR. AND CAN YOU CHARACTERIZE THE
15 DEGREE OF PAIN THAT THOSE TYPE BLOWS WOULD CAUSE A
16 PERSON TO SUFFER?

17 A. BASICALLY ON A SCALE OF ONE TO TEN WITH ONE BEING
18 LESS PAINFUL, TEN MORE PAINFUL; THESE BLOWS WOULD
19 BE APPROXIMATELY SEVEN TO EIGHT.

20 Q. NOW I BELIEVE YOU TESTIFIED THAT YOU WENT TO THE
21 ACTUAL CRIME SCENE. DID YOU OBSERVE MRS. BOYD'S
22 BODY ON THE FLOOR OF THE KITCHEN THE PREVIOUS DAY?

23 A. YES, I DID.

24 Q. ALL RIGHT, SIR. I'M GOING TO PUT STATE'S FOUR ON
25 THE PROJECTOR WHICH WAS TESTIFIED AS BEING TAKEN BY

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 MR. MANCHESTER AT THE CRIME SCENE AND ASK WHETHER
2 OR NOT THAT ACCURATELY DEPICTS WHAT YOU OBSERVED
3 WHEN YOU WERE IN THE KITCHEN AREA?

4 A. YES, IT DOES.

5 Q. ALL RIGHT, SIR. NOW WITH RESPECT TO THE DAMAGE TO
6 MRS. BOYD'S RIB CAGE USING THIS PHOTOGRAPH, COULD
7 YOU DEMONSTRATE, PLEASE, TO THE JURY WHERE THE
8 FRACTURED RIBS WERE?

9 A. TO GO BACK AND REFRESH THE JURY'S MEMORY; THE RIGHT
10 RIBS TWO THROUGH SEVEN WERE FRACTURED ON THE
11 ANTERIOR ASPECT. AND THAT WOULD THAT BE RIGHT
12 ALONG THIS AREA HERE. (INDICATING.) THE FIRST RIB
13 WOULD BE RIGHT BELOW THE COLLAR BONE BEING DOWN IN
14 THIS AREA; FROM HERE ALL THE WAY TO APPROXIMATELY
15 THE LOWER MID CHEST AREA. IN ADDITION LEFT RIBS
16 TWO THROUGH SIX WERE FOUND FRACTURED ALSO ON THE
17 ANTERIOR ASPECT. THAT WOULD ROUGHLY IN THE SAME
18 LEVEL AS THE RIGHT RIBS ONLY ON THE LEFT SIDE. AND
19 LEFT RIBS FIVE THROUGH EIGHT WHICH ARE NOT
20 VISUALIZED IN THIS PHOTOGRAPH WERE ALSO FRACTURED.
21 AND THOSE WOULD BE APPROXIMATELY FROM THE MID CHEST
22 DOWN TO THE LOWER CHEST AREA AS WELL ON THE LATERAL
23 OR SIDE ASPECT.

24 Q. WAS THERE HEMORRHAGING IN THAT AREA ALSO?

25 A. YES.

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 Q. DOES THAT INDICATE THAT SHE WAS ALIVE WHEN THOSE
2 FOURTEEN RIBS WERE FRACTURED?

3 A. YES, SIR.

4 Q. ALL RIGHT, SIR. AND ASSUMING AGAIN THAT SHE WAS
5 CONSCIOUS WHEN THOSE RIBS WERE FRACTURED, WOULD
6 THAT HAVE BEEN PAINFUL?

7 A. YES, SIR. NOT ONLY WOULD THAT BE PAINFUL WHEN THE
8 RIBS WERE FRACTURED, BUT EVERY TIME SHE, MRS. BOYD,
9 TOOK A DEEP BREATH AFTER THAT, IT WOULD ALSO CAUSE
10 SEVERE PAIN. ALSO DURING HER SEXUAL ASSAULT, EVERY
11 THRUST OF MR. SIMMONS' PENIS IN HER VAGINA WOULD
12 CAUSE A SIMILAR TYPE OF PAIN.

13 Q. ALL RIGHT, SIR. I'M GOING TO PUT STATE'S SEVEN UP
14 HERE. YOU HAD TESTIFIED IN THE GUILT PHASE THAT
15 MRS. BOYD'S HYOID BONE WAS FRACTURED?

16 A. YES, SIR.

17 Q. WOULD YOU SHOW THE LOCATION OF THE HYOID BONE ON
18 THERE?

19 A. THE HYOID BONE WOULD BE RIGHT BELOW THE CHIN AT THE
20 UPPER PART OF THE NECK. AND ONCE AGAIN, IT IS
21 EASILY PALPATED. IF YOU LOCATE THE ADAM'S APPLE;
22 GO ABOVE THAT AND YOU'LL FEEL A HORSESHOE SHAPED
23 BONE. RIGHT ABOVE THAT, THAT'S THE HYOID BONE.

24 Q. ALL RIGHT, SIR. AND, AGAIN, WHAT WAS YOUR
25 TESTIMONY IN REGARD TO THE CONDITION OF THE MUSCLES

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 AROUND THE NECK AREA?

2 A. THE MUSCLES THEMSELVES WERE HEMORRHAGIC MEANING
3 THAT SHE HAD BLOOD PRESSURE AND SHE WAS ALIVE.

4 Q. AND YOU TESTIFIED THAT THE COMBINATION OF THE
5 FRACTURED HYOID BONE, THE HEMORRHAGING TO THE
6 MUSCLES, AND THE PETECHIAL HEMORRHAGING TO THE
7 MUSCLES, AND THE PETECHIAL HEMORRHAGING INDICATED
8 THAT SHE WAS MANUALLY STRANGLED; IS THAT CORRECT,
9 SIR?

10 A. YES, SIR; THAT IS CORRECT.

11 Q. ALL RIGHT, SIR. AGAIN, THE HEMORRHAGING WOULD
12 INDICATE THAT SHE WAS ALIVE AT THE TIME THAT FORCE
13 WAS APPLIED TO HER NECK?

14 A. YES, SIR.

15 Q. ALL RIGHT, SIR. DOCTOR, DO YOU HAVE AN OPINION TO
16 A REASONABLE DEGREE OF MEDICAL CERTAINTY AS TO HOW
17 LONG IT WOULD TAKE SOMEBODY, OR A RANGE IN TIME, TO
18 LOSE CONSCIOUSNESS WHEN THEY'RE MANUALLY STRANGLED
19 IN THAT FASHION?

20 A. IN ORDER TO LOSE CONSCIOUSNESS, THE BLOOD WOULD
21 HAVE TO BE DEPRIVED OF OXYGEN FOR A SUFFICIENT
22 PERIOD OF TIME WHERE THE BRAIN WOULD BECOME
23 DEOXYGENATED, AND SHE WOULD LOSS CONSCIOUSNESS
24 BECAUSE THE BRAIN HAS TO RECEIVE OXYGEN. THAT
25 COULD HAPPEN ANYWHERE AS QUICKLY AS TEN TO FIFTEEN

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

SECONDS ON THE INSIDE; A MAXIMUM OF APPROXIMATELY A
MINUTE IN THIS PARTICULAR CASE.

Q. AND UP UNTIL THE TIME THAT SHE LOST CONSCIOUSNESS,
WOULD THAT HAVE BEEN A PAINFUL EXPERIENCE?

A. OH, YES; VERY PAINFUL. ONCE AGAIN, I THINK THE
JURY CAN GET AN IDEA OF HOW PAINFUL THAT WOULD BE
JUST BY GENERAL PRESSURE ON THE HYOID BONE. IT
ELICITS A VERY PAINFUL DISCOMFORT LET ALONE THE
TYPE OF PRESSURE NECESSARY TO FRACTURE THE HYOID
BONE.

Q. ALL RIGHT, SIR. WOULD YOU CHARACTERIZE OR QUANTIFY
THE DEGREE OF PAIN THAT WOULD BE ASSOCIATED WITH
THE FRACTURED HYOID BONE?

A. THAT WOULD BE EXQUISITELY PAINFUL; A NINE TO A TEN.

Q. NOW -- DOCTOR, YOU CAN HAVE A SEAT. (AT THIS TIME
WITNESS RETURNS TO WITNESS STAND.) IN THE GUILT
PHASE, DOCTOR, YOU TESTIFIED TO HEMORRHAGING IN THE
VAGINAL CAVITY?

A. YES, SIR.

Q. IS THAT CORRECT, SIR?

A. YES, SIR.

Q. AND YOU TESTIFIED, I BELIEVE ACCORDING TO MY NOTES,
THAT THE HEMORRHAGING WAS AN EXAMPLE OF FORCIBLE
SEX; IS THAT CORRECT?

A. YES, SIR.

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

- 1 Q. ALL RIGHT, SIR. AND AGAIN, BASED ON THE FACT THAT
2 YOU OBSERVED HEMORRHAGING, CAN YOU STATE TO A
3 REASONABLE DEGREE OF MEDICAL CERTAINTY WHETHER OR
4 NOT IN YOUR OPINION MRS. BOYD WAS ALIVE AT THE TIME
5 SHE WAS SEXUALLY ASSAULTED?
- 6 A. OH, YES. SHE WAS ALIVE DURING THE SEXUAL ASSAULT.
- 7 Q. ALL RIGHT, SIR. HOW MANY AUTOPSIES HAVE YOU
8 CONDUCTED OF FEMALE VICTIMS THAT HAVE BEEN
9 SUBJECTED TO SEXUAL ASSAULT?
- 10 A. A COUPLE OF DOZEN. I CAN'T GIVE YOU AN EXACT
11 FIGURE.
- 12 Q. ALL RIGHT, SIR. AND IN TERMS OF A DEGREE, THE
13 AMOUNT AND LOCATION OF THE -- LET ME WITHDRAW THAT
14 AND ASK YOU; WHAT PORTION OF THE VAGINAL CAVITY WAS
15 HEMORRHAGED?
- 16 A. APPROXIMATELY ONE-THIRD TO ONE-FOURTH OF THE TOTAL
17 VAGINAL CAVITY WAS HEMORRHAGIC.
- 18 Q. AND IN COMPARISON WITH THE OTHER SEXUAL ASSAULT
19 CASES WHERE VAGINAL DAMAGE WAS DONE, HOW DID THIS
20 COMPARE WITH THE OTHER ONES THAT YOU HAD SEEN?
- 21 A. THIS IS THE SECOND WORSE CASE OF VAGINAL TRAUMA I
22 HAVE EVER SEEN.
- 23 Q. ALL RIGHT, SIR. AND, DOCTOR, DO YOU HAVE AN
24 OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY
25 THAT THIS IS THE MOST PROBABLE CAUSE OF THE TYPE OF

CLAY ALLEN NICHOLS - DIRECT/MR. BAILEY

1 DAMAGE YOU OBSERVED FROM MRS. BOYD'S VAGINAL AREA?

2 A. I THINK PROBABLY, OTHER THAN THAT PENIS BEING
3 INSERTED THAT SOME SORT OF OTHER WERE OBJECT
4 BESIDES A PENIS WAS INSERTED IN HER VAGINA.

5 Q. DOCTOR, ASSUMING THAT MRS. BOYD WAS CONSCIOUS WHEN
6 SHE WAS SEXUALLY ASSAULTED; DO YOU HAVE AN OPINION
7 TO A REASONABLE DEGREE OF MEDICAL CERTAINTY ON
8 WHETHER OR NOT THAT WOULD HAVE BEEN PAINFUL?

9 A. OH, YES, SIR; THIS WOULD HAVE BEEN PAINFUL ALSO.

10 Q. HOW PAINFUL WOULD IT HAVE BEEN?

11 A. APPROXIMATELY A SEVEN TO AN EIGHT.

12 Q. AGAIN, YOU TESTIFIED THAT YOU HAD DONE VAGINAL AND
13 ORAL SWABS; IS THAT CORRECT, SIR?

14 A. YES, SIR.

15 Q. ALL RIGHT, SIR. AND YOU TESTIFIED ABOUT MARKERS
16 FOR THE PRESENCE OF SEMEN OR SPERM; IS THAT
17 CORRECT?

18 A. YES, SIR, I DID.

19 Q. AND THAT WAS ACID PHOSPHATASE?

20 A. YES, SIR.

21 Q. BASED ON THE ACID PHOSPHATASE LEVEL WITH RESPECT TO
22 THE ORAL SWABS; DO YOU HAVE AN OPINION OF WHETHER
23 OR NOT SEMEN WAS PRESENT?

24 A. YES; SEMEN WAS PRESENT ON THE ORAL SWAB.

25 Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE

JESSIE MAE WILSON - DIRECT/MR. BAILEY
FOR YOU.

THE COURT: CROSS?

MR. BELL: NO QUESTIONS FOR THIS
WITNESS, YOUR HONOR.

THE COURT: THANK YOU. IS THERE ANY
OBJECTION TO THIS DOCTOR BEING EXCUSED?

MR. BAILEY: NONE FROM THE STATE,
YOUR HONOR.

MR. BELL: NONE FROM THE DEFENSE,
YOUR HONOR.

THE COURT: WITHOUT OBJECTION. THANK
YOU.

MR. BAILEY: THE STATE WOULD NEXT
CALL JESSIE MAE WILSON.

THE COURT: COME AROUND, PLEASE,
JESSIE MAE WILSON. PUT YOUR LEFT HAND ON THE BIBLE
AND RAISE YOUR RIGHT.

WHEREUPON,

JESSIE MAE WILSON, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. MRS. WILSON. YOU WERE ALSO ONE OF LILLY BELL

JESSIE MAE WILSON - DIRECT/MR. BAILEY

1 BOYD'S SISTERS; IS THAT CORRECT?

2 A. YES, SIR, I AM.

3 Q. AND WHERE DO YOU LIVE?

4 A. AT [REDACTED] [REDACTED] [REDACTED].

5 Q. ALL RIGHT.

6 A. IN SUMMERVILLE, SOUTH CAROLINA.

7 Q. ALL RIGHT. AND HOW FAR FROM MRS. BOYD'S HOUSE IS
8 THAT ADDRESS?

9 A. I'D ESTIMATE ABOUT TWO MILES.

10 Q. AND AS FAR AS THE AGE OF THE DIFFERENT CHILDREN IN
11 YOUR FAMILY, WHERE ARE YOU?

12 A. I WAS THEIR NINTH.

13 Q. THEIR NINTH CHILD?

14 A. YES, SIR.

15 Q. AND THERE'S BEEN SOME TESTIMONY THAT YOUR FAMILY
16 GREW UP OUTSIDE OF RIDGEVILLE?

17 A. PARDON?

18 Q. YOU GREW UP IN RIDGEVILLE?

19 A. YES, SIR.

20 Q. AND WHEN WAS IT THE FAMILY MOVED TO SUMMERVILLE?

21 A. WELL, AFTER MY FATHER DIED, THEN MY MOTHER HAD
22 MOVED TO SUMMERVILLE.

23 Q. COULD YOU SPEAK UP JUST A LITTLE BIT, PLEASE?

24 A. I WOULD SAY ABOUT -- I DON'T KNOW WHAT YEAR. BUT
25 IT'S BEEN ABOUT, I GUESS, THIRTY YEARS.

JESSIE MAE WILSON - DIRECT/MR. BAILEY

1 Q. ALL RIGHT. HOW OFTEN DID YOU SEE MRS. BOYD DURING
2 HER LATER YEARS?

3 A. WELL, GENERALLY SOMETIMES I SEE HER ABOUT THREE OR
4 FOUR TIMES A WEEK BECAUSE WE USED TO GO TO THE
5 CENTER.

6 Q. OKAY. AND THAT'S THE SENIOR CITIZENS CENTER?

7 A. YES, SIR.

8 Q. WHAT KIND OF STUFF WOULD Y'ALL DO AT THE CENTER?

9 A. WELL, WE DID DIFFERENT THINGS. WE PLAYED -- WE DO
10 CRAFTS AND THEY HAVE A SINGING SESSION. AND THEY
11 DO SOME DIFFERENT LITTLE THINGS; PLAY DIFFERENT
12 GAMES AND THINGS LIKE THAT.

13 Q. ALL RIGHT. AND DID Y'ALL GO THERE TOGETHER TWO OR
14 THREE TIMES A WEEK; THREE OR FOUR TIMES A WEEK?

15 A. YES, WE DID.

16 Q. AND WHAT OTHER TYPES OF THINGS DID YOU AND YOUR
17 SISTER DO TOGETHER? DID Y'ALL ATTEND THE SAME
18 CHURCH?

19 A. WELL, WE GO TO THE SAME CHURCH; AND SOMETIMES WE DO
20 DIFFERENT THINGS ESPECIALLY.

21 Q. ALL RIGHT. WERE Y'ALL CLOSE, YOU AND MRS. BOYD?

22 A. WE WAS REASONABLY CLOSE; YES, SIR.

23 Q. CAN YOU DESCRIBE TO THE JURY IN YOUR OWN WORDS,
24 MRS. WILSON, THE KIND OF PERSON LILLY BELL BOYD
25 WAS?

JESSIE MAE WILSON - DIRECT/MR. BAILEY

1 A. WELL, SHE WAS A QUIET, LOVING PERSON. SHE WAS VERY
2 QUIET. SHE KEPT TO HERSELF A LOT. AND SHE WAS A
3 VERY HARD WORKING PERSON. SHE WORKED ALL HER
4 LIFE. SHE STARTED OFF WORKING LIKE ON THE FARM.
5 AND AFTER THAT, THEN SHE WOULD GO AND DO DOMESTIC
6 WORK AND HELP THE MOTHERING WITH THE REST OF US.
7 SHE DID A LOT OF WORKING OUT.

8 Q. SINCE SHE WAS THE OLDEST CHILD, SHE WOULD HELP OUT
9 A LOT WITH THE YOUNGER CHILDREN?

10 A. YES, SIR, SHE DID.

11 Q. WHEN WAS THE LAST TIME YOU SAW MRS. BOYD?

12 A. WELL, THE LAST TIME I SAW HER WAS THAT FRIDAY
13 BEFORE -- THE LAST FRIDAY OF SEPTEMBER, 1996.

14 Q. OKAY. AND WHAT DID Y'ALL DO THAT DAY? DID YOU DO
15 ANYTHING TOGETHER?

16 A. WELL, THAT WAS THE DAY WE WENT TO THE CENTER. AND
17 WE DID DIFFERENT THINGS THAT DAY. LIKE I THINK WE
18 HAD LIKE EXERCISING THAT DAY AND SINGING BECAUSE WE
19 USED TO HAVE -- THEY'D COME IN AND TEACH EXERCISE.
20 SO I THINK THAT'S WHAT WE DID THAT DAY.

21 Q. AND DID YOU HAVE PLANS TO SEE LILLY BELL AGAIN
22 AFTER THAT; SHORTLY AFTER THAT?

23 A. YES. AFTER WE WENT TO CHURCH THAT SUNDAY AND SHE
24 WASN'T THERE. AND WE HAD PLANNED ON GOING TO SEE
25 HER OR JUST TALK OR SOMETHING. AND I DIDN'T GET A

JESSIE MAE WILSON - DIRECT/MR. BAILEY

1 CHANCE TO TALK WITH HER. SO I SAID SHE WASN'T AT
2 CHURCH THAT SUNDAY. I SAID I'LL GO TO HER HOUSE
3 AFTER CHURCH. AND I PLANNED TO GO AFTER CHURCH IN
4 THE BEGINNING. AND AFTER SHE WASN'T AT CHURCH AND
5 I STARTED TO GO BY THERE RIGHT FROM CHURCH, THEN I
6 THOUGHT OTHERWISE AND DECIDED I WOULD GO HOME FIRST
7 AND GET RELAXED AND COMFORTABLE; THEN I WOULD GO
8 BACK AND SIT DOWN AND TALK WITH HER. BUT BY THE
9 TIME I GOT HOME GOOD, GETTING READY TO COME BACK
10 OVER THERE, MY SISTER, KATHERINE GUILLIARD, CALLED
11 ME AND SAID SOMEBODY HAD MURDERED HER. AND I JUST
12 GOT A HEADACHE. I GOT A TERRIBLE HEADACHE. AND I
13 FELT SO SHOCKING. I'VE NEVER BEEN SO SHOCKED IN MY
14 LIFE.

15 Q. DO YOU LIVE ALONE?

16 A. YES, SIR, I DO.

17 Q. OKAY. MRS. WILSON, HOW HAS YOUR SISTER'S DEATH
18 AFFECTED YOUR LIFE?

19 A. IT'S AFFECTED IT A WHOLE LOT ALL AROUND ME; THE
20 IDEA OF THE TERRIBLE WAY, THE AWFUL WAY THAT SHE
21 GOT KILLED. AND THEN IT MADE ME VERY CAUTIOUS OF
22 GOING OUT AT NIGHT AND COMING BACK IN. LIKE I
23 SAID, COMING BACK IN THE HOUSE AT NIGHTTIME BY
24 MYSELF. AND I USED TO HAVE SLIDING GLASS DOORS.
25 AND I'VE SHORTLY HAD THAT RE-DID OVER. THERE'S A

JESSIE MAE WILSON - DIRECT/MR. BAILEY

1 REGULAR DOOR PUT THERE INSTEAD OF A SLIDING GLASS
2 DOOR BECAUSE I WAS AFRAID OF THAT. AND I'M JUST
3 VERY TIMID NOW LOOKING AROUND AND SEEING WHAT
4 HAPPENED. AND I'M AFRAID TO GO OUT AT NIGHT AND
5 COME BACK IN THE NIGHTTIME.

6 Q. DO YOU THINK OF HER OFTEN NOW?

7 A. PARDON?

8 Q. DO YOU THINK OF OFTEN?

9 A. ALL THE TIME.

10 Q. ARE THERE ANY TIMES LIKE HOLIDAYS THAT ARE HARDER
11 THAN OTHER TIMES?

12 A. YES; MOSTLY THE HOLIDAYS. FOR A LONG TIME I WAS
13 STILL HOPING THAT I WOULD WOKE UP AND FIND IT
14 WASN'T TRUE, BUT THAT DIDN'T HAPPEN.

15 Q. YOU WISH IT WASN'T TRUE; AND THEN REALIZE THAT IT
16 WAS?

17 A. YES, SIR.

18 Q. IS IT GETTING ANY EASIER TO HANDLE AS TIME GOES ON?

19 A. WELL, SOMEWHAT, YOU KNOW; BUT SOMETIMES IT JUST
20 FEELS LIKE IT WILL NEVER LEAVE ME. BUT, YOU KNOW,
21 IT'S GETTING WHERE I'M USED TO IT. BUT IT'S HARD.
22 I DON'T KNOW. IT WILL PROBABLY WOULD GET A LITTLE
23 BETTER. BUT IT SEEMS TO ME LIKE I'M NEVER GOING TO
24 GET OVER IT.

25 Q. MRS. WILSON, THAT'S ALL I HAVE. THANK YOU.

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THE COURT: ANYTHING ON CROSS?

MR. BELL: NOTHING, YOUR HONOR.

THE COURT: NEXT WITNESS, GENTLEMEN?

MR. BAILEY: THE STATE RESTS, YOUR
HONOR.

THE COURT: ALL RIGHT. LADIES AND
GENTLEMEN, I THINK AT THIS TIME WE WILL TAKE A
RECESS. I'LL EXCUSE YOU TO GO TO YOUR ROOM.
AGAIN, YOU'RE NOT IN A POSTURE TO DELIBERATE AND
DISCUSS OR TO DECIDE THIS CASE. I'M GOING TO
CONFER WITH LT. EDWARDS. DO YOU LADIES AND
GENTLEMEN HAVE A PREFERENCE OF WHAT YOU WOULD LIKE
DO ABOUT LUNCH TODAY? IF THAT'S SOMETHING THAT
Y'ALL WOULD LIKE TO TALK ABOUT DURING THE RECESS,
PLEASE FEEL FREE TO DO SO. YOU MAY GO TO YOUR
ROOM.

(AT THIS TIME, JURY RETIRES TO JURY ROOM.)

THE COURT: PLEASE LET THE RECORD
REFLECT THAT IN REGARD TO CERTAIN EXHIBITS THAT THE
DEFENDANT OBJECTED BUT DID NOT WANT TO HAVE TO
OBJECT IN THE PRESENCE OF THE JURY AND BECAUSE OF
THE CONCERN THAT IF I EXCUSE THE JURY TO GO OUT,
THEY WOULD KNOW THAT YOU WERE OBJECTING; AND THAT'S
WHY I DIDN'T SEND THE JURY OUT AS YOU UNDERSTOOD
THAT TO BE. AND MAY I PLEASE NOW ASK THAT YOU NUNC

MOTIONS

1 PRO TUNC, NOW FOR THEN, PLACE YOUR OBJECTIONS ON
2 THE RECORD BECAUSE, MA'AM, THESE WERE
3 CONTEMPORANEOUS OBJECTIONS; THAT IS THEY WERE
4 INTERPOSED TIMELY SO PRIOR TO THE COURT RULING UPON
5 THEIR ADMISSIBILITY. AND THAT WAS MORE THAN ONE
6 THAT -- THERE WASN'T ANY USE TO HAVE A SIDE BAR ON
7 EACH OCCASION THAT YOU HAD THE OBJECTION. I WAS
8 AWARE OF THAT WHICH YOU WERE OBJECTING TO. AND
9 I'LL BE GLAD TO HEAR FROM YOU, MR. BELL OR MR.
10 THEOS.

11 MR. BELL: YOUR HONOR, I'LL START
12 OFF WITH AN OBJECTION TO THE VIDEO TAPE.

13 THE COURT: STATE'S THREE?

14 MR. BELL: YES, SIR. THAT IT WAS
15 UNNECESSARY FOR THE STATE TO SHOW ESTABLISHED FACTS
16 AND/OR CIRCUMSTANCES PERTAINING TO THE DEATH OF
17 MRS. BOYD AND TO THE AGGRAVATING CIRCUMSTANCES.
18 THEN EVEN AS WE WENT FURTHER, YOUR HONOR, WHEN THE
19 PHOTOGRAPHS CAME OUT THAT IT BECAME JUST CUMULATIVE
20 TO THE PHOTOGRAPHS THAT WERE ALREADY GOING TO BE
21 AND HAD BEEN SHOWN. AND JUST KIND POINTING OUT THE
22 -- WELL, THE TRAUMA TO THIS LADY -- SIMPLY TO
23 AROUSE PASSIONS OR THE PREJUDICE OF THE JURORS
24 BECAUSE IT JUST BECAME CUMULATIVE; AND THAT THERE
25 WAS NO PROBATIVE VALUE AT ALL IN ADDITION TO THE

MOTIONS

1 OTHER PHOTOGRAPHS. AND THIS JUST HAD NO PROBATIVE
2 VALUE AT ALL.

3 THE COURT: THANK YOU. AND, MADAM
4 COURT REPORTER, LET THE RECORD REFLECT THAT THAT
5 PERTAINS TO STATE'S NUMBER THREE, THE VIDEO;
6 STATE'S FOUR, THE STILL PHOTOS OF THE LADY, MRS.
7 BOYD BEFORE, HER BODY WAS MOVED ON AUGUST THE 31ST
8 OR THE EARLY MORNING OF SEPTEMBER THE FIRST.
9 STATE'S NUMBER FIVE AND SIX AGAIN WERE PHOTOS OF
10 THE SCENE WITH HER BODY THERE. AND THEN STATE'S
11 NUMBER SEVEN AND EIGHT, THE PHOTOS THAT WERE DONE
12 BY DR. NICHOLS AT THE TIME OF THE AUTOPSY ON
13 SEPTEMBER THE SECOND OF 1996. AND THE RECORD
14 SHOULD REFLECT THAT THE COURT DID OBSERVE EACH OF
15 THESE ITEMS TO REVIEW THEM TO SEE IF UNDER THE
16 CURRENT STATE OF THE CASE LAW; FOR EXAMPLE, ONE
17 CASE WAS REVERSED WHERE IT WAS ALLOWED IN THE
18 TESTIMONY THE VICTIM'S HEAD THAT HAD BEEN SAWED IN
19 HALF. DURING THE AUTOPSY THESE PHOTOS ONLY
20 DISPLAYED THAT WHICH EXISTED, NOT AS A RESULT OF
21 ANY -- PARTICULAR AS REGARDS NUMBER SEVEN AND
22 EIGHT, ANY MEDICAL PROCEDURES BY THE PATHOLOGIST
23 DURING THE AUTOPSY. AND FURTHER THAT THE COURT
24 DEEMED THESE VARIOUS ITEMS OF THREE THROUGH EIGHT
25 ADMISSIBLE, AND THAT THEIR RELEVANCE FAR OUTWEIGHS

MOTIONS

1 ANY UNDUE PREJUDICE ON THE PART OF THE DEFENDANT.
2 MR. BAILEY, I DON'T MEAN TO PRECLUDE YOUR ARGUMENT
3 IF YOU WANT TO ADDRESS THOSE ISSUES OR COMMENT
4 THEREUPON.

5 MR. BAILEY: YOUR HONOR, I'LL
6 ADDRESS THOSE IF THE COURT DEEMS IT NECESSARY.
7 OTHERWISE I WON'T.

8 THE COURT: I DON'T DEEM IT
9 NECESSARY. I DON'T MEAN TO BE PREMATURE BY NOT
10 ASKING YOU. I OVERLOOKED THAT. BUT I HAD ALREADY
11 HEARD THE ARGUMENTS PREVIOUSLY IN CHAMBERS AND AT
12 THE SIDE BENCH. AND I KNEW OF THE STATE'S
13 POSITION. BUT THE RECORD SHOULD REFLECT THAT THE
14 COURT WAS AWARE OF THE CONTENTS OF THE VIDEO AND
15 THE PHOTOS PRIOR TO THE COURT RULING UPON THEIR
16 ADMISSIBILITY. SO ANYTHING OTHER OR FURTHER,
17 GENTLEMEN AT THIS TIME?

18 MR. BAILEY: NOT FROM THE STATE.

19 MR. BELL: NOT FROM THE DEFENSE,
20 YOUR HONOR.

21 THE COURT: ALL RIGHT, THEN. MR.
22 SIMMONS, WOULD YOU APPROACH THE BENCH, PLEASE; OR
23 EITHER JUST STAND? I DON'T KNOW THAT YOU NEED TO
24 APPROACH THE BENCH. MR. SIMMONS, LET ME PLEASE
25 ADVISE YOU AGAIN AS I ALREADY HAVE DURING THE GUILT

MOTIONS

1 PHASE OF THE TRIAL THAT AS A DEFENDANT IN THIS CASE
2 THAT YOU HAVE CERTAIN RIGHTS. AND OF COURSE ONE OF
3 THOSE RIGHTS IS THE FACT THAT YOU CANNOT BE FORCED
4 OR MADE TO TAKE THE WITNESS STAND IN THIS CASE IN
5 THIS PENALTY PHASE OF THE CASE. AND THE STATE HAS
6 NOW CONCLUDED ITS PRESENTATION IN THE PENALTY
7 PHASE. AND SO NOW YOU ARE AFFORDED THE OPPORTUNITY
8 TO PRESENT SUCH EVIDENCE AS YOU OR YOU ATTORNEY MAY
9 DEEM FIT AND APPROPRIATE BY WAY OF EXTENUATING OR
10 MITIGATING CIRCUMSTANCES OR OTHERWISE. AND DO YOU
11 UNDERSTAND THAT RIGHT TO TAKE THE WITNESS STAND?

12 MR. SIMMONS: YES, SIR.

13 THE COURT: NOW, MR. SIMMONS, IF YOU
14 DO NOT TAKE THE WITNESS STAND -- AND THAT'S YOUR
15 DECISION AFTER CONFERRING WITH YOUR LAWYERS. IT'S
16 NOT A DECISION THAT YOUR LAWYERS MAKE. BUT IT'S
17 ONE THAT YOU MUST MAKE AFTER TALKING WITH AND
18 COUNSELING WITH YOUR ATTORNEYS. AND IF YOU DECIDE
19 NOT TO TAKE THE WITNESS STAND, THE COURT WOULD
20 AGAIN CHARGE AS APPLICABLE LAW TO THE JURY JUST AS
21 I DID IN THE GUILT PHASE; AND I QUOTE "THE FACT
22 THAT A DEFENDANT DOES NOT TESTIFY IN HIS OWN BEHALF
23 CANNOT AND MUST NOT BE CONSIDERED AGAINST HIM AND
24 UNDER ANY CIRCUMSTANCES OR IN ANY MANNER
25 WHATSOEVER. THE FAILURE OF ANY DEFENDANT TO TAKE

MOTIONS

1 THE WITNESS STAND AND TESTIFY IN HIS OWN BEHALF
2 DOES NOT CREATE ANY INFERENCE FOR OR AGAINST HIM OR
3 HIS GUILT OR INNOCENCE IN THE JURY'S CHARGE, AND IT
4 MUST NOT PERMIT THAT FACT TO WEIGH IN THE SLIGHTEST
5 DEGREE AGAINST SUCH DEFENDANT, NOR SHOULD THIS FACT
6 ENTER INTO THE DISCUSSIONS OR DELIBERATIONS OF THE
7 JURY IN ANY MANNER." NOW, HAVE YOU UNDERSTOOD WHAT
8 I'VE JUST SAID?

9 MR. SIMMONS: YES, SIR.

10 THE COURT: AND IF YOU DO TAKE THE
11 WITNESS STAND, YOU WOULD BE GIVEN AN OATH OR
12 AFFIRMATION. AND YOUR LAWYER WOULD BE ALLOWED TO
13 QUESTION YOU. AND THEN THE STATE'S LAWYER WOULD BE
14 ABLE TO ASK YOU QUESTIONS ABOUT ANY MATTER THAT MAY
15 BE PERTINENT TO, RELEVANT, OR GERMANE, OR TOUCH
16 UPON THE ISSUES DURING THIS PENALTY PHASE OF THE
17 TRIAL. DO YOU UNDERSTAND THAT, MR. SIMMONS?

18 MR. SIMMONS: YES, SIR.

19 THE COURT: DO YOU HAVE ANY
20 QUESTIONS TO ASK OF THIS COURT REGARDING THE
21 EXPLANATION THAT I HAVE JUST GIVEN TO YOU AND OF
22 YOUR RIGHT TO OR NOT TO TESTIFY?

23 MR. SIMMONS: NO, SIR.

24 THE COURT: DO YOU HAVE ANY
25 QUESTIONS OF YOUR LAWYERS REGARDING THAT MATTER?

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MR. SIMMONS: NO, SIR.

THE COURT: I WILL NOT ASK YOU AT THIS TIME AS TO WHETHER OR NOT YOU WISH TO TESTIFY OR NOT. I WILL WAIT. WE'RE GOING TO TAKE A RECESS. AND I'LL GIVE YOU FURTHER TIMES TO THINK ABOUT IT AND TO TALK TO YOUR LAWYERS UNLESS YOU'VE MADE A DECISION AND WISH TO ADVISE THE COURT AT THIS TIME. YOU MAY; OR IF YOU WANT TO PONDER OR THINK ABOUT IT FURTHER, YOU MAY DO SO. NOW, MR. SIMMONS, WHILE THE JURY IS ABSENT FROM THE COURTROOM, MAY I PLEASE SIR EXPLAIN TO YOU ALSO THAT IN THE PENALTY PHASE OF THIS BIFURCATED TWO-PART MURDER TRIAL IN WHICH THE STATE SEEKS THE DEATH PENALTY, UNDER THE STATUTORY LAW PASSED BY THE LEGISLATURE, YOU AS THE DEFENDANT AS WELL AS YOUR ATTORNEYS ARE ALLOWED THE LAST ARGUMENT. THE STATE WILL BE REQUIRED TO OPEN. AND THEY WILL ONLY HAVE ONE ARGUMENT. THEN YOU AND/OR YOUR LAWYERS WOULD BE ALLOWED TO ARGUE TO THE JURY. I WANTED TO MAKE, SURE THAT YOU UNDERSTAND IF YOU WISH TO MAKE AN ARGUMENT TO THE JURY THAT YOU MAY DO SO AS WELL AS ANY ARGUMENT THAT YOUR LAWYERS WOULD MAKE. AND BOTH YOUR LAWYERS CAN ARGUE IF THEY LIKE. AND YOU CAN ARGUE. ALL THREE OF YOU CAN ARGUE TO THE JURY. DO YOU UNDERSTAND THAT?

MOTIONS

1 MR. SIMMONS: YES, SIR.

2 THE COURT: AND, AGAIN, I DO NOT
3 NEED TO HAVE AN ANSWER AT THIS TIME AS TO WHAT YOUR
4 PLEASURE MIGHT BE. BUT OBVIOUSLY MR. THEOS AND MR.
5 BELL, AS I CONFER PROCEDURALLY WITH THE ATTORNEYS
6 DURING RECESSES SO I CAN BE CONSIDERATE OF WHEN TO
7 FEED THE JURY AND WHAT TO EXPECT AND HOW LONG IT
8 WILL TAKE, I WOULD WAIT AND ASK Y'ALL THAT AT A
9 LATER TIME. BUT AT SUCH TIME, YOU KNOW, WE CAN
10 WAIT AND GET AN ANSWER TO THAT AFTER THE
11 DEFENDANT'S PHASE OF THE PENALTY PHASE IS
12 COMPLETED. I DON'T NEED TO KNOW THAT AT THIS TIME
13 EITHER. SO, GENTLEMEN, WOULD NOW BE AN APPROPRIATE
14 TIME TO PUT THE MOTIONS AND THE RULINGS IN THE
15 RECORD, OR DO Y'ALL PREFER TO WAIT UNTIL THE
16 COMPLETION OR AT ANOTHER TIME TO DO IT?

17 MR. BAILEY: YOUR HONOR, IT DOESN'T
18 MATTER TO ME WHEN WE DO IT.

19 THE COURT: IT DOESN'T MATTER TO ME
20 EITHER BECAUSE I'M SURE THAT Y'ALL ARE AWARE OF MY
21 RULINGS AND WILL NOT TRANSGRESS THEREUPON. YES,
22 SIR.

23 MR. THEOS: YOUR HONOR, DID YOU ALSO
24 WANT TO ALSO INSTRUCT MR. SIMMONS RELATED TO HIS
25 RIGHT TO PARTICIPATE IN THE OPENING STATEMENT AS WE

MOTIONS

DISCUSSED IN CHAMBERS?

THE COURT: YES. PLEASE, MR.

SIMMONS -- THANK YOU, MR. THEOS. I HAD A NOTE TO DO THAT. IN ADDITION TO YOUR RIGHT TO GIVE A CLOSING ARGUMENT, MR. SIMMONS, WE'RE GOING TO TAKE A RECESS NOW IN A FEW MINUTES. AND THEN WHEN WE START BACK -- YOUR LAWYER HAS NOT MADE AN OPENING STATEMENT YET TO THE JURY LIKE THE SOLICITOR DID. AND YOU ALSO HAVE THE PRIVILEGE OR OPPORTUNITY TO MAKE AN OPENING STATEMENT TO THE JURY AT THE BEGINNING OF YOUR EVIDENCE, BEFORE YOU PUT UP EVIDENCE, AND DURING THIS PENALTY PHASE. AND THAT DOES NOT MEAN YOU'D HAVE TO TAKE THE WITNESS STAND. YOU CAN MAKE AN OPENING STATEMENT AND NOT TAKE THE WITNESS STAND, OR YOU CAN MAKE AN OPENING STATEMENT AND YOU CAN TAKE THE WITNESS STAND. AGAIN, THAT'S ENTIRELY UP TO YOU. DO YOU UNDERSTAND THAT RIGHT?

MR. SIMMONS: YES, SIR.

THE COURT: AND AGAIN, GENTLEMEN, I DON'T NEED TO KNOW THIS MINUTE IF HE DESIRES TO MAKE AN OPENING STATEMENT. I'LL JUST WAIT UNTIL WE COME BACK IN THE COURTROOM. IS THERE ANYTHING ELSE, MR. THEOS OR MR. BELL, THAT YOU WOULD LIKE FOR THE COURT TO ADDRESS?

MOTIONS

1 MR. BELL: NOTHING AT THIS TIME,
2 YOUR HONOR.

3 THE COURT: NOT AT THIS TIME. ALL
4 RIGHT. SO IS THERE ANYTHING ELSE YOU GENTLEMEN CAN
5 THINK ABOUT? DOES IT SUIT Y'ALL TO TRY TO BREAK
6 FOR LUNCH AROUND ONE? THE JURY CAME IN ABOUT
7 9:15. WE DIDN'T START UNTIL ABOUT FIVE OR TEN
8 AFTER TEN.

9 MR. BAILEY: YES, SIR. THAT'S FINE,
10 YOUR HONOR.

11 THE COURT: BUT RATHER THAN GO TO
12 LUNCH NOW, I THINK GO AHEAD WITH TESTIMONY IF IT
13 SUITS YOU.

14 MR. BAILEY: YES, SIR.

15 MR. BELL: YOUR HONOR, I WOULD LIKE
16 ABOUT A THIRTY MINUTE -- WE HAD ASKED THE COURT
17 BEFORE---

18 THE COURT: I'LL GIVE YOU AN
19 OPPORTUNITY TO TALK TO YOUR WITNESSES OR TO TRY TO
20 PREPARE; AND WE'LL HAVE THE LUNCH BREAK.

21 MR. BELL: THAT'S FINE. THAT'S WHY
22 I SAID. IF WE CAN DO IT; WE'LL HAVE MAYBE ONE
23 WITNESS, AND MAYBE ONE WITNESS THEN WE'LL BREAK FOR
24 LUNCH.

25 THE COURT: WELL, WE'LL SEE HOW OUR

MOTIONS

1 TIME GOES. BUT AT ANY TIME, MR. BELL OR MR. THEOS,
2 AS EACH OF YOU HAVE KNOWN DURING THIS TRIAL THAT
3 YOU NEED A RECESS SO YOU CAN CONFER WITH YOUR
4 CLIENT OR TO TALK TO A WITNESS, I WANT TO MAKE SURE
5 THAT THERE'S BEEN AMPLE TIME.

6 MR. THEOS: YOUR HONOR, CAN MR. BELL
7 AND I SPEAK FOR ONE SECOND, PLEASE?

8 THE COURT: YES, SIR.

9 MR. THEOS: JUDGE, CAN WE APPROACH?

10 THE COURT: YES, YOU MAY.

11 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

12 THE COURT: YOUR HONOR, WHILE THE
13 JURY IS OUT AND WHILE I'M THINKING ABOUT IT, I'D
14 LIKE TO FILE WITH THE CLERK A COPY OF MY FINAL
15 DISCOVERY IN CASE THERE'S SOME ISSUE ON APPEAL OF
16 WHETHER OR NOT BRADY RULE FIVE WAS COMPLIED WITH.

17 THE COURT: ALL RIGHT, NOW, WHAT
18 YOU'RE FILING WITH THEM, DO YOU WANT THAT TO BE
19 MADE A COURT'S EXHIBIT OR JUST STATE'S FOR
20 IDENTIFICATION?

21 MR. BAILEY: A COURT'S EXHIBIT.

22 THE COURT: ALL RIGHT. AND THESE
23 ARE THE DOCUMENTS THAT YOU GAVE TO THE DEFENDANT
24 TIMELY SO IN RESPONSE TO ANY AND ALL BRADY OR
25 DISCOVERY?

MOTIONS

1 MR. BAILEY: THESE ARE NOT THE
2 DOCUMENTS THEMSELVES. THERE ARE A COUPLE OF
3 LETTERS THAT ITEMIZE THE DOCUMENTS THAT WERE SENT
4 TO THE DEFENDANT.

5 THE COURT: ALL RIGHT.

6 MR. THEOS: YES, SIR. THE DOCUMENTS
7 WOULD BE TOO VOLUMINOUS.

8 THE COURT: SURE. ALL RIGHT,
9 GENTLEMEN. WE'LL TAKE A RECESS TAKING A RECESS
10 NOW. AND I WON'T SAY WHETHER IT'S FOR FIFTEEN OR
11 TWENTY-FIVE OR THIRTY MINUTES; RATHER I'M JUST
12 GOING TO WAIT FOR Y'ALL TO TELL ME THAT YOU'RE
13 READY TO PROCEED.

14 MR. THEOS: THANK YOU, YOUR HONOR.

15 MR. BELL: THANK YOU, YOUR HONOR.

16 (BRIEF RECESS.)

17 - - - - -
18 THE COURT: ALL RIGHT, GENTLEMEN.

19 ANYTHING FOR THE RECORD?

20 MR. BAILEY: NONE FROM THE STATE,
21 YOUR HONOR.

22 MR. BELL: NOTHING FROM THE DEFENSE,
23 YOUR HONOR.

24 THE COURT: ALL RIGHT. AND, MR.
25 SIMMONS; WHAT'S YOUR PLEASURE? WOULD YOU LIKE TO

MOTIONS

1 MAKE AN OPENING STATEMENT OR NOT?

2 MR. SIMMONS: NO, SIR.

3 THE COURT: THANK YOU. BRING THE
4 JURY IN, PLEASE.

5 MR. BAILEY: YOUR HONOR, CAN WE
6 APPROACH BRIEFLY AT THE SIDE BAR?

7 THE COURT: CERTAINLY.

8 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

9 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

10 MR. BAILEY: LADIES AND GENTLEMEN, I
11 UNDERSTAND THAT YOU WISH TO GO OUT FOR LUNCH AND TO
12 GO TO GEORGIO'S; AND CERTAINLY THAT MEETS WITH THE
13 APPROVAL OF THE COURT. MR. SOLICITOR, IF YOU
14 WOULD, PLEASE SHARE WITH US ON THE RECORD.

15 MR. BAILEY: YES, SIR. YOUR HONOR,
16 I NEGLECTED TO FORMERLY MOVE TO INCORPORATE THE
17 GUILT PHASE INTO THE PENALTY PHASE AS I ADVISED THE
18 JURY I WOULD DO. AND JUST FOR THE RECORD, I WOULD
19 MOVE AT THIS POINT AND TIME TO INCORPORATE THE
20 GUILT PHASE INTO THE PENALTY PHASE.

21 THE COURT: CERTAINLY. AND ALL THE
22 EXHIBITS THEREFROM. AND I HAD IN THE COURT'S
23 OPENING STATEMENT SHARED WITH THE JURY THAT THAT
24 WAS THE CASE.

25 MR. BAILEY: YES, SIR. THANK YOU,

MOTIONS

1 YOUR HONOR.

2 THE COURT: SO JUST A MATTER OF A
3 TECHNICAL NICETY. NOW LADIES AND GENTLEMEN, YOU'VE
4 NOW HEARD THE EVIDENCE OFFERED BY THE STATE IN
5 REGARD TO THE PENALTY PHASE. AND BEAR IN MIND THAT
6 THE STATE CONTINUES TO HAVE THE BURDEN OF PROVING
7 BEYOND A REASONABLE DOUBT ONE OR MORE AGGRAVATING
8 CIRCUMSTANCES WHICH YOU MUST FIND IN ORDER TO
9 RETURN THE RECOMMENDATION SENTENCE OF DEATH
10 PENALTY. THERE IS NO BURDEN ON THE DEFENDANT.
11 YOUR VERDICT MUST BE UNANIMOUS WHATEVER IT MAY BE.
12 AND YOU CAN, AS YOU MENTIONED MANY TIMES DURING
13 VOIR DIRE; YOU MAY RETURN A VERDICT OR
14 RECOMMENDATION VERDICT OF LIFE WITHOUT PAROLE EVEN
15 IF YOU FIND A STATUTORY AGGRAVATING CIRCUMSTANCE.
16 AND YOU MAY FIND A MITIGATING CIRCUMSTANCE, OR FOR
17 NO REASON AT ALL JUST BECAUSE YOU DECIDE TO, YOU
18 MAY RECOMMEND LIFE WITHOUT PAROLE. AND AT THIS
19 TIME THE DEFENDANT'S COUNSEL WILL BE AFFORDED AN
20 OPPORTUNITY TO MAKE AN OPENING STATEMENT AFTER
21 WHICH WE'LL PROCEED WITH TESTIMONY ON BEHALF OF THE
22 DEFENDANT ALTHOUGH PLEASE UNDERSTAND THERE'S NO
23 BURDEN UPON THE DEFENDANT TO PRODUCE ANY EVIDENCE.
24 THAT'S ENTIRELY UP TO THE DEFENDANT. YOU MAY
25 PROCEED, GENTLEMEN.

OPENING REMARKS BY MR. BELL

1 MR. BELL: MAY IT PLEASE THE COURT?

2 THE COURT: YES, SIR.

3 - - - - -

OPENING STATEMENT

4 BY MR. BELL

5 MADAM FORELADY, LADIES AND GENTLEMEN
6
7 OF THE JURY; IT'S MY TIME TO ADDRESS YOU. YOU'VE
8 HEARD WHAT THE STATE HAS HAD TO SAY IN THE PAST
9 SEVERAL DAYS AND MOST ESPECIALLY POINTED OUT TO YOU
10 TODAY ABOUT WHAT KENNETH SIMMONS DID ON SEPTEMBER
11 THE FIRST, 1996. YOU KNOW THAT FACET OF KENNETH
12 SIMMONS. YOU'VE DELIBERATED ON IT. YOU'VE SEEN
13 EVIDENCE ON IT. YOU'VE MADE A DECISION ABOUT THAT
14 DAY OF HIS LIFE. WHAT I WANT TO PRESENT TO YOU
15 THIS TIME IS THE LIFE OF KENNETH SIMMONS ON
16 [REDACTED] THE [REDACTED], [REDACTED] UP UNTIL THAT FATEFUL
17 DAY. I WANT YOU TO HEAR FROM HIS FAMILY; SOME OF
18 THE MEMBERS OF IT. I WANT YOU TO HEAR FROM A HIGH
19 SCHOOL FRIEND. I WANT YOU TO HEAR FROM PEOPLE IN
20 THE COMMUNITY; PEOPLE THAT KNOW KENNETH SIMMONS
21 CANNOT COMPREHEND THE SEPTEMBER THE FIRST, '96
22 ACTIONS THAT YOU HAD TO ADJUDICATE.

23 YOU'RE GOING TO HEAR ABOUT A MAN
24 THAT DID GO THROUGH SCHOOL; THAT DID PLAY FOOTBALL;
25 THAT DID HAVE CHILDREN. BUT THEN DID HAVE A SEVERE

OPENING REMARKS BY MR. BELL

1 PROBLEM. BUT YOU'RE GOING TO HEAR FROM PEOPLE THAT
2 WOULD SHOW YOU, YOU'RE NOT DEALING WITH A VICIOUS
3 MAN. AND I TELL YOU THE FACTS THAT YOU'VE HEARD
4 ABOUT ARE AWFUL. BUT YOU'RE NOT GOING TO BE
5 HEARING ABOUT A VICIOUS MAN, A MAN THAT IN THIS
6 PARTICULAR PHASE THE STATE IS ASKING THAT YOU PUT
7 TO DEATH. YOU'RE GOING TO HEAR ABOUT A MAN THAT
8 DESERVES TO BE PUNISHED BUT DESERVES TO LIVE.

9 NOW AS IN MR. BAILEY'S CASE, THESE
10 ARE NOT REHEARSED WITNESSES. THESE ARE PEOPLE THAT
11 ARE GOING TO PUT FORTH THEIR FEELINGS TO YOU. AND
12 I ASK THAT YOU PAY ATTENTION TO THESE FAMILY,
13 FRIENDS, ACQUAINTANCES, PEOPLE THAT KNOW KENNETH
14 SIMMONS AND THAT KNEW KENNETH SIMMONS PRIOR TO THIS
15 FATEFUL DAY. THANK YOU.

16 THE COURT: YOU MAY CALL YOUR FIRST
17 WITNESS, PLEASE.

18 MR. BELL: MAY IT PLEASE THE COURT;
19 I WOULD LIKE CALVIN LINNING TO COME FORWARD.

20 - - - - -
21 WHEREUPON,

22 CALVIN LINNING, SR., WHO AFTER BEING
23 FIRST DULY SWORN TO TELL THE TRUTH,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

CALVIN LINNING - DIRECT/MR. BELL

BY MR. BELL:

Q. MR. LINNING, HOW OLD ARE YOU?

A. FIFTY-EIGHT.

Q. WHAT'S YOUR EDUCATIONAL BACKGROUND?

A. I STARTED WITH SUMMERVILLE HIGH SCHOOL; GRADUATED IN '59, AND CONTINUED ON TO CLAFLIN COLLEGE; AND GRADUATED THERE IN '63 WITH A BACHELOR'S DEGREE IN MATHEMATICS AND SCIENCE. I GOT 93 GRADUATE HOURS AT THE UNIVERSITY OF GEORGIA; IN ATLANTA UNIVERSITY, SOUTH CAROLINA STATE, THE CITADEL, U.S.C.; BAPTIST COLLEGE WHICH IS NOW CHARLESTON SOUTHERN.

Q. ALL RIGHT. NOW, YOU'RE MARRIED?

A. YES, I AM.

Q. ANY CHILDREN?

A. YES; MARRIED TO MARY FRANCIS JONES. SHE'S THE FORMER TEACHER AND ASSISTANT PRINCIPAL AT ALSTON MIDDLE SCHOOL. I HAVE TWO LOVELY KIDS; CALVIN, JR. WHO'S A SIXTH YEAR TEACHER IN DISTRICT FOUR AS A COACH. AND MY DAUGHTER, KATRINA, THIS IS HER FOURTH YEAR IN GRADUATE SCHOOL AT MICHIGAN STATE UNIVERSITY WORKING ON A PH.D. IN MICROBIOLOGY.

Q. WHERE ARE YOU LIVING NOW?

A. IN SUMMERVILLE; [REDACTED] [REDACTED].

Q. ARE YOU EMPLOYED NOW?

CALVIN LINNING - DIRECT/MR. BELL

1 A. NO; I'M RETIRED NOW.

2 Q. WHAT DID YOU DO?

3 A. I WAS A TEACHER OF MATHEMATICS AND SCIENCE FOR
4 THIRTY-FOUR YEARS IN DISTRICT -- FIRST I STARTED AT
5 BOWLEN HAVEN MATH ACADEMY IN CAMDEN, SOUTH
6 CAROLINA. THEN I MOVED TO SANDERSVILLE, GEORGIA,
7 WHERE I WORKED THERE AS THE CHAIRMAN OF THE MATH
8 DEPARTMENT AND THE SENIOR CLASS ADVISOR. AND THEN
9 IN 1991 I MOVED TO SUMMERVILLE HIGH SCHOOL WHERE I
10 RETIRED THERE.

11 Q. NOW, DO YOU KNOW KENNETH SIMMONS?

12 A. OH, YES.

13 Q. AND ACTUALLY YOU'RE A FAMILY MEMBER, ARE YOU NOT?

14 A. WE'RE FIRST COUSINS. KENNETH'S DAD AND MY MOTHER
15 ARE BLOOD SISTER AND BROTHER.

16 Q. DO YOU HAVE SOME BACKGROUND YOU CAN SHARE OF
17 KENNETH'S FAMILY TREE WITH THIS JURY?

18 A. YES.

19 Q. PLEASE DO THAT.

20 A. I'VE GOT MY NOTES HERE. KENNETH'S GRANDMOTHER AND
21 GRANDFATHER ARE REBECCA JOHNSON AND CECIL SIMMONS.
22 AND FROM THAT UNION THERE ARE TWELVE SIBLINGS. AND
23 EUGENE SIMMONS -- WE CALL HIM UNCLE BUB -- HE'S THE
24 FIRST OF THE TWINS. HE'S A TWIN WITH BEAULAH
25 SHEPHERD AND HIMSELF THERE. AND THERE WAS EIGHT

CALVIN LINNING - DIRECT/MR. BELL

1 GIRLS AND FOUR MALES THERE. AND EUGENE SIMMONS'
2 FAMILY; HE GOT MARRIED. HIS FIRST WIFE WAS ALICE
3 LINNEES. FROM THAT UNION THERE ARE SIX OTHER
4 CHILDREN. AND AFTER THE DEATH OF ALICE LINNEES,
5 RE-MARRIED. AND HIS SECOND MARRIAGE WAS TO IRENE
6 WHETSELL. AND FROM THAT UNION IT WAS FIVE
7 CHILDREN. AND AFTER THE DEATH OF IRENE WHETSELL,
8 HE MARRIED THE THIRD TIME TO MRS. ANNA GRAVES. AND
9 FROM THAT UNION THERE ARE SIX CHILDREN. AND THAT
10 WAS COLETTE, NUMBER ONE; MICHAEL SIMMONS, NUMBER
11 TWO; JUANITA SIMMONS, NUMBER THREE; GENE SIMMONS,
12 NUMBER FOUR; AND KENNETH SIMMONS, NUMBER FIVE; AND
13 THE LAST ONE IS ANNETTE SIMMONS. KENNETH IS THE
14 SIXTEENTH. THERE WERE SIXTEEN KIDS ALL TOGETHER.
15 KENNETH IS NUMBER SIXTEEN.

16 Q. AND DID YOU KNOW KENNETH WHEN HE WAS GROWING UP?

17 A. YES.

18 Q. COULD YOU DESCRIBE WHAT HE WAS LIKE?

19 A. I WORKED AT SUMMERVILLE HIGH SCHOOL. I DIDN'T HAVE
20 HIM IN MY CLASS, BUT I WOULD PASS HIM IN THE HALL
21 AND OBSERVE HIM PLAYING FOOTBALL FOR SUMMERVILLE
22 HIGH SCHOOL. AND HE'S WHAT WE CONSIDERED A SUPER
23 STAR. HE PLAYED THREE YEARS AT SUMMERVILLE HIGH
24 SCHOOL; '76, '77, AND '78. AND HE ALSO PLAYED
25 SEMI-PRO FOOTBALL. AND I NOTICED THAT -- NEVER CAN

CALVIN LINNING - DIRECT/MR. BELL

1 I RECALL HIM HAVING ANY KIND OF DISCIPLINARY NOTICE
2 FOR MISBEHAVING. HE WAS HIGHLY RESPECTABLE. HE
3 WAS QUIET. THAT'S ONE OF THOSE SIMMONS' TRAITS;
4 REAL RESERVED AND QUIET; LOVED PEOPLE; WAS
5 MANNERABLE; AND I CONSIDER KENNETH AS MY SON THERE
6 REALLY.

7 Q. WAS HE RESPECTFUL TO OTHERS?

8 A. YES.

9 Q. DID HE DO ANY VOLUNTEER WORK THAT YOU KNOW OF?

10 A. YES. KENNETH HAS ALWAYS WORKING WITH THE CHURCH
11 GROUP THERE. AND THE THING I WOULD LIKE TO SHARE
12 WITH THAT; HE HAD QUITE A FEW ROLE MODELS IN THE
13 FAMILY WHICH I THOUGHT WAS VERY IMPORTANT, YOU
14 KNOW. AND I WANT TO SHARE ONE OR TWO WITH YOU
15 THERE. LET ME LOOK AT MY NOTES HERE. (WITNESS
16 EXAMINES NOTES.) THE FIRST FAMILY MEMBER TO FINISH
17 COLLEGE AND START TEACHING -- WE CALL HER MUNCH --
18 IS JULIA KITCHEN; JULIA SIMMONS KITCHEN. SHE IS 93
19 YEARS YOUNG TODAY. AND THERE ARE MANY OTHER FAMILY
20 MEMBERS THAT WENT ON IN THE TEACHING PROFESSION
21 TODAY. AND ONE OF THE HIGHEST PROFESSIONS IN THE
22 WORLD IS TO BE SELECTED BY GOD OR CALLED BY GOD TO
23 PREACH HIS SORT OF WORD. AND WE HAVE SEVERAL
24 MEMBERS IN THE FAMILY THAT ARE MINISTERS AND
25 DEACONS HERE. AND THE FIRST MEMBER IN THE FAMILY

CALVIN LINNING - DIRECT/MR. BELL

1 TO RECEIVE A FULL ACADEMIC SCHOLARSHIP WAS GRANGER
2 BRICE WHO WENT TO SOUTH CAROLINA STATE. AND THERE
3 WERE MANY AFTERWARDS THERE TO RECEIVE FULL-TIME
4 SCHOLARSHIPS FOR COLLEGE. AND IF YOU WILL GO
5 DOWNTOWN AND OBSERVE THE TOWN HALL, SIMON FAULK,
6 JR. WAS THE ORIGINAL BUILDER FOR THAT PARTICULAR
7 BUILDING. HE WAS A FIRST COUSIN. AND IF YOU GO
8 DOWN ON MAIN STREET IN SUMMERVILLE AND YOU NOTICE
9 THE BETHEL CHURCH ON THE HILL; COUSIN GEORGIA
10 SIMMONS WAS A BUILDER OF THAT PARTICULAR CHURCH AND
11 SEVERAL OTHER BUILDINGS IN THE COUNTY. DOWN ON
12 MAIN STREET AND ON RICHARDSON AVENUE, THE TOP
13 BEAUTY SALON IS OPERATED BY OUR COUSIN, JULIAN
14 JERRY AND VERDELLE GLOVER. AND ON 17-A, ONE OF
15 BEST BARBER SHOPS IN TOWN, OUR COUSIN MAY EVERETTE
16 RUNS THAT. KEITH SIMMONS IS A FIRST YEAR STUDENT
17 IN LAW SCHOOL. DR. CARL WHETSELL IS A
18 PEDIATRICIAN. HE WORKS AT M.U.S.C., THE FAMILY'S
19 FIRST. IF YOU WILL VISIT THE BROWNVILLE COMMUNITY
20 CHURCH OF GOD YOU WILL NOTICE THAT THE NEW ADDITION
21 TO THE CHURCH AND THE EDUCATIONAL BUILDING, IT WAS
22 CONSTRUCTED BY A CONTRACTOR COUSIN, WILLIAM
23 BRYANT. IN THE BANKING BUSINESS WE HAVE MAXINE
24 LIMEHOUSE THOMPSON AND FRAN SIMMONS DELANEY. IF
25 YOU WILL GO TO THE V.A. HOSPITAL, YOU'LL HAVE

CALVIN LINNING - DIRECT/MR. BELL

1 JOHNETTA LINNON JACKSON WHO IS A REGISTERED NURSE
2 AND SUPERVISOR. IF YOU ATTEND TRI-DENT TECHNICAL
3 COLLEGE, OUR COUSIN GEORGE COLEMAN IS THE DIRECTOR
4 OF THE COMPUTER LAB CENTER. IN THE FUNERAL
5 BUSINESS YOU HAVE ALBERT A. GLOVER AND SON. IN THE
6 DAY CARE CENTER, YOU HAVE ELAINE BRYANT AND BERNICE
7 SCOTT DAY CARE CENTER. ON A NATIONAL LEVEL, YOU
8 HAVE GLENDA MCQUEEN WHO IS THE PUBLISHER OF A
9 WORLDWIDE MAGAZINE.

10 Q. MR. LINNING, IN THAT; THESE ARE SOME OF THE PEOPLE
11 THAT KENNETH HAD AROUND HIM AS HE GREW UP?

12 A. YES, SIR.

13 Q. AND WHEN HE GREW UP -- YOU SAID YOU WERE TEACHING
14 IN THE SUMMERVILLE SCHOOL SYSTEM WHEN HE WAS IN
15 SCHOOL THERE?

16 A. YES, SIR.

17 Q. DID HE LISTEN TO AUTHORITY; DO WHAT THE TEACHERS
18 TOLD HIM TO?

19 A. YES. HE RESPECTED THE TEACHERS, THE PRINCIPAL. HE
20 WAS WELL RESERVED. HE WAS ON THE FOOTBALL TEAM.
21 AND ONE OF THE THINGS ABOUT SUMMERVILLE HIGH
22 SCHOOL; THE REASON WHY SUMMERVILLE HIGH SCHOOL IS
23 NUMBER ONE, I THINK IN THE STATE, IS BECAUSE NUMBER
24 ONE, THE FOOTBALL PLAYERS ARE DISCIPLINED. AND
25 THAT CARRIES A LOT FOR HIM. HE WAS A WELL

CALVIN LINNING - DIRECT/MR. BELL

1 DISCIPLINED YOUNG MAN. COMING FROM A FAMILY WHO
2 BELIEVED IN HARD WORK AND STERN DISCIPLINE. THIS
3 IS ALL THE WHOLE TRAIT FROM MY GRANDPARENTS.

4 Q. IN FACT HIS PARENTS TOOK HIM TO CHURCH, DIDN'T
5 THEY, WHEN HE WAS GROWING UP?

6 A. YES, THEY DID.

7 Q. AND YOU MENTIONED THAT THE CHURCH HAD A BUILDING
8 PROGRAM. ISN'T THAT THE BUILDING PROGRAM THAT
9 KENNETH ASSISTED IN THE BUILDING OF THAT?

10 A. YES; THE NEW EDUCATIONAL PART, HE ASSISTED WITH
11 THAT. AND ALSO THEY ADDED THE NEW PART TO THE MAIN
12 SANCTUARY. HE ALSO HELPED IN WORKING WITH THAT AS
13 WELL.

14 Q. DID YOU KNOW HIM TO BE A VIOLENT PERSON?

15 A. NO. I'VE NEVER KNOWN KENNETH TO BE A VIOLENT
16 PERSON. ALL THE WAY COMING UP -- HE LIVED ON

17 [REDACTED] WE LIVE ON [REDACTED]

18 IN BETWEEN [REDACTED] AND [REDACTED] ON [REDACTED]

19 [REDACTED] AND WE'VE HAD QUITE A BIT OF CONNECTION AND
20 WHATNOT WITH THAT. I'VE SEEN HIM FROM TIME TO TIME
21 AT SCHOOL, AND NEVER HAVE I KNOWN HIM TO HAVE ANY
22 KIND OF DISCIPLINE PROBLEM; MILD AND QUIET AND THAT
23 RESERVED KIND OF BEHAVIOR.

24 Q. KENNETH HAS GOT A COUPLE OF CHILDREN, DOES HE NOT?

25 A. YES.

CALVIN LINNING - DIRECT/MR. BELL

1 Q. TWO SONS?

2 A. TWO SONS.

3 Q. AND THOSE---

4 A. THEY'RE AT SUMMERVILLE HIGH SCHOOL; GREAT ATHLETES.

5 Q. DO THOSE SONS HAVE THE SAME TRAITS AS FAR AS

6 BEING---

7 A. THE SAME QUIET, MANNERIBLE INDIVIDUALS.

8 Q. HAVE YOU GOT ANYTHING ELSE THAT YOU COULD ADD THAT

9 YOU WOULD LIKE TO TELL THIS JURY?

10 A. IT'S AWFULLY HARD FOR ME TO BE UP HERE TODAY

11 BECAUSE I'M CERTAINLY NERVOUS BECAUSE WE KNOW

12 SISTER LILLY BELL BOYD PERSONALLY. I GREW UP IN

13 THE CHURCH OF GOD IN SUMMERVILLE. AND SISTER BOYD

14 AND MY FAMILY WAS REAL CLOSE. WE WOULD TAKE HER TO

15 THE STATE YOUTH CONVENTION YEAR AFTER YEAR. MY

16 BROTHER IS THE ONE THAT TAUGHT HER HOW TO DRIVE.

17 AND MY NIECE WAS REAL CLOSE TO SISTER BOYD. SHE

18 HAD A REAL CLOSE RELATIONSHIP WITH HER. AND IT WAS

19 REAL PAINFUL WHEN WE DISCOVERED ABOUT HER---

20 MR. BAILEY: I'M GOING TO OBJECT TO

21 THIS. I HAVE NO OBJECTION WHATSOEVER TO THIS MAN

22 TESTIFYING ABOUT MR. SIMMONS AND ALL THAT; BUT

23 ABOUT HIS PERSONAL FEELINGS ABOUT WHAT OCCURRED, I

24 THINK IS HIGHLY IRRELEVANT.

25 THE COURT: I SUSTAIN THE OBJECTION.

CALVIN LINNING - DIRECT/MR. BELL

1 Q. YOU WILL NOT BE ABLE TO INTERJECT YOUR FEELINGS,
2 OKAY?

3 A. OKAY. I WORKED AT BROWNSVILLE FROM '71 UNTIL '84
4 AS A YOUTH COUNSELOR. YOU KNOW, WE WORK REAL
5 CLOSELY WITH THE STUDENTS THERE. I HAVE A SON THAT
6 IS THIRTY YEARS OLD. AND I LOOK AFTER KENNETH AS
7 BEING POSSIBLY MY SON. AND I WOULD HATE VERY MUCH
8 FOR MY SON TO BE INVOLVED WITH A SITUATION LIKE
9 THIS, AND FOR HIM TO BE ABLE TO AFTER ALL OF THE
10 TRAINING FROM THE FAMILY MEMBERS, AND ALL THE ROLE
11 MODELS AND WORKING WITH HIM AND THE STANDARD
12 DISCIPLINE, AND WORK ETHICS AND SO FORTH, FOR HIM
13 TO BE ABLE TO COME UP AND TAKE HIS LIFE. AT THIS
14 PARTICULAR TIME I'M ASKING THE JURY---

15 MR. BAILEY: JUDGE, I'M GOING TO
16 OBJECT TO HIM ASKING---

17 MR. BELL: YOU CAN'T ASK THE JURY.

18 THE COURT: THANK YOU.

19 MR. THEOS: YOUR HONOR, CAN WE
20 APPROACH THE BENCH?

21 THE COURT: YOU CERTAINLY MAY.

22 (AT THIS TIME BENCH CONFERENCE IS HELD.)

23 THE COURT: YOU MAY PROCEED,
24 GENTLEMEN, PLEASE.

25 Q. MR. LINNING, YOU SAID THAT KENNETH WAS LIKE A SON

CALVIN LINNING - DIRECT/MR. BELL

1 TO YOU?

2 A. YES.

3 Q. AND WOULD YOU LIKE HIM TO RECEIVE LIFE IMPRISONMENT
4 AND NOT RECEIVE THE DEATH PENALTY?

5 A. IF KENNETH WERE MY SON AND HE WAS ACCUSED OF THIS
6 PARTICULAR CRIME, THEN I WOULD WANT MY SON TO BE
7 ABLE TO REFLECT YEAR AFTER YEAR AFTER YEAR WHAT HAS
8 HAPPENED, YOU KNOW THE HURT---

9 MR. BAILEY: YOUR HONOR, I THINK
10 HE'S GOING TOO FAR. I THINK HE'S ANSWERED MR.
11 BELL'S QUESTION.

12 Q. AND YOUR ANSWER TO THAT WOULD BE YES?

13 A. YES; I WOULD WANT HIM TO RECEIVE LIFE, NOT THE
14 DEATH PENALTY. I KNOW THAT HIS DAD WAS A REAL HARD
15 WORKER, WORKED FOR LONG YEARS AT FLAGELLE LUMBER
16 MILL. AND AFTER HE RECEIVED SOME ILLNESS OR WHAT
17 NOT, HE WORKED WITH ANOTHER JOB. AND HE SPEND A
18 LOT OF TIME IN TRYING TO TEACH THOSE KIND OF VALUES
19 THAT ALL OF US TRY TO TEACH OUR KIDS.

20 Q. WHEN YOU'RE TALKING ABOUT HIS FATHER; ISN'T IT A
21 FACT THAT KENNETH'S MOTHER DIED SOMEWHERE IN SAY
22 LIKE '78?

23 A. YES.

24 Q. AND HIS FATHER WAS NOT IN GOOD HEALTH?

25 A. NO.

CALVIN LINNING - CROSS/MR. BAILEY

1 Q. AND THAT KENNETH AND ACTUALLY HIS YOUNGER SISTER,
2 ANNETTE, HAD TO CARE FOR THEIR FATHER DURING THE
3 LAST YEARS OF HIS LIFE WHILE HE WAS STILL IN
4 SCHOOL?

5 A. THAT'S TRUE.

6 Q. AND HE DID? HE AND HIS SISTER WERE THE ONLY ONES
7 LEFT AT HOME; WERE THEY NOT?

8 A. THAT'S TRUE. AND ON HIS DEATH BED, HE WOULD ASK
9 FOR KENNETH, YOU NOW. HE WAS 88, I THINK, WHEN HE
10 FINALLY PASSED. HIS MOTHER PASSED WHILE HE WAS IN
11 HIGH SCHOOL.

12 Q. THAT WAS AROUND '78?

13 A. YES.

14 Q. ANSWER ANY QUESTIONS MR. BAILEY MAY HAVE.

15 THE COURT: CROSS?

16 CROSS-EXAMINATION

17 BY MR. BAILEY:

18 Q. MR. LINNING; HOW ARE YOU DOING? I JUST HAVE A FEW
19 QUESTIONS I'D LIKE TO ASK YOU, SIR.

20 A. YES, SIR.

21 Q. IF THAT'S ALL RIGHT.

22 A. YES.

23 Q. AND BASED ON WHAT YOU'VE TOLD THE JURY, NO QUESTION
24 WHATSOEVER THAT MR. SIMMONS' FAMILY WAS AND IS A
25 VERY RESPECTED FAMILY IN THE SUMMERVILLE COMMUNITY;

CALVIN LINNING - CROSS/MR. BAILEY

1 IS THAT CORRECT?

2 A. YES.

3 Q. AND WHEN KENNETH SIMMONS WAS GROWING UP, HE HAD
4 GOOD PARENTS, GOOD FAMILY, GOOD ROLE MODELS?

5 A. YES.

6 Q. WAS RAISED IN A CHURCH; AND HE WAS TAUGHT
7 CORRECTLY, WASN'T HE?

8 A. THAT'S CORRECT.

9 Q. AND THERE'S NOTHING ELSE THAT YOU KNOW OF THAT HIS
10 PARENTS, HIS ROLE MODELS, COULD HAVE DONE FOR HIM
11 TO SET HIM ON THE RIGHT TRACK THAT YOU KNOW OF, IS
12 THERE?

13 A. (NO RESPONSE.)

14 Q. THEY DID THEIR BEST?

15 A. YES, SIR.

16 Q. ALL RIGHT, SIR. AND AS FAR AS HIS ATHLETIC
17 ENDEAVORS; AS YOU SAID YOU'VE GOT TO BE WELL
18 DISCIPLINED TO PLAY FOOTBALL AT SUMMERVILLE HIGH
19 SCHOOL?

20 A. YES, SIR.

21 Q. DISCIPLINE MEANS THAT YOU HAVE TO UNDERSTAND THE
22 RULES AND KNOW HOW TO FOLLOW THOSE RULES?

23 A. THAT'S CORRECT.

24 Q. ALL RIGHT, SIR. AND FROM WHAT YOU OBSERVED, HE WAS
25 ABLE TO DO THAT?

CALVIN LINNING - CROSS/MR. BAILEY

1 A. YES.

2 Q. ALL RIGHT, SIR. NOW YOU SAID THAT HE DID SOME WORK
3 OUT AT THE BROWNSVILLE CHURCH; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. ALL RIGHT. WHAT TYPE OF WORK DID HE DO? WAS HE
6 HELPING TO BUILD THE CHURCH?

7 A. YES. THEY WERE ADDING ON THIS NEW ADDITION; AND
8 KENNETH, WHILE HE WAS IN HIGH SCHOOL, HE ATTENDED
9 THE VOCATIONAL CAREER SCHOOL IN DORCHESTER.

10 Q. OKAY.

11 A. AND HE WAS TAUGHT BY BROTHER REVEREND THOMAS SMITH,
12 CARPENTRY.

13 Q. OKAY.

14 A. SO BY TRADE HE WAS REALLY EXTREMELY WELL IN
15 CARPENTRY.

16 Q. HE WAS A GOOD CARPENTER?

17 A. YES.

18 Q. WAS HE A FINISH CARPENTER OR DID FRAMING?

19 A. I THINK A FRAMING CARPENTER IS WHAT HE DID.

20 Q. ALL RIGHT, SIR. AND HAVE YOU KEPT UP WITH KENNETH
21 SINCE HIGH SCHOOL?

22 A. NO, I HAVEN'T.

23 Q. WHEN IS ACTUALLY THE LAST TIME YOU SAW HIM AFTER
24 HIGH SCHOOL?

25 A. I DON'T RECALL THE LAST TIME. WE WOULD BE PASSING

CHARLIE WILSON - DIRECT/MR. BELL

BACK AND FORTH THROUGH SUMMERVILLE; AND YOU'LL SEE
HIM OR WHATNOT.

Q. YES, SIR.

A. BUT I DON'T RECALL A SPECIFIC TIME.

Q. WHEN IS THE LAST TIME THAT YOU'VE HAD ANY REAL
SIGNIFICANT CONTACT WITH HIM AS FAR AS SITTING DOWN
AND TALKING WITH HIM, MEETING WITH HIM?

A. DURING THE TIME HE WAS IN HIGH SCHOOL AFTER THE
GAMES, IN THE HALLWAYS, AND SOMETHING LIKE THAT.

Q. THANK YOU VERY MUCH.

THE COURT: ANYTHING FURTHER, MR.
BELL, FROM THIS WITNESS?

MR. BAILEY: NOTHING FROM THIS
WITNESS, YOUR HONOR.

THE COURT: ALL RIGHT. STEP DOWN,
PLEASE, SIR. NEXT WITNESS, GENTLEMEN.

WHEREUPON,

CHARLIE WILSON, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BELL:

Q. MR. WILSON, HOW OLD ARE YOU?

A. FIFTY-SEVEN.

CHARLIE WILSON - DIRECT/MR. BELL

- 1 Q. ALL RIGHT. AND ARE YOU MARRIED?
- 2 A. YES, I AM.
- 3 Q. ANY CHILDREN?
- 4 A. YES.
- 5 Q. HOW ABOUT YOUR OCCUPATION? WHAT IS THAT?
- 6 A. FORMER TEACHER.
- 7 Q. WHERE DID YOU TEACH?
- 8 A. WHERE?
- 9 Q. YES, SIR.
- 10 A. IN BERKELEY COUNTY.
- 11 Q. BERKELEY COUNTY?
- 12 A. YES, SIR.
- 13 Q. WHERE DID YOU GO TO SCHOOL?
- 14 A. WHERE DID I GO TO SCHOOL?
- 15 Q. YES, SIR.
- 16 A. HIGH SCHOOL?
- 17 Q. HIGH SCHOOL AND COLLEGE?
- 18 A. I WENT TO ALSTON HIGH SCHOOL. I WENT TO COLLEGE IN
- 19 SAVANNAH STATE COLLEGE. AND I ALSO RECEIVED A
- 20 MASTER'S DEGREE FROM CLEMSON UNIVERSITY.
- 21 Q. AND WHERE DO YOU LIVE NOW?
- 22 A. I LIVE IN SUMMERVILLE.
- 23 Q. HOW LONG HAVE YOU LIVED IN SUMMERVILLE?
- 24 A. OFF AND ON ALL MY LIFE EXCEPT FOR THE TIME THAT I
- 25 WENT INTO THE ARMY AND AWAY FROM SCHOOL -- AWAY IN

CHARLIE WILSON - DIRECT/MR. BELL

1 SCHOOL. THAT WAS BASICALLY THE ONLY TIME THAT I
2 WAS AWAY FROM SUMMERVILLE.

3 Q. THAT WAS BACK IN THE EARLY SIXTIES, MAYBE?

4 A. YES.

5 Q. DID YOU KNOW KENNETH SIMMONS?

6 A. YES, SIR, I DID.

7 Q. HOW DO YOU KNOW HIM?

8 A. WELL, BASICALLY I KNOW THE FAMILY FROM GROWING UP
9 ON THE SAME STREET. AND AS YOU KNOW, I'M QUITE A
10 FEW YEARS OLDER THAN KENNETH. SO AFTER I CAME OUT
11 OF SERVICE AND WENT THROUGH SCHOOL AND CAME OUT OF
12 COLLEGE, I STARTED GOING TO THE SUMMERVILLE HIGH
13 SCHOOL FOOTBALL GAMES. AND I WOULD SEE KENNETH.
14 AND PRIOR TO THE GAMES I WOULD SAY "ARE YOU GOING
15 TO PLAY TONIGHT?" AND HE WOULD SAY, "I'M GOING TO
16 START ARE." I SAID, "YOU'RE GOING TO START; ARE
17 YOU SURE YOU'RE GOING TO START?" HE WOULD ALWAYS
18 SAY HE WAS GOING TO START. SO AFTER THAT, WE
19 STARTED CONVERSING FROM THAT POINT ON.

20 Q. DID YOU KNOW HIM AS A HIGH SCHOOL STUDENT AS FAR AS
21 AROUND THE COMMUNITY OR EVEN IN THE SCHOOL AREA?

22 A. OH, YES, SIR. I USED TO SEE HIM QUITE OFTEN.

23 Q. DESCRIBE WHAT YOU SAW OF KENNETH SIMMONS AS A YOUNG
24 MAN; A TEENAGER.

25 A. HE WAS A YOUNG, ENERGETIC, WELL RESPECTED, HAD

CHARLIE WILSON - DIRECT/MR. BELL

1 MANNERS. AND I'M THE TYPE PERSON I WAS ALWAYS HARD
2 ON PEOPLE THAT DIDN'T HAVE MANNERS. AND HE WOULD
3 ALWAYS HAVE MANNERS. HE WOULD SAY "YES, SIR," OR
4 YOU KNOW -- IT WASN'T FLAMBOYANT OR ANYTHING OF
5 THAT NATURE.

6 Q. DID YOU EVER KNOW HIM TO GET IN ANY TROUBLE?

7 A. NO, SIR; I NEVER KNEW HIM TO GET IN ANY TROUBLE.

8 Q. NOW, HOW FAR DID YOU LIVE FROM HIS HOUSE NOW WHERE
9 HE AND HIS FATHER AND MOTHER WERE?

10 A. APPROXIMATELY A TENTH OF A MILE, MAYBE.

11 Q. DID YOU KNOW HIS MOTHER AND FATHER?

12 A. YES, SIR.

13 Q. DID YOU KNOW THE CIRCUMSTANCES WITH HIM BEING IN
14 HIGH SCHOOL WHEN HIS MOTHER DIED?

15 A. YES, SIR, I DID.

16 Q. YOU KNEW HER RIGHT PRIOR TO HER DEATH?

17 A. YES, SIR, I DID.

18 Q. AND THE FACT THAT KENNETH AND HIS SISTER TOOK CARE
19 OF THEIR FATHER FOR THE NEXT THREE OR FOUR YEARS
20 UNTIL HE PASSED AWAY?

21 A. WELL, I WASN'T IN THE HOUSE. BUT BEING OUTSIDE, I
22 COULD SEE WHAT THE PROBLEMS WERE. AND YOU COULD
23 SEE THAT SOMEBODY HAD TO BE TAKING CARE OF HIM. SO
24 BY HIM BEING IN THE HOUSE AND HIS SISTER, THEY HAD
25 TO BE TAKING CARE OF HIM.

CHARLIE WILSON - DIRECT/MR. BELL

1 Q. SO IT WAS OBVIOUS THAT HE CARED FOR AND LOVED HIS
2 MOTHER AND FATHER?

3 A. YES, SIR.

4 Q. NOW, WHAT CHURCH DO YOU GO TO?

5 A. I GO TO BIBLE ASSEMBLY AND DESIGN.

6 Q. DID KENNETH EVER HELP DO ANY WORK AT YOUR CHURCH?

7 A. YES, SIR. WE STARTED PUTTING ON A DINING HALL AT
8 THE CHURCH. AND BASICALLY, YOU KNOW, BEING A POOR
9 CHURCH, WE DIDN'T HAVE A WHOLE LOT OF MONEY. SO I
10 WOULD SAY KENNETH -- WELL, I DIDN'T CALL HIM
11 KENNETH; BUT ANYWAY -- I WOULD SAY "COULD YOU HELP
12 ME THIS WEEKEND?" "SURE." AND HE WOULD NEVER ASK
13 "HOW MUCH MONEY AM I GOING TO MAKE" OR ANYTHING OF
14 THIS NATURE. HE WOULD BE WILLING TO HELP DO THE
15 WORK BECAUSE WE BASICALLY HAD TO DO THE WORK ON THE
16 CHURCH OURSELVES.

17 Q. SO Y'ALL DID IT -- IT WAS A MORE OR LESS DO IT
18 YOURSELF JOB?

19 A. THAT'S RIGHT; YES, SIR.

20 Q. AND HE HELPED?

21 A. YES, SIR.

22 Q. WHEN WAS THAT WORK DONE?

23 A. APPROXIMATELY BETWEEN EIGHT AND TEN YEARS AGO.

24 Q. SOME TIME IN THE LATE EIGHTIES OR EARLY NINETIES?

25 A. YES, SIR.

CHARLIE WILSON - DIRECT/MR. BELL

1 Q. AND HAVE YOU SEEN KENNETH IN THE RECENT YEARS
2 BEFORE THIS TOOK PLACE?

3 A. BEFORE THIS INCIDENT?

4 Q. YES.

5 A. YES, SIR. I WOULD SEE HIM PERIODICALLY. AND, YOU
6 KNOW, WE WOULD CHAT. IN FACT ONE TIME I SAW HIM, I
7 WAS HELPING MY BROTHER-IN-LAW DO SOME WORK IN
8 GEORGIA. I ASKED HIM TO GO TO GEORGIA WITH ME TO
9 WORK ON A HOUSE. AND HE SAID THAT HE WOULD BUT
10 SOMETHING HAPPENED, AND HE COULDN'T GO DOWN TO
11 GEORGIA WITH ME. BUT I WAS WILLING TO TAKE HIM
12 TO GEOGIA WITH ME TO HELP ME WORK ON A PROJECT.

13 Q. HAVE YOU EVER KNOWN HIM NOT TO BE RESPECTFUL?

14 A. NO, SIR, I HAVEN'T.

15 Q. HAVE YOU EVER KNOWN HIM TO ABUSE AUTHORITY?

16 A. NO, SIR, I HAVE NEVER KNOWN HIM TO ABUSE AUTHORITY.

17 Q. HAVE YOU EVER KNOWN HIM TO BE A VIOLENT PERSON?

18 A. BY NO MEANS, SIR.

19 Q. IN FACT, HAVE YOU EVER KNOWN HIM TO BE A LEADER, OR
20 WAS HE A FOLLOWER?

21 A. I WOULD SAY FROM MY OBSERVATION ON THE FOOTBALL
22 FIELD, I WOULD SAY HE WAS A LEADER ON DEFENSE ON
23 THE FOOTBALL FIELD. BUT IN HIS PRIVATE LIFE, I
24 CAN'T SAY. SO, YOU KNOW, THERE HAS TO BE SOME
25 LEADERSHIP IN A TEAM OR IN A SPORT.

CHARLIE WILSON - DIRECT/MR. BELL

1 Q. AND DID YOU KNOW ANY OF BROTHERS AND SISTERS THAT
2 HE HAD?

3 A. YES, SIR, I DID.

4 Q. DO YOU STILL KNOW SOME OF THEM?

5 A. YES, SIR.

6 Q. WERE THEY NOT A CLOSE FAMILY UNTIL THE DADDY
7 FINALLY DIED?

8 A. THEY WERE ALWAYS A CLOSE-KNIT FAMILY. MAY I
9 ELABORATE?

10 Q. SURE.

11 A. THE OLD MAN; HE WAS THE TYPE OF FELLOW THAT DIDN'T
12 TAKE NO STUFF. ALL THE OLDER KIDS, YOU KNOW, THEY
13 HAD IT A LOT HARDER THAN KENNETH HAD BECAUSE HE WAS
14 A TYPE OF FELLOW THAT WHEN THEY GO TO SCHOOL AND
15 COME HOME, THEY HAD TO GO IN THAT FIELD AND WORK
16 UNTIL DARK. AND AT DARK THEY HAD TO COME IN THE
17 HOUSE, AND THEY HAD TO BE IN THE HOUSE AT A CERTAIN
18 TIME. SO AS HE GOT -- WITH KENNETH'S AGE AND WHAT
19 HAVE -- WHEN HE CAME ALONG, THE OLD MAN WASN'T AS
20 STRONG AS HE WAS BEFORE. SO THEREFORE HE COULDN'T
21 DISCIPLINE KENNETH THE WAY HE WOULD HIS OTHER
22 KIDS.

23 Q. BUT DID HE REALLY NEED TO DISCIPLINE KENNETH?

24 A. WELL, WHEN I SAY "DISCIPLINE," I'M TALKING ABOUT
25 BRINGING UP THE CHILD THE WAY HE WANTED THEM TO

CHARLIE WILSON - DIRECT/MR. BELL

COME UP, YOU KNOW.

Q. WHAT WOULD YOU SAY YOUR RELATIONSHIP WITH KENNETH IS?

A. I WOULD SAY I WAS LIKE -- I WOULD HAVE BEEN A MENTOR, MORE OR LESS, BECAUSE I COULD SHOW HIM HOW TO DO SOME THINGS THAT HE DIDN'T UNDERSTAND HOW TO DO; AND HE WOULD ASK ME HOW TO DO CERTAIN THINGS. OR COULD I EXPLAIN SOMETHING; OR MAYBE DO A LITTLE ESTIMATING AND TELL HIM HOW MUCH MATERIAL IT WOULD TAKE TO DO THIS JOB, OR WHAT HAVE YOU. YOU KNOW, WE WOULD BE TALKING ON THE JOB. I WOULD ASK HIM CERTAIN QUESTIONS WHEN WE WAS WORKING.

Q. SO YOU WOULD TRY TO HELP HIM?

A. SURE.

Q. HE NEVER DID HOLD OUT ANY REAL SKILL JOB, THOUGH, DID HE?

A. YOU MEAN A JOB WHERE YOU GO NINE TO FIVE OR EIGHT TO FIVE?

Q. I'M TALKING ABOUT A JOB THAT REQUIRED A LOT OF SKILL; LIKE WOULD HE BE MORE OF A HELPER OR---

MR. BAILEY: YOUR HONOR, OBJECTION TO LEADING.

A. HE WOULD BE MORE OF A HELPER PER SE. WHEN I SAY HELPER, YOU KNOW, THERE'S GOT A BE FOREMAN ON THE

CHARLIE WILSON - CROSS/MR. BAILEY

JOB; THEN THERE HAS TO BE SOMEBODY TO FOLLOW,
RIGHT? SO THE FOREMAN WOULD TELL THE WORKERS WHAT
TO DO. SO EVERYBODY CAN'T BE CHIEFS; SOMEBODY HAS
TO BE SOME INDIANS.

Q. AND HE WAS AN INDIAN?

A. AN INDIAN; YES, SIR.

Q. IS THERE ANYTHING YOU'D LIKE TO TELL THE
JURY?

A. YES, SIR. I WOULD LIKE TO SAY -- NOT TRYING TO
INTERJECT MY PERSONAL FEELINGS TO THE JURY; BUT
KENNETH IS A GOOD FELLOW. HE'S ALWAYS BEEN A GOOD
FELLOW. AND I KNOW THAT HE WOULD HAVE SOME
POSITIVE IMPACT ON SOMEONE'S LIFE IF HE WAS GIVEN
THE OPPORTUNITY TO LIVE.

Q. THANK YOU, SIR.

MR. BAILEY: PLEASE THE COURT?

THE COURT: CROSS; YES, SIR.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MR. WILSON?

A. YES, SIR.

Q. NO QUESTION ABOUT THE FACT THAT THE SIMMONS' FAMILY
IS A VERY WELL RESPECTED FAMILY IN THE SUMMERVILLE
COMMUNITY; THE EXTENDED FAMILY? THEY'RE GOOD
PEOPLE; WORK HARD; AND THEY RAISED KENNETH SIMMONS

CHARLIE WILSON - CROSS/MR. BAILEY

- 1 UP THE BEST WAY THEY KNEW HOW?
- 2 A. YES, SIR.
- 3 Q. AND HE WAS RAISED UP IN THE CHURCH?
- 4 A. YES, SIR.
- 5 Q. ALL RIGHT, SIR. AND ANYTHING YOU CAN THINK OF THAT
- 6 HIS PARENTS OR ANY OF HIS RELATIVES COULD HAVE DONE
- 7 ANY DIFFERENT TO SET HIM ON THE RIGHT PATH?
- 8 A. COULD YOU COME AGAIN WITH THAT, PLEASE?
- 9 Q. ANYTHING THAT YOU CAN THINK OF THAT HIS PARENTS
- 10 COULD HAVE DONE ANY DIFFERENT TO SET HIM ON THE
- 11 RIGHT PATH?
- 12 A. OF COURSE, THERE'S ALWAYS SOMETHING THAT WE CAN DO
- 13 TO MAKE A DIFFERENCE IN SOMEONE'S LIFE.
- 14 Q. HE HAD ROLE MODELS TO LOOK UP TO INCLUDING
- 15 YOURSELF; DIDN'T HE?
- 16 A. YES, SIR.
- 17 Q. OKAY. AND OTHER PEOPLE IN THE COMMUNITY THAT CARED
- 18 ABOUT HIM THAT HE COULD -- YOU SAID YOU WERE LIKE
- 19 HIS MENTOR. HE COULD COME TO YOU IF HE HAD A
- 20 PROBLEM, AND YOU'D HELP HIM OUT WITH THAT PROBLEM?
- 21 A. IF I HAD THE RESOURCES; YES.
- 22 Q. ALL RIGHT, SIR. AND HE DID AT TIMES COME TO
- 23 YOU; AND YOU WOULD GIVE HIM ADVICE AND
- 24 CONSULTATION?
- 25 A. YES, SIR.

CHARLIE WILSON - CROSS/MR. BAILEY

1 Q. ALL RIGHT, SIR. AND AS FAR AS THE CARPENTRY WORK
2 THAT MR. SIMMONS DID ON YOUR CHURCH; HE DID OTHER
3 JOBS FOR YOU ALSO. I THINK YOU SAID YOU WERE GOING
4 TO TAKE HIM TO GEORGIA TO DO SOME WORK?

5 A. YES, SIR. I SAID I WAS GOING TO GEORGIA TO MY
6 BROTHER-IN-LAW'S HOUSE.

7 Q. ALL RIGHT, SIR.

8 A. BUT I WAS GOING TO TAKE HIM TO DO THAT. IN
9 ADDITION TO THAT, THOUGH, HE PAINTED MY MOTHER'S
10 HOUSE; MY MOTHER WHO WAS SEVENTY YEARS OLD. AND I
11 CAME AND ASKED HER "WHO PAINTED THE HOUSE?" AND
12 SHE SAID, "KENNETH DID." AND I SAID, "HE DID A
13 WONDERFUL JOB;" YOU KNOW. SO I WOULD TRUST HIM
14 WITH MY PARENTS.

15 Q. DID HE DO A GOOD JOB WITH CARPENTRY ALSO?

16 A. YES, SIR.

17 Q. WAS HE A GOOD CARPENTER?

18 A. SIR, HE WOULD DO AS THEY TOLD HIM. YOU KNOW, HOW
19 DO YOU CLASSIFY A GOOD CARPENTER THESE DAYS, YOU
20 KNOW?

21 Q. ALL RIGHT, SIR. I THINK THAT'S ALL I HAVE, MR.
22 WILSON. THANK YOU VERY MUCH.

23 THE COURT: ANYTHING ON RE-DIRECT,
24 MR. BELL?

25 MR. BELL: NOTHING, YOUR HONOR.

MOTIONS

1 THE COURT: ALL RIGHT, MR. BELL, WE
2 WANT TO ACCOMMODATE YOUR WITNESSES, BUT WE WANT TO
3 ACCOMMODATE THE JURY, TOO. IT'S NOW ONE O'CLOCK.
4 IF YOU'VE GOT A SHORT WITNESS. IS THERE ANYONE
5 YOU'D LIKE TO CALL AT THIS TIME BEFORE WE RECESS
6 FOR LUNCH?

7 MR. BELL: NO, YOUR HONOR. I WOULD
8 LIKE TO RECESS IF WE COULD.

9 THE COURT: CERTAINLY. MADAM
10 FORELADY AND LADIES AND GENTLEMEN OF THE JURY;
11 WE'RE GOING TO RECESS AT THIS TIME FOR LUNCH.
12 PLEASE YOU'RE UNDER THE CONTINUING ADMONITION NOT
13 TO ALLOW YOURSELF TO BECOME EXPOSED TO ANYTHING
14 ABOUT THIS CASE OR ALLOW ANYONE TO DISCUSS IT WITH
15 YOU OR IN YOUR PRESENCE FOR OBVIOUS REASONS. THAT
16 WOULD NOT BE PROPER. FURTHER, YOU'RE NOT IN A
17 POSTURE AS YET TO DELIBERATE AND DECIDE THE CASE.
18 I WILL INSTRUCT YOU WHEN TO DO SO. AND YOU SAID
19 YOU WANTED TO EAT AT GEORGIO'S. HAVE A PLEASANT
20 LUNCH. I HOPE YOU GET A DESSERT. THE COUNTY WILL
21 PAY THE GRATUITY OR TIP THAT MIGHT NORMALLY BE
22 EXPECTED. Y'ALL ENJOY. AND IT'S ONE O'CLOCK NOW.
23 AND AGAIN, LADIES AND GENTLEMEN, ALTHOUGH I KEEP
24 MENTIONING WHAT TIME IT IS; I NEED TO KNOW WHEN TO
25 LET OTHER FOLKS BE BACK FOR COURT. AND THAT'S THE

MOTIONS

1 ONLY REASON WHY I NEED A BALL-PARK ESTIMATE AS TO
2 HOW LONG YOU'RE GOING TO BE GONE FOR LUNCH. DO YOU
3 THINK AN HOUR AND FIFTEEN MINUTES IS REASONABLE?
4 DO YOU THINK AN HOUR? DO YOU THINK TWO HOURS? YOU
5 TELL ME.

6 THE FORELADY: HOW ABOUT 2:15?

7 THE COURT: 2:15? DOES THAT SOUND
8 REASONABLE? NOW UNDERSTAND THAT WHEN YOU GET BACK,
9 IF IT'S 2:30, THAT'S NO PROBLEM AT ALL. EVERYBODY
10 WILL BE HERE READY TO GO. BUT I NEED TO KNOW WHEN
11 TO TELL OTHER FOLKS TO BE BACK. AND THAT'S THE
12 ONLY REASON I ASK YOU FOR AN E-T-A, ESTIMATED TIME
13 OF ARRIVAL WE CALL IT. SO WITH THAT, Y'ALL ARE
14 EXCUSED FOR LUNCH. ENJOY!

15 (WHEREUPON AT 1:00 P.M. JURY IS EXCUSED FOR
16 LUNCH.)

17 THE COURT: ALL RIGHT, GENTLEMEN.
18 WHAT I'D LIKE TO DO IS GO TO CHAMBERS AND START
19 WORKING ON THE ARGUMENT OR CHARGE IF THAT SUITS
20 YOUR PLEASURE, ALBEIT YOU TAKE AS MUCH TIME AS YOU
21 NEED WITH YOUR CLIENT OR WITH THE WITNESSES. YOU
22 TELL ME -- THE FOOD. I DON'T KNOW WHAT TIME---

23 THE BAILIFF: THEY'RE READY FOR THE
24 JURY ANY TIME.

25 THE COURT: OKAY. BUT SHE ALREADY

MOTIONS

ORDERED OURS.

THE BAILIFF: YES, SIR. IT SHOULD
BE HERE ANY TIME.

THE COURT: ANY TIME. AND OBVIOUSLY
WHEN IT GETS HERE, WE'LL STOP AND EAT SO IT WILL BE
FRESH AND HOT. SO IS THERE ANYTHING FOR THE
RECORD, PLEASE, LADIES AND GENTLEMEN, AT THIS TIME?

MR. BAILEY: NOT FROM THE STATE,
YOUR HONOR.

THE COURT: ALL RIGHT, THEN. WE'LL
BE IN RECESS UNTIL 2:15. BUT MR. BELL; YOU AND MR.
THEOS DECIDE AND LET THE COURT KNOW WHEN IT'S
CONVENIENT FOR YOU TO MEET IN CHAMBERS WITH MR.
BAILEY AND MYSELF BECAUSE I WANT YOU TO TENDER
ANYTHING ELSE YOU NEED TO DO RELATIVE TO YOUR
PRESENTATION, PLEASE. THANK YOU. WE'LL STAND AT
EASE, LADIES AND GENTLEMEN.

(WHEREUPON AT 1:10 P.M. COURT ADJOURNED FOR LUNCH.)

- - - - -
THE COURT: ALL RIGHT. ANYTHING
BEFORE WE PROCEED?

MR. BAILEY: NOTHING FROM THE STATE,
YOUR HONOR.

MR. THEOS: NOTHING FROM THE
DEFENSE.

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 THE COURT: BRING THE JURY IN,
2 PLEASE.

3 (WHEREUPON AT 2:30 JURY RETURNED TO OPEN COURT.)

4 THE COURT: I HOPE YOU ENJOYED YOUR
5 LUNCH, LADIES AND GENTLEMEN. THE SLIGHT DELAY
6 WHICH I AGAIN FIND MYSELF APOLOGIZING FOR; WE
7 ORDERED FOOD AT TWELVE FROM GEORGIO'S. IT GOT HERE
8 AT TWO. THEY WERE APPARENTLY PRETTY BUSY. SO
9 Y'ALL WERE A STEP OR TWO ANOTHER OF US. BUT AT
10 THIS TIME PLEASE GIVE YOUR CAREFUL ATTENTION AS WE
11 PROCEED WITH OTHER AND FURTHER TESTIMONY. YOU MAY
12 CALL YOUR NEXT WITNESS, GENTLEMEN.

13 MR. BELL: MAY IT PLEASE THE COURT?
14 THIS IS GENE SIMMONS.

15 - - - - -

16 WHEREUPON,
17 GENE ALEX SIMMONS, WHO AFTER BEING
18 FIRST DULY SWORN TO TELL THE TRUTH,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. BELL:

22 Q. MR. SIMMONS, HOW OLD ARE YOU?

23 A. THIRTY-NINE.

24 Q. AND YOU ARE KENNETH'S BROTHER?

25 A. YES.

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 Q. ALL RIGHT. AND YOU, OF COURSE, HEARD MR. LINNING
2 TESTIFY EARLIER ABOUT THE THREE DIFFERENT WIVES
3 THAT YOUR FATHER HAD. AND YOU AND KENNETH -- AND
4 ANNETTE WILL BE HERE SHORTLY -- CAME OUT OF THE
5 THIRD MARRIAGE?

6 A. YES; HE CAME OUT OF THE THIRD MARRIAGE.

7 Q. AND YOU WERE WHAT, A YEAR-AND-A-HALF OR TWO YEARS
8 OLDER THAN KENNETH?

9 A. TWO YEARS OLDER THAN KENNETH, SIR.

10 Q. WHERE DID YOU GO TO SCHOOL?

11 A. SUMMERVILLE HIGH SCHOOL.

12 Q. AND YOU FINISHED?

13 A. YES, SIR.

14 Q. ALL RIGHT. AND ARE YOU MARRIED?

15 A. YES, SIR. I'M MARRIED, AND WE HAVE ONE SON, SIR.

16 Q. WHAT KIND OF OCCUPATION DO YOU HAVE?

17 A. I WORK OVER AT THE ALUMINUM PLANT THAT USED TO
18 BE---

19 THE COURT: I DON'T MEAN TO
20 INTERRUPT YOU, MR. SIMMONS. PULL THAT MICROPHONE
21 DOWN A LITTLE BIT, AND TRY TO SPEAK INTO IT. I
22 JUST WANT TO MAKE SURE THAT EVERYBODY CAN HEAR YOU.
23 SO START OVER, AND TELL HIM ABOUT WHERE YOU WORK,
24 PLEASE.

25 A. I WORK AT THE DYNAMICS -- WELL, IT IS ALCOA NOW,

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 BUT IT USED TO BE DYNAMICS IN GOOSE CREEK.

2 Q. HOW LONG HAVE YOU BEEN OVER THERE?

3 A. WELL, THIS SEPTEMBER WOULD BE EIGHTEEN YEARS, SIR.

4 Q. OKAY.

5 A. IT WOULD BE SEVENTEEN YEARS.

6 Q. NOW, YOU WERE IN HIGH SCHOOL WITH KENNETH, I
7 BELIEVE?

8 A. WELL, I CAME OUT TWO YEARS AHEAD OF HIM.

9 Q. OKAY. BUT YOU WERE THERE TWO YEARS AHEAD OF HIM.
10 HE WENT TO SCHOOL AT THE SAME TIME YOU WERE IN
11 SCHOOL?

12 A. YES, SIR.

13 Q. DID KENNETH EVER CAUSE ANY PROBLEMS AT SCHOOL?

14 A. NOT THAT I KNOW OF, SIR.

15 Q. WOULD YOU HAVE KNOWN IF YOU HAD GONE -- WOULD YOUR
16 DADDY HAVE KNOWN ABOUT IT?

17 A. WELL, MY DADDY AND MY MOTHER WOULD HAVE KNOWN ABOUT
18 IT. BUT I THINK DADDY WOULD HAVE BEEN THE ONE THAT
19 SET THE RECORD STRAIGHT ON BEING DISCIPLINED AND
20 EVERYTHING AT THE TIME.

21 Q. BUT HE NEVER DID HAVE TO DO THAT?

22 A. NO, SIR.

23 Q. NOW, YOU FINISHED SCHOOL IN?

24 A. IN '77, SIR.

25 Q. SEVENTY-SEVEN?

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 A. YES, SIR.

2 Q. AND YOUR MOTHER DIED THE NEXT YEAR?

3 A. YES; MY MOTHER DIED IN '78.

4 Q. SEVENTY-EIGHT?

5 A. YES, SIR.

6 Q. WAS SHE SICK DURING YOUR LAST YEAR OF SCHOOL?

7 A. YES, SIR. SHE SUFFERED FROM SUGAR DIABETES, SIR.
8 AND MYSELF AND KENNETH WERE THE ONES THAT -- EXCEPT
9 MY SISTER; MY SISTER, BERTHA -- MOSTLY TOOK CARE OF
10 MY FATHER AND MY MOTHER, SIR.

11 Q. HOW WAS KENNETH WITH YOUR MOTHER? HOW DID HE TREAT
12 HER?

13 A. I THINK KENNETH MOSTLY HAD -- THE THREE YOUNGEST
14 WAS MOSTLY THE CLOSEST TO MY MOTHER. ALL OF US WAS
15 CLOSE TO MY MOTHER, BUT HE WAS MORE LIKE A MOTHER'S
16 BOY. HE ALWAYS HAS BEEN A CLOWN TO MAKE HER LAUGH
17 DURING THE DAY. DIDN'T TROUBLE HER, YOU KNOW --
18 TAKING INSULIN AND EVERYTHING ELSE; IN A WHEELCHAIR
19 AND ALL.

20 Q. DID YOU NOTICE ANY CHANGES IN KENNETH WHEN YOUR
21 MAMMA DIED?

22 A. KENNETH MOSTLY STAYED TO HIMSELF, SIR, AT THAT
23 TIME. HE WAS MORE OF A DOWN -- HE STILL HAD THE
24 CLOWN IN HIM LIKE THE TEASING AND JOKING WITH
25 EVERYBODY A LOT. BUT AT THAT TIME HE MOSTLY WOULD

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 KIND OF STAY TO HIMSELF WHICH I DO MYSELF BECAUSE
2 EVERYONE -- FROM MY SISTER, COLETTE, WOULD BE THE
3 CLOSEST -- MAMMA WAS THE CLOSEST TO ALL OF US.

4 Q. Y'ALL WERE REALLY ATTACHED TO YOUR MOTHER?

5 A. YES, SIR.

6 Q. NOW, KENNETH IN SCHOOL; DID YOU KNOW HOW HE DID IN
7 SCHOOL GRADE-WISE?

8 A. WELL, KENNETH HAD REGULAR GENERAL MATH AND HISTORY
9 LIKE EVERYONE ONE ELSE WHICH EVERYBODY FEELS THAT
10 KENNETH WAS THE SMARTEST ONE IN THE SCHOOL WHICH HE
11 WASN'T BECAUSE IT WAS NO ONE TO LOOK AT THE SCHOOL
12 RECORDS AND SEE WHAT GRADE LEVEL THAT THE ENGLISH
13 WAS IN. YOU KNOW, THERE WERE THREE DIFFERENT
14 LEVELS, ENGLISH CLASSES THAT YOU COULD TAKE AND
15 THIRTEEN AND FOURTEEN. AND IT WAS FIFTEEN LEVEL
16 ENGLISH WHICH TO ME WAS THE SIXTH TO SEVENTH GRADE
17 LEVEL. IF ANYONE EVER WENT TO SUMMERVILLE, YOU
18 KNEW THAT THERE WERE FIFTEEN LEVEL CLASSES.

19 Q. SO THE LEVEL CLASSES THAT HE WAS TAKING IN SCHOOL
20 WERE THE FIFTEEN LEVEL CLASSES?

21 A. YES, SIR. IT WAS A LOT OF -- I HATE TO THINK LIKE
22 THIS, BUT FOOTBALL PLAYERS ON THE SUMMERVILLE
23 FOOTBALL TEAM WAS IN THAT SAME CLASS.

24 Q. SO THOSE THAT HAD PROBLEMS WITH GRADES HAD THE
25 FIFTEEN LEVEL CLASSES TO HELP THEM ALONG?

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 A. TO HELP THEM ALONG. AND ANYWHERE ELSE THEY NEEDED
2 HELP, IF THEY DIDN'T PASS, IT WAS GIVEN TO THEM.

3 Q. NOW, HE PLAYED FOOTBALL?

4 A. THAT'S CORRECT, SIR.

5 Q. AND WHAT POSITION DID HE PLAY?

6 A. TIGHT END. NO, NOT TIGHT END. IT WAS SAFETY AND
7 RUNNING BACK.

8 Q. AND---

9 A. AND I DON'T REMEMBER ANY OF THE OTHER ONES.

10 Q. WAS HE A LEADER OF THE TEAM, OR IS HE A MEMBER OF
11 THE TEAM?

12 A. MOSTLY IF YOU -- THE QUARTERBACK IS THE LEADER OF
13 THE OFFENSE WHICH ANYBODY KNOWS. HE PLAYED MOSTLY
14 THE DEFENSE. AND THE DEFENSE -- YOUR LINEBACKER IS
15 THE LEADER OF THE DEFENSIVE TEAM. HE NEVER WAS IN
16 THE LINEBACKER POSITION.

17 Q. AND DO YOU KNOW OF ANY TROUBLE THAT HE GOT IN AFTER
18 SCHOOL OR ANY OF THAT PERIOD OF TIME?

19 A. NOT RIGHT -- WELL, JUST ARGUMENTS MOST OF THE TIME
20 BETWEEN STUDENTS BUT NEVER BROKE OUT INTO A FIGHT
21 BECAUSE HE WOULD TEASE A LOT, AND SOME PEOPLE WOULD
22 GET ANGRY. BUT HE WOULD STOP BECAUSE HE DIDN'T
23 REALLY MEANT TO MAKE ANYBODY MAD BECAUSE HE NEVER
24 CARED TO FIGHT ANYONE. EVEN BETWEEN ME AND HIM AS
25 KIDS GROWING UP; BEFORE WE WOULD FIGHT, WE WOULD

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 START TO CRY BECAUSE WE KNOW THAT SOMETHING WAS
2 WRONG AND IT GOT OUT OF HAND. I NEVER KNEW HIM TO
3 BE A VIOLENT PERSON WHICH---

4 Q. WAS HE VIOLENT WITH OTHER PEOPLE?

5 A. NOT THAT I KNOW OF, SIR. NO ONE EVER TOLD ME ABOUT
6 IT.

7 Q. NOW, YOUR MOTHER PASSED AFTER YOU GOT OUT OF HIGH
8 SCHOOL?

9 A. YES. MY MOTHER PASSED -- WELL, REALLY MY MOTHER
10 PASSED FOUR MONTHS -- WHEN I WENT INTO THE
11 MILITARY; I WENT INTO THE MILITARY IN '78. MY
12 FATHER PASSED FIVE MONTH AFTER I GOT OUT. AND
13 DURING THAT TIME KENNETH AND ANNETTE WAS MOSTLY THE
14 ONES THAT TOOK CARE OF HIM.

15 Q. AND YOUR FATHER WAS RIGHT ELDERLY AT THAT TIME. HE
16 WAS 88 YEARS OLD, WASN'T HE, ROUGHLY?

17 A. PRETTY CLOSE TO IT. I WOULD SAY -- NO HE WASN'T
18 88. IT WAS 78 YEARS OLD, SIR.

19 Q. AND YOU SAY KENNETH AND ANNETTE TOOK CARE OF HIM?

20 A. YES, SIR.

21 Q. DID KENNETH LOVE HIS DADDY?

22 A. WELL, WHEN MAMMA DIED, THAT WAS THE ONLY PERSON HE
23 HAD TO HOLD ONTO WHICH HE LOVED MY FATHER ANYWAY
24 BECAUSE WE GREW UP IN A FAMILY, LIKE THEY SAID,
25 DURING THE TIME -- YOU HAD A GARDEN OR A FIELD THAT

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 WE WAS IN PICKING COTTON AND BREAKING CORN AND
2 DOING EVERYTHING ELSE. AND KENNETH ALWAYS HAS BEEN
3 THE ONE THERE FOR MY FATHER -- WELL, REALLY, IT WAS
4 MICHAEL. THEN KENNETH WAS NEXT BECAUSE I NEVER DID
5 CARE ABOUT WORKING THE FIELD. THAT'S WHY I WENT TO
6 THE MILITARY TO TRY TO BETTER MYSELF AND GET AWAY
7 FROM THE FARM. BUT AFTER MAMMA DIED, KENNETH WAS
8 THE CLOSEST TO MY FATHER WITH ANNETTE JUST TAKING
9 CARE OF MY FATHER. HE WAS THE CLOSEST TO THEM,
10 SIR.

11 Q. HE'S GOT TWO CHILDREN, I BELIEVE?

12 A. WHO; KENNETH?

13 Q. YES; KENNETH?

14 A. YES, HE DOES. LITTLE KENNETH AND ANTHONY.

15 Q. DOES HE LOVE THOSE CHILDREN?

16 A. YES, SIR. HE LOVES THEM, AND THEY LOVE HIM BECAUSE
17 I'M NOT GOING TO TRY TO PUT HIM ON A PEDESTAL. BUT
18 THE WAY HIS LIFE DETERIORATED; HE WENT OUT AND GOT
19 IN TROUBLE. THEN HIM AND HIS WIFE SPLIT UP. AFTER
20 HE LEFT HOME, HIS OLDEST SON WHO REALLY COULD
21 RECOGNIZE THINGS THAT KNEW ABOUT HIM AND HEARD
22 ABOUT HIM, ESPECIALLY AFTER HE GOT INTO HIGH
23 SCHOOL, AFTER KENNETH GOT INTO THIS TROUBLE. IT
24 SORT OF TORE HIS LIFE APART BECAUSE HE CAN'T GET
25 THE CONNECTION TO HIS FATHER THE WAY THAT HE HAD.

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 EVEN WHILE KENNETH WAS OUT, HE HARDLY EVER SEES
2 HIM. NOT HARDLY EVER SEES HIM; BUT DURING A MONTH
3 AT A TIME, HE WOULDN'T SEE HIM LIKE I WOULD SEE MY
4 SON. HE WOULD GO OUT TWO OR THREE TIMES A WEEK.
5 SOMETIMES THE NEXT WEEK HE WOULDN'T COME AROUND.
6 BUT WHEN HE'D GO AROUND, IT WAS LIKE THE JOY OF HIS
7 SON'S HEART, YOU KNOW. AND WHEN HE'D LEAVE, IT
8 TORE HIM APART, SIR.

9 Q. KENNETH'S DOWNFALL STARTED WHEN?

10 A. WELL, IT RECOGNIZES TO ME, SIR, WAS AFTER MAMMA
11 DIED WHERE HE SORT OF SEPARATED HIMSELF FROM A LOT
12 OF PEOPLE. HE GOT REAL CLOSE TO MY FATHER; AND
13 AFTER MY FATHER DIED IN '82, HE GOT MARRIED. HIS
14 LIFE WAS GOOD THEN. THEN HE STARTED DRUGS AND
15 ALCOHOL AND EVERYTHING. AND IT WAS STILL ON THE
16 DOWNHILL DRIVE EVER SINCE.

17 Q. DID YOU EVER WORK WITH KENNETH?

18 A. YES; I DID A FEW JOBS. BUT AFTER I GOT OUT OF THE
19 MILITARY, THE JOB RATE WAS POOR DURING THAT TIME TO
20 TRY TO GET A JOB. AND HE HELPED ME GOT ONTO
21 BAILEY'S INSULATION WHERE HE WAS WORKING. AND I
22 WORKED A FEW MONTHS WITH THEM. AND THAT'S WHEN I
23 GOT OVER TO ALIMAX IN '83, SIR.

24 Q. WELL, YOU'VE WORKED ON SOME CONSTRUCTION JOBS WITH
25 KENNETH IN YOUR DAYS?

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 A. DURING '78. BUT RIGHT AFTER I GOT OUT OF THE
2 MILITARY, ON THE WEEKENDS WE WOULD GO WITH A BRICK
3 MASON, SAMMY GLOVER, YOU KNOW, ROLLING BRICKS UP,
4 BLOCKS, OR WHATEVER WE NEEDED TO DO. LIKE SOME
5 PEOPLE WOULD SAY, A GOPHER PERSON; A FEW
6 CONSTRUCTION JOBS AS CARPENTER. AS PEOPLE SAY,
7 THEY'RE JUST SAYING THAT HE WAS A HIGH LEVEL
8 CARPENTER WHICH HE WASN'T. IF YOU COULD MEASURE
9 OUT THE DISTANCE AND PUT THE MARK THAT'S ON THE
10 BOARD, HE WOULD CUT IT. BUT THAT'S ABOUT ALL THAT
11 I EVER DID WITH A CARPENTER OR WITH A BRICK MASON.
12 I MEAN, IT'S A LABORER WHICH WE WOULD CALL IT. YOU
13 WOULD WORK AS A LABORER, SIR.

14 Q. HOW DID YOU FEEL WHEN KENNETH GOT ARRESTED FOR THIS
15 THING?

16 A. TO ME IT WAS SHOCK OR DISAPPOINTMENT; NOT FOR
17 MYSELF, BUT REALLY BECAUSE OF HIS KIDS; AND I KNOW
18 HOW THEY WOULD TAKE IT, OR HIS OLDEST SON WOULD
19 TAKE IT BECAUSE THE OTHER SON WAS SO YOUNG, YOU
20 KNOW, HE WOULDN'T REALLY RECOGNIZE IT. AND TO KNOW
21 THAT HE DID SOMETHING -- YOU KNOW, NOT SAYING THAT
22 HE DID IT. BUT AT THAT TIME HE WAS A SUSPECT THAT
23 THEY SAY DID IT. SO IT REALLY TORE THE FAMILY UP
24 TO KNOW ABOUT IT, YOU KNOW, TO HEAR ABOUT IT
25 BECAUSE, YOU KNOW, WITHIN THE FAMILY WE HAVE SENIOR

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 CITIZENS AROUND THE AREA THE SAME AGE, AND YOU
2 WOULDN'T WANT ANYBODY TO DO YOUR FAMILY LIKE THAT.
3 AND IT SURPRISES US THAT THEY SAY THAT HE DID IT.
4 I MEAN, IT REALLY JUST TORE THE WHOLE FAMILY UP,
5 SIR.

6 Q. EVEN THOUGH IT'S ALREADY BEEN FOUND THAT HE DID IT,
7 DO YOU STILL LOVE YOUR BROTHER?

8 A. YES, SIR, I LOVE MY BROTHER VERY MUCH, SIR. I
9 WOULD DO ANYTHING TO SAVE HIS LIFE. TO HAVE A LIFE
10 WITHOUT HIM, EVEN IF HE'S LOCKED UP FOR THE REST OF
11 HIS LIFE, THEN THERE'S SOME SORT OF COMMUNICATION
12 THAT HE WOULD HAVE BETWEEN HIMSELF AND HOPEFULLY
13 HIS SON NOT TO LET ANOTHER GENERATION OF FAMILY GO
14 DOWN THE SAME TRAIL THAT REALLY GOT HIM IN THE
15 SITUATION THAT HE GOT INTO. BECAUSE IF HE CAN TALK
16 TO THEM AND KEEP THEM OUT OF THE SAME SITUATION, IT
17 WOULD HELP A WHOLE LOT. THEN HIS SONS THINKING
18 WELL, DAD'S GOING TO HAVE TO DIE. I THINK THAT
19 WOULD RUIN HIS LIFE WORSE THAN HAVING TO BE ABLE TO
20 GO TALK TO HIM AND SOMEONE KEEP HIM IN LINE. WE
21 WERE TRYING OUR BEST TO GET HIM TO UP HERE TODAY
22 BECAUSE IF YOU SITTING HOME WATCHING TELEVISION AND
23 HEAR THINGS ON THE NEWS SAYING YOUR FATHER THIS AND
24 YOUR FATHER THAT, AND YOU CAN'T REALLY HEAR OR SEE
25 OR UNDERSTAND WHAT'S GOING ON, I THINK IT WOULD

GENE ALEX SIMMONS - DIRECT/MR. BELL

1 REALLY TEAR HIS SONS APART, SIR.

2 Q. HOW ABOUT THE REST OF THE FAMILY?

3 A. I THINK THAT'S WHY MOST OF THE FAMILY IS NOT UP
4 HERE, SIR. WELL, I SAY THEY CAN'T TAKE IT. A LOT
5 OF THEM -- MY SISTER'S IN VIRGINIA. SHE JUST GOT
6 OVER AN OPERATION. SHE WAS ONE OF THE ONES THAT
7 ARE VERY CLOSE TO KENNETH. AND NOW IT'S HARD FOR
8 HER TO TAKE IT WHILE SHE'S UP THERE. SO THE NEWS
9 YESTERDAY OF HIM BEING -- THE VERDICT COMING DOWN
10 SAYING HE'S GUILTY WAS HARD. IT WOULD BE MORE
11 TRAGIC FOR THE VERDICT SAYING GIVING HIM THE DEATH
12 WOULD BE MUCH MORE HARDER ON US. BUT MY SISTER
13 HAS DONE LIVED HER LIFE. SHE IS MUCH -- I THINK
14 SHE COULD HANDLE IT A WHOLE LOT BETTER THAN HIS
15 SONS WOULD TAKE IT.

16 Q. DO YOU WANT THIS JURY TO SPARE HIS LIFE?

17 A. VERY MUCH SO. I DON'T WANT TO DISRESPECT ANYONE IN
18 THIS COURT; BUT IF I CAN ASK YOU TO SAVE MY
19 BROTHER'S LIFE AND GIVE HIM A CHANCE WHILE HE'S
20 INCARCERATED TO TEACH BOTH OF HIS SONS FOR A BETTER
21 LIFE -- TO GIVE HIS SON A BETTER LIFE EVEN FROM
22 JAIL. THAT IS WHAT I WOULD ASK OF YOU, TOO, FROM
23 MY HEART. AND I WOULD GIVE ANYTHING, EVEN IF IT'S
24 MY LIFE, TO CHANGE PLACES WITH HIM; JUST TO SAVE
25 HIS LIFE. BUT THEN YOU CAN'T DO IT THAT WAY, SIR.

GENE ALEX SIMMONS - CROSS/MR. BAILEY

1 BUT I WOULD ASK YOU TO SPARE HIS LIFE SO HE CAN NOT
2 LET ANOTHER GENERATION OF MY FAMILY GO DOWN THE
3 SAME TRAIL THAT HE WENT.

4 Q. THANK YOU, GENE. ANSWER ANY QUESTIONS THAT MR.
5 BAILEY MAY HAVE.

6 THE COURT: YOU MAY CROSS-EXAMINE.

7 MR. BAILEY: YES, SIR.

8 CROSS-EXAMINATION

9 BY MR. BAILEY:

10 Q. SINCE YOUR BROTHER HAS BEEN IN JAIL OVER HERE
11 ACROSS THE STREET, I THINK SINCE DECEMBER OF 1997,
12 YOU'VE LIVED IN SUMMERVILLE; IS THAT CORRECT?

13 A. YES, SIR.

14 Q. THE ENTIRE TIME?

15 A. YES, SIR.

16 Q. ALL RIGHT, SIR. AND YOU'VE BEEN TO SEE YOUR
17 BROTHER ONCE IN AUGUST AND ONCE IN OCTOBER OF LAST
18 YEAR; IS THAT CORRECT?

19 A. YES, SIR.

20 Q. THOSE ARE THE ONLY TWO TIMES YOU'VE BEEN TO SEE
21 HIM?

22 A. YES, SIR.

23 Q. ALL RIGHT, SIR. AND HIS SON, KENNETH, HAS BEEN
24 THERE ONE TIME TO SEE HIM IN THE LAST YEAR?

25 A. YES, SIR.

ANNETTE GEDDIS - DIRECT/MR. BELL

Q. THANK YOU. THAT'S ALL I HAVE.

THE COURT: ANYTHING FURTHER FROM
THIS WITNESS, MR. BELL?

MR. BELL: NOTHING FURTHER, YOUR
HONOR.

THE COURT: THANK YOU, MR. SIMMONS.
YOU MAY STEP DOWN. NEXT WITNESS, PLEASE,
GENTLEMEN.

MR. BELL: ANNETTE GEDDIS, YOUR
HONOR.

WHEREUPON,

ANNETTE S. GEDDIS, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BELL:

Q. MRS. GEDDIS, I BELIEVE YOU'RE KENNETH'S YOUNGEST
SISTER; IS THAT RIGHT?

A. YES.

Q. ARE YOU MARRIED?

A. YES.

Q. HOW MANY CHILDREN HAVE YOU GOT?

A. THREE.

Q. WHERE DO YOU WORK?

ANNETTE GEDDIS - DIRECT/MR. BELL

1 A. TRIDENT MEDICAL CENTER.

2 Q. AND WHERE DO YOU LIVE?

3 A. IN JEDBURG; [REDACTED] [REDACTED].

4 Q. NOW, YOU AND KENNETH -- AND OF COURSE GENE RIGHT
5 AT THE END -- WERE HOME WHEN YOUR MOTHER PASSED
6 AWAY; IS THAT CORRECT?

7 A. YES.

8 Q. AND YOU WERE A YOUNG PERSON AT THAT TIME, WERE YOU
9 NOT?

10 A. RIGHT; FOURTEEN OR FIFTEEN.

11 Q. AND I BELIEVE GENE TESTIFIED THAT YOU AND KENNETH
12 TOOK CARE OF YOUR MAMMA. IS THAT BASICALLY WHAT
13 HAPPENED?

14 A. YES.

15 Q. DID KENNETH ALSO HELP TAKE CARE OF YOU?

16 A. RIGHT.

17 Q. OKAY. NOW TELL ME WHEN GENE WENT INTO SERVICE, WHO
18 THEN WORKED WITH YOUR FATHER WHILE HE WAS THERE?

19 A. ME AND KENNETH.

20 Q. AND WHAT WOULD KENNETH DO?

21 A. WHAT DID YOU SAY?

22 Q. WHAT WOULD KENNETH DO FOR YOUR FATHER AND/OR FOR
23 YOU?

24 A. WELL, HE WOULD BE THE ONLY ONE WORKING OR COOK,
25 TAKE CARE OF US.

ANNETTE GEDDIS - DIRECT/MR. BELL

- 1 Q. DID THAT GO ON THROUGHOUT THE TIME?
- 2 A. YES, SIR, UNTIL DADDY DIED; RIGHT.
- 3 Q. AND HAVE YOU STAYED KIND OF CLOSE TO KENNETH
- 4 THROUGHOUT THE YEARS?
- 5 A. YES, SIR.
- 6 Q. SEE HIM OFTEN?
- 7 A. YES, SIR.
- 8 Q. AND YOU LIVE IN JEDBURG, AND HE'S IN SUMMERVILLE?
- 9 A. SUMMERVILLE; RIGHT.
- 10 Q. DO YOU LOVE YOUR BROTHER?
- 11 A. YES, SIR.
- 12 Q. HOW DID YOU FEEL WHEN YOU HEARD THAT HE WAS
- 13 ARRESTED ON THIS THING?
- 14 A. IT HURT. IT'S STILL HURTING. AND I STILL DON'T
- 15 BELIEVE IT.
- 16 Q. YOU DIDN'T BELIEVE HE COULD DO THAT?
- 17 A. NO.
- 18 Q. WAS THAT SOMETHING THAT YOU WOULD HAVE EXPECTED OUT
- 19 OF HIM WHEN HE WAS A YOUNG MAN GROWING UP WITH YOU?
- 20 A. NO.
- 21 Q. WAS HE EVER IN TROUBLE WHEN HE WAS IN SCHOOL?
- 22 A. NO, SIR.
- 23 Q. DID YOUR PARENTS HAVE TO DISCIPLINE HIM ALL THE
- 24 TIME?
- 25 A. NO, SIR.

ANNETTE GEDDIS - DIRECT/MR. BELL

1 Q. WAS HE A GOOD KID?

2 A. YES, SIR.

3 Q. DID HE GET IN FIGHTS WITH PEOPLE?

4 A. NOT AS I KNOW OF.

5 Q. YOUR MOTHER OR YOUR DADDY WOULD HAVE DISCIPLINED
6 HIM IF HE WOULD HAVE, WOULDN'T THEY?

7 A. RIGHT; ALL OF US.

8 Q. DO YOU KNOW WHAT KENNETH HAS DONE AS FAR AS HIS
9 WORK OR ANYTHING OF THAT NATURE? WERE YOU EVER
10 INVOLVED WITH HIM OR KNEW WHAT HE WAS DOING?

11 A. WHEN HE USED TO CALL ME, HE WAS DOING ROOFING;
12 FIXING SOMEBODY'S ROOF OR SOMEBODY'S PORCH.

13 Q. HE DID MANUAL LABOR TYPE STUFF?

14 A. YES.

15 Q. WHEN DID YOU LEAVE THE HOME?

16 A. I LEAVE THE HOME AFTER GENE CAME BACK FROM THE
17 SERVICE.

18 Q. GENE CAME BACK FROM THE SERVICE RIGHT BEFORE YOUR
19 DADDY DIED?

20 A. YES.

21 Q. AND THEN YOU LEFT HOME?

22 A. YES.

23 Q. HAVE YOU STAYED IN CLOSE CONTACT WITH KENNETH FROM
24 THE TIME YOU LEFT THE HOME UP UNTIL THIS THING
25 HAPPENED?

ANNETTE GEDDIS - DIRECT/MR. BELL

1 A. YES.

2 Q. AND HOW ABOUT HIS ACTIVITIES WITH THE CHURCH?

3 ANYTHING OF THAT -- DO YOU KNOW ANY OF THAT; WHAT
4 WORK HE DID FOR THE CHURCH?

5 A. NO, SIR.

6 Q. DO YOU LOVE YOUR BROTHER?

7 A. YES, SIR.

8 Q. DO YOU KNOW HIS RELATIONSHIP WITH HIS CHILDREN?
9 DOES HE LOVE THEM?

10 A. YES, HE DOES; AND THEY LOVE HIM.

11 Q. YOU'VE SEEN THEM TOGETHER?

12 A. YES. I WAS TRYING TO GET THEM UP HERE THIS WHOLE
13 WEEK FOR THEIR DAD'S SUPPORT.

14 Q. ARE YOU ASKING THIS JURY NOT TO PUT YOUR BROTHER TO
15 DEATH?

16 A. YES, SIR.

17 Q. HOW DID YOU FEEL WHEN KENNETH GOT ARRESTED FOR THIS
18 THING?

19 A. IT HURT; IT REALLY HURTS.

20 Q. IS THERE ANYTHING YOU WANT TO TELL THIS JURY FOR
21 YOUR BROTHER?

22 A. JUST SAVE HIS LIFE BECAUSE HE'S GOT TWO KIDS, TWO
23 SONS. I HAVE TWO SONS AND A DAUGHTER THAT LOOKS UP
24 TO HIM REALLY CLOSE. AND WE LOOKED UP TO KENNETH
25 ALL THE TIME BECAUSE HE ALWAYS WOULD CALL AND SEE

ANNETTE GEDDIS - DIRECT/MR. BELL

1 HOW I'M DOING. AND I'M ASKING YOU TO SAVE HIM.

2 Q. HE CARES FOR YOU?

3 A. YES, SIR.

4 Q. DO YOU CARE FOR HIM?

5 A. YES.

6 Q. WHAT WOULD HE DO -- DID YOU EVER OBSERVE HIM DOING
7 ANYTHING WITH HIS CHILDREN?

8 A. JUST TAKING---

9 Q. TAKING THEM OUT AND PLAYING WITH THEM?

10 A. THEY'D GO OUT, WRESTLING YOU KNOW, PLAYING FOOTBALL
11 BECAUSE HE WOULD TAKE MY TWO OLDEST ONES.

12 Q. HOW WAS HE AROUND CHILDREN?

13 A. HE LOVED KIDS.

14 Q. DID IT SHOW BY THE WAY HE TREATED THEM?

15 A. YES, BECAUSE HE WAS ALWAYS PLAYING. THEY ALWAYS
16 PLAYED.

17 Q. NOW, HAVE YOU KEPT UP WITH KENNETH -- YOU KNOW THIS
18 INCIDENT TOOK PLACE IN SEPTEMBER OF '96. AFTER
19 THAT DID KENNETH STILL COME AROUND TO SHOW CARE FOR
20 YOU?

21 A. YES, SIR; HE WOULD CALL; HE MOSTLY WOULD CALL.

22 Q. WOULD HE STILL PLAY WITH YOUR CHILDREN OR GO OUT
23 WITH YOUR CHILDREN AFTER THAT?

24 A. YES, SIR; PLAY ON THE TELEPHONE.

25 Q. WAS HE STILL A LOVING AND CARING MAN?

ANNETTE GEDDIS - DIRECT/MR. BELL

- 1 A. YES, SIR.
- 2 Q. WHEN YOU WERE GROWING UP, DO YOU KNOW OF ANYTHING
- 3 VIOLENT THAT KENNETH DID?
- 4 A. NO, SIR.
- 5 Q. HOW WOULD YOU DESCRIBE -- WHAT TYPE PERSON WAS HE
- 6 WHEN Y'ALL WERE GROWING UP?
- 7 A. HE WAS A GOOD PERSON BECAUSE WE ALWAYS BE TOGETHER;
- 8 YOU KNOW, PLAYING AROUND.
- 9 Q. YOU KNOW YOU SAID YOU AND HE TOOK CARE OF YOUR
- 10 FATHER THE LAST COUPLE OF YEARS. WHAT ALL DID HE
- 11 DO FOR YOUR FATHER?
- 12 A. WELL, YOU HAD TO BATHE HIM BECAUSE HE WAS TOTALLY
- 13 IN THE BED. WE HAD TO BATHE HIM AND FEED HIM.
- 14 Q. TAKE CARE OF EVERYTHING FOR HIM?
- 15 A. YES.
- 16 Q. HE WAS BED RIDDEN?
- 17 A. YES, SIR.
- 18 Q. HOW LONG WAS HE LIKE THAT?
- 19 A. UNTIL HE DIED.
- 20 Q. SEVERAL YEARS? MONTHS?
- 21 A. IT WAS A YEAR; ABOUT A YEAR.
- 22 Q. HOW DO YOU FEEL ABOUT KENNETH NOW?
- 23 A. I LOVE HIM TO DEATH.
- 24 Q. EVEN WITH WHAT'S GOING ON?
- 25 A. WHAT HE DID WAS WRONG; BUT I LOVE HIM.

ANNETTE GEDDIS - DIRECT/MR. BELL

- 1 Q. HE'S STILL YOUR BROTHER?
- 2 A. HE'S STILL MY BROTHER.
- 3 Q. STILL A GOOD MAN?
- 4 A. YES, SIR.
- 5 Q. WHEN Y'ALL WERE GROWING UP, HOW DID HE ACT AROUND
- 6 OLDER PEOPLE? DID YOU EVER SEE HIM AROUND OTHER
- 7 PEOPLE THEIR AGE OR CLOSER TO THEIR AGE THAT WOULD
- 8 COME VISIT OR ANYTHING LIKE THAT?
- 9 A. YES BECAUSE WE'VE GOT -- MY FATHER'S SISTERS,
- 10 THEY'RE OLD.
- 11 Q. HOW DID HE ACT AROUND THEM?
- 12 A. HE TREATED THEM WITH RESPECT.
- 13 Q. VERY RESPECTFUL?
- 14 A. YES. NEXT DOOR NEIGHBORS, THEY WERE OLD.
- 15 Q. DID YOU EVER SEE HIM BE MEAN TOWARD ANY OF THE OLD
- 16 PEOPLE OR YOUR FATHER OR ANY OF THEM?
- 17 A. NO, SIR.
- 18 Q. DID Y'ALL GO TO CHURCH?
- 19 A. YES; WE WENT TO BOND'S TEMPLE.
- 20 Q. WHAT'S THE NAME OF IT?
- 21 A. BOND'S TEMPLE.
- 22 Q. YOUR MAMMA AND DADDY TOOK YOU?
- 23 A. NO; WE HAD TO WALK.
- 24 Q. YOU HAD TO WALK?
- 25 A. I USED TO WALK TO SUNDAY SCHOOL EVERY SUNDAY AND

ANNETTE GEDDIS - CROSS/MR. BAILEY

1 BACK.

2 Q. HOW FAR DID YOU HAVE TO GO?

3 A. OH, I DON'T KNOW. I GUESS THAT'S FOUR MILES. I
4 DON'T REALLY KNOW. IT'S NOT TOO FAR.

5 Q. AND Y'ALL WENT TO CHURCH EVERY SUNDAY?

6 A. TO SUNDAY SCHOOL AND CHURCH.

7 Q. HAVE YOU EVER KNOWN KENNETH TO NOT BE RESPECTFUL TO
8 AN OLDER PERSON?

9 A. NO, SIR. HE LOVED OLD PEOPLE. AND I DO, TOO,
10 BECAUSE THAT'S WHO I WORK WITH.

11 Q. ANSWER ANY QUESTIONS MR. BAILEY MAY HAVE.

12 THE COURT: YOU MAY CROSS.

13 MR. BAILEY: THANK YOU, YOUR HONOR.

14 CROSS-EXAMINATION

15 Q. MRS. GEDDIS, I KNOW THIS IS UNCOMFORTABLE FOR YOU.
16 AND I'LL TRY TO BE AS BRIEF AS I CAN; ALL RIGHT?

17 A. OKAY.

18 Q. MRS. GEDDIS, BACK ON MARCH THE 30TH OF LAST YEAR,
19 YOU TOOK MR. SIMMONS' SON TO JAIL TO SEE HIM,
20 DIDN'T YOU?

21 A. YES, SIR.

22 Q. OKAY. AND YOU HAVE NOT BEEN BACK TO SEE HIM SINCE
23 THEN, HAVE YOU?

24 A. I REALLY CAN'T TELL YOU BECAUSE I USUALLY GO EVERY
25 OTHER WEEKEND.

ANNETTE GEDDIS - CROSS/MR. BAILEY

1 Q. OKAY.

2 A. AND I DIDN'T KEEP UP WITH THE DATES. I JUST WOULD
3 GO.

4 Q. TO THE JAIL?

5 A. YES, SIR.

6 Q. EVERY OTHER WEEK?

7 A. YES.

8 Q. ALL RIGHT. AS FAR AS YOU KNOW, SINCE MARCH THE
9 30TH OF LAST YEAR MR. SIMMONS' SON, KENNETH HAS
10 ONLY BEEN UP TO ST. GEORGE TO SEE HIM THAT ONCE?

11 A. YES, SIR.

12 Q. NOW, HE AND HIS WIFE, VALERIE, SEPARATED ABOUT,
13 WHAT, TEN TO TWELVE YEARS AGO?

14 A. YES, SIR.

15 Q. AND DO YOU KNOW WHETHER OR NOT YOUR BROTHER HAS
16 PAID ANY CHILD SUPPORT FOR HIS CHILDREN SINCE THEN?

17 A. I DON'T KNOW, SIR.

18 Q. THAT'S ALL I HAVE, MRS. GEDDIS. THANK YOU.

19 THE COURT: MR. BELL OR THEOS;
20 ANYTHING OTHER OR FURTHER FROM THIS LADY?

21 MR. BELL: NO, YOUR HONOR.

22 THE COURT: THANK YOU, MA'AM. YOU
23 MAY STEP DOWN.

24 MR. BELL: MRS. FRANKLIN.

25 - - - - -

SANDRA FRANKLIN - DIRECT/MR. BELL

WHEREUPON,

SANDRA FRANKLIN, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BELL:

Q. MRS. FRANKLIN, WHERE DO YOU LIVE?

A. IN SUMMERVILLE.

Q. HOW LONG HAVE YOU BEEN THERE?

A. APPROXIMATELY ELEVEN YEARS.

Q. WHAT'S YOUR EDUCATIONAL BACKGROUND?

A. I HAVE A YEAR OF COLLEGE.

Q. AND DO YOU HAVE AN OCCUPATION?

A. I DON'T WORK. I VOLUNTEER AS A HOSPICE VOLUNTEER
AND ALSO AS A DORCHESTER DISTRICT TWO SURROGATE
PARENT.

Q. AND YOU'RE MARRIED?

A. YES, SIR.

Q. HAVE ANY CHILDREN?

A. NO, SIR.

Q. AND YOU KNOW KENNETH SIMMONS, DON'T YOU?

A. YES, SIR, I DO.

Q. HOW DID YOU GET TO KNOW KENNETH SIMMONS?

A. MY HUSBAND AND I VOLUNTEER AT PALMETTO HOUSE; AND
HE WOULD COME IN TO USE THE PHONE. AND I THINK

SANDRA FRANKLIN - DIRECT/MR. BELL

1 THAT HE LIVED THERE, YOU KNOW, BRIEFLY A COUPLE OF
2 TIMES WHILE WE VOLUNTEERED THERE.

3 Q. ALL RIGHT. NOW, WHAT'S THE PALMETTO HOUSE?

4 A. A HOMELESS SHELTER IN SUMMERVILLE.

5 Q. WHEN DO YOU AND YOUR HUSBAND VOLUNTEER THERE?

6 A. WE DON'T ANY MORE. WE DID FOR FOUR OR FIVE YEARS.

7 Q. WHEN DID THAT START?

8 A. I THINK PROBABLY ABOUT EIGHT YEARS AGO. RIGHT
9 BEFORE WE MET KENNETH.

10 Q. AND YOU MET HIM RIGHT AFTER YOU GOT THERE?

11 A. YES, SIR.

12 Q. WHAT IS THE PALMETTO CENTER?

13 A. IT'S A HOMELESS SHELTER.

14 Q. AND WHAT DOES IT PROVIDE, AND TO WHOM DOES IT
15 PROVIDE?

16 A. SHELTER AND MEALS, SHOWERS, A MAILING ADDRESS,
17 SUPPORT, ENCOURAGEMENT.

18 Q. AND YOU SAID YOU MET KENNETH THERE SOME EIGHT YEARS
19 AGO?

20 A. YES, SIR.

21 Q. AND WERE YOU WORKING THERE VOLUNTEERING THERE WHEN
22 YOU MET HIM?

23 A. YES, SIR.

24 Q. WHAT WAS HE DOING THERE?

25 A. (NO RESPONSE.)

SANDRA FRANKLIN - DIRECT/MR. BELL

1 Q. TAKING ADVANTAGE OF THE FACILITIES THERE?

2 A. YES, SIR; TO THE BEST OF MY KNOWLEDGE. I DON'T
3 THINK HE WAS LIVING THERE AT THE TIME. I THINK
4 WHEN WE FIRST MET HIM, HE JUST CAME, YOU KNOW, TO
5 TAKE ADVANTAGE OF THE MEALS OR THE TELEPHONE. BUT
6 I DON'T BELIEVE HE WAS LIVING THERE WHEN WE FIRST
7 MET HIM.

8 Q. TELL ME -- DESCRIBE HIM WHEN AS YOU FIRST KNEW
9 HIM. WHAT CAN YOU SAY ABOUT HIM?

10 A. I LIKED HIM IMMEDIATELY. HE WAS FRIENDLY;
11 HELPFUL. I TRUSTED HIM. I STILL DO. I WAS DRAWN
12 TO HIM WITH HIS PERSONALITY. HE SEEMED GENTLE; WAS
13 VERY HELPFUL AROUND THE SHELTER; DID WHATEVER YOU
14 ASKED HIM TO DO.

15 Q. WHAT WOULD HE DO?

16 A. HE WOULD CLEAN; TAKE OUT THE TRASH; JUST, YOU KNOW,
17 ANYTHING YOU WOULD ASK.

18 Q. DID YOU EVER HAVE ANY PROBLEMS WITH HIM?

19 A. NO, SIR; I NEVER DID.

20 Q. AND DID YOU GET TO KNOW HIM REAL WELL OR RELATIVELY
21 WELL OVER THE YEARS?

22 A. YES, SIR; I WOULD SAY PRETTY WELL. IN FACT WHEN MY
23 HUSBAND AND I WOULD BE VOLUNTEERING AT THE SHELTER
24 AND KENNETH WASN'T THERE, MANY, MANY TIMES HE WOULD
25 JUST CALL TO SEE HOW WE WERE. AND SEVERAL TIMES HE

SANDRA FRANKLIN - DIRECT/MR. BELL

1 WOULD JUST STOP -- WE WOULD BE OUT IN THE YARD
2 WORKING AT OUR HOUSE, AND HE WOULD SOME BY AND TALK
3 FOR A FEW MINUTES.

4 Q. WHAT KIND OF A PERSON WOULD YOU DESCRIBE HIM AS
5 BEING?

6 A. A CARING, HONEST, SENSITIVE PERSON.

7 Q. DID YOU EVER HAVE HIM DO ANY PERSONAL JOBS FOR YOU?

8 A. NO, SIR, I DIDN'T BECAUSE I'M THE YARD GUY AT OUR
9 HOUSE.

10 Q. AROUND THE SHELTER WHAT ALL WOULD HE HELP DO?

11 A. WASH DISHES. LIKE I SAID, TAKE OUT THE TRASH. I
12 REMEMBER ONE PARTICULAR TIME WHEN I DROPPED BY HE
13 WAS CLEANING THE SHELTER FROM TOP TO BOTTOM. IT
14 WAS ABSOLUTELY SPOTLESS.

15 Q. HOW LONG AGO WOULD THAT HAVE BEEN?

16 A. MAYBE SIX OR SEVEN YEARS AGO, I WOULD GUESS.

17 Q. WHEN DID YOU SAY YOU QUIT VOLUNTEERING THERE?

18 A. I WOULD THINK FOUR OR FIVE YEARS AGO.

19 Q. SOME TIME IN '93 OR '94 AREA?

20 A. YES, SIR, PROBABLY.

21 Q. SO YOU KNEW HIM THERE FOR THAT PERIOD OF TIME, SOME
22 TWO OR THREE YEARS?

23 A. YES, SIR. I'VE SEE HIM NUMEROUS TIMES SINCE.

24 Q. ALL RIGHT. YOU'VE SEEN HIM SINCE YOU'VE LEFT THE
25 SHELTER?

SANDRA FRANKLIN - DIRECT/MR. BELL

1 A. YES, SIR.

2 Q. WHERE DID YOU SEE HIM?

3 A. HE WOULD COME BY OUR HOUSE, AND WE WOULD TALK. OR
4 I'D JUST SEE HIM AROUND TOWN. SINCE HE'S BEEN
5 HERE, WE'VE VISITED HIM HERE SEVERAL TIMES, THREE
6 OR FOUR TIMES TO THE BEST OF MY KNOWLEDGE. WE TALK
7 ON THE PHONE NOW. AND WE CORRESPOND BY LETTER.

8 Q. AND WHAT ARE YOUR FEELINGS TOWARD KENNETH?

9 A. I LOVE KENNETH WITH ALL MY HEART. AND I ALWAYS
10 HAVE FROM THE MOMENT I MET HIM. I TRUSTED HIM
11 THEN, AND I TRUST HIM NOW. AND WHEN I HEARD THIS
12 ON T.V., I WAS SHOCKED, AND I COULDN'T BELIEVE THAT
13 HE WAS CAPABLE OF SOMETHING LIKE THIS. AND I STILL
14 DON'T. IT'S JUST NOT HIM.

15 Q. DO YOU FEEL HIS LIFE IS WORTH SPARING?

16 A. YES, SIR, I DO.

17 Q. WHY IS THAT?

18 A. I FEEL THAT HE'S A CHRISTIAN FROM THE TALKS THAT
19 WE'VE HAD. AND I THINK HE COULD HELP SOMEONE ELSE.

20 Q. YOU STATED, I THINK, A MINUTE AGO THAT YOU STILL
21 TRUST HIM?

22 A. YES, SIR, I DO.

23 Q. STILL WOULDN'T BE AFRAID TO BE AROUND HIM?

24 A. NO, SIR, NOT AT ALL.

25 Q. HOW DID HE INTERACT WITH YOUR HUSBAND? I THINK YOU

SANDRA FRANKLIN - DIRECT/MR. BELL

1 SAID HE'D COME AROUND THE YARD WHEN YOU AND YOUR
2 HUSBAND WOULD BE OUT THERE?

3 A. YES, SIR. WE WOULD ALWAYS JOKE, YOU KNOW, ABOUT MY
4 HUSBAND'S LACK OF HAIR AND HIS TUMMY, AND YOU KNOW.

5 Q. WHAT ABOUT AT THE SHELTER WHEN YOU WERE THERE? HOW
6 DID HE INTERACT WITH THE OTHER PEOPLE THAT WERE
7 UTILIZING THE SHELTER?

8 A. ALWAYS GOT ALONG TO THE BEST OF MY KNOWLEDGE THAT I
9 RECALL. HE ALWAYS GOT ALONG WITH EVERYBODY. I
10 NEVER REMEMBER ANY INCIDENT. I CAN REMEMBER
11 INSTANCES WITH OTHER RESIDENTS THAT WOULD HAVE
12 DISAGREEMENTS OR WHATEVER. BUT I NEVER REMEMBER
13 INCIDENTS WITH KENNETH LIKE THAT.

14 Q. DID HE SHOW ANY PROPENSITY FOR VIOLENCE?

15 A. NO, SIR; NONE AT ALL.

16 Q. AND SINCE YOU'VE VISITED HIM IN JAIL, HAS HE SHOWN
17 ANY VIOLENCE---

18 A. NO, SIR.

19 Q. --OR PROPENSITY TOWARD VIOLENCE IN THE JAIL?

20 A. NO, SIR; NONE AT ALL.

21 Q. IN REPORTS THAT YOU KNOW OF OF HIM BEING VIOLENT?

22 A. NO, SIR.

23 Q. WHO ELSE WOULD WORK AT THE SHELTER WITH YOU? HOW
24 DID THAT WORK? HOW DID YOU HAPPEN TO VOLUNTEER, OR
25 WHEN WOULD YOU WORK?

SANDRA FRANKLIN - DIRECT/MR. BELL

1 A. WELL, MY HUSBAND WOULD VOLUNTEER WHEN I DID TO
2 RELIEVE THE STAFF. MY HUSBAND WOULD USUALLY BE
3 THERE WHEN I WAS. BUT ON SOME OCCASIONS I WAS
4 THERE BY MYSELF WITH THE RESIDENTS.

5 Q. OKAY. STAFF? WHO WAS IN CHARGE OF THE PALMETTO
6 HOUSE? WHO IS IN CHARGE?

7 A. MRS. DORIS IS THE MANAGER; MRS. DORIS RUSSELL.

8 Q. AND MRS. RUSSELL IS IN CHARGE?

9 A. YES, SIR.

10 Q. AND SHE WOULD BE BASICALLY THE ONE THAT YOU WOULD
11 RELIEVE, OR SOME OF HER STAFF?

12 A. ONE OF HER STAFF; MRS. ALLSTEAD IS WHO I WOULD
13 USUALLY RELIEVE.

14 Q. WHAT DAYS OF THE WEEK NORMALLY WOULD YOU HELP?

15 A. FOR -- I THINK FOR A WHILE WE WORKED ONE DAY A
16 WEEK. I THINK IT WAS USUALLY ON TUESDAYS. AND
17 THEN WE STARTED EVERY SUNDAY AND EVERY TUESDAY.
18 AND THEN I THINK IT WAS EVERY OTHER SUNDAY. WE GOT
19 BUSY WITH, YOU KNOW, OTHER THINGS AND JUST NEEDED
20 MORE TIME. BUT I THINK IT WAS EVERY OTHER SUNDAY
21 FOR A WHILE AT THE END.

22 Q. SO FOR THAT THREE OR FOUR YEAR PERIOD THAT YOU
23 VOLUNTEERED THERE, YOU WOULD BE AROUND HIM FOR AN
24 EXTENDED PERIOD OF TIME ONCE OR TWICE A WEEK?

25 A. YES, SIR.

SANDRA FRANKLIN - DIRECT/MR. BELL

1 Q. SO YOU REALLY HAD A CHANCE TO OBSERVE HIM?

2 A. YES, SIR.

3 Q. WAS HE A GENTLE PERSON?

4 A. YES, SIR.

5 Q. DO YOU FEEL LIKE HIS LIFE IS WORTH SPARING?

6 A. YES, SIR, I DO.

7 Q. ARE YOU ASKING THIS JURY TO DO THAT?

8 A. YES, I AM.

9 MR. BELL: JUST A MINUTE, YOUR
10 HONOR.

11 THE COURT: ALL RIGHT, SIR.

12 Q. MRS. FRANKLIN, IN THE YEARS THAT YOU'VE KNOWN
13 KENNETH, DID ANYTHING HE EVER DO OR THAT YOU SAW
14 HIM DO LEAD YOU TO BELIEVE THAT HE WOULD EVER
15 COMMIT AN ACT SUCH AS THIS?

16 A. NO, SIR; NOTHING AT ALL. IT'S JUST TOTAL
17 DISBELIEF. I JUST CAN'T BELIEVE IT.

18 Q. HOW DO YOU THINK HE'S ADJUSTED TO HIS STAY -- HE'S
19 BEEN IN THE JAIL NOW FOR A YEAR---

20 MR. BAILEY: OBJECTION. YOUR HONOR,
21 I DON'T THINK SHE'S QUALIFIED TO ANSWER THAT.

22 THE COURT: SUSTAINED.

23 Q. DO YOU KNOW OF ANY PROBLEMS HE'S HAD IN JAIL?

24 MR. BAILEY: OBJECTION, YOUR HONOR.
25 SHE'S NOT IN THE POSITION TO ANSWER THAT. SHE'S

SANDRA FRANKLIN - DIRECT/MR. BELL

NOT IN THE JAIL AS A CORRECTIONAL OFFICER.

THE COURT: YOU'LL HAVE TO LAY A
FOUNDATION FOR HER RELATIVE TO KNOWLEDGE OF IT
BEFORE SHE CAN ANSWER IT. I'M SORRY, MR. BELL.

MR. BAILEY: YES, SIR.

Q. YOU HAVE VISITED WITH KENNETH OVER AT THE JAIL ON
HOW MANY OCCASIONS APPROXIMATELY?

A. I'M THINKING THREE OR FOUR. WE HAVE VISITED SOME
OTHER PEOPLE OVER THE YEARS. AND I'M REALLY NOT
SURE; BUT I THINK THREE OR FOUR TIMES.

Q. AND HOW DID THE VISITS GO?

A. REAL WELL.

Q. AND WHAT DID HE EXHIBIT? WHAT TYPE PERSON DID HE
EXHIBIT IN WORDS IN THE JAIL?

A. THE SAME OLD KENNETH; FUN; JOKING AROUND; LAUGH.

Q. DID HE CAUSE YOU ANY PROBLEMS WHILE HE WAS IN JAIL?

A. NO, SIR.

Q. OR WHILE YOU WERE VISITING HIM?

A. NO.

Q. THE WAY THAT HE REACTED TO YOUR VISITS IN JAIL;
WOULD YOU HAVE SAY THEY WERE PRETTY MUCH LIKE HE
REACTED TO YOU WHEN HE WAS AT THE PALMETTO HOUSE?

A. YES, SIR.

Q. OR WHEN HE VISITED YOUR HOUSE OUTSIDE OF THE
PALMETTO HOUSE?

SANDRA FRANKLIN - CROSS/MR. BAILEY

1 A. YES, SIR; LIKE WE WERE ALWAYS GLAD TO SEE EACH
2 OTHER.

3 Q. THE SAME PERSON?

4 A. JUST THE SAME PERSON; YES, SIR.

5 Q. DO YOU THINK HE WOULD BE ABLE TO ADAPT TO ANY
6 SITUATION LIKE FROM WHAT YOU'VE SEEN---

7 MR. BAILEY: OBJECTION, YOUR HONOR.
8 SHE CAN'T TESTIFY AS TO THAT ABILITY.

9 THE COURT: SUSTAINED.

10 Q. IS THERE ANYTHING ELSE YOU'D LIKE TO TELL THE JURY?

11 A. PLEASE SPARE KENNETH'S LIFE. I HAVE THE UTMOST
12 SYMPATHY FOR THE BOYDS. BUT THE DEATH PENALTY
13 WON'T BRING HER BACK.

14 Q. ANSWER ANY QUESTIONS MR. BAILEY HAS FOR YOU,
15 PLEASE.

16 THE COURT: CROSS?

17 MR. BAILEY: THANK YOU, YOUR HONOR.

18 MR. BAILEY: JUST A COUPLE OF
19 QUESTIONS.

20 CROSS-EXAMINATION

21 BY MR. BAILEY:

22 Q. MRS. FRANKLIN, MR. BELL MAY HAVE ASKED YOU THIS;
23 BUT HOW LONG AGO WAS IT THAT YOU FIRST MET KENNETH
24 SIMMONS?

25 A. I THINK IT WAS APPROXIMATELY EIGHT YEARS AGO.

SANDRA FRANKLIN - CROSS/MR. BAILEY

1 Q. OKAY. SO WELL PRIOR TO SEPTEMBER ONE, 1996; IS
2 THAT RIGHT?

3 A. YES, SIR.

4 Q. AND DID I UNDERSTAND YOU TO SAY THAT HE ACTED THE
5 SAME BEFORE SEPTEMBER THE FIRST, 1996, AS HE DOES
6 THE COUPLE OF TIMES YOU'VE SEEN HIM IN JAIL AFTER
7 SEPTEMBER ONE, 1996?

8 A. YES, SIR.

9 Q. SO YOU'VE SEEN NO CHANGE IN HIM?

10 A. NO, SIR.

11 Q. THE WAY HE PRESENTS HIMSELF TO YOU?

12 A. I BEG YOUR PARDON?

13 Q. THE WAY HE PRESENTS HIMSELF TO YOU; YOU SEE NO
14 CHANGE IN THE KENNETH SIMMONS YOU KNEW BEFORE
15 SEPTEMBER ONE, 1996?

16 A. HE'S THE SAME GENERAL, CARING, PERSON THAT HE
17 ALWAYS SEEMED LIKE TO ME.

18 Q. ALL RIGHT, MA'AM. NOW, YOU SAID THAT YOU HAD A
19 CORRESPONDENCE RELATIONSHIP WITH HIM. YOU WOULD
20 WRITE HIM LETTERS; HE WOULD WRITE TO YOU?

21 A. YES, SIR.

22 Q. OKAY. AND THE OCCASIONS YOU WOULD SEE HIM, HE
23 WOULD LAUGH AND JOKE AND CUT UP WITH YOUR HUSBAND
24 ABOUT HIS WEIGHT OR SOMETHING OF THAT NATURE?

25 A. YES, SIR.

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 Q. AND DID HE COME ACROSS TO YOU AS AN INTELLIGENT
2 YOUNG MAN?

3 A. NOT IN THE BOOK SENSE; NO, SIR; NOT INTELLIGENT.
4 AN INSIGHT, MAYBE, YOU KNOW; BUT NOT INTELLIGENT,
5 YOU KNOW, LIKE IN BOOK SENSE.

6 Q. OKAY; COMMON SENSE?

7 A. YES, SIR.

8 Q. THANK YOU, MA'AM. THAT'S ALL I HAVE.

9 THE COURT: ANYTHING ON RE-DIRECT?

10 MR. BELL: NOTHING FURTHER, YOUR
11 HONOR.

12 THE COURT: THANK YOU, MA'AM. YOU
13 MAY STEP DOWN, PLEASE.

14 MR. BELL: ROBIN SCHMIEDING.

15 - - - - -

16 WHEREUPON,

17 ROBIN BEECH SCHMIEDING, WHO AFTER
18 FIRST DULY SWORN TO TELL THE TRUTH,
19 TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. BELL:

22 Q. MRS. SCHMIEDING, HOW OLD ARE YOU?

23 A. THIRTY-SEVEN.

24 Q. AND WHAT'S YOUR EDUCATIONAL BACKGROUND?

25 A. I HAVE A B.A. IN ELEMENTARY AND EARLY CHILDHOOD

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 EDUCATION; ABOUT 36 HOURS GRADUATE WORK.

2 Q. AND WHERE DO YOU LIVE?

3 A. I LIVE ON [REDACTED] [REDACTED] IN SUMMERVILLE.

4 Q. OKAY. AND WHAT'S YOUR OCCUPATION?

5 A. WELL, I WAS A TEACHER UNTIL MY SPECIAL FIRST
6 ADOPTED DAUGHTER WAS BORN ON THE FIRST DAY OF
7 SCHOOL; AND THAT WAS IT; I QUIT. AND ABOUT SEVEN
8 MONTHS AGO I BOUGHT A SMALL BUSINESS UP TOWN IN
9 SUMMERVILLE; A STATIONERY AND INVITATION BUSINESS.

10 Q. SO YOU AND YOUR HUSBAND HAVE HOW MANY CHILDREN?

11 A. WE HAVE TWO.

12 Q. HOW OLD ARE THEY?

13 A. THEY ARE TWO-AND-A-HALF AND FOUR-AND-A-HALF.

14 Q. NOW DO YOU KNOW KENNETH SIMMONS?

15 A. YES, SIR.

16 Q. HOW LONG HAVE YOU KNOWN KENNETH SIMMONS?

17 A. EXCUSE ME. A VERY, VERY, LONG TIME. WE ARE
18 LOCALS. I'M A LOCAL SUMMERVILLE GIRL; AND THAT
19 MEANS EVEN MY GRANDPARENTS WERE BORN IN TOWN. SO
20 WHILE I DON'T RECALL GOING TO SCHOOL WITH KENNETH,
21 IN ELEMENTARY SCHOOL, BECAUSE THAT WAS BEFORE THE
22 SCHOOLS WERE ALREADY INTEGRATED. THEY WERE WHEN I
23 GOT TO ALSTON MIDDLE SCHOOL. I RECALL, AT LEAST IN
24 HIGH SCHOOL -- ANYWAY; SO A LONG TIME.

25 Q. SO YOU KNEW KENNETH IN HIGH SCHOOL?

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 A. YES, SIR.

2 Q. HOW DID YOU KNOW HIM?

3 A. WELL, I WAS GOING TO TELL YOU THAT. IN MY
4 GRADUATING CLASS IN 1979 THERE WERE 609 PEOPLE. SO
5 IT'S EASY TO WONDER THE BIG QUESTION HOW IN THE
6 WORLD COULD YOU KNOW HIM. AND I KNEW HIM BECAUSE
7 HE WAS -- I WAS A GOOD GIRL AND POPULAR AND THAT
8 KIND OF THING. AND KENNETH WAS IN THE GOOD GUY
9 CROWD. HE WASN'T -- BACK THEN YOU WERE A SMOKER
10 WHICH THAT WAS LIKE THE WORSE THING. I THINK THEY
11 WERE THE DRINKERS, TOO; OR A NON-ATHLETE THAT
12 DIDN'T CARE FOR ATHLETES; OR, I GUESS, THE POPULAR
13 CROWD. AND THEN, I GUESS, PROBABLY BACK THEN WERE
14 THE NERDS. AND KENNETH DIDN'T SEEM TO FIT -- NOW
15 AS I LOOK BACK WITH MY EDUCATION AND WHATEVER. HE
16 WAS IN THE GOOD OLE BOY CROWD BECAUSE HE DIDN'T FIT
17 IF ANY OF THOSE OTHER SPOTS.

18 Q. WHAT WERE THE GOOD OLE BOYS? WHO WERE THEY?

19 A. MY BROTHER-IN-LAW, CHIP HUSSEY, WHO HE PLAYED
20 FOOTBALL WITH. CHIP WAS A STAR. AND, NO OFFENSE,
21 BUT I NEED TO CLARIFY THAT. CHIP WAS THE TIGHT END
22 STAR HOW GOT THE TWELVE OFFERS. THAT'S HOW I HEARD
23 ABOUT THIS TERRIBLE, TERRIBLE TRAGEDY. ALTHOUGH
24 KENNETH WAS VERY MUCH A PART OF MY HUSBAND'S AND MY
25 LIFE, WE FOUND OUT ABOUT THIS FROM A TELEPHONE CALL

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 FROM MY BROTHER-IN-LAW, CHIP. WE GOT A TELEPHONE
2 CALL FROM ANOTHER FRIEND OF KENNETH'S, TREY BANKS.
3 AND THEY PLAYED FOOTBALL WITH HIM; AND THEY
4 REMEMBERED HIM WELL BECAUSE HE WAS THE ONE THAT --
5 I TALKED TO TREY ON THE PHONE ABOUT A MONTH AGO --
6 IF YOU LINED UP OR OPENED THE YEARBOOK AND SAID
7 "OKAY, SHOW ME ONE HUNDRED OF THESE 600 PEOPLE
8 THAT ARE GOING TO BE SOMETHING BAD;" KENNETH
9 SIMMONS WOULD NOT HAVE BEEN ONE OF THEM.

10 Q. WHAT DID THE GOOD GUYS DO IN HIGH SCHOOL? WHAT DID
11 Y'ALL DO?

12 A. I DON'T REMEMBER. WE LIVED RIGHT ACROSS THE
13 RAILROAD TRACKS. I GREW UP IN A HOUSE THAT WAS A
14 BLOCK OVER ON THE OTHER SIDE OF THE TRACKS. I
15 DON'T RECALL KENNETH BEING THERE, BUT I GUESS ALL
16 THE KIDS MET THERE WHICH WAS MY PARENTS' CHOICE.
17 HE MAY HAVE BEEN THERE TOO BECAUSE HE COULD WALK
18 OVER. I DON'T REMEMBER THAT AS MUCH AS LIKE, SINCE
19 I HAVE ALLOWED MYSELF TO LOOK AT THIS OR TO THINK
20 ABOUT IT BECAUSE IN ALL HONESTY WHEN I FOUND OUT, I
21 JUST COMPLETELY INVOLVED MYSELF IN MY BABIES AND MY
22 BUSINESS BECAUSE I DIDN'T BELIEVE IT. IT WAS A
23 SHOCK. I GUESS I JUST DIDN'T UNDERSTAND WHAT IT
24 MEANS TO GO INTO SHOCK. AND SO SOMETIMES, I GUESS,
25 YOUR MIND, OR MY MIND, PLAYS LIKE 35 MILLIMETER

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 PICTURES, AND I SEE THINGS. AND ONE SHOT I SEE OF
2 US WAS HOMECOMING. I WAS MISS GREEN-WAVE. AND
3 YOU'D JUST NEVER KNOW IT AFTER ALL THIS BOO-HOOING.
4 BUT I WAS -- WE MADE IT FUN. AND THE HOMECOMING
5 FLOAT -- I WAS WITH THE FOOTBALL PLAYER AND THE
6 CUTE LITTLE SHORTS AND ALL THAT, BUT WITH THE
7 HELMET AND ALL THE GOOD STUFF. AND I REMEMBER
8 KENNETH AND CHIP AND STANFORD JENKINS WHO Y'ALL
9 KNOW HIM; HE'S A PROFESSIONAL FOOTBALL PLAYER NOW.
10 HE WAS A GOOD OLE BOY, TOO. HE WENT OFF TO
11 STANFORD AND KENNEDY. AND THOSE ARE GOOD BOYS.
12 AND KENNETH SIMMONS, WHILE HE WASN'T -- HE
13 CERTAINLY WASN'T IN MY CLASSES. AND I LOVE HIM;
14 BUT HE WASN'T BRIGHT INTELLECTUALLY. BY NO MEANS
15 WAS HE MY PEER. BUT IT'S KIND OF LIKE, FOR LACK OF
16 A BETTER WORD, I USE THE WORD "SIMPLE" LIKE PERHAPS
17 A DOWNES PERSON OR SOMETHING.

18 MR. BAILEY: YOUR HONOR, UNLESS SHE
19 CAN TESTIFY THAT'S SHE'S A PSYCHOLOGIST OR
20 SOMETHING, I THINK SHE NEEDS TO GET AWAY FROM
21 MEDICAL DIAGNOSIS.

22 MRS. SCHMIEDING: I'M SORRY.

23 THE COURT: THANK YOU.

24 A. CAN I SAY WHAT I MEAN?

25 Q. GO AHEAD AND SAY WHAT YOU MEAN.

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 A. KENNETH SEEMS TO BE SIMPLE TO ME IN WHAT HE LACKS
2 INTELLECTUALLY. I ALWAYS THOUGHT THAT HE JUST MADE
3 UP IN THE HEART. I KNOW THAT SOUNDS STUPID; BUT
4 THAT'S JUST HOW I FEEL FROM THE HEART.

5 Q. OKAY.

6 A. ANYWAY, I COULD SEE US ALL ON FLOATS AND DOING
7 THINGS LIKE THAT; AND KENNETH WOULD BE -- THE
8 FLOAT-MAKING WOULD BE AT OUR HOUSE OR THE OTHER
9 FRIENDS HOUSE IN THE COUNTRY. KENNETH WOULD
10 PARTICIPATE IN THAT INSTEAD OF RUNNING THE STREETS
11 AND DOING BAD THINGS WHICH I'M SURE PLENTY OF
12 PEOPLE DID; I JUST DIDN'T CHOOSE TO.

13 Q. HOW DID HE ACT WITH THE REST OF THE GOOD GUYS? WAS
14 HE HOSTILE OR VIOLENT?

15 A. NO; NO, SIR; NOT AT ALL HOSTILE OR VIOLENT. HE
16 CERTAINLY WAS NOT THE PLAN MAKER. HE WAS NOT THE
17 INSTIGATOR. BUT IT WAS JUST A COMFORTABLE PLACE
18 BECAUSE HE WAS NICE, AND HE WAS ACCEPTED BY THAT
19 CROWD, THAT GOOD GUY CROWD. AND SO HE JUST FELL
20 IN. AND I GUESS I'M SAYING -- I HEARD SOMEONE SAY
21 ABOUT LEADERSHIP. I CERTAINLY WOULDN'T USE THAT
22 ADJECTIVE.

23 Q. HE WASN'T A LEADER?

24 A. NO. AND I DON'T MEAN TO BE UNKIND TOWARD HIM.
25 BUT; NO, SIR. AND LIKE EARLIER IT WAS LEADERSHIP

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 AS FAR AS BEING A FOOTBALL STAR. NOT AN ATHLETE --
2 I'VE SEEN PLENTY OF STARS. BUT THAT WAS IN 1978,
3 '77. HE WAS CERTAINLY GOOD BECAUSE HE WAS BIG AND
4 HE WAS TOUGH, BUT HE WASN'T A STAR. HE DIDN'T GET
5 THE TWELVE OFFERS TO UNIVERSITIES LIKE I WATCHED MY
6 BROTHER-IN-LAW GET.

7 Q. THEN WHEN YOU WENT TO COLLEGE, DID YOU JUST LOSE
8 TOUCH WITH HIM?

9 A. YES, SIR SURE; SURE. I WENT TO CONVERSE FOR FOUR
10 YEARS AND CAME BACK HOME AND TAUGHT AND DON'T
11 RECALL -- I GUESS IF MY COUNTER WOULD GO BACK OFF,
12 I'D LIKE TO SEE US RUNNING INTO EACH OTHER. I
13 DON'T RECALL THAT AT ALL. I GOT MARRIED AND MOVED
14 AWAY AND HAVE BEEN BACK SO FAR AS COLUMBIA AND MT.
15 PLEASANT; AND CAME BACK HOME SEVEN-AND-A-HALF YEARS
16 AGO.

17 Q. WHEN DID YOU RUN ACROSS KENNETH AGAIN?

18 A. WELL, WE DIDN'T HAVE ANY CHILDREN. WE COULDN'T
19 HAVE CHILDREN. AND I WANTED -- THEY SAY IT'S HARD
20 TO MOVE BACK HOME. SO I DOVE RIGHT BACK INTO THE
21 COMMUNITY AND BECAME ACTIVE IN THE JUNIOR SERVICE
22 LEAGUE. AND OF ALL THE COMMUNITY APPROVED SERVICE
23 PROJECTS, IN MY HEART AT THAT TIME -- AND STILL I
24 FELT THAT THE PALMETTO HOUSE WAS SOMETHING THAT I
25 COULD DO MAYBE MORE SO THAN ANY OF THE OTHER WOMEN

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 BECAUSE I DID NOT HAVE CHILDREN AND I COULD WORK
2 THAT RELIEF HOUR SHIFT AT THE SHELTER WHICH WAS SIX
3 TO ELEVEN WITH MY HUSBAND. HE WASN'T COMFORTABLE
4 WITH ME GOING ALONE. I'M GOOD ON YEARS BECAUSE OF
5 GETTING THE BABIES AND -- ARE YOU INTERESTED IN
6 WHEN THAT WAS? THAT WAS 1993. AND -- MY HUSBAND'S
7 NAME IS DANA; AND I WENT TO THE SHELTER. AND THE
8 DINNER PEOPLE HAD JUST LEFT, AND I WAS VERY
9 NERVOUS. I HAD NEVER BEEN IN A HOMELESS SHELTER IN
10 MY LIFE. AND ALL OF A SUDDEN I HEARD THIS VOICE
11 SAY -- I THINK IT WAS ROBIN OR HEY GIRL; AND I
12 LOOKED UP; AND KENNETH HAS A NICKNAME, SO -- BUT
13 ANYWAY -- SO I SAID -- HE SAID "IT'S KENNETH." AND
14 THEN HE SAID THE NICKNAME, AND I SQUEALED IN
15 DELIGHT. AND WE HUGGED. AND THEN, OF COURSE, MY
16 NEXT THING WAS "WHAT ARE YOU DOING HERE IN A
17 HOMELESS SHELTER?" AND HE WAS NOT PITIFUL. I
18 MEAN, HE WASN'T -- "OH, I'M ALL RIGHT, GIRL" KIND
19 OF THING. I JUST MOVED BACK, AND I'VE GOT TO GET
20 BACK ON MY FEET AND THAT SORT OF THING. SO I
21 BELIEVE HE MUST HAVE JUST RECENTLY COME BACK HOME.
22 I DON'T REALLY KNOW HIS TIME LIKE I KNOW MINE. BUT
23 DANA AND I WERE NOT REGULARS LIKE THE LAST WITNESS.
24 WE WERE SUBSTITUTES BECAUSE WE WERE AVAILABLE, AND
25 SO WE WOULD BE CALLED IN THE LATE AFTERNOON. A

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ROBIN SCHMIEDING - DIRECT/MR. BELL

1 THIS IS A HEINOUS CRIME. AND I CHOOSE -- I DON'T
2 CHOOSE TO STILL BE IN SHOCK. BUT IT'S JUST -- IT'S
3 NOT MY KENNETH. I UNDERSTAND THERE'S EVIDENCE. I
4 UNDERSTAND THAT YOU ALL HAVE WORKED AND THAT'S WHAT
5 YOU'VE FOUND OUT, BUT---

6 THE COURT: MA'AM, YOU'D BETTER GET
7 BACK ON THE TRACK, NOW.

8 MRS. SCHMIEDING: ALL RIGHT. ASK
9 THE QUESTION.

10 THE COURT: UNDERSTAND, NOW --
11 PROCEED ASK HER THE QUESTION AGAIN.

12 MRS. SCHMIEDING: AND I'LL ANSWER
13 IT.

14 Q. MRS. SCHMIEDING, HOW LONG DID HE WORK WITH YOU AT
15 YOUR HOUSE?

16 A. WELL, THROUGH THE FIRST BABY. AND THAT WAS AROUND
17 AUGUST OF '94. THAT'S HOW GOOD I AM WITH YEARS.
18 WE GOT THE SECOND CHILD IN JUNE OF '96. EASTER
19 '96; MARCH, APRIL, EASTER, KENNETH WAS AT OUR
20 HOUSE. WE HAD MOVED TO A LARGER PROPERTY, OR WERE
21 MOVING TO A LARGER PROPERTY. AND IT WAS ODD THAT I
22 REMEMBER THAT EASTER SUNDAY, AND NEVER, EVER WORKED
23 ON SUNDAY; WENT TO CHURCH. BUT BECAUSE WE WERE
24 MOVING IN, HE WANTED TO HELP GET THINGS TOGETHER.
25 AND I THINK WE WENT TO EARLY CHURCH BECAUSE WE TOOK

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 HIM TO CHURCH AT MY GRANDMOTHER'S BY SPECIAL
2 REQUEST. HE KNEW MY KIDS.

3 Q. HOW DID HE KNOW YOUR KIDS?

4 A. WELL, THE BABY HE DIDN'T GET TO KNOW LIKE [REDACTED] MY
5 FOUR-AND-A-HALF YEAR OLD. BEING THE EARLY
6 CHILDHOOD, CHILDREN ARE INTUITIVE. MY LITTLE TWO
7 YEAR OLD, OR EVEN STARTING AS A BABY, SHE WOULD GO
8 TO HIM, AND HE WOULD HOLD HER. I MEAN, HE WANTED
9 TO. AND I GUESS SHE WAS INTUITIVE. SHE COULD FEEL
10 THAT. AND YOU CAN FEEL WHEN SOMEBODY LIKES YOU.

11 Q. DID HE EVER KEEP THEM FOR YOU?

12 A. YES, SIR, HE DID. WHEN WE WERE BACK IN THE LITTLE
13 HOUSE ON [REDACTED] I USED TO ALWAYS WANT TO
14 GET FAST FOOD BURGERS WHEN KENNETH WAS THERE
15 BECAUSE THAT'S KIND OF A LUXURY THAT NOT MANY
16 PEOPLE -- I DIDN'T THINK HE WOULD CHOOSE TO DO
17 THAT. AND SHE WAS A NEWBORN. AND I WANTED TO RUN
18 UP TO BURGER KING, AND I WASN'T GOING TO WAKE HER
19 UP. SO NATURALLY -- AND I SAY NATURALLY -- IT WAS
20 A NATURAL THING FOR ME TO DO; KENNETH CAME IN THE
21 HOUSE AND WAITED FOR ME TO GET BACK; AND NEVER,
22 EVER, WOULD LIKE A YARD MAN; HE ATE THE MEAL -- ANY
23 MEAL HE ATE AT MY HOUSE, HE ATE AT THE TABLE WITH
24 US. BUT, YES; HE DID STAY IN MY HOUSE WHILE I RAN
25 UP -- LISTENED OUT FOR [REDACTED]. AND TRUST,

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 OBVIOUSLY; COMPLETELY I TRUSTED HIM; AND I STILL
2 DO.

3 Q. AND WHEN WAS THE LAST TIME THAT YOU RECALL HE WAS
4 AT YOUR HOUSE?

5 A. WELL, IT'S CRAZY TO SAY -- IN 1997 BECAUSE I KNOW
6 HE SAW OUR [REDACTED], MY BABY, WHO WAS BORN -- OH! AND
7 ACTUALLY I'VE GOT A BETTER -- I KNOW I'M POSITIVE.
8 WE WERE HAVING OUR HOUSE PAINTED PRIOR TO A WEDDING
9 PARTY FOR A FRIEND'S CHILD IN THE WINTER OF '97.
10 AND WE WERE USING THE SHELTER -- A PAINTER THAT WAS
11 STAYING AT THE SHELTER. AND KENNETH BECAME AWARE
12 OF IT, OR WAS DOING SOME YARD WORK TO GET READY FOR
13 THE PARTY; AND HE JUST WAS -- HE WAS A LITTLE
14 CONCERNED. HE THOUGHT THAT WAS A LITTLE OF A SHADY
15 CHARACTER. I MEAN, HE WAS HOPING THAT I DIDN'T
16 OPEN MY DOOR TO ANYBODY WHICH I DON'T.

17 Q. IN '97 HE WAS STILL AT YOUR HOUSE, WORKING AT YOUR
18 HOUSE, SHARING AT YOUR TABLE, AND WITH YOUR FAMILY?

19 A. YES, SIR.

20 Q. KNOWING WHAT'S HAPPENED, WERE YOU EVER AFRAID OF
21 HIM AT ANY TIME?

22 A. KNOWING WHAT HAPPENED? I MEAN, I DIDN'T KNOW THEN.

23 Q. KNOWING NOW, WOULD YOU STILL BE AFRAID?

24 A. OF KENNETH SIMMONS?

25 Q. YES.

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 A. NO, SIR.

2 Q. AND AT THE SHELTER, YOU STAYED SOME TIMES AT THE
3 SHELTER, I BELIEVE?

4 A. YES, SIR.

5 Q. WHAT WOULD HE DO? WOULD HE DO ANYTHING AROUND THE
6 SHELTER TO HELP YOU?

7 A. ALWAYS. AND NOT JUST ME. LIKE MRS. DORIS AND THE
8 STAFF. KENNETH WOULD RAKE THE -- PRETTY MUCH
9 MAINTAIN THE YARD. I SAW HIM VACUUM CONSTANTLY.
10 WE'D GO ON SATURDAY MORNINGS OR SOMETIMES FOR THE
11 JUNIOR SERVICE LEAGUE I WOULD TAKE FOOD. OR IF I
12 EVER HAD A PARTY AND HAD LEFT-OVER FOOD, I WOULD
13 ALWAYS TAKE IT TO THE SHELTER. KENNETH COULD BE
14 SEEN VACUUMING ON SATURDAY MORNINGS, DOING YARD
15 WORK. I'VE SEEN HIM TAKE THE CHRISTMAS TREE DOWN
16 AT THE SHELTER. HE DIDN'T NEED THE SHELTER TO STAY
17 IN, I DON'T BELIEVE AT THE TIME; BUT IT WAS KIND OF
18 LIKE THEY NEEDED HIM. AND KENNETH WAS ALWAYS DOING
19 THINGS AND HELPING LIKE HE WAS US AT OUR HOUSE. I
20 CAN THINK OF ALL OUR BIRTHDAY PARTIES AND KENNETH
21 BEING THERE. AND I KNOW THOSE DATES; HELPING ME
22 GET THAT YARD READY FOR THE BIRTHDAY PARTIES FOR
23 THE PRINCESSES OF THE WORLD IN MY OPINION. I
24 CALLED THEM AND SAID "IT'S THE BABY'S BIRTHDAY" AND
25 HE'D BE THERE. DEPENDABLE, I GUESS, IS WHAT I'M

ROBIN SCHMIEDING - DIRECT/MR. BELL

1 SAYING -- FOR US.

2 Q. DID YOU EVER KNOW HIM TO BE A VIOLENT PERSON?

3 A. ABSOLUTELY NOT.

4 Q. AND HOW -- DID HE TREAT OTHER PEOPLE WITH RESPECT?

5 A. YES; YES, SIR. SIR, I KNOW OF NO INSTANCE WHERE HE
6 WASN'T POLITE AND KIND AND -- I'M IN SHOCK; SO.

7 Q. HOW DO YOU FEEL ABOUT KENNETH SIMMONS TODAY?

8 A. TODAY MY HEART IS BROKEN. BUT I LOVE KENNETH. AND
9 I WANT HIS LIFE TO BE SPARED. I KNOW HIS
10 CHILDREN. I'M AWARE OF THE FACT THAT -- I DON'T
11 KNOW THIS -- BUT THE OLDER SON HAS QUIT HIS EXTRA
12 CURRICULAR SPORTS ACTIVITIES. AND AS THE BROTHER
13 SAID, I JUST -- THIS CAN'T GO ON IN ANOTHER
14 GENERATION. AND I BELIEVE THAT BY SPARING
15 KENNETH'S LIFE, WE CAN HELP TO SAVE YOUNG KENNETH'S
16 LIFE. I KNOW THAT. I KNOW THAT. AND I AM AWARE
17 THAT THE CHILD IS IN COUNSELING NOW, AND I'M VERY
18 GLAD TO KNOW THAT.

19 Q. ANSWER ANY QUESTIONS MR. BAILEY MAY HAVE FOR YOU.

20 MR. BAILEY: JUDGE, I HAVE NO
21 QUESTIONS.

22 THE COURT: STEP DOWN. NEXT
23 WITNESS, PLEASE.

24 MR. BELL: DORIS RUSSELL.

25

- - - - -

DORIS RUSSELL - DIRECT/MR. BELL

WHEREUPON,

DORIS V. RUSSELL, WHO AFTER BEING FIRST
DULY SWORN TO TELL THE TRUTH, TESTIFIED
AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BELL:

Q. MRS. RUSSELL, WHERE DO YOU LIVE?

A. I LIVE IN SUMMERVILLE. I'M ON [REDACTED] [REDACTED] IN
SUMMERVILLE.

Q. HOW LONG HAVE YOU LIVED THERE?

A. TWENTY-ONE YEARS AND EIGHT MONTHS.

Q. ARE YOU MARRIED?

A. SEPARATED.

Q. ANY CHILDREN?

A. SIX CHILDREN; FIFTEEN GRANDCHILDREN.

Q. WHERE DO YOU WORK?

A. THE PALMETTO HOUSE.

Q. AND HOW LONG HAVE YOU BEEN THERE?

A. I THINK WE OPENED IN '91.

Q. YOU'VE BEEN WITH IT SINCE IT OPENED?

A. YES.

Q. WHAT'S YOUR POSITION AT THE PALMETTO HOUSE?

A. SHELTER MANAGER.

Q. HOW LONG HAVE YOU BEEN IN THAT POSITION?

A. FROM '91.

DORIS RUSSELL - DIRECT/MR. BELL

1 Q. SO YOU'VE BEEN THE SHELTER MANAGER SINCE IT OPENED?

2 A. YES. MR. PEACE THAT ROBIN TALKED ABOUT; WE GOT IT
3 OPEN; AND I WORK AS A MANAGER, AND HE HELPED ME AT
4 NIGHT.

5 Q. NOW, TELL ME ABOUT WHAT THE PALMETTO HOUSE WAS, AND
6 WHY IT WAS FOUNDED?

7 A. PALMETTO HOUSE IS A 24 HOURS A DAY SHELTER NOW.
8 BUT IN THE BEGINNING IT JUST WAS OPEN FROM SIX IN
9 THE MORNING UNTIL SIX AT NIGHT. IT WAS OPEN
10 BECAUSE WE FOUND AFTER HUGO -- I WORKED WITH THE
11 HUGO CLEAN-UP AND EVERYTHING. AND WE FOUND AFTER
12 HUGO THERE WERE SO MANY PEOPLE LIVE IN ABANDONED
13 CARS, ABANDONED HOUSES, AND EVERY PLACE ELSE. AND
14 AT THE END OF GETTING ALL THE HOUSES REPAIRED, WE
15 HAD A FEW HOURS LEFT OVER. ONE THING ABOUT STATE
16 MONEY; IT'S EITHER USE IT OR LOSE IT. SO I CAME UP
17 WITH THE IDEA FOR US TO TRY AND DO A SHELTER TO USE
18 THAT PART OF THE MONEY. AND THEN THIS GENTLEMAN
19 CAME UP AND SAID "WELL, IF YOU'LL REPAIR THE ROOF
20 AND CEILING ON MY HOUSE, I'LL GIVE IT TO YOU FOR
21 THREE YEARS FREE RENT. WE TOOK HIM UP ON THAT. WE
22 GOT IT STARTED. AND IT WAS GOING TO ONLY BE
23 DAYTIME. THEN WE FOUND PEOPLE THAT THE POLICE WAS
24 BRINGING TO US AND DIFFERENT PEOPLE. HE WAS FROM
25 UP HERE IN ST. GEORGE THAT DIDN'T HAVE A PLACE TO

DORIS RUSSELL - DIRECT/MR. BELL

1 STAY. SO WE WENT TO 24 HOURS SO WE COULD HELP
2 THESE PEOPLE OUT WITH A PLACE TO STAY.

3 Q. AND YOU'RE 24 HOURS NOW YOU SAY?

4 A. YES, SIR.

5 Q. AND DID YOU GET TO MEET KENNETH?

6 A. OH, YES. I KNOW KENNETH QUITE WELL.

7 Q. WHEN DID YOU FIRST MEET KENNETH?

8 A. I THINK IT WAS AROUND '92, '93 WHEN I FIRST MET
9 KENNETH.

10 Q. WHERE?

11 A. I MET KENNETH AT THE SHELTER. HE CAME OVER THERE.
12 BESIDES BEING A 24 HOUR A DAY SHELTER, WE'RE ALSO A
13 24 HOUR FEEDING SITE. WE FEED THREE MEALS A DAY.
14 AND JUST ANYBODY CAN WALK IN AND GET A MEAL. YOU
15 DONE HAVE TO LIVE THERE IN ORDER TO GET A MEAL.
16 AND THAT'S HOW I MET KENNETH.

17 Q. AND WHAT TYPE PERSON DID YOU FIND HIM TO BE?

18 A. KENNETH HAS ALWAYS BEEN TO ME A VERY QUIET PERSON;
19 LOVES TO JOKE; LOVES TO PLAY AROUND. AND HE WOULD
20 CALL ME MAMMA. THERE WAS NOTHING KENNETH WOULDN'T
21 DO FOR YOU.

22 Q. AND DID HE EVER HELP YOU ANY AT THE SHELTER?

23 A. OH, YES. HE WOULD MOP FLOORS. HE WOULD WASH
24 DISHES. HE WOULD ANSWER THE TELEPHONE. HE WOULD
25 DO WHATEVER, YOU KNOW, IS THERE TO DO BECAUSE WITH

DORIS RUSSELL - DIRECT/MR. BELL

1 LIMITED STAFF. I'M THERE FROM SEVEN IN THE MORNING
2 UNTIL ABOUT TEN OR ELEVEN O'CLOCK BY MYSELF. THEN
3 WHEN I LEAVE, PEGGY IS THERE BY HERSELF. AND
4 KENNETH WOULD GET IN THERE AND WASH DISHES; PUT
5 GARBAGE OUT; VACUUM FLOORS. HE WOULD DO WHATEVER
6 WAS NEEDED TO BE DONE TO HELP US THROUGH THE DAY.

7 Q. WAS THAT FROM 1992 OR 1993 WHEN YOU FIRST MET HIM?

8 A. YES, SIR. HE'S ALWAYS BEEN THE SAME PERSON.

9 KENNETH HAS NEVER CHANGED. SOMETIMES I CHANGED ON
10 HIM BECAUSE HE LIKED TO KID AROUND AND PLAY; AND I
11 HAD A PIECE OF P.V.C. PIPE, AND THAT WAS MY LETHAL
12 WEAPON. YOU KNOW, YOU DON'T DO THIS -- DON'T MOP
13 THE FLOOR RIGHT NOW IS SOMETHING -- I'M GOING TO
14 USE THAT. BUT KENNETH WAS NEVER DISRESPECTFUL. HE
15 WAS JUST THERE. HE WAS LIKE ONE OF MY SONS. HE
16 WOULD DO ANYTHING I ASKED HIM TO DO; NOT ONLY ME,
17 THE VOLUNTEERS OR ANYBODY ELSE THAT ASKED KENNETH
18 TO DO SOMETHING; KENNETH WOULD DO.

19 Q. DID YOU EVER HAVE A PROBLEM WITH HIM?

20 A. I'VE NEVER HAD ANY PROBLEMS WITH KENNETH.

21 Q. DID HE EVER DO ANY WORK FOR YOU OR YOUR FAMILY?

22 A. OH, HE'S WORKED FOR ME. I HAVE LEFT KENNETH IN MY
23 HOUSE WHILE I GO TO WORK. AND HE WOULD PAINT FOR
24 ME. HE WOULD DO OTHER THINGS. IF HE COME BY AND
25 SEE ME IN THE YARD TRYING TO PUSH THAT BIG

DORIS RUSSELL - DIRECT/MR. BELL

1 LAWNMOWER BECAUSE HE KNOW I'VE HAD TWO HEART
2 ATTACKS, HE WOULD SAY "OLD LADY, WHAT YOU TRYING TO
3 DO?" AND HE WOULD TAKE THAT LAWNMOWER, AND HE
4 WOULD DO THAT GRASS. I'D LEAVE HIM IN MY HOUSE TO
5 PAINT. AND I KEEP TELLING HIM I'VE GOT THE REST OF
6 THOSE ROOMS WAITING ON HIM. AND IF HE TOOK A GLASS
7 OF WATER OUT THERE, HE MUST HAVE FILLED THE
8 CONTAINER BACK BEFORE HE LEAVE. I HAVE NEVER BEEN
9 ABLE TO SEE ONE THING THAT I COULD SAY KENNETH TOOK
10 OUT OF MY HOUSE.

11 Q. YOU TRUSTED HIM IN THERE?

12 A. YES. I DID; TRUSTED HIM WHOLEHEARTEDLY.

13 Q. WOULD YOU STILL TRUST HIM?

14 A. OH, YES. I'VE GOT THE PAINT AND THE BRUSH. IF HE
15 COMES OUT RIGHT NOW, HE'D BE RIGHT THERE PAINTING.

16 Q. NOW, YOU KNOW THIS INCIDENT TOOK PLACE ON SEPTEMBER
17 THE FIRST OF '96?

18 A. YES, SIR.

19 Q. DID KENNETH COME BACK AROUND THE SHELTER AFTER THAT
20 TIME?

21 A. OH, YES. KENNETH WAS BACK THAT MONDAY MORNING
22 WHICH WAS EITHER THE FIRST OR SECOND. I THINK I
23 REMEMBER IT BEING LABOR DAY. AND KENNETH WAS
24 AROUND THERE THEN. WE USUALLY TRY TO HAVE A
25 COOKOUT OR DO SOMETHING GOOD FOR THE PEOPLE THAT

DORIS RUSSELL - DIRECT/MR. BELL

1 ARE THERE BECAUSE EVERYBODY AT A SHELTER ISN'T BAD
2 PEOPLE; BUT THAT'S THE WAY THEY'RE LABELED. AND I
3 REMEMBER HIM BEING THERE THAT DAY. AND HE'S BEEN
4 IN MY HOUSE SINCE THEN. HE'S DONE WORK FOR ME
5 SINCE THEN. HE'S BEEN DOING THINGS FOR ME AT MY
6 HOUSE AND UP AT THE SHELTER UP UNTIL HE LEFT HERE.

7 Q. THAT WOULD HAVE BEEN ABOUT OCTOBER OF '97?

8 A. YES, SIR.

9 Q. WERE THERE ANY ELDERLY PEOPLE UTILIZING THE SHELTER
10 FOR ANY REASON?

11 A. WE'VE HAD A COUPLE OF ELDERLY GENTLEMEN THAT LIVE
12 THERE; AND HE WAS 84 YEARS OLD. MRS. BOYD USED TO
13 COME TO THE SHELTER TO PICK UP BREAD FOR A LADY
14 NAMED MRS. NOLAND. AND SOMETIMES SHE WOULD TRY TO
15 GET ENOUGH BREAD TO CARRY, AND SHE COULDN'T MAKE IT
16 OUT THE DOOR. AND KENNETH, MAINLY, AND ANOTHER
17 YOUNG MAN THAT'S NOT THERE ANY MORE; THEY WOULD
18 TAKE THAT BREAD AND CARRY IT AND PUT IT IN HER CAR
19 TO KEEP HER FROM TRYING TO GO DOWN THERE BECAUSE
20 THEY SAID WHO BUILT THE HOUSE PUT THE STEPS TOO
21 SHORT. AND I'M A LIVING WITNESS OF IT BECAUSE I
22 FELL OUT THE DOOR. AND THEY WOULD TAKE HER BREAD
23 AND STUFF THAT SHE WOULD PICK FOR MRS. NOLAND AND
24 TAKE IT TO HER CAR AND PUT IT IN HER CAR. AND
25 THAT'S MORE TIME THAN ONCE THAT HE HAS DONE THAT

DORIS RUSSELL - DIRECT/MR. BELL

FOR HER TO MY KNOWLEDGE.

Q. DID HE TREAT OTHER ELDERLY PEOPLE THE SAME WAY?

A. OH, YES. KENNETH DID NOT REACT IN MY OPINION WITH A BAD BONE IN HIS BODY. AND IF YOU STARTED TALKING AND HE DIDN'T WANT TO HEAR IT, HE SAID "ALL RIGHT; YOU'RE TALKING ABOUT PEOPLE NOW." HE DIDN'T LIKE EVEN PEOPLE JUST TALKING ABOUT OTHER PEOPLE. THAT WAS NOT KENNETH'S STYLE.

Q. DO YOU THINK KENNETH'S LIFE IS WORTH SPARING?

A. PLEASE, YES; KENNETH'S LIFE IS WORTH SAVING. THROUGH KEVIN WE MIGHT BE ABLE TO SAVE OTHERS. AND, YOU KNOW -- I KEEP SAYING KEVIN BECAUSE MY GRANDSON JUST GOT KILLED. AND I WOULD ASK FOR THE DEATH PENALTY FOR THE PERSON WHO DID IT IF I THOUGHT IT COULD BRING MY GRANDSON BACK, BUT I CAN'T.

(AT THIS TIME MR. BAILEY STANDS.)

THE COURT: YES, SIR; I'LL SUSTAIN THE OBJECTION.

Q. IS THERE ANYTHING ELSE THAT HE DID AROUND THE SHELTER FOR ANYONE ELSE THAT YOU CAN THINK OF?

A. OH, YES. SOMEBODY LIKE THE DIFFERENT ORGANIZATIONS; WE GET FOOD AND THINGS FROM CATERING SERVICE. SOMEBODY MIGHT HAVE HAD A DEATH IN THE FAMILY OR A WEDDING OR A PARTY. AND THEY'D COME TO

DORIS RUSSELL - DIRECT/MR. BELL

1 BRING THE FOOD. YOU NEVER HAD TO ASK KENNETH TO GO
2 OUT THERE AND HELP THOSE PEOPLE. IF HE SEES A CAR
3 PULL UP AND SOMEBODY GOES TO THE TRUNK OR TO THE
4 BACK SEAT, HE KNOWS THAT THEY'RE BRINGING IN STUFF;
5 AND HE WOULD GO OUT THERE AND HELP THEM. YOU
6 DIDN'T HAVE TO ASK HIM TO GO HELP THEM. YOU DIDN'T
7 HAVE TO ASK HIM TO WASH THE DISHES. YOU DIDN'T
8 HAVE TO ASK HIM TO COME BY EARLY ON MONDAY MORNING
9 AND PUT THE GARBAGE OUT FOR US IF THERE WAS NOBODY
10 THERE TO PUT IT OUT FOR US.

11 Q. IS THERE ANYTHING ELSE THAT YOU WOULD LIKE TO TELL
12 THE JURY?

13 A. I WOULD LIKE TO ASK Y'ALL -- AND HEARTS OF HEART;
14 PLEASE SPARE HIS LIFE. KENNETH IS -- THE KENNETH
15 THAT YOU'RE HEARING ABOUT ON THE OTHER SIDE THAT
16 YOU DID LAST WEEK, AND THE KENNETH THAT I KNOW THAT
17 IS SITTING OVER THERE; Y'ALL HAVE HEARD TWO
18 EXTREMELY DIFFERENT SIDES. KENNETH IS LOVABLE.
19 KENNETH IS KIND. THERE ISN'T NOTHING THAT KENNETH
20 WOULDN'T DO FOR ANYBODY. ALL I ASK IS THAT YOU
21 PLEASE -- I DON'T KNOW HOW YOU FEEL IN YOUR HEART;
22 AND I CAN'T DETERMINE HOW NOBODY ELSE FEELS. BUT
23 MY HEART IS VERY, VERY SAD. AND TO KNOW THAT
24 KENNETH COULD BE PUT TO DEATH MAKES IT EVEN
25 SADDER. SO I ASK Y'ALL TO PLEASE CONSIDER WHAT

DORIS RUSSELL - CROSS/MR. BAILEY

YOU'RE DOING TO SPARE KENNETH'S LIFE.

Q. ANSWER ANY QUESTIONS MR. BAILEY MAY HAVE FOR YOU.

THE COURT: CROSS?

MR. BAILEY: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. MRS. RUSSELL, I HAVE REAL POOR HANDWRITING; AND I'M GOING TO TRY TO READ MY NOTES HERE. BUT IF I GET IT WRONG, PLEASE CORRECT ME. I'VE GOT WRITTEN DOWN HERE THAT YOU'VE KNOWN KENNETH SIMMONS FOR HOW LONG NOW?

A. FROM ABOUT '92 OR '93; SOMEWHERE RIGHT UP IN THERE.

Q. AND YOU'VE SEEN HIM BOTH BEFORE AND AFTER SEPTEMBER 1996; IS THAT CORRECT?

A. YES.

Q. AND I BELIEVE, ACCORDING TO MY NOTES, YOU SAID HE NEVER CHANGED; HE'S THE SAME OLD KENNETH?

A. TO ME HE'S NEVER CHANGED.

Q. DO YOU REMEMBER THAT MONDAY THAT YOU SAW HIM THAT WOULD HAVE BEEN, I GUESS, SEPTEMBER THE SECOND AT THE SHELTER?

A. YES.

Q. AND HOW WAS HE ACTING THEN?

A. HE WASN'T ACTING NO DIFFERENT. HE WASN'T ACTING LIKE NOTHING HAPPENED OR HE WAS SCARED OR ANYTHING.

DORIS RUSSELL - CROSS/MR. BAILEY

- 1 Q. OKAY. JUST THE SAME OLD KENNETH?
- 2 A. SAME KENNETH.
- 3 Q. AND I BELIEVE YOU'VE BEEN UP TO THE JAIL ONE TIME
- 4 TO SEE HIM?
- 5 A. NO. I'VE BEEN UP TO THE JAIL MORE THAN ONE TIME.
- 6 BUT DUE TO THE WAY THE SYSTEM UP HERE WORKS, THE
- 7 FIRST GROUP OF PEOPLE GET IN. AND IF YOU DON'T GET
- 8 THERE TO BE IN THAT FIRST GROUP WHEN THEY'VE GOT A
- 9 CERTAIN AMOUNT IN, DON'T CARE WHO YOU COME TO SEE,
- 10 BUT IF THAT PERSON DON'T HAVE A VISITOR, YOU CAN'T
- 11 GET IN.
- 12 Q. OKAY. BUT THE TIME YOU DID SEE HIM, HE WAS STILL
- 13 THE SAME OLD KENNETH?
- 14 A. STILL THE SAME KENNETH.
- 15 Q. HADN'T CHANGED BEFORE SEPTEMBER OF '96?
- 16 A. NO, SIR.
- 17 Q. NOW, I BELIEVE IF I'VE GOT MY NOTES RIGHT THAT MRS.
- 18 BOYD WAS OUT THERE AT THE SHELTER TO GET SOME BREAD
- 19 FOR A NEEDY PERSON?
- 20 A. MANY TIMES.
- 21 Q. THAT'S LEFT-OVER BREAD THAT Y'ALL DIDN'T USE?
- 22 A. NO. WE GET BREAD -- PUBLIX DONATES THEIR BREAD TO
- 23 US THREE TIMES A WEEK.
- 24 Q. ALL RIGHT.
- 25 A. AND PEOPLE COME THERE AND GET IT BECAUSE WE GIVE IT

DORIS RUSSELL - CROSS/MR. BAILEY

1 TO THE COMMUNITY.

2 Q. OKAY. I UNDERSTAND. AND MRS. BOYD WOULD BE ONE OF
3 THE PEOPLE THAT WOULD SOMETIMES GET BREAD TO CARRY
4 TO OTHER PEOPLE?

5 A. YES.

6 Q. AND YOU SAID THAT ON AT LEAST ONE OCCASION THAT
7 KENNETH SIMMONS WAS AT THE SHELTER AND HAD HELPED
8 MRS. BOYD LOAD THE BREAD UP INTO HER CAR?

9 A. THAT'S CORRECT.

10 Q. YOU DON'T REMEMBER WHEN THAT WAS, DO YOU?

11 A. NO. BUT I KNOW IT WAS -- SAY ABOUT THE LAST TIME I
12 EVEN REMEMBER MRS. BOYD BEING OVER THERE WAS MAYBE
13 CLOSE TO A YEAR BEFORE THIS HAPPENED.

14 Q. OKAY. AND COULD YOU TELL FROM THE WAY WHEN MRS.
15 BOYD WAS THERE AND KENNETH SIMMONS AT THE SAME TIME
16 WHETHER OR NOT THEY KNEW EACH OTHER?

17 A. NO. MRS. BOYD WAS VERY QUIET. YOU HAD TO PULL
18 ANYTHING OUT OF HER THAT SHE TALKED TO YOU ABOUT.
19 SO SHE WASN'T THE TYPE PERSON TO ELABORATE ON WHO
20 SHE KNEW SHE WOULD SPEAK TO.

21 Q. DID KENNETH SIMMONS ACT LIKE HE KNEW MRS. BOYD WHEN
22 HE DROVE UP TO THE SHELTER?

23 A. I THINK HE DID KNOW MRS. BOYD.

24 Q. MRS. RUSSELL, THAT'S ALL I HAVE. THANK YOU VERY
25 MUCH.

DORIS RUSSELL - CROSS/MR. BAILEY

A. YOU'RE WELCOME.

THE COURT: ANYTHING FURTHER,
GENTLEMEN, FROM THIS LADY?

MR. BAILEY: NOTHING, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN,
MA'AM.

MR. BELL: YOUR HONOR, COULD WE HAVE
A COUPLE OF MINUTES TO CONFER?

THE COURT: SURE. GO AHEAD. LADIES
AND GENTLEMEN, WE'RE AT A CROSS-ROAD WHILE THEY'RE
CONFERRING. EXCUSE ME. I DON'T MEAN TO HURRY YOU.
Y'ALL GO AHEAD.

MR. BELL: YOUR HONOR, MAY WE
APPROACH, PLEASE?

THE COURT: SURE.
(AT THIS TIME, BENCH CONFERENCE IS HELD.)

THE COURT: MADAM FORELADY AND
LADIES AND GENTLEMEN OF THE JURY, I THINK THAT
CONCLUDES THE TESTIMONY IN THE CASE. IT'S NOW FOUR
O'CLOCK. I NEED ABOUT TWENTY MINUTES TO REVIEW
SOME LAW FOR FURTHER CHARGES WITH THE ATTORNEYS.
I'M ADVISED THE ARGUMENTS WILL BE ABOUT AN HOUR
ASIDE. MY CHARGE WILL BE ABOUT TWENTY MINUTES. MY
INCLINATION IS TO PROCEED WITH THE ARGUMENTS AND
CHARGE AND LET YOU START YOUR DELIBERATIONS THIS

MOTIONS

1 EVENING. AGAIN, I REITERATE TO YOU, I'M NOT TRYING
2 TO SLOW YOU DOWN. I'M NOT TRYING TO SPEED YOU UP.
3 SO I DON'T WANT YOU TO FEEL IN ANY WAY THAT YOUR
4 TIME IS BEING MONITORED SO TO SPEAK. WHAT'S
5 Y'ALL'S PLEASURE? WE CAN WAIT AND START IN THE
6 MORNING, EIGHT O'CLOCK, 8:30; 9:00; 9:30; 10:00;
7 WHATEVER TIME Y'ALL WANT TO. MY TIME IS YOUR
8 TIME. BUT WOULD LIKE TO GO AHEAD THIS EVENING? OR
9 WHAT'S YOUR---

10 THE FORELADY: WE'LL GO AHEAD IF
11 THAT'S OKAY?

12 THE COURT: SURE. DOES ANYONE
13 OBJECT TO THAT? (NO RESPONSE.) I'M TRYING TO GET A
14 FEEL. I HAVE TO MAKE THE DECISION. BUT I WANT TO
15 BE CONSIDERATE OF WHAT YOUR THOUGHTS ARE, OF
16 COURSE.

17 THE FORELADY: IF WE COULD DISCUSS
18 IT, PLEASE?

19 THE COURT: SURE. WE'LL EXCUSE YOU
20 TO GO TO YOUR ROOM. PLEASE DO NOT DELIBERATE UNTIL
21 WE INSTRUCT YOU SO TO DO. IF Y'ALL WOULD LIKE TO
22 GO OUTSIDE, GO AHEAD. WE'LL SEND FOR YOU IF WE
23 NEED YOU.

24 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

25 THE COURT: MR. SIMMONS, WOULD YOU

MOTIONS

1 STAND, PLEASE? (DEFENDANT COMPLIES.) MR. SIMMONS,
2 I HAD PREVIOUSLY EXPLAINED TO YOU ON FRIDAY OF LAST
3 WEEK YOUR RIGHT TO TAKE THE WITNESS STAND OR NOT TO
4 TAKE THE WITNESS STAND. I SHARE THAT AGAIN WITH
5 YOU AS I DID EARLIER TODAY. I'VE ALREADY EXPLAINED
6 YOUR RIGHTS RELATIVE TO THAT AND THE CHARGE THAT
7 THE COURT WOULD GIVE IF YOU DID NOT AND IF YOU DID
8 TAKE THE STAND THE RIGHT OF CROSS-EXAMINATION BY
9 THE STATE. DO YOU FULLY UNDERSTAND YOUR RIGHTS IN
10 THAT REGARD?

11 MR. SIMMONS: YES, SIR.

12 THE COURT: AND HAVE YOU HAD AMPLE
13 OPPORTUNITY TO DISCUSS THAT WITH YOUR ATTORNEYS?

14 MR. SIMMONS: YES, SIR.

15 THE COURT: AND HAVE YOU ARRIVED AT
16 A DECISION?

17 MR. SIMMONS: I WON'T TAKE THE
18 STAND.

19 THE COURT: ALL RIGHT, SIR. THEN,
20 MR. SIMMONS, IN ALL PROBABILITY THAT WILL CLOSE THE
21 TESTIMONY AS I UNDERSTAND IT, GENTLEMEN, FOR THE
22 DEFENSE?

23 MR. BELL: YES, SIR.

24 THE COURT: AND YOU'RE WELCOME TO
25 CALL ANY AND OTHER WITNESSES.

THE COURT: AND THERE'S NOTHING
OTHER FURTHER IN REPLY, MR. SOLICITOR?

MR. BAILEY: NO REPLY, YOUR HONOR.

THE COURT: ALL RIGHT. SO I NEED TO
AGAIN REMIND YOU THAT YOU HAVE THE RIGHT TO MAKE A
CLOSING ARGUMENT. THE STATE WILL BE REQUIRED TO
OPEN IN FULL; AND THE STATE ONLY HAS ONE ARGUMENT.
AND ALTHOUGH THEY COULD DIVIDE IT AMONG FOUR
LAWYERS, BUT AS I UNDERSTAND IT, THEY'RE JUST GOING
TO HAVE THE ONE ARGUMENT. AND THEN THE DEFENSE,
EITHER OR BOTH OF YOUR ATTORNEYS, MAY MAKE A
CLOSING ARGUMENT AS LONG AS THEY LIKE. I HAVE NO
TIME LIMIT ON THEM. AND YOU ARE PERMITTED TO MAKE
A CLOSING ARGUMENT IF YOU WISH TO. DO YOU
UNDERSTAND THAT?

MR. SIMMONS: YES, SIR.

THE COURT: HAVE YOU HAD TIME TO
THINK ABOUT THAT?

MR. SIMMONS: YES, SIR.

THE COURT: AND WHAT IS YOUR
DECISION?

MR. SIMMONS: I WILL.

THE COURT: ALL RIGHT. THANK YOU.

MOTIONS

1 NOW, GENTLEMEN, ARE THERE ANY MOTIONS AT THIS
2 TIME?

3 MR. BAILEY: NO MOTIONS FROM THE
4 STATE, YOUR HONOR. I WOULD REQUEST THAT THE COURT
5 ADMONISH MR. SIMMONS THAT DURING THE COURSE OF THE
6 CLOSING ARGUMENTS -- I KNOW HE'S NOT A LAWYER AND
7 ALL THAT; BUT I CAN'T CROSS-EXAMINE HIM; AND I
8 DON'T BELIEVE HE SHOULD GET INTO ANY OF THE FACTS
9 THAT AREN'T IN EVIDENCE. I DON'T WANT TO HAVE TO
10 INTERRUPT.

11 THE COURT: WELL, I ASSUME THAT HIS
12 LAWYERS HAVE EXPLAINED THAT TO HIM. BUT THAT
13 CERTAINLY IS A CORRECT STATEMENT THAT THOSE FACTS
14 THAT ARE NOT IN EVIDENCE, YOU COULD NOT ARGUE
15 ABOUT. BUT I DON'T WANT YOU TO FEEL OTHERWISE
16 PROHIBITED. SO IS THERE ANYTHING ELSE FROM THE
17 STATE?

18 MR. BAILEY: YOUR HONOR, AS FAR AS A
19 TIME FRAME AND ALL THAT, I WOULD LIKE TO BE HEARD
20 ON THE STATUTORY INSTRUCTIONS ON THE NONSTATUTORY
21 MITIGATING CIRCUMSTANCES.

22 THE COURT: YES, SIR. AND I THINK
23 THAT WE COULD MAKE THAT A TIME IF WE DID THAT IN
24 CHAMBERS.

25 MR. BAILEY: ALL RIGHT, SIR.

MOTIONS

1 THE COURT: MAY WE, GENTLEMEN?

2 MR. THEOS: THAT'S FINE, YOUR HONOR.

3 THE COURT: ALL RIGHT. SO IS THERE
4 ANYTHING FROM THE DEFENSE FOR THE RECORD?

5 MR. THEOS: NOT AT THIS POINT.

6 THE COURT: ALL RIGHT. AND IF Y'ALL
7 WOULD, GET YOUR REQUESTS TO CHARGE AND COME INTO
8 CHAMBERS, AND LET'S MOVE ALONG NOW, PLEASE. THANK
9 YOU FOR YOUR COOPERATION. COURT WILL STAND AT EASE
10 FOR AT LEAST TWENTY MINUTES, LADIES AND GENTLEMEN.
11 (BRIEF RECESS.)

12 - - - - -

13 THE COURT: LET ME SAY ONCE AGAIN
14 THAT ONCE WE COMMENCE THE ARGUMENTS, WE'RE GOING TO
15 HAVE TO KEEP THE DOORS CLOSED. MY LAW CLERK WILL
16 NECESSARILY HAVE TO COME IN BECAUSE THERE HAVE BEEN
17 TWO OR THREE CHANGES IN THE DOCUMENTS TO BE
18 PRESENTED TO THE JURY. AND HE'S TYPING THAT FOR ME
19 NOW. BUT YOU GENTLEMEN ARE AWARE OF THOSE. SO IF
20 ANYONE WOULD LIKE TO LEAVE NOW, PLEASE FEEL FREE TO
21 DO SO. NOW, AS I UNDERSTOOD IT, THE DEFENDANT
22 INDICATED THAT HE DID WISH TO GIVE A CLOSING
23 ARGUMENT TO THE JURY. THE STATE WILL OPEN; AND
24 THEN THE DEFENDANT WANTED EACH OF THE ATTORNEYS AND
25 MR. SIMMONS, IN ANY ORDER Y'ALL TAKE THEM IN.

MOTIONS

1 AGAIN LADIES AND GENTLEMEN, BECAUSE WE'RE CONCERNED
2 ABOUT THESE THIRTEEN JURORS BEING AWAY FROM THEIR
3 FAMILY AND HOMES, IT SUITED ME TO RECESS NOW AND
4 START IN THE MORNING. BUT THE JURY INDICATED
5 THEY'D LIKE TO PROCEED THIS EVENING BUT WITH THE
6 UNDERSTANDING THAT WE WILL HAVE ALL CLOSING
7 ARGUMENTS AND THE CHARGE THIS EVENING. AND THEY'LL
8 BE GIVEN THE OPPORTUNITY TO DELIBERATE TONIGHT. IS
9 THAT AGREED, MR. SOLICITOR?

10 MR. BAILEY: YES, SIR. MY ONLY
11 CONCERN, AS I MENTIONED IN CHAMBERS, JUDGE, IS THAT
12 IF THE JURY -- I WOULD HATE TO HAVE THE ARGUMENTS
13 AND THE CHARGE AND THEN HAVE THE JURY SAY THEY
14 DIDN'T WANT TO EVEN COMMENCE DELIBERATING UNTIL
15 TOMORROW.

16 THE COURT: I UNDERSTAND THAT. BUT
17 I'M NOT GOING TO ASK THEM. I'M JUST GOING TO SEND
18 THEM BACK THERE TO DELIBERATE.

19 MR. BAILEY: YES, SIR.

20 THE COURT: BUT IF EACH OF Y'ALL
21 TAKE AN HOUR, I'M GOING TO HAVE TO TAKE A RECESS
22 BEFORE WE HAVE THE CHARGE. Y'ALL UNDERSTAND THAT?

23 MR. BAILEY: YES; WE UNDERSTAND
24 THAT.

25 THE COURT: I MEAN, THEY MAY NEED TO

MOTIONS

1 GO POWDER THEIR NOSE. NOW, GENTLEMEN, PURSUANT TO
2 THE DICTATES OF STATE VS. VICTOR OF OUR SUPREME
3 COURT, IT REQUIRES THE COURT TO SET FORTH FINDINGS
4 THAT WILL BE SUBMITTED ON THE STATUTORY MITIGATING
5 CIRCUMSTANCES. I'VE REVIEWED IT WITH YOU,
6 GENTLEMEN, IN CHAMBERS; AND I REITERATE AT THIS
7 TIME FOR THE RECORD THAT THE DOCUMENT TO BE
8 SUBMITTED TO THE JURY WILL INCLUDE THE NUMBER ONE
9 STATUTORY AGGRAVATING (1) CSC FIRST DEGREE; (2)
10 KIDNAPPING; (3) BURGLARY IN THE FIRST DEGREE; (4)
11 ROBBERY WHILE ARMED WITH A DEADLY WEAPON; AND (5)
12 PHYSICAL TORTURE. AGREED, GENTLEMEN?

13 MR. BAILEY: YES, SIR.

14 MR. THEOS: YES, SIR.

15 THE COURT: AND THEN I WILL STATE
16 "YOU MAY ALSO CONSIDER THE FOLLOWING STATUTORY
17 MITIGATING CIRCUMSTANCES; (1) THE DEFENDANT HAS NO
18 SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION
19 INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER
20 PERSON; (2) THE MURDER WAS COMMITTED WHILE THE
21 DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL
22 OR EMOTIONAL DISTURBANCE; (3) THE CAPACITY OF THE
23 DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
24 CONDUCT OR TO CONFORM HIS CONDUCT TO THE
25 REQUIREMENTS OF LAW WERE SUBSTANTIALLY IMPAIRED;

MOTIONS

1 (4) TO AGE AND MENTALITY OF THE DEFENDANT AT THE
2 TIME OF THE CRIMES; AND THEN (5) THE DEFENDANT HAD
3 MENTAL RETARDATION AT THE TIME OF THE CRIME.
4 "MENTAL RETARDATION MEANS SIGNIFICANTLY
5 SUB-AVERAGE GENERAL INTELLECTUAL FUNCTIONING
6 EXISTING CONCURRENTLY WITH DEFICITS AND ADAPTED
7 BEHAVIOR AND MANIFESTED DURING THE DEVELOPMENTAL
8 PERIOD." AND FINALLY "YOU MAY ALSO CONSIDER ANY
9 NONSTATUTORY MITIGATING CIRCUMSTANCES." AND I'VE
10 LISTED THREE THERE. (1) THE DEFENDANT WOULD NOT
11 POSE DANGER IF HIS LIFE IS SPARED BUT INCARCERATED;
12 (2) THE DEFENDANT'S LONG-TERM ADDICTION TO ALCOHOL
13 AND DRUGS; (3) THE DEFENDANT'S INTOXICATION AT THE
14 TIME OF THE COMMISSION OF THE CRIME. SO AT THIS
15 TIME, GENTLEMEN FOR THE DEFENSE, I WISH TO AFFORD
16 AN OPPORTUNITY TO YOU ON THE RECORD TO WAIVE
17 SUBMISSION OF ANY OF THOSE THAT YOU DO NOT WISH TO
18 BE CONSIDERED BY THE JURY AND TO REQUEST ANY
19 ADDITIONAL MITIGATING STATUTORY CIRCUMSTANCES
20 SUPPORTED BY THE EVIDENCE THAT YOU WISH TO SUBMIT
21 IN WRITING TO THE JURY. MAY I HEAR FROM THE
22 DEFENDANT?

23 MR. THEOS: YOUR HONOR, THOSE
24 STATUTORY MITIGATING CIRCUMSTANCES AND
25 NON-MITIGATING CIRCUMSTANCES THAT YOU JUST READ

MOTIONS

1 ALoud ARE THE ONES THAT WE FEEL ARE APPROPRIATE
2 BASED ON THE EVIDENCE THAT'S BEEN SUBMITTED.

3 THE COURT: ALL RIGHT, SIR. YOU
4 SAID NON. YOU MEAN STATUTORY AND NONSTATUTORY
5 MITIGATING?

6 MR. THEOS: YES, SIR; STATUTORY AND
7 NONSTATUTORY MITIGATING CIRCUMSTANCES.

8 THE COURT: ALL RIGHT. DO I
9 UNDERSTAND, THEN, THAT YOU DO NOT WISH TO WAIVE ANY
10 OF THOSE OR TO REQUEST ADDITIONAL ONES?

11 MR. THEOS: THAT'S CORRECT.

12 THE COURT: ALL RIGHT, GENTLEMEN.
13 Y'ALL HAVE BEEN VERY COOPERATIVE, AND WE'VE BEEN IN
14 CHAMBERS NOW FOR MORE THAN AN HOUR REVIEWING THESE
15 CHARGES. AND I WOULD SUBMIT THAT WE SHOULD WAIT
16 UNTIL THE CONCLUSION OF THE CHARGE AND THEN NUNC
17 PRO TUNC PUT YOUR OBJECTIONS ON THE RECORD.
18 AGREEABLE, MR. SOLICITOR?

19 MR. BAILEY: YES, SIR.

20 THE COURT: AGREEABLE, GENTLEMEN?

21 MR. THEOS: THAT'S FINE.

22 THE COURT: SO IS THERE ANYTHING
23 FURTHER AT THIS TIME?

24 MR. BAILEY: NOTHING FROM THE STATE,
25 YOUR HONOR.

MOTIONS

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MR. THEOS: NO, SIR.

THE COURT: LET ME -- MY LAW CLERK
AND I HAVEN'T PROOFED THEM. BUT I HAVE CONFIDENCE
IN HIS ABILITIES. HE'S GOING TO HAND THEM TO YOU
AT THIS TIME, THE RECOMMENDATION OF THE SENTENCE,
FOR DEATH PENALTY, WHERE THERE'S A CHECKLIST THERE
FOR THE EXISTENCE OF STATUTORY AGGRAVATING
CIRCUMSTANCES AND A PLACE FOR EACH OF THE JURORS TO
SIGN. YOU'LL HAVE AN OPPORTUNITY TO OBJECT TO THAT
BEFORE I CHARGE, OKAY? THAT'S IN CONFORMITY WITH
WHAT WE SPOKE ABOUT.

MR. BAILEY: YOUR HONOR, THIS FORM
APPEARS TO BE SORT OF A COMBINATION OF THE FINDINGS
ON AGGRAVATING CIRCUMSTANCES AND THE DEATH PENALTY
RECOMMENDATION. I NEED TO---

THE COURT: YES, SIR. WELL, YOU
KNOW WHO SUBMITTED THAT TO ME, DON'T YOU? YOU DID.

MR. BAILEY: JUDGE, CAN I CHECK TO
MAKE SURE?

THE COURT: YOU MAY DO SO. GET HIM
WHAT YOU WERE TYPING FROM. AND THE ONLY REASON WE
TYPED IT OVER WAS TO MAKE SOME SCRIVENER'S ERROR
CORRECTIONS, PLEASE. (AT THIS TIME COUNSEL REVIEWS
DOCUMENT.)

MR. BAILEY: YOUR HONOR, THE FORM I

MOTIONS

1 HANDED UP, IF I COULD APPROACH THE BENCH, WOULD BE
2 THE JURY'S FINDING AS TO AGGRAVATED CIRCUMSTANCES
3 WHICH IS THIS FORM HERE. (INDICATING.) THE FORM
4 THAT I'M HANDING---

5 THE COURT: WELL, HE CHANGED THE
6 CAPTION OF IT. ANY OTHER CHANGES OTHER THAN THE
7 CAPTION?

8 MR. BAILEY: LET ME CHECK THAT A
9 MINUTE.

10 THE COURT: IS THAT THE ONE THAT HE
11 GAVE TO US?

12 THE LAW CLERK: NO, SIR.

13 THE COURT: ALL RIGHT. YOU'RE
14 CORRECT.

15 THE COURT: ALL RIGHT. SO YOU
16 UNDERSTAND WHAT YOU NEED TO DO; AND THEN MAKE
17 COPIES AND GIVE IT TO THEM?

18 THE LAW CLERK: YES, SIR.

19 THE COURT: ALL RIGHT. IF YOU'RE
20 CORRECT THAT MY LAW CLERK CHANGED THE CAPTION. I
21 DON'T KNOW WHY, BUT -- ANYTHING OTHER OR FURTHER,
22 GENTLEMEN?

23 MR. BAILEY: NO, SIR.

24 THE COURT: FROM THE DEFENSE?

25 MR. THEOS: NO, SIR.

MOTIONS

1 THE COURT: ALL RIGHT. BRING THE
2 JURY IN, PLEASE.

3 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

4 THE COURT: MADAM FORELADY, LADIES
5 AND GENTLEMEN OF THE JURY; I REMIND YOU AGAIN THAT
6 WE'RE NOW ENGAGED IN THE PENALTY PHASE OF THE TRIAL
7 AT WHICH TIME YOU WILL BE ASKED TO MAKE A
8 RECOMMENDATION AS TO THE SENTENCE TO BE IMPOSED. I
9 WILL EXPLAIN THAT IN MORE DETAIL TO YOU AT THE
10 CONCLUSION OF THE LAWYERS' ARGUMENTS. AND THEN
11 WHEN I CHARGE YOU ON THE LAW, I WILL INSTRUCT YOU
12 SPECIFICALLY AS TO THAT. AT THIS STAGE OF THE
13 PROCEEDING, THE LAW PROVIDES FOR THE SOLICITOR TO
14 OPEN. HE WILL ARGUE. AND THEN YOU WILL HEAR
15 ARGUMENTS FROM THE ATTORNEYS AND FROM THE DEFENDANT
16 WHICH HE HAS A RIGHT TO DO UNDER THE LAW. SO AT
17 THIS TIME, LADIES AND GENTLEMEN, MAY I ASK THAT YOU
18 PLEASE GIVE YOUR VERY CAREFUL AND UNDIVIDED
19 ATTENTION. AND IF WE GET TO THE POINT WHERE YOU
20 ARE TIRING AND WOULD LIKE TO BE EXCUSED FOR A SHORT
21 RECESS, LET ME KNOW BECAUSE WE CERTAINLY WANT YOU
22 TO BE COMFORTABLE. THANK YOU. YOU MAY PROCEED,
23 GENTLEMEN.

24 MR. BAILEY: THANK YOU, YOUR HONOR.
25 - - - - -

CLOSING ARGUMENT BY MR. BAILEY

CLOSING ARGUMENT

BY MR. BAILEY

I WANT TO THANK Y'ALL AGAIN FOR YOUR ATTENTION. THIS HAS BEEN A LONG TRIAL. YOU'VE BEEN VERY PATIENT WITH US; AND I DO APPRECIATE IT. SERVICE ON A JURY OF THIS TYPE, WHETHER IT'S A MURDER CASE WHICH THE STATE SEEKS THE DEATH PENALTY, IS THE HIGHEST DUTY THAT ANY CITIZEN CAN RENDER TO THEIR STATE, THEIR COUNTRY, AND THEIR COUNTY EXCEPT FOR MILITARY SERVICE IN TIME OF WAR. SO I THINK EVERYBODY IN THIS COURTROOM WOULD JOIN ME IN THANKING YOU FOR YOUR WILLINGNESS TO SERVE IN THIS CASE. AND ON BEHALF OF THE FAMILY AND LOVED ONES AND MRS. BOYD AND THE STATE OF SOUTH CAROLINA, I WOULD APPRECIATE YOUR CONTINUING ATTENTION.

AS THE JUDGE SAID, THIS IS GOING PROBABLY TO TAKE ME ROUGHLY AN HOUR TO GO THROUGH WHAT I HAVE TO TELL YOU. AND I DON'T WANT TO DRAG THIS THING OUT, BUT I'VE GOT SOME THINGS I WANT TO SAY TO YOU. AND THIS IS THE LAST OPPORTUNITY I'LL HAVE TO SPEAK TO YOU. THE DEFENSE ATTORNEYS, OF COURSE, GO LAST. SOMEBODY HAS GOT TO GO FIRST AND SOMEBODY LAST. SO AGAIN, I CAN'T REBUT WHAT THEY SAY. I'VE GOT TO GET OUT WHATEVER I WANT TO SAY AT

CLOSING ARGUMENT BY MR. BAILEY

THIS POINT AND TIME.

AND, OF COURSE, AT THIS STAGE
GUILT, INNOCENCE, ARE NOT ISSUES. Y'ALL HAVE FOUND
MR. SIMMONS GUILTY OF ALL FIVE OFFENSES. AND AS I
SAID IN MY STATEMENT, HE SITS BEFORE YOU NOW A
CONVICTED MURDERER, A CONVICTED RAPIST, ARMED
ROBBER, KIDNAPPER, BURGLAR. YOUR DUTY, AS I SAID,
THAT SOLEMN DUTY, IS -- YOU HAVE BUT TWO CHOICES;
LIFE WITHOUT PAROLE AND THE DEATH PENALTY. MONDAY
SEEMS LIKE A LONG, LONG TIME AGO; BUT JUST LAST
MONDAY WHEN Y'ALL WERE ALL OUT HERE THAT FIRST DAY,
YOU WERE EACH ASKED BY JUDGE PEEPLES TO RAISE YOUR
HAND AND STAND AND RAISE YOUR HAND. AND YOU GAVE A
SOLEMN OATH. AND YOU SAID WHEN YOU ANSWERED THE
QUESTIONS THAT WOULD BE ASKED OF YOU THAT "I SWEAR
TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
THE TRUTH SO HELP ME GOD." AND YOU WERE THEN ASKED
A SERIES OF QUESTIONS BY JUDGE PEEPLES BY ME AND BY
MR. THEOS UNDER OATH TO DETERMINE YOUR
QUALIFICATIONS TO SIT ON A DEATH PENALTY CASE.

EACH OF YOU SAID UNDER OATH IN
RESPONSE TO EITHER MY QUESTIONS OR JUDGE AND MR.
THEOS THAT "IN THE APPROPRIATE CASE, I CAN BRING
BACK THE VERDICT OF THE DEATH PENALTY." AND EACH
OF YOU SAID UNDER THAT SAME OATH THAT "IF I THINK

CLOSING ARGUMENT BY MR. BAILEY

1 THIS CASE WARRANTS A DEATH PENALTY AND I VOTE FOR
2 IT, I CAN SIGN MY NAME TO THAT DEATH VERDICT FORM."

3 AND EACH OF YOU FURTHER SAID UNDER THAT SAME OATH
4 "IF I VOTE FOR THE DEATH PENALTY; IF I SIGN THAT
5 PAPER; I CAN GET OUT HERE AND ANNOUNCE THAT VERDICT
6 OUT LOUD IN OPEN COURT.

7 LADIES AND GENTLEMEN, EACH OF
8 Y'ALL SAID NOT EVERY MURDER IS A DEATH PENALTY
9 CASE; BUT IF THAT CASE IS BAD ENOUGH, I CAN BRING
10 BACK THE DEATH PENALTY. AND WHEN Y'ALL SAID THAT,
11 I BELIEVED YOU OR YOU WOULDN'T BE ON THIS JURY. SO
12 THE ISSUE OF WHETHER OR NOT THE DEATH PENALTY IS
13 RIGHT OR WRONG, WHETHER WE OUGHT TO HAVE A DEATH
14 PENALTY, IS NOT AN ISSUE. IT'S LIKE YOU ALL SAID
15 THAT "UNDER THE APPROPRIATE CIRCUMSTANCES, I CAN
16 BRING BACK A DEATH PENALTY." SO THE ONLY QUESTION
17 LEFT IN THIS CASE, THIS DEFENDANT, THE APPROPRIATE
18 CASE FOR THE DEATH PENALTY BASED ON THE FACTS THAT
19 I'VE HEARD IN THIS CASE. IT JUST BOILS DOWN TO
20 SOMETHING THAT SIMPLE.

21 I'M GOING TO TALK TO Y'ALL ABOUT
22 THE AGGRAVATING CIRCUMSTANCES, MITIGATING
23 CIRCUMSTANCES, CHARACTERISTICS OF KENNETH SIMMONS,
24 THE CIRCUMSTANCES OF THE CRIMES HE COMMITTED ON
25 SEPTEMBER THE FIRST, 1996, AND THE IMPACT OF MRS.

CLOSING ARGUMENT BY MR. BAILEY

1 BOYD'S DEATH, ON HER FAMILY, AND THOSE PEOPLE THAT
2 KNEW HER AND WERE CLOSE TO HER. AND LIKE I SAID IN
3 MY OPENING STATEMENT, Y'ALL WOULD GET TO KNOW MRS.
4 BOYD TO THE EXTENT THAT YOU CAN KNOW SOMEONE WHO'S
5 NOT HERE. AND I TRIED TO GIVE YOU A GLIMPSE OF HER
6 LIFE THROUGH HER SISTERS AND THROUGH A FRIEND OF
7 HERS, AND A PHOTOGRAPH OF HER IN LIFE. AND YOU
8 CAUGHT A BRIEF GLIMPSE OF HER.

9 SHE WAS BORN IN RIDGEVILLE IN
10 1980; THE OLDEST OF TEN CHILDREN. SHE LIVED
11 THROUGH THE TERM OF SIXTEEN PRESIDENTS; LIVED A
12 LONG LIFE THROUGH TWO WORLD WARS, KOREA, VIETNAM,
13 GREAT BRITAIN. SHE WITNESSED INVENTIONS LIKE THE
14 TELEVISION, THE COMPUTER. DURING HER LIFETIME A
15 MAN WALKED ON THE MOON, AND SHE WITNESSED THAT.
16 AND ON SEPTEMBER THE FIRST, 1996, ON THE FLOOR OF
17 HER KITCHEN IN HER OWN HOME, SHE WAS ROBBED, BEATEN
18 BRUTALLY, AND RAPED BY THIS MAN OVER HERE; KENNETH
19 SIMMONS; STRANGLED AND LEFT TO DIE IN THE KITCHEN
20 FLOOR IN A POOL OF BLOOD. SHE MADE HER MARK IN
21 LIFE. SHE WON'T BE FORGOTTEN BY HER FAMILY AND
22 THOSE THAT LOVED HER. AND, LADIES AND GENTLEMEN, I
23 SUBMIT TO YOU THE FACT THAT YOU'VE HEARD THROUGHOUT
24 THIS CASES AND THE FIRST PART OF THIS TRIAL AND THE
25 SECOND PART OF THE TRAIL, SPELL OUT THE COURSE OF

CLOSING ARGUMENT BY MR. BAILEY

1 CONDUCT THAT'S -- AND THE FACTS ON WHICH YOU HAVE
2 TO BASE YOUR DECISION -- SPELL OUT A COURSE OF
3 CONDUCT SO DEVOID OF BASIC, HUMAN COMPASSION,
4 LACKING IN CONSCIENCE, SO BENT ON MALICE, THAT IT
5 CRIES OUT FOR THE DEATH PENALTY IF WE'RE GOING TO
6 HAVE A DEATH PENALTY IN THIS STATE.

7 LAST WEEK WHEN Y'ALL SAID IF THE
8 CASE IS BAD ENOUGH I CAN BRING BACK THE DEATH
9 PENALTY, YOU HAD A MENTAL PICTURE IN YOUR MIND OF A
10 CASE SO BAD THAT IT WOULD WARRANT THE DEATH
11 PENALTY. LADIES AND GENTLEMEN, THIS IS THAT CASE.
12 Y'ALL HAVE SEEN IT. YOU'VE HEARD IT FROM THAT
13 WITNESS STAND. IF Y'ALL HEARD, IF YOU'VE READ
14 SOMEWHERE, IN THE NEWSPAPER, THE SIX O'CLOCK NEWS
15 THAT SOMEBODY SOMEWHERE IN CALIFORNIA OR NEW YORK
16 OR SOMEWHERE HAD FOUND A STRAY DOG AND BEAT THAT
17 DOG TO DEATH AND STRANGLED IT AND LEFT IT TO DIE,
18 YOU'D SAY THAT'S HORRIBLE. HOW CAN SOMEBODY DO
19 THAT TO A DOG. HE DID THAT TO A HUMAN BEING. THIS
20 MAN OVER HERE -- LOOK AT HIM -- KENNETH SIMMONS --
21 A LIVING HUMAN BEING WHO HAD NEVER DONE ANYBODY ANY
22 HARM; ALL SHE WANTED TO DO WAS MIND HER OWN
23 BUSINESS, ATTEND CHURCH, GO TO THE SENIOR CITIZEN'S
24 CENTER, TAKE CARE OF HER GARDEN. AND HE DID WHAT
25 Y'ALL KNOW HE DID.

CLOSING ARGUMENT BY MR. BAILEY

1 MR. BELL IN HIS OPENING STATEMENT
2 IN THIS PHASE OF THE TRIAL SAID YOU'RE NOT DEALING
3 WITH A VIOLENT MAN. WELL, I SUBMIT TO YOU THAT YOU
4 COULDN'T IMAGINE IN YOUR WILDEST DREAMS A MORE
5 VIOLENT MAN THAN KENNETH SIMMONS WAS THAT NIGHT,
6 EARLY THAT MORNING, SEPTEMBER THE FIRST. IT'S NOT
7 ONLY A MALICIOUS ACT; IT'S A COWARDLY ACT. Y'ALL
8 HAVE HEARD ABOUT KENNETH SIMMONS' ATHLETIC PROWESS,
9 SEMI-PRO FOOTBALL, HIGH SCHOOL FOOTBALL STAR; A
10 YOUNG MAN IN THE PRIME OF LIFE. I THINK HE WAS
11 THIRTY-FIVE YEARS OLD. LILLY BELL BOYD, ACCORDING
12 TO DR. NICHOLS IN THE AUTOPSY STOOD A LITTLE OVER
13 FIVE FEET TALL; WEIGHED ABOUT 110 POUNDS; WAS 89
14 YEARS OLD. AND HE HAD A STICK, TOO.

15 ACCORDING TO STEVE DERRICK WHO
16 TESTIFIED IN THE FIRST PART OF THIS TRIAL, THE SLED
17 FORENSIC EXPERT. AND ONE OF HIS AREAS OF EXPERTISE
18 IS BLOOD SPATTER TESTIMONY. REMEMBER WE HAD THAT
19 PIECE OF FLOOR OUT HERE; AND WE TOLD Y'ALL HE HAD
20 BEEN TO THESE SCHOOLS ON BLOOD SPATTER, AND THEY
21 CAN TELL FROM THE PATTERN OF THE BLOOD FLOW THE
22 HEIGHT AT WHICH THAT BLOOD WAS LEFT. AND MR.
23 DERRICK TOLD YOU THAT HIS OPINION, TO A REASONABLE
24 DEGREE OF SCIENTIFIC CERTAINTY, THE BLOOD THAT WAS
25 LEFT ON THAT FLOOR WAS LEFT FROM A HEIGHT OF ABOUT

CLOSING ARGUMENT BY MR. BAILEY

1 A FOOT, I BELIEVE HE SAID. SO, I MEAN. THERE'S NO
2 GOOD WAY TO BEAT AN OLD LADY. BUT HE BEAT HER WHEN
3 SHE WAS ON THE FLOOR. HE BEATS HER WHILE SHE'S
4 DOWN. THAT'S WHERE THAT BLOOD WAS LEFT. SHE
5 DIDN'T HAVE A CHANCE. AS SOON AS HE ENTERED THAT
6 HOUSE HE SNUFFED OUT HER LIFE FOR NO REASON. AS I
7 SAID, SHE DID NOTHING TO DESERVE THIS; NOTHING.
8 SHE WAS A TOTALLY INNOCENT VICTIM.

9 WHAT DID HE GAIN BY IT? WHATEVER
10 THRILL HE GOT OUT OF RAPING A 89 YEAR OLD WOMAN,
11 BEATING HER TO DEATH FOR A HUNDRED DOLLARS OR SO TO
12 BUY MORE CRACK. AND THE THING ABOUT THE CRACK AND
13 THE ALCOHOL; AND I'M SURE THE DEFENSE WILL GET UP
14 HERE AND TELL Y'ALL ABOUT "THIS POOR GUY IS OUT OF
15 HIS MIND ON CRACK AND ALCOHOL." REMEMBER THAT
16 TAPE? HE HAD BEEN OUT DRINKING AND DOING CRACK THAT
17 NIGHT AT UNCLE WILLIE'S, I THINK HE SAID; HIM AND
18 HIS BUDDIES; WENT HOME, WENT TO SLEEP; WOKE UP
19 EARLY. SO IT ISN'T LIKE HE'S RIGHT OFF OF A
20 BINGE. I MEAN, HE'S GONE HOME AND GONE TO SLEEP
21 AND GOT UP. HE RODE HIS BICYCLE OUT THERE; HAD
22 TIME TO THINK ABOUT IT. AND WAS HE JUST CRAZED
23 WITH THE DESIRE TO GET THAT CRACK RIGHT NOW? NO!
24 BECAUSE IN THE STATEMENT -- Y'ALL WILL HAVE IT BACK
25 THERE WITH YOU -- LOOK AT IT -- HE SAID HE DIDN'T

CLOSING ARGUMENT BY MR. BAILEY

1 BUY ANY MORE CRACK WITH THAT MONEY UNTIL ABOUT SIX
2 HOURS LATER. SO NO MATTER HOW MUCH HE LOVED THAT
3 CRACK AND ALCOHOL, HE DIDN'T LOVE IT SO MUCH HE HAD
4 TO HAVE IT RIGHT THEN. HE CERTAINLY DIDN'T NEED TO
5 KILL THAT OLD LADY.

6 I MEAN, THERE'S JUST NO REASON;
7 NO JUSTIFICATION; NO POSSIBLE EXCUSE; JUST
8 MITIGATION IN THIS CASE. THERE IS NO WAY YOU CAN
9 JUSTIFY WHAT HE DID THAT NIGHT -- THAT MORNING.
10 THE ENORMITY AND JUST THE SHEAR HORROR OF WHAT THAT
11 OLD LADY ENDURED. I FEEL INADEQUATE AS A LAWYER TO
12 REALLY GET IT ACROSS TO YOU. WE'RE IN COURT. WE
13 HAVE DECORUM. WE HAVE RULES. THE JUDGE IS IN HIS
14 BLACK ROBE, AND THE LAWYERS HAVE THEIR COATS AND
15 TIES ON. AND WE STAND UP; WE SIT DOWN AT THE
16 PROPER TIME; AND IN THIS STERILE ATMOSPHERE, IT'S
17 HARD FOR ME, NO MATTER WHAT I SAY OR DO OR WHAT
18 PICTURES I SHOW YOU ALL, TO TRY TO CONVEY TO YOU
19 HOW BAD THIS THING WAS.

20 LOOK AT IT -- JUST TRY TO TAKE
21 YOURSELVES OUT OF THIS COURTROOM; AND IN YOUR MINDS
22 EYE GO BACK TO SEPTEMBER THE FIRST, 1996, ABOUT
23 FIVE OR SIX O'CLOCK IN THE MORNING. IT'S DARK.
24 MRS. BOYD IS GOING OUT OF THAT HOUSE. AND IMAGINE
25 THIS THING FROM HER POINT OF VIEW. SHE WAS ALREADY

CLOSING ARGUMENT BY MR. BAILEY

1 AFRAID. SHE LIVED ALONE. ONE OF HER SISTERS SAID
2 SHE HAD BEEN BROKEN INTO BEFORE. AND, YOU KNOW,
3 THAT LITTLE HOUSE IS IN A BAD PART OF TOWN; AND SHE
4 PUTS BLOCKS ON THE FRONT DOOR AND PUTS BARS ON ALL
5 THE WINDOWS, ALL THE DOORS BECAUSE SHE'S THERE BY
6 HERSELF. AND THAT MORNING WHEN KENNETH SIMMONS
7 SHOWED UP, HER WORSE NIGHTMARE CAME TRUE.

8 JUDGE PEEPLES WILL INSTRUCT YOU
9 ON AGGRAVATING CIRCUMSTANCES. AND AS I'VE SAID,
10 WE'VE ALLEGED FIVE AGGRAVATING CIRCUMSTANCES. AND
11 THE SIGNIFICANCE, THE LEGAL SIGNIFICANCE OF AN
12 AGGRAVATING CIRCUMSTANCE IS, IF I CAN'T PROVE AT
13 LEAST ONE AGGRAVATING CIRCUMSTANCE, Y'ALL CAN'T
14 BRING BACK THE DEATH PENALTY FOR MURDER, EVEN IF
15 YOU WANTED TO. YOU'RE JUST NOT ALLOWED TO BY LAW.
16 BUT IF I CAN PROVE AT LEAST ONE AGGRAVATING
17 CIRCUMSTANCE, NO MATTER WHAT ELSE COMES OUT; NO
18 MATTER HOW MANY MITIGATING CIRCUMSTANCES THERE ARE,
19 YOU CAN STILL BRING BACK THE DEATH PENALTY IF YOU
20 FIND I'VE PROVEN AT LEAST ONE AGGRAVATING
21 CIRCUMSTANCE. AND YOU'VE ALREADY FOUND FOUR IN THE
22 FIRST PART OF THIS TRIAL.

23 NOW IN ADDITION TO THAT, AS I
24 SAID, THERE'S A FIFTH AGGRAVATING CIRCUMSTANCE THE
25 JUDGE WILL INSTRUCT YOU ON; THAT'S PHYSICAL

CLOSING ARGUMENT BY MR. BAILEY

1 TORTURE. AND JUST LIKE ANY OTHER LEGAL CONCEPT,
2 YOU MAY HAVE ONE IDEA OF LIKE WHAT KIDNAPPING IS.
3 THE JUDGE WILL TELL YOU IT'S SOMETHING ELSE. IT'S
4 YOUR DUTY TO FOLLOW THE JUDGE. JUDGE PEEPLES WILL
5 INSTRUCT YOU ON WHAT'S MEANT LEGALLY BY PHYSICAL
6 TORTURE. LISTEN TO HIS INSTRUCTIONS TO YOU.

7 PHYSICAL TORTURE EXISTS WHEN A
8 PERSON IS SUBJECTED TO SERIOUS PHYSICAL ABUSE
9 BEFORE A DEATH THAT EXISTS WHEN THE VICTIM IS
10 SUBJECTED TO AN AGGRAVATED BATTERY. AN AGGRAVATED
11 BATTERY CAN OCCUR WHEN THERE'S A DIFFERENCE IN THE
12 AGE OR THE PHYSICAL CONDITION, SIZE, SEXES OF THE
13 DEFENDANT AND THE VICTIM, THE PERSON ASSAULTING
14 THAT PERSON. IT'S THE INTENTIONAL INFLECTION OF
15 SERIOUS ABUSE. IT'S CAUSING PAIN BEFORE DEATH.
16 THE INSTANTANEOUS DEATH OF SOMEBODY WOULDN'T BE
17 PHYSICAL TORTURE. BUT IF THEY SUFFER BEFORE THEY
18 DIE, THAT IS PHYSICAL TORTURE. THAT'S AN
19 AGGRAVATING CIRCUMSTANCE. YOU CAN CONSIDER THAT
20 WHEN YOU CONSIDER THE DEATH PENALTY OR LIFE WITHOUT
21 PAROLE IN THIS CASE.

22 YOU HEARD KENNETH SIMMONS ON THE
23 TAPE WHICH HE TOLD YOU WHAT HE DID TO LILLY BELL
24 BOYD. AND PLEASE NOTE ACCORDING TO HIS TAPED
25 CONFESSION THE SEQUENCE OF WHAT HAPPENED. FIRST OF

CLOSING ARGUMENT BY MR. BAILEY

1 ALL THE ROBBERY OCCURS; THEN THE BEATING; THEN THE
2 RAPE; THEN SHE'S BOUND. AT SOME POINT SHE'S
3 STRANGLED WHILE SHE'S STILL ALIVE ACCORDING TO THE
4 PATHOLOGIST. MR. SIMMONS, WHEN ASKED BY MR. MEARS
5 ON THAT TAPE, WAS SHE ALIVE WHEN YOU RAPED HER? AT
6 ONE POINT HE SAID SHE WAS HALF AND HALF. AND AT A
7 LATER POINT HE SAID, "DID SHE FIGHT BACK?" HE SAID
8 "A LITTLE." SHE WAS HEMORRHAGING THE ENTIRE
9 TIME. SHE WAS BLEEDING. IF YOU'RE DEAD, YOU DON'T
10 BLEED. SHE WAS ALIVE THROUGH THAT ENTIRE ORDEAL HE
11 PUT HER THROUGH FOR HOWEVER LONG IT TOOK. IF SHE
12 WASN'T ALIVE, WHY WOULD THERE BE ANY NEED TO BIND
13 HER, TO TIE HER UP, TO GAG HER?

14 NOW, LET'S LISTEN. I'M GOING TO
15 ASK MR. BELL TO PLAY AGAIN A PORTION OF THOSE TAPES
16 AS WE DID IN THE FIRST PART OF THE TRIAL. AND I'M
17 GOING TO ASK YOU TO THINK ABOUT THE ELEMENTS OF
18 PHYSICAL TORTURE. YOU'RE GOING TO HEAR KENNETH
19 SIMMONS' WORDS, KENNY MEARS WORDS, SO TRY TO
20 IMAGINE THIS FROM LILLY BELL BOYD'S POINT OF VIEW.

21 MR. THEOS: YOUR HONOR, I'M GOING TO
22 OBJECT. HE CANNOT ASK THE JURY TO PUT THEMSELVES
23 IN THE PLACE OF MRS. BOYD.

24 MR. BAILEY: JUDGE, I DIDN'T ASK
25 THEM TO DO THAT.

CLOSING ARGUMENT BY MR. BAILEY

1 THE COURT: YOU'RE CORRECT. HE IS
2 NOT ALLOWED TO ASK TO PUT THEMSELVES IN THE PLACE
3 OF MRS. BOYD BECAUSE YOU CAN'T MAKE A PERSONAL
4 APPEAL TO THE JURY. I DIDN'T HEAR HIM SAY THAT.
5 IF HE SAID IT, I DON'T ARGUE WITH YOU. WHATEVER
6 WAS SAID WAS SAID. BUT PLEASE, IF IT WAS SAID
7 LADIES AND GENTLEMEN, DISREGARD ANY APPEAL TO PUT
8 YOURSELF IN THE PLACE OF MRS. BOYD. THANK YOU.

9 MR. BAILEY: BEFORE YOU TURN THAT
10 ON, MR. BELL; LADIES AND GENTLEMEN; I'LL ASK YOU
11 JUST TO LISTEN TO THIS. AND USING YOUR GOOD COMMON
12 SENSE, LISTEN TO THIS THING. GO AHEAD.

13 (AT THIS TIME TAPE IS TURNED ON FOR JURY AND IS AS
14 FOLLOWS:)

15 MR. SIMMONS: "SHE WAS COMING BACK
16 IN THE HOUSE. I WENT IN THE HOUSE. SHE TRIED TO
17 COME BACK OUTSIDE; PUSHED HER BACK IN THE HOUSE."

18 MR. MEARS: "YOU WENT IN THE HOUSE
19 BEHIND HER?"

20 MR. SIMMONS: "YES, SIR. SHE WAS
21 COMING BACK OUT, AND I PUSH HER BACK IN THE HOUSE."

22 MR. MEARS: "WHAT PART OF THE HOUSE
23 WAS THIS IN?"

24 MR. SIMMONS: "IT WAS ON THE BACK
25 PORCH; AND I PUSHED HER BACK INSIDE THE DOOR. AND

CLOSING ARGUMENT BY MR. BAILEY

1 I ASKED HER TO GIVE ME THE MONEY. SHE WAS COMING
2 BACK, AND I PUSH HER."

3 MR. MEARS: "WHAT DID SHE HAVE IN
4 HER HAND?"

5 MR. SIMMONS: "AN ENVELOPE; AND I
6 PUSH HER."

7 MR. MEARS: OKAY.

8 MR. SIMMONS: "AND I PUSH HER. SHE
9 FALL AND HIT HER HEAD AND GET BACK UP. WHEN I
10 TRIED TO CATCH HER, SHE WOULD TRY TO HOLD ONTO ME.
11 SHE'D FALL. SHE WAS GETTING BACK UP; AND I HIT HER
12 WITH A STICK."

13 MR. MEARS: "WHAT KIND OF STICK DID
14 YOU HIT HER WITH?"

15 MR. SIMMONS: "A STICK OFF A TREE."

16 MR. MEARS: "DID YOU TAKE THAT STICK
17 IN THE HOUSE WITH YOU?"

18 MR. SIMMONS: "NO; THAT WAS ON THE
19 BACK PORCH. THE STICK WAS ON THE BACK PORCH."

20 MR. MEARS: "HOW MANY TIMES DID YOU
21 HIT HER?"

22 MR. SIMMONS: "I THINK IT WAS TWO OR
23 THREE TIMES."

24 MR. MEARS: "WHERE DID YOU HIT HER
25 AT?"

CLOSING ARGUMENT BY MR. BAILEY

1 MR. SIMMONS: "ON HER HEAD; IN HER
2 HEAD."

3 MR. MEARS: "THEN WHAT DID YOU DO?"

4 MR. SIMMONS: "AFTER THAT, I HAD SEX
5 WITH HER."

6 MR. MEARS: "WAS SHE STILL ALIVE AT
7 THAT TIME?"

8 MR. SIMMONS: "YES, SIR; SHE WAS
9 STILL LIVING AT THAT TIME."

10 MR. MEARS: "YOU HAD SEX WITH HER?"

11 MR. SIMMONS: "YES, SIR; I WAS
12 REALLY LOST IN MY MIND."

13 MR. MEARS: "DID SHE GIVE YOU THE
14 MONEY?"

15 MR. SIMMONS: "YES; SHE DONE DROP
16 THE ENVELOPE WHEN I HIT HER. AND I PICKED UP THE
17 TELEPHONE TO TRY TO DIAL A NUMBER; PUT THE
18 TELEPHONE BACK DOWN."

19 MR. MEARS: "DIAL WHAT NUMBER?"

20 MR. SIMMONS: "I WAS GOING TO DIAL
21 911. I PUT THE TELEPHONE BACK DOWN."

22 MR. MEARS: "WHY WERE YOU GOING TO
23 DIAL 911?"

24 MR. SIMMONS: "I REALIZED WHAT I
25 DID; AND I WAS KNOW I JUST MADE THE BIGGEST MISTAKE

CLOSING ARGUMENT BY MR. BAILEY

1 IN MY LIFE."

2 MR. MEARS: "HOW MANY TIMES DID YOU
3 RAPE HER?"

4 MR. SIMMONS: "ONLY ONCE, SIR."

5 MR. MEARS: "WAS SHE ALIVE OR WAS
6 SHE DEAD?"

7 MR. SIMMONS: "SHE WAS ALIVE, SIR."

8 MR. MEARS: "AFTER YOU HIT MRS. BOYD
9 SEVERAL TIMES?"

10 MR. SIMMONS: "YES, SIR."

11 MR. MEARS: "WAS SHE CONSCIOUS OR
12 WAS SHE UNCONSCIOUS WHEN YOU RAPED HER?"

13 MR. SIMMONS: "SHE WAS HALF AND
14 HALF."

15 MR. MEARS: "DID SHE TRY TO FIGHT
16 BACK?"

17 MR. SIMMONS: "A LITTLE BIT, SIR."

18 MR. MEARS: "AND YOU PUSHED HER?"

19 MR. SIMMONS: "YES, SIR."

20 MR. MEARS: "AND ASKED HER FOR THE MONEY?"

21 MR. SIMMONS: "YES, SIR."

22 MR. MEARS: "AND THEN SHE -- YOU
23 PUSHED HER BACK INSIDE THE HOUSE?"

24 MR. SIMMONS: "YES, SIR."

25 MR. MEARS: "DOWN THE HALLWAY INTO

1 THE BEDROOM?"

2 MR. SIMMONS: "YES, SIR."

3 MR. MEARS: "YOU FOLLOWED HER?"

4 MR. SIMMONS: "NOT ALL THE WAY?"

5 MR. MEARS: "NOT ALL THE WAY?"

6 MR. SIMMONS: "NO, SIR."

7 MR. MEARS: "SHE CAME BACK OUT WITH

8 THE MONEY?"

9 MR. SIMMONS: "UH-HUH."

10 MR. MEARS: "GAVE YOU THE MONEY?"

11 MR. SIMMONS: "UH-HUH."

12 MR. MEARS: "WHAT WAS THE MONEY IN?"

13 MR. SIMMONS: "A LITTLE BROWN

14 ENVELOPE."

15 MR. MEARS: "A LITTLE BROWN

16 ENVELOPE?"

17 MR. SIMMONS: "YES, SIR."

18 MR. MEARS: "WHERE DID SHE GIVE YOU

19 THE MONEY AT; DOWN THE HALLWAY, IN THE BEDROOM, OR

20 IN THE KITCHEN?"

21 MR. SIMMONS: "IT WAS IN THE KITCHEN

22 BETWEEN THE HALLWAY WHEN I PUSHED HER."

23 MR. MEARS: "AFTER SHE GAVE YOU THE

24 MONEY, YOU PUSHED HER---

25 MR. SIMMONS: "AND SHE HIT HER HEAD."

CLOSING ARGUMENT BY MR. BAILEY

1 MR. MEARS: "SHE HIT HER HEAD?"

2 MR. SIMMONS: "YES, SIR."

3 MR. MEARS: "AND THAT'S WHEN YOU
4 BEAT HER WITH THE STICK?"

5 MR. SIMMONS: "I HIT HER WITH THE
6 STICK; YES, SIR."

7 MR. MEARS: "AND WHAT ELSE
8 HAPPENED?"

9 MR. SIMMONS: "I TIED HER HANDS. I
10 RAPED HER, THEN TIED HER HANDS."

11 MR. MEARS: "OKAY; YOU RAPED HER
12 AFTER YOU KNOCKED HER TO THE FLOOR?"

13 MR. SIMMONS: "YES, SIR."

14 MR. MEARS: "AND BEAT HER WITH THE
15 STICK?"

16 MR. SIMMONS: "YES, SIR."

17 MR. MEARS: "YOU RAPED HER?"

18 MR. SIMMONS: "YES, SIR."

19 MR. MEARS: "AFTER YOU RAPED HER,
20 YOU TIED HER UP?"

21 MR. SIMMONS: "YES, SIR."

22 MR. MEARS: "WITH WHAT?"

23 MR. SIMMONS: "I GUESS A STOCKING.
24 I DON'T KNOW WHAT IT WAS. I CAN'T REMEMBER WHAT I
25 TIED HER UP WITH."

CLOSING ARGUMENT BY MR. BAILEY

1 MR. MEARS: "WAS SHE ALIVE WHEN YOU
2 RAPED HER?"

3 MR. SIMMONS: "SHE WAS HALF AND HALFWHEN
4 I WENT TO THE TELEPHONE AND TRIED TO CALL 911." AND
5 WE KNOW THAT SIMMONS' ACCOUNT OF WHAT HAPPENED, AS
6 BAD AS IT IS, DOESN'T TELL THE WHOLE STORY. WE
7 KNOW THAT FROM DR. NICHOLS, THE PATHOLOGIST. DR.
8 NICHOLS TESTIFIED THAT THE VAGINAL HEMORRHAGING HE
9 OBSERVED WAS THE SECOND WORSE HE HAD EVER SEEN.
10 AND I ASKED HIM HIS OPINION ON THAT. AND HE SAID
11 IN RESPONSE TO THAT QUESTION THAT HIS OPINION WAS
12 THAT SOME OBJECT OTHER THAN A PENIS WAS INSERTED
13 INTO HER VAGINA TO CAUSE THAT AMOUNT OF DAMAGE.
14 AND HE FURTHER SAID THAT A GREAT DEAL OF PAIN WOULD
15 BE ASSOCIATED. YOU CAN IMAGE AN 89 YEAR OLD WOMAN
16 UNDERGOING WHAT SHE WENT THROUGH. HE ALSO TALKED
17 ABOUT HER BEING BEAT ON THE HEAD SEVERAL TIMES;
18 CONTUSIONS TO HER TONGUE WHICH WERE CONSISTENT --
19 HE BROUGHT THIS OUT IN THE GUILT PHASE -- WITH A
20 BLOW DRIVING HER TEETH INTO HER TONGUE.

21 IMAGINE THIS MAN WITH THAT 89
22 YEAR OLD WOMAN ON THE FLOOR SMASHING HIS FIRST INTO
23 HER JAW TO WHERE SHE BITES INTO HER TONGUE; AN 89
24 YEAR OLD WOMAN ON THE FLOOR. Y'ALL SAW THE
25 PICTURES. HER EYES WERE SWOLLEN SHUT, HER LIP

CLOSING ARGUMENT BY MR. BAILEY

1 BUSTED. SHE HAD BEEN BEATEN IN THE TORSO SO BAD
2 THAT SIX RIBS ON THE RIGHT FRONT SIDE WERE
3 FRACTURED; FIVE ON THE LEFT FRONT SIDE WERE
4 FRACTURED; AND FOUR ON THE LEFT SIDE WERE
5 FRACTURED. AND DR. NICHOLS SAID THAT DAMAGE WAS
6 CONSISTENT WITH EITHER BEING STOMPED OR SLAMMED
7 HARD AGAINST THAT FLOOR TO BREAK FOURTEEN OR
8 FIFTEEN RIBS. HE ALSO SAID THOSE BLOWS TO HER HEAD
9 AND BODY WOULD BE CONSISTENT WITH A GREAT DEAL OF
10 PAIN. AND AGAIN SHE WAS ALIVE WHEN THAT HAPPENED
11 BECAUSE THERE WAS HEMORRHAGING ASSOCIATED WITH IT.

12 SHE WAS STRANGLED WHILE SHE WAS
13 ALIVE. THE HYOID BONE HERE WAS BROKEN. IT WAS
14 HEMORRHAGING AROUND HER NECK MUSCLES. THE
15 PETECHIAL HEMORRHAGING IN HER EYES. AND I ASKED
16 DR. NICHOLS HOW LONG WOULD IT TAKE FOR HER TO LOSE
17 CONSCIOUSNESS BEING STRANGLED LIKE THAT. HE SAID
18 UP TO A MINUTE. AND I ASKED HOW PAINFUL THAT WOULD
19 BE, AND HE SAID ON A SCALE OF ONE TO TEN, A NINE OR
20 A TEN WHEN THAT BONE -- IF YOU FEEL THAT BONE, IT
21 HURTS JUST TO TOUCH IT. IT WOULD BE EXCRUCIATINGLY
22 PAINFUL. AND THIS HAD TO HAVE COME TOWARDS THE
23 END.

24 AGAIN, THERE'S REALLY NO DOUBT
25 THAT SHE WAS CONSCIOUS; OTHERWISE WHY WOULD HE TIE

CLOSING ARGUMENT BY MR. BAILEY

1 HER UP? I TOLD Y'ALL THIS WOULDN'T BE AN EASY CASE
2 TO TALK ABOUT, AND IT'S NOT. IT'S NOT EASY FOR ME
3 TO TALK ABOUT. IT'S NOT EASY FOR Y'ALL TO LISTEN
4 TO. BUT YOU NEED TO MAKE YOUR DECISION BASED ON
5 THE EVIDENCE AND THE REASONABLE INFERENCES THAT YOU
6 CAN DRAW FROM THAT EVIDENCE. YOU RECALL MRS.
7 CRANE, THE DNA EXPERT, TESTIFIED THAT WHEN SHE GOT
8 THE ORAL SWABS THAT WERE TAKEN FROM HER MOUTH BY
9 DR. NICHOLS; SHE TESTED THOSE. THERE WAS SEMEN
10 PRESENT.

11 DR. NICHOLS LOOKED AT THE ORAL
12 SWABS ON A SLIDE -- EXCUSE ME. HE LOOKED AT THE
13 VAGINAL SWABS OF THE SLIDE. HE TALKED ABOUT ACID
14 PHOSPHATASE LEVELS. AND HE SAID IN HIS OPINION
15 ALSO THE ACID PHOSPHATASE LEVEL WHICH IS A MARKER
16 FOR SEMEN WAS POSITIVE AND THAT IN HIS OPINION
17 THERE WAS SEMEN -- ALSO THERE WAS SEMEN IN THE ORAL
18 SWABS. SO AT SOME POINT IN TIME THIS MAN MADE THAT
19 89 YEAR OLD WOMAN PERFORM ORAL SEX ON HIM. HOW
20 ELSE IS SHE GOING TO GET SEMEN IN HER MOUTH AT 89
21 YEARS OLD?

22 AGAIN I DON'T HAVE TO PROVE ALL
23 FIVE. I DON'T NEED TO PROVE PHYSICAL TORTURE FOR
24 Y'ALL TO BRING BACK THE DEATH PENALTY. I'VE
25 ALLEGED FIVE AGGRAVATING CIRCUMSTANCES. YOU FOUND

CLOSING ARGUMENT BY MR. BAILEY

1 FOUR. THERE'S ONE MORE TO CONSIDER. PROOF OF ANY
2 IS ALL Y'ALL NEED TO BRING BACK THE DEATH PENALTY
3 IF THAT'S YOUR CHOICE. BUT YOU CAN LOOK BEYOND THE
4 AGGRAVATING CIRCUMSTANCES. YOU'RE NOT LIMITED TO
5 THAT. YOU CAN ALSO LOOK AT MR. SIMMONS' PRIOR
6 CONDUCT, NOT AS AN AGGRAVATING CIRCUMSTANCE BUT AS
7 THE CHARACTERISTIC OF THE PERSON WHOSE FATE IS IN
8 YOUR HANDS. SO YOU'RE GOING TO BE SENTENCING HERE
9 TODAY, TONIGHT.

10 WHEN YOU CONSIDER LIFE
11 IMPRISONMENT AS AN ALTERNATIVE OF THE DEATH
12 PENALTY, I WANT YOU TO TAKE A LOOK AT HIS CRIMINAL
13 RECORD. YOU'LL HAVE THIS WITH YOU. IT STARTS OFF
14 WITH SOME REALLY MINOR STUFF HERE. I MEAN, ANYBODY
15 COULD DO THAT -- FAILURE TO OBEY. AND I WANTED TO
16 JUST COMMENT -- TRESPASSING BACK IN '81. THEN HE
17 GETS MORE SERIOUS. BACK IN '91, HE'S CONVICTED FOR
18 RECEIVING STOLEN GOODS. HE HAS ANOTHER CONVICTION
19 LATER ON.

20 MRS. BOYD IS MURDERED BY HIM ON
21 SEPTEMBER THE FIRST, 1996. AFTER HE MURDERS,
22 RAPES, ROBS, AND MUTILATES THAT OLD WOMAN, HE'S
23 CONVICTED AFTER THAT OF CRIMINAL DOMESTIC
24 VIOLENCE. AND THIS IS A MAN THAT THESE WITNESSES
25 GOT UP HERE AND MR. BELL SAID IS NOT A VIOLENT

CLOSING ARGUMENT BY MR. BAILEY

1 PERSON. AND EVEN AFTER THAT, HE GOT THAT
2 SHOPLIFTING CONVICTION. SO HE'S HAD CHANCE AFTER
3 CHANCE AFTER CHANCE. HIS CONDUCT BECOMES MORE
4 VIOLENT AS HE GOES ALONG. AND ONCE HE COMMITS THIS
5 MURDER, HE DOESN'T EVEN STOP THEN. HE'S COMMITTED
6 TWO OTHER CRIMINAL OFFENSES THAT HE'S BEEN
7 CONVICTED OF SINCE THEN.

8 I WANT TO GO THROUGH THE
9 MITIGATING CIRCUMSTANCES THAT JUDGE PEEPLES IS
10 GOING TO TELL Y'ALL TO CONSIDER. AND THAT'S WHAT
11 YOU SHOULD DO. YOU SHOULD CONSIDER EVERYTHING THAT
12 YOU'VE HEARD HERE. AND HE WILL TELL YOU THAT YOU
13 ARE TO CONSIDER THESE. THAT DOESN'T MEAN THAT YOU
14 HAVE TO FIND THEY EXIST. THAT MEANS THERE'S SOME
15 EVIDENCE IN THE RECORD THAT COULD SUPPORT IT. IT'S
16 UP TO YOU TO DECIDE WHETHER OR NOT EACH OF THESE
17 MITIGATING CIRCUMSTANCES EXISTS; AND IF THEY DO
18 EXIST, WHAT SIGNIFICANCE DO YOU WANT TO GIVE TO
19 IT. IT'S UP TO YOU.

20 NOW LET'S LOOK AT THEM. AND
21 REMEMBER THESE ARE MITIGATING CIRCUMSTANCES FOR YOU
22 TO CONSIDER. YOU DECIDE IF THEY EXIST; AND IF THEY
23 DO EXIST WHAT USE TO MAKE OF THEM. THE FIRST
24 STATUTORY MITIGATING CIRCUMSTANCE THE JUDGE WILL
25 INSTRUCT YOU TO CONSIDER IS THAT KENNETH SIMMONS

CLOSING ARGUMENT BY MR. BAILEY

1 HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL
2 CONVICTIONS INVOLVING THE USE OF VIOLENCE AGAINST
3 ANOTHER PERSON. AND WE'LL GIVE HIM THAT. HE'S GOT
4 NO PRIOR CONVICTIONS; NOTHING PRIOR TO 1996 THAT
5 INDICATED VIOLENCE. BUT AGAIN I ASK YOU TO LOOK AT
6 THE FACT THAT HE'S CONVICTED OF CRIMINAL DOMESTIC
7 VIOLENCE IN JANUARY OF 1997 AFTER THIS MURDER.

8 THE NEXT FOUR STATUTORY
9 MITIGATING CIRCUMSTANCES THAT THE JUDGE WILL
10 INSTRUCT YOU ON ARE RELATED. THEY DEAL WITH MR.
11 SIMMONS' MENTAL STATUS AT THE TIME HE COMMITTED
12 THIS OFFENSE, OR THESE OFFENSES. SO I'M GOING TO
13 TALK ABOUT THEM ALL TOGETHER BECAUSE THEY KIND OF
14 RUN TOGETHER. THEY OVERLAP.

15 THE JUDGE WILL INSTRUCT YOU TO
16 CONSIDER THAT HE WAS UNDER A MENTAL OR EMOTIONAL
17 DISTURBANCE AT THE TIME HE COMMITTED THESE CRIMES;
18 TO CONSIDER HIS ABILITY TO CONFORM HIS CONDUCT WAS
19 IMPAIRED. HE'LL ASK YOU TO CONSIDER HIS AGE AND
20 MENTALITY AT THE TIME OF THE CRIME. HE WILL ASK
21 YOU TO CONSIDER IF THE DEFENDANT HAD MENTAL
22 RETARDATION AT THE TIME OF THE CRIME. LET'S TALK
23 ABOUT HIS AGE, FIRST OF ALL. I THINK HE WAS
24 THIRTY-FIVE OR THIRTY-SIX IN SEPTEMBER OF 1996.
25 HE'S A GROWN MAN; NOT A CHILD. OLD ENOUGH TO VOTE.

CLOSING ARGUMENT BY MR. BAILEY

1 OLD ENOUGH TO SERVE IN THE MILITARY. OLD ENOUGH TO
2 SERVE ON A JURY. OLD ENOUGH TO COMMIT AN ACT OF
3 COLD BLOODED MURDER.

4 THE DEFENSE PUT UP EVIDENCE OF
5 HIS CHILDHOOD; HIGH SCHOOL DAYS, PEOPLE THAT KNEW
6 HIM BACK IN HIGH SCHOOL; GOOD FOOTBALL PLAYER AND
7 ALL THAT. Y'ALL AREN'T SENTENCING THE BOY THEY
8 WERE TALKING ABOUT. YOU ARE SENTENCING THE GROWN
9 MAN, 38 YEARS OLD NOW THAT SITS IN FRONT OF YOU.
10 YOU KNOW, THE WORSE PERSON ON THE FACE OF THE EARTH
11 STARTED OFF AS AN INNOCENT CHILD. SO THAT CAN'T BE
12 A CONSIDERATION. IT WOULDN'T MAKE ANY SENSE.
13 EVERYBODY IS AN INNOCENT BABY AT ONE TIME OR
14 ANOTHER OR A CUTE KID, OR WHATEVER. BUT YOU'VE GOT
15 TO LOOK AT WHAT HE'S DONE WHEN HE BECAME A MAN.
16 THAT HAS TO BE CONSIDERED IN YOUR SENTENCING; THE
17 MAN, NOT THE BOY HE USED TO BE.

18 I WANT TO TALK ABOUT THIS MENTAL
19 RETARDATION, MITIGATING CIRCUMSTANCES. I'M NOT
20 GOING TO SPEND A LOT OF TIME ON IT BECAUSE I THINK
21 THAT SUBJECT HAS PRETTY WELL BEEN WORN OUT WITH THE
22 DAY'S WORTH OF TESTIMONY. THESE GUYS WHO TALKED,
23 THESE EXPERTS; THEY COULDN'T EVEN GET TOGETHER ON
24 WHETHER OR NOT HE WAS RETARDED. ONE OF THEM SAYS
25 HE IS. ONE SAYS HE ISN'T. ONE SAYS "WELL, HE

CLOSING ARGUMENT BY MR. BAILEY

DIDN'T USED TO BE THAT WAY BUT."

DR. SANDLER, THE HEAD
PSYCHOLOGIST AT THE DEPARTMENT OF DISABILITIES AND
SPECIAL NEEDS; HE'S THE HEAD MAN AT THE AGENCY THAT
DEALS WITH MENTAL RETARDATION. HE GOT UP HERE AND
TESTIFIED TWO TIMES. AND HE SAID IN CLEAR AND NO
UNCERTAIN TERMS THIS MAN IS NOT MENTALLY RETARDED.
HE DOESN'T MEET EVEN ONE OF THE THREE CRITERIA THAT
YOU'VE GOT TO LOOK AT TO DIAGNOSE SOMEBODY AS BEING
MENTALLY RETARDED. HE SAID "HE'S PULLING MY LEG."
IN OTHER WORDS, HE'S MALINGERING; HE'S FAKING; HE'S
TRYING TO PULL ONE OVER ON US.

MENTAL RETARDATION IS SOMETHING
THAT YOU DON'T ALL OF A SUDDEN WAKE UP ONE DAY AND
YOU'RE RETARDED. IT'S A CONDITION THAT YOU HAVE --
YOU'RE BORN WITH IT. IT DEVELOPS IN CHILDHOOD. IT
WASN'T THERE. THE DEFENSE HAS LOOKED AT SOME TEST
SCORES AND SAID HE'S RETARDED BASED ON HIS TEST
SCORES. WELL, I SUBMIT TO YOU ANYBODY CAN FAKE
LONG TESTS. YOU KNOW, JUST DON'T ANSWER A LOT OF
QUESTIONS RIGHT. I MEAN, THERE'S NO BIG MAGIC TO
IT. BACK IN SCHOOL WHEN HE WAS TESTED, WHEN HE WAS
A KID, IN 1968 HE SCORES A 94 ON AN I.Q. TEST. AND
IN 1970, I THINK HE SCORED 104 ON AN I.Q. TEST. AS
I POINTED OUT, IF YOU'VE GOT A PROBLEM; YOU'RE

CLOSING ARGUMENT BY MR. BAILEY

1 RETARDED, YOU'RE MENTALLY ILL, YOU THINK THERE'S
2 SOMETHING EMOTIONALLY WRONG WITH YOU, AND YOU GO TO
3 A PSYCHIATRIST, YOU'RE GOING TO PRESENT YOURSELF AS
4 HONEST AS YOU CAN BECAUSE IF YOU LIE TO THAT
5 PSYCHIATRIST, HE CAN'T HELP YOU. IF YOU'RE FACING
6 MURDER CHARGES AND YOU'RE COURT ORDERED TO GO TO A
7 PSYCHIATRIST, YOU'VE GOT EVERY REASON IN THE WORLD
8 TO FAKE, TO MALINGER, WHICH IS WHAT DR. SANDLER
9 SAID THIS GUY DID.

10 NOW I'M NOT GOING TO STAND UP
11 HERE AND TELL YOU THAT KENNETH SIMMONS IS THE
12 BRIGHTEST GUY IN DORCHESTER COUNTY BECAUSE HE'S
13 NOT. THIS WAS A STUPID CRIME. IT WAS A HORRIBLE
14 CRIME. BUT IT WAS A STUPID CRIME. BUT ACCORDING
15 TO TESTIMONY, SIMMONS IS NOT MENTALLY RETARDED. HE
16 GRADUATED FROM HIGH SCHOOL; PLAYED FOOTBALL;
17 REMEMBERS LETTERING TWO YEARS; GOT MARRIED; WORKED;
18 GAINFULLY EMPLOYED. AND THESE WITNESSES -- MR.
19 WILSON AND THE OTHER MAN, MR. LINNING, TESTIFIED
20 WHAT A GOOD CARPENTER HE WAS. ONE OF THEM WANTED
21 TO TAKE HIM TO GEORGIA TO WORK ON A HOUSE. SO THIS
22 ISN'T SOME LABORER THERE. HE'S NOT RETARDED. HE
23 CAN READ AND WRITE. Y'ALL HAVE THE NOTE IN
24 EVIDENCE HE GAVE CORRECTIONAL OFFICER. YOU HAVE
25 THE STATEMENT HE GAVE; THE TESTIMONY ABOUT READING

CLOSING ARGUMENT BY MR. BAILEY

1 NEWSPAPERS. MRS. FRANKLIN WHO TESTIFIED FOR THE
2 DEFENSE TODAY WAS HIS PEN PAL. SHE WROTE LETTERS
3 TO HIM AT THE JAIL, AND HE WROTE LETTERS BACK TO
4 HER. AND HE TELLS THESE PEOPLE HE CAN'T READ AND
5 WRITE.

6 IN ADDITION TO THAT FINDING ON
7 MENTAL RETARDATION, HE WAS GIVEN A BATTERY OF TESTS
8 AT THE STATE HOSPITAL; E.E.G., M.R.I.; ALL THESE
9 TESTS; NEUROLOGICAL CONSULTATION WITH PHYSICIANS
10 WHO FOUND NOTHING WRONG WITH HIM MEDICALLY. AS I
11 SAID BEFORE, YOU CAN HAVE A PH.D. OR AN M.D. AFTER
12 YOUR NAME AND GET UP HERE AND MAKE A FOOL OF
13 YOURSELF ON THE STAND BECAUSE YOU'VE GOT NO COMMON
14 SENSE. JURIES HAVE TO USE THEIR COMMON SENSE. AND
15 YOU CAN LOOK PAST ALL THIS PSYCHO-BABBLE AND LOOK
16 AT THE TRUE FACTS. HE KNOWS RIGHT FROM WRONG. HE
17 KNOWS -- HE'S THROWN AWAY HIS IRRESISTIBLE IMPULSE
18 TO BREAK THE LAW. HE HAD THE ABILITY TO CONFORM
19 HIS CONDUCT. HE HAD THE ABILITY TO ENGAGE IN A
20 PURPOSEFUL GOAL DIRECTED ACTIVITY.

21 KENNETH SIMMONS MADE HIS CHOICES
22 IN LIFE. HE CHOSE TO GET ON CRACK AND ALCOHOL THAT
23 NIGHT. NOBODY SHOVED ANY ALCOHOL OR CRACK DOWN HIS
24 THROAT OR HIS LUNGS. HE MADE THAT DECISION. HE'S
25 A GROWN MAN. HE'S RESPONSIBLE FOR HIS DECISIONS.

CLOSING ARGUMENT BY MR. BAILEY

1 HE CHOSE TO RIDE THE BICYCLE TO MRS. BOYD'S HOUSE
2 THAT MORNING IN THE DARKNESS. HE CHOSE TO WAIT
3 OUTSIDE UNTIL SHE OPENED THE DOOR AND CAME OUT. HE
4 CHOSE TO PICK UP THAT STICK AND PUSH HER BACK IN
5 THE HOUSE. HE CHOSE TO FORCE HER TO GIVE HIM
6 MONEY. HE CHOSE TO BEAT HER IN THE HEAD AND THE
7 BODY AS YOU'VE HEARD ABOUT. HE CHOSE TO VIOLENTLY
8 RAPE AND SEXUALLY ABUSE HER AND DO OTHER ACTS THAT
9 YOU KNOW HE DID TO HER OF HIS OWN FREE WILL. HE
10 CHOSE TO TIE HER UP, BIND HER, AND LEAVE HER TO DIE
11 ON THE KITCHEN FLOOR. HE CHOSE TO MURDER A
12 HELPLESS 89 YEAR OLD WOMAN BECAUSE HE WANTED MONEY
13 FOR CRACK.

14 THE JUDGE IS ALSO GOING TO
15 TELL Y'ALL ABOUT NONSTATUTORY MITIGATING
16 CIRCUMSTANCES. THESE ARE THINGS YOU CAN ALSO
17 CONSIDER WHEN YOU CONSIDER WHETHER OR NOT HE SHOULD
18 RECEIVE THE DEATH PENALTY OR LIFE WITHOUT PAROLE.
19 THE JUDGE WILL INSTRUCT YOU TO CONSIDER THAT MR.
20 SIMMONS WAS INTOXICATED AND WAS UNDER THE INFLUENCE
21 OF DRUGS. HE'S A DRUG ADDICT; INTOXICATED AT THE
22 TIME. THAT'S SMALL COMFORT TO MRS. BOYD, THE GUY
23 WHO RAPE AND MURDERED HER WAS ON CRACK AND
24 ALCOHOL. IF Y'ALL WANT TO CONSIDER THAT AS
25 MITIGATING, IT'S UP TO YOU.

CLOSING ARGUMENT BY MR. BAILEY

1 HE'LL ALSO ASK YOU TO
2 CONSIDER THE NONSTATUTORY MITIGATING CIRCUMSTANCES;
3 AND THAT MR. SIMMONS WOULD NOT POSE A DANGER IF HIS
4 LIFE IS SPARED AND HE'S SENT TO PRISON. I'M GOING
5 TO TALK TO Y'ALL A LITTLE BIT MORE LATER. BUT
6 THERE'S NO WAY YOU CAN PREDICT SOMEBODY'S FUTURE
7 CONDUCT. THE BEST THING SINCE WE DON'T HAVE A
8 CRYSTAL BALL, IS THE BEST WE CAN DO, IS TO TRY TO
9 FIGURE OUT WHAT SOMEBODY MAY DO IN THE FUTURE BASED
10 ON WHAT THEY'VE DONE IN THE PAST. AND I'LL COME
11 BACK TO THAT IN A MINUTE. LET'S LOOK AT LIFE
12 IMPRISONMENT. IS THAT AN APPROPRIATE ALTERNATIVE
13 FOR THE HORROR STORY THAT Y'ALL BEEN SUBJECTED TO
14 FOR THE LAST WEEK AND A HALF. LILLY BELL BOYD IS
15 IN HER GRAVE. SHE'LL BE THERE FOREVER. AND I
16 SUBMIT TO YOU LIFE IN PRISON IS NOT AN ACCEPTABLE
17 ALTERNATIVE FOR A MAN THAT'S DONE WHAT KENNETH
18 SIMMONS HAS DONE. AS I SAID, NOBODY HAS GOT A
19 CRYSTAL BALL. BUT THE BEST INDICATOR OF FUTURE
20 BEHAVIOR IS WHAT YOU'VE DONE IN THE PAST.

21 I'VE ALREADY MENTIONED HE
22 COMMITTED TWO CRIMES AFTER THIS MURDER THAT HE WAS
23 CONVICTED OF. IF HE GETS PRISON, LIFE WITHOUT
24 PAROLE, THESE DEFENSE ATTORNEYS ARE GOING TO TELL
25 YOU THAT, YOU KNOW, LIFE WITHOUT PAROLE IS A

CLOSING ARGUMENT BY MR. BAILEY

1 SERIOUS, SERIOUS SENTENCE. IT'S THE SECOND WORSE
2 SENTENCE SOMEBODY CAN GET. AND THEY'RE CORRECT.
3 IT IS THE SECOND WORSE THING. LIFE WITHOUT PAROLE
4 MEANS THAT THERE'S NOTHING ELSE THAT CAN BE DONE TO
5 KENNETH SIMMONS. NO MATTER WHAT HE DOES AFTER THE
6 CONVICTION; HE CAN'T RECEIVE ANY GREATER SENTENCE.
7 IF SOMEBODY GOES TO PRISON, THEY'RE NOT PUT IN SOME
8 HOLE SOMEWHERE. THEY'RE AROUND OTHER PEOPLE.
9 THEY'RE AROUND CORRECTIONAL OFFICERS. THEY'RE
10 AROUND OTHER INMATES. AND I SUBMIT TO YOU THAT A
11 MAN CAPABLE OF DOING WHAT THIS MAN DID IN SEPTEMBER
12 IS CAPABLE OF FURTHER ACTIONS OF VIOLENCE WITHIN
13 THE PRISON SYSTEM. SO PLEASE THINK ABOUT THAT.
14 AND WHATEVER HE DOES IN A LIFE WITHOUT PAROLE
15 SENTENCE, THERE'S NOTHING ELSE THEY CAN DO TO HIM.
16 HE'S GOT ALL THE TIME HE CAN GET. HE'S GOT NO
17 REASON TO OBEY THE LAW; THE RULES AND REGULATIONS.

18 AGAIN, I WANT TO STRESS TO
19 YOU; AND JUDGE PEEPLES WILL INSTRUCT YOU ON THIS.
20 THAT EVEN IF YOU ACCEPT EVERY MITIGATING
21 CIRCUMSTANCE THE DEFENSE WILL TELL YOU ABOUT,
22 STATUTORY NONSTATUTORY; THE JUDGE WILL CHARGE YOU
23 ON. YOU CAN STILL BRING BACK THE DEATH PENALTY IF
24 YOU FIND AT LEAST ONE AGGRAVATING CIRCUMSTANCE
25 EXISTS. AND YOU'VE ALREADY FOUND FOUR THAT EXIST.

CLOSING ARGUMENT BY MR. BAILEY

1 THE DEFENSE WILL JUST USE
2 WHAT I CALL A DUMP TRUCK APPROACH. THERE HAVE BEEN
3 A BUNCH OF PEOPLE UP HERE; SEVEN OR EIGHT PEOPLE
4 THAT THINK THEY KNOW KENNETH SIMMONS, THAT USED TO
5 KNOW KENNETH SIMMONS, GET UP HERE AND TELL YOU WHAT
6 A GREAT FELLOW HE IS. AND THEY ASK YOU TO SPARE
7 HIS LIFE FOR ONE REASON OR ANOTHER. AND THESE
8 PEOPLE HAVE NOT HEARD THE FACTS OF THIS CASE. LIKE
9 I SAID, THEY THINK THEY KNOW HIM. BUT YOU AND ONLY
10 YOU ARE CHARGED BY LAW TO MAKE THAT DECISION, LIFE
11 IN PRISON OR THE DEATH PENALTY. YOU'VE HEARD ALL
12 OF THE FACTS UNDER OATH. IT'S NOT UP TO THESE
13 PEOPLE TO TELL Y'ALL WHAT TO DO. THAT IS YOUR
14 DECISION BASED ON THE FACTS. AND YOU DON'T MAKE
15 THAT DECISION BY COUNTING UP THE AGGRAVATING
16 CIRCUMSTANCES, COUNTING MITIGATING CIRCUMSTANCES
17 AND SEEING WHAT YOU'VE GOT THE MOST OF. YOU LOOK
18 AT EVERYTHING. YOU LOOK AT THE STATUTORY
19 AGGRAVATING CIRCUMSTANCES, THE MITIGATING
20 CIRCUMSTANCES, THE CIRCUMSTANCES OF THE CRIME, THE
21 VICTIM IMPACT, THE DAMAGE HE'S DONE NOT ONLY TO
22 MRS. BOYD BUT TO THOSE OTHER LADIES WHO TESTIFIED.
23 ONE OF THESE PEOPLE -- AND I FORGET WHICH ONE OF
24 THE DEFENSE PEOPLE TESTIFIED TODAY -- SAID THAT
25 THEY'D SEEN KENNETH SIMMONS BACK BEFORE SEPTEMBER.

CLOSING ARGUMENT BY MR. BAILEY

1 HE WAS A GREAT GUY. HE WAS PEACEFUL; HE WAS, YOU
2 KNOW, JUST A REAL GOOD GUY; CLEANED UP AROUND THE
3 HOMELESS SHELTER AND THAT KIND OF THING. AND
4 THEY'VE SEEN HIM AFTERWARDS BEFORE HE GOT
5 ARRESTED. THEY'VE SEEN HIM IN JAIL. AND HE'S THE
6 SAME OLD KENNETH SIMMONS; HADN'T CHANGED. ONE LADY
7 EVEN SAID SHE SAW HIM THE MONDAY AFTER HE MURDERED
8 LILLY BELL BOYD AT THE COASTAL CENTER AND HE WAS
9 ACTING JUST LIKE HE ALWAYS DID, THE SAME OLD
10 KENNETH SIMMONS. SO THESE PEOPLE DON'T KNOW
11 KENNETH SIMMONS. THEY WEREN'T WITH HIM ON
12 SEPTEMBER THE FIRST, 1996. THEY HADN'T SEEN WHAT
13 HE'S CAPABLE OF DOING; WHAT HE DID DO AS Y'ALL HAVE
14 SEEN.

15 WHEN I SIT DOWN IN A FEW
16 MINUTES HERE, THE DEFENSE IS PROBABLY GOING TO GET
17 UP HERE AND PLAY THE BLAME GAME WITH YOU. THEY'RE
18 GOING TO BLAME SOCIETY. THEY'RE GOING TO BLAME THE
19 SCHOOL SYSTEM FOR PROMOTING HIM WHEN HE DIDN'T KNOW
20 HOW TO DO THIS, THAT, AND THE OTHER. Y'ALL AREN'T
21 SITTING IN JUDGMENT ON THE SCHOOL SYSTEM. YOU'RE
22 NOT SITTING IN JUDGMENT ON SOCIETY. YOU'RE SITTING
23 IN JUDGMENT OF KENNETH SIMMONS. THE PEOPLE THAT
24 THE DEFENSE CALLED UP, MR. SIMMONS' BROTHER, HIS
25 SISTERS, PEOPLE THAT KNEW HIS FAMILY, RELATIVES.

CLOSING ARGUMENT BY MR. BAILEY

1 AND THEY WERE NICE PEOPLE; I FEEL SORRY FOR THEM.
2 THEY WANT YOU TO VOTE FOR A LIFE SENTENCE OUT OF
3 SYMPATHY. YOUR DUTY, YOUR SWORN DUTY, IS TO TAKE
4 THE LAW AS THE JUDGE GIVES IT TO YOU. AND THERE'S
5 LAW THAT APPLIES TO THIS STAGE OF THE TRIAL AS WELL
6 AS THE FIRST STAGE OF TRIAL. ONE OF THE THINGS THE
7 JUDGE IS GOING TO INSTRUCT YOU ON IS THAT YOU
8 CANNOT ALLOW YOURSELVES TO BE GOVERNED BY SYMPATHY,
9 BY PREJUDICE, BY PASSION, BY PUBLIC OPINION, OR ANY
10 OTHER ARBITRARY FACTOR. YOU HAVE TO MAKE YOUR
11 DECISION BASED ON THE FACTS OF THIS CASE.

12 A DEATH PENALTY IS GOING TO HURT
13 PEOPLE THAT ARE CLOSE TO KENNETH SIMMONS. THERE'S
14 NO QUESTION ABOUT IT. EVERYBODY HAS GOT SOMEBODY
15 THAT CARES FOR THEM TO COME UP HERE AND SPEAK FOR
16 THEM. BUT LET'S SUPPOSE MR. SIMMONS DIDN'T HAVE
17 ANYBODY THAT CARED ENOUGH TO GET UP HERE, INCLUDING
18 HIS LAWYERS, AND ASK FOR HIS LIFE. WOULD IT MAKE
19 ANY SENSE FOR ME TO GET UP HERE AND SAY "Y'ALL
20 OUGHT TO GIVE HIM THE DEATH PENALTY FOR THAT
21 REASON; HE'S GOT NOBODY TO TALK FOR HIM." IT
22 WOULDN'T MAKE ANY SENSE. AND IT DOESN'T MAKE ANY
23 SENSE NOT TO -- IT DOESN'T MAKE ANY SENSE TO GIVE
24 HIM A LIFE SENTENCE JUST BECAUSE THERE ARE PEOPLE
25 UP HERE THAT ASK FOR IT. IT'S JUST AN IRRELEVANT

CLOSING ARGUMENT BY MR. BAILEY

1 CIRCUMSTANCE AS FAR AS THE CHOICE YOU HAVE TO
2 MAKE.

3 AS I SAID, THE BROTHER AND SISTER
4 WERE NICE PEOPLE. THEY LIVE HERE IN SUMMERVILLE.
5 HIS BROTHER HAS SEEN HIM TWICE SINCE HE WAS LOCKED
6 UP IN 1997, IN DECEMBER. HIS SISTER HAS SEEN HIM
7 SEVERAL MORE TIMES. THEY WANT Y'ALL TO SPARE HIM
8 FOR THE SAKE OF HIS CHILDREN. HE'S SEEN HIS SON
9 ONE TIME SINCE DECEMBER OF 1997 AT THE JAIL. IT'S
10 UNFORTUNATE THAT HE HAS CHILDREN; THAT THEY HAVE A
11 FATHER THAT'S DONE WHAT HE'S DONE. BUT NO MATTER
12 WHAT YOUR SENTENCE IS, DEATH PENALTY OR LIFE
13 WITHOUT PAROLE, HE CAN'T BE A FATHER TO HIS
14 CHILDREN IF HE EVER WAS.

15 LET'S NOT FORGET WHO THE VICTIM
16 IS IN THIS CASE. THEY WANT Y'ALL TO THINK THAT MR.
17 SIMMONS' FAMILY MEMBERS WERE VICTIMS. AND AGAIN,
18 WE CAN FEEL FOR THEM. THEY'RE NOT THE VICTIMS
19 HERE. LILLY BELL BOYD IS THE VICTIM. MRS.
20 GUILLIARD; MRS. WILSON; THE OTHER MRS. WILSON;
21 THEY'RE THE VICTIMS HERE. PLEASE REMEMBER WHAT
22 THIS IS, WHAT WE'RE DOING HERE RIGHT NOW AT THIS
23 PART OF THE TRIAL. THIS ISN'T A REHABILITATION
24 HEARING. IT'S NOT AN EXCUSE HEARING. IT'S A
25 PENALTY HEARING. IT'S A PENALTY PHASE OF THE

CLOSING ARGUMENT BY MR. BAILEY

1 TRIAL. AND THE ONLY PERSON RESPONSIBLE FOR WHAT
2 HAPPENED IS KENNETH SIMMONS. HE'S THE ONLY ONE.

3 THESE LAWYERS, MR. BELL
4 AND MR. THEOS, ARE GOING TO GET UP HERE IN A FEW
5 MINUTES. THEY'RE GOING TO TELL YOU HOW SEVERE A
6 LIFE WITHOUT PAROLE SENTENCE IS. IN FACT THEY'RE
7 GOING TO BEG YOU TO GIVE HIM THAT SENTENCE. AND A
8 LIFE WITHOUT PAROLE SENTENCE IS THE BEST THING
9 Y'ALL CAN DO FOR KENNETH SIMMONS. OUT OF TWO
10 CHOICES YOU'VE GOT, THAT IS THE BEST THING YOU CAN
11 DO FOR HIM. BUT THIS HEARING IS NOT ABOUT WHAT'S
12 BEST FOR KENNETH SIMMONS. IT'S ABOUT DOING
13 JUSTICE. IT'S ABOUT DECIDING WHAT THE MOST
14 APPROPRIATE PUNISHMENT IS FOR THE ACTS THAT Y'ALL
15 HAVE SEEN. NOW TODAY THERE WERE TEARS SHED ON THAT
16 WITNESS STAND BY A LOT OF PEOPLE. SOME OF Y'ALL
17 SHED SOME TEARS FOR THAT TESTIMONY. IF THERE'S ONE
18 PERSON IN THIS COURTROOM RESPONSIBLE FOR EVERY ONE
19 OF THOSE TEARS THAT WERE SHED, IT'S KENNETH
20 SIMMONS. HE'S RESPONSIBLE FOR HIS SISTER AND
21 BROTHER HAVING TO GET UP HERE AND HAVE HIS KIDS
22 SITTING OUT THERE LOOKING AT THIS. HE'S
23 RESPONSIBLE FOR THAT. WHAT I'M TALKING ABOUT,
24 LADIES AND GENTLEMEN, IS RESPONSIBILITY,
25 ACCOUNTABILITY. FOR OUR JUDICIAL SYSTEM TO WORK;

CLOSING ARGUMENT BY MR. BAILEY

1 FOR OUR SOCIETY TO WORK; A PERSON HAS TO BE HELD
2 ACCOUNTABLE FOR WHAT THEY DO. IF THEY'RE NOT, THE
3 WHOLE THING FALLS PART.

4 I'M A PROSECUTOR. I'M NOT A
5 PSYCHOLOGIST, A PSYCHIATRIST, A SOCIAL WORKER. AND
6 I CAN'T GET UP HERE AND TELL Y'ALL OR EXPLAIN TO
7 YOU HOW KENNETH SIMMONS GOT TO BE THE WAY HE IS
8 NOW. THAT'S NOT MY JOB. IT NOT YOUR JOB. YOUR
9 JOB IS TO DECIDE ONCE HE'S GOTTEN TO BE THE WAY HE
10 IS, ONCE HE'S IN OUR MIDST, WHAT DO WE DO WITH
11 HIM. WHAT DO WE DO WITH A MAN WHO'S DONE THE
12 THINGS THAT WE KNOW HE'S DONE? THIS MURDER WAS
13 HORRENDOUS. IT WASN'T ANY KIND OF A HEAT OF
14 PASSION KILLING. IT WASN'T A CRIME OF IMPULSE. IT
15 WAS A COLD BLOODED TORTURE AND MURDER OF A HELPLESS
16 89 YEAR OLD WOMAN. AND I SUBMIT TO YOU WHEN CAN
17 KILL THAT WAY A TOTALLY INNOCENT VICTIM IN HER OWN
18 HOME, YOU SHOULD FORFEIT YOUR RIGHT TO LIVE. HANK
19 AARON WAS ONCE ASKED HOW HE HIT SO MANY HOME RUNS;
20 AND HE SAID "IT'S EASY; I KEEP MY EYE ON THE BALL."
21 KEEP YOUR EYE ON THE BALL. KEEP FOCUSED THROUGHOUT
22 THE DEFENSES CLOSING ARGUMENTS TO YOU BECAUSE THEY
23 TALK TO YOU. KEEP FOCUSED ON THE ISSUE YOU HAVE TO
24 DECIDE. WHAT IS THE APPROPRIATE PUNISHMENT FOR AN
25 INTENTIONALLY COMMITTED HORRIBLE MURDER THAT Y'ALL

CLOSING ARGUMENT BY MR. BAILEY

1 HAVE WITNESSED HERE. USE YOUR COMMON SENSE.
2 FOLLOW THE JUDGE'S INSTRUCTIONS.

3 YOUR DECISION SHOULD BE BASED ON
4 CIRCUMSTANCES OF THE CRIME AND THE CHARACTERISTICS
5 OF KENNETH SIMMONS THAT Y'ALL ARE ABOUT TO
6 SENTENCE. WHAT IS IT? ASK YOURSELVES WHEN YOU
7 CONSIDER LIFE OR DEATH, AS YOU GO IN THAT JURY
8 ROOM, WHAT IS IT ABOUT THE CIRCUMSTANCES
9 SURROUNDING THE MURDER OF LILLY BELL BOYD THAT WANT
10 TO MAKE ME REWARD KENNETH SIMMONS WITH A LIFE
11 SENTENCE. WHAT IS IT ABOUT THE WAY KENNETH SIMMONS
12 HAS CONDUCTED HIS ADULT LIFE THAT WOULD MAKE ME
13 WANT TO REWARD HIM WITH A LIFE SENTENCE AFTER WHAT
14 HE'S DONE. AND I SUBMIT TO YOU WHEN YOU BOIL IT
15 ALL DOWN, THERE REALLY ISN'T ANY CREDIBLE
16 MITIGATING EVIDENCE HERE.

17 KENNETH SIMMONS HAS FOREVER
18 DEPRIVED MRS. BOYD'S SISTERS, FRIENDS, LOVED ONES,
19 OF HER COMPANIONSHIP, HER LIFE. THEY DEPRIVED THE
20 CITIZENS OF THE BROWNSVILLE COMMUNITY IN
21 SUMMERVILLE OF AN EXEMPLARY CITIZEN; A ROLE MODEL
22 FOR OTHER PEOPLE. THE ONLY PLACE THEY CAN SEE HER
23 IS IN THE CEMETERY; AND THEY WANT YOU TO SPARE HIS
24 LIFE. SHE'S DEPRIVED OF THE RIGHT TO LIVE OUT THE
25 LAST FEW YEARS OF HER LIFE IN THE QUIET MANNER THAT

CLOSING ARGUMENT BY MR. BAILEY

1 SHE LIVED. AND LET'S BE HONEST. SHE WAS 89 YEARS
2 OLD. SHE DIDN'T HAVE A LOT OF TIME LEFT. BUT
3 WHATEVER MONTHS OR YEARS SHE HAD LEFT WERE HER
4 YEARS. THEY DIDN'T BELONG TO KENNETH SIMMONS.

5 AS FAR AS HER FAMILY, THE
6 PEOPLE YOU HEARD FROM EARLIER TODAY, THERE WILL BE
7 A VOID IN THEIR LIVES UNTIL THEY DIE. THEY WILL
8 NEVER, EVER, BE ABLE TO COMPREHEND WHAT HE DID TO
9 THEIR SISTER. IT'S JUST BEYOND FATHOM. IT'S
10 BEYOND IMAGINATION. THEY'LL NEVER UNDERSTAND IT
11 UNTIL THE DAY THEY DIE. AND THEIR LIVES HAVE
12 CHANGED. THEY LIVE ALONE. AND NOW THEY'RE AFRAID
13 BECAUSE OF KENNETH SIMMONS. THERE WON'T BE A DAY
14 THAT GOES BY IN THEIR LIVES THAT THEY DON'T THINK
15 OF THEIR SISTER AND WHAT HAPPENED TO HER. EVERY
16 MORNING WHEN THEY WAKE UP, THAT'S IN THEIR MINDS;
17 ALL SHE WANTED TO DO WAS TO LEAD A QUIET LIFE, MIND
18 HER OWN BUSINESS. SHE HAD WORKED HARD WHEN SHE WAS
19 YOUNG. SHE WASN'T ON WELFARE. SHE WASN'T ASKING
20 FOR HAND-OUTS. SHE WAS A PERSON THAT WORKED,
21 MINDED HER OWN BUSINESS, AND WANTED TO BE LEFT
22 ALONE AND LIVE IN HER OWN HOUSE. AND HE DEPRIVED
23 HER OF ALL OF THAT.

24 LADIES AND GENTLEMEN, I SUBMIT
25 TO YOU, NOTHING THAT HAS COME OUT IN THIS TRIAL

CLOSING ARGUMENT BY MR. BAILEY

1 THAT YOU'VE HEARD IS SUFFICIENT TO JUSTIFY ANYTHING
2 LESS THAN THE DEATH PENALTY IN THIS CASE. LOOK AT
3 THE EVIDENCE. THIS MAN OVER HERE IS A MURDERER.
4 HE'S A RAPIST, AN ARMED ROBBER, A KIDNAPPER, A
5 BURGLAR. HE'S A COWARD. AN EIGHTY-NINE YEAR OLD
6 WOMAN. YOU NEED TO BE ABLE TO BRING BACK A VERDICT
7 TONIGHT OR WHENEVER YOU REACH YOUR DECISION. YOU
8 CAN COME OUT HERE IN OPEN COURT, AND WHEN YOU
9 ANNOUNCE THAT VERDICT, LOOK EVERYBODY IN THIS
10 COURTROOM IN THE EYE AND LET THEM KNOW THAT JUSTICE
11 HAS BEEN DONE IN THIS CASE.

12 JUDGE PEEPLES WILL TELL YOU,
13 INSTRUCT YOU, THAT YOU CAN BRING BACK A LIFE
14 SENTENCE FOR ANY REASON OR NO REASON AT ALL AS AN
15 ACT OF MERCY, AND YOU CAN DO THAT. BUT WHAT YOU
16 CANNOT DO IS SHOW MERCY TO KENNETH SIMMONS AND DO
17 JUSTICE IN THIS CASE AT THE SAME TIME. THE PERSON
18 WHO DESERVES THE MERCY IS LILLY BELL BOYD. SHE
19 DIDN'T GET IT AT KENNETH SIMMONS' HANDS. AND WHEN
20 YOU TALK ABOUT JUSTICE WHICH IS WHAT -- A TRIAL IS
21 A SEARCH FOR THE TRUTH -- AND THIS PART OF THE
22 TRIAL IS ABOUT JUSTICE. YOUR VERDICT SHOULD RESULT
23 IN JUSTICE. AND THE CONCEPT OF JUSTICE IS THE
24 PUNISHMENT HAS TO FIT THE CRIME. YOUR VERDICT IS
25 -- ONE OF THESE PEOPLE SAID, YOU KNOW, GIVE HER A

CLOSING ARGUMENT BY MR. BAILEY

1 LIFE SENTENCE; THE DEATH PENALTY IS NOT GOING TO
2 BRING MRS. BOYD BACK. AND IT WON'T. OF COURSE IT
3 WON'T. SHE'S DEAD, AND SHE'S DEAD FOREVER. BUT IT
4 CAN DO JUSTICE; THE VERDICT CAN DO JUSTICE IN THIS
5 CASE.

6 BY HIS CONDUCT, KENNETH SIMMONS
7 HAS SHOWN THAT HE SHOULDN'T BE ALLOWED TO EXIST IN
8 SOCIETY EVEN WITHIN THE PRISON SYSTEM OR OUT OF THE
9 PRISON SYSTEM. AND THE TASK THAT Y'ALL HAVE, THE
10 TWELVE OF YOU, IS AN AWESOME TASK. IT'S NOT EASY.
11 WHAT I'M ASKING Y'ALL TO DO I KNOW IS NOT EASY, AND
12 IT'S NOT SUPPOSED TO BE EASY. BUT AGAIN, Y'ALL
13 WERE PICKED OUT OF 350 PEOPLE. YOU WERE PICKED BY
14 BOTH SIDES AFTER DAYS OF QUALIFICATIONS AS BEING
15 FAIR, IMPARTIAL, DECISIVE CITIZENS OF DORCHESTER
16 COUNTY THAT COULD HEAR THIS CASE OUT, REPRESENT THE
17 CITIZENS OF DORCHESTER COUNTY, AND DO YOUR FULL
18 DUTY IN THIS CASE.

19 I'M GOING SIT DOWN IN A
20 MINUTE. I HAVE ONE REQUEST TO MAKE OF YOU. THE
21 EVIDENCE THAT CAME OUT IN THIS TRIAL, BOTH IN THE
22 FIRST PART OF THE TRIAL AND THE GUILT PHASE AND THE
23 PENALTY PHASE WILL GO BACK IN THE EVIDENCE ROOM
24 WITH YOU JUST LIKE IT DID WHEN YOU ALL DELIBERATED
25 IN THE GUILT PHASE. AND OF COURSE THAT EVIDENCE IN

CLOSING ARGUMENT BY MR. BAILEY

1 THE GUILT PHASE WAS THERE TO HELP YOU MAKE A
2 DECISION ON GUILT OR INNOCENCE. AND Y'ALL SPENT
3 OVER FOUR HOURS GOING OVER THAT EVIDENCE. IT'S
4 THERE TO HELP YOU, TO ASSIST YOU.

5 THERE'S EVIDENCE IN THIS STAGE OF
6 THE TRIAL THAT WILL GO BACK IN THE JURY ROOM WITH
7 YOU. AND IT INCLUDES PICTURES WHICH Y'ALL HAVE
8 SEEN HERE. AND IF YOU WANT TO -- YOU DON'T HAVE TO
9 LOOK AT THE EVIDENCE. WHAT YOU DO IN THE ROOM IS
10 YOUR OWN BUSINESS. AND YOU CAN TURN THOSE PICTURES
11 FACE DOWN AND NOT EVEN LOOK AT THEM. BUT IF YOU DO
12 THAT, WHAT YOU'RE DOING IS YOU'RE TURNING A BLIND
13 EYE TO THE OPENING TRUTH OF THIS CASE; THE UGLY
14 REALITY OF IT. THAT EVIDENCE WAS PUT IN FOR A
15 REASON.

16 THIS IS LILLY BELL BOYD BEFORE
17 SHE MET KENNETH SIMMONS. (INDICATING.) THIS IS
18 LILLY BELL BOYD AFTER SHE MET KENNETH SIMMONS.
19 (INDICATING.) THIS IS HIS HANDIWORK HERE. THAT'S
20 IT. (INDICATING.) WHEN Y'ALL WERE QUESTIONED LAST
21 MONDAY ABOUT WHETHER OR NOT YOU COULD BRING BACK
22 THE DEATH PENALTY AND YOU SAID I'M THAT NUMBER
23 THREE TYPE JUROR THAT WOULDN'T ALWAYS VOTE FOR THE
24 DEATH PENALTY BUT I COULD VOTE FOR THE DEATH
25 PENALTY IF THE CASE WERE BAD ENOUGH; YOU HAD IN

CLOSING ARGUMENT BY MR. BAILEY

1 MIND A MENTAL PICTURE OF A CASE SO BAD THAT IT
2 WOULD JUSTIFY THE DEATH PENALTY. THIS IS THAT CASE
3 THAT YOU HAD IN MIND. THIS IS IT. DID YOU HAVE IN
4 MIND SOMETHING WORSE THAN THIS WHEN YOU SAID YOU
5 COULD BRING BACK THE DEATH PENALTY? AND THESE
6 PICTURES DON'T TELL THE WHOLE STORY. THEY DON'T
7 TELL EVERYTHING THAT HAPPENED TO HER. THIS IS JUST
8 THE RESULT OF IT. WHAT MORE COULD KENNETH SIMMONS
9 HAVE DONE TO LILLY BELL BOYD TO WARRANT THE DEATH
10 PENALTY THAN WHAT Y'ALL HAVE HEARD ABOUT? CAN YOU
11 THINK OF SOMETHING ELSE HE COULD HAVE DONE TO HER
12 BEFORE SHE DIED?

13 AGAIN, I'M GOING ASK Y'ALL TO
14 TURN THESE PICTURES FACE UP AND LOOK AT THEM AS YOU
15 DELIBERATE BECAUSE AGAIN IF YOU DON'T, YOU'RE NOT
16 FACING THE REALITY OF THIS. AGAIN, WHEN Y'ALL SAID
17 I COULD BRING BACK THE DEATH PENALTY IF THE CASE IS
18 BAD ENOUGH, THIS IS THAT CASE; NOT BECAUSE I SAY SO
19 BUT BECAUSE THE EVIDENCE SAYS SO. AGAIN EACH OF
20 YOU SAID UNDER OATH I CAN BRING BACK THE DEATH
21 PENALTY IF THE CASE IS BAD ENOUGH. WHEN YOU
22 DELIBERATE AND YOU COME BACK AND YOU ANNOUNCE YOUR
23 VERDICT, I ASK YOU TO LET THAT VERDICT SAY THAT WE
24 THE CITIZENS OF DORCHESTER COUNTY ARE NOT GOING TO
25 TOLERATE THIS KIND OF INHUMAN ACTIVITY WITHOUT THE

CLOSING ARGUMENT BY MR. THEOS

1 PERSON THAT PERPETRATED THESE ACTS ON AN 89 YEAR
2 OLD WOMAN IN HER OWN HOME PAYING THE ULTIMATE
3 PRICE. ON BEHALF OF THE CITIZENS OF DORCHESTER
4 COUNTY, THE STATE OF SOUTH CAROLINA, I'M ASKING
5 Y'ALL TO HAVE THE COURAGE TO DO YOUR FULL DUTY IN
6 THIS CASE. AND REMEMBER ALL TWELVE OF YOU MUST
7 AGREE. YOUR VERDICT MUST BE UNANIMOUS. THANK YOU.

8 THE COURT: YES, SIR?

9 MR. THEOS: MAY IT PLEASE THE COURT?

10 THE COURT: YES, SIR.

11 - - - - -
12 CLOSING ARGUMENT

13 BY MR. THEOS

14 I'D LIKE TO THANK YOU ALL FOR
15 SITTING THROUGH THIS. IT'S BEEN A LONG WEEK.
16 WE'VE WORKED STRAIGHT THROUGH. THESE ARE THE ONLY
17 SORTS OF CASES THAT I'M AWARE OF IN THIS STATE THAT
18 WE WORK MONDAY THROUGH SUNDAY. AND WE APOLOGIZE
19 FOR YOU ALL HAVING TO WORK ON THE WEEKENDS, BUT IT
20 IS SOMETHING THAT HAD TO BE DONE. AND WE THANK YOU
21 FOR YOUR ATTENTION. YOU'VE BEEN ALERT. YOU'VE
22 BEEN PATIENT. YOU'VE PAID CLOSE ATTENTION TO
23 EVERYTHING. SO WE THANK YOU; AND WE APOLOGIZE. I
24 APOLOGIZE IF I'VE SAID ANYTHING TO YOU DURING THE
25 COURSE OF THE TRIAL THAT'S OFFENDED YOU, THE

CLOSING ARGUMENT BY MR. THEOS

1 DEFENDANT, THE FAMILY OF MRS. BOYD; AGAIN OUR
2 INTENT WAS NOT TO OFFEND ANYBODY BUT TO REPRESENT
3 MR. SIMMONS AS BEST WE WERE ABLE.

4 YOU DIDN'T HEAR MUCH FROM ME,
5 OR ANYTHING FROM ME REALLY, IN THE SECOND PHASE.
6 YOU'VE HEARD ENOUGH FROM ME. I WILL BE REAL
7 BRIEF. I DON'T HAVE MUCH TO SAY AT THIS POINT.
8 YOU, AS MR. BAILEY SAID, ARE CHARGED NOW WITH
9 MAKING WHAT IS IN ALL PROBABILITY THE MOST
10 IMPORTANT DECISION YOU'LL EVER MAKE IN YOUR LIVES.
11 AND THAT DECISION IS TO DETERMINE WHETHER OR NOT
12 SOMEBODY SHOULD LIVE OR DIE. IT'S A GRAVE
13 RESPONSIBILITY. IT'S AN INCREDIBLE
14 RESPONSIBILITY. NOBODY IN THIS COURTROOM ENVIES
15 YOU.

16 THE DEATH PENALTY IS THE MOST
17 SEVERE FORM OF PUNISHMENT IN OUR COUNTRY. IT'S THE
18 MOST SEVERE FORM OF PUNISHMENT ANYWHERE. AND IT'S
19 AN APPROPRIATE FORM OF PUNISHMENT. IT'S AN
20 APPROPRIATE PUNISHMENT IN CERTAIN CASES AND IN
21 CERTAIN CASES WITH CERTAIN TYPES OF PEOPLE. THOSE
22 CASES IN WHICH THE PEOPLE THAT COMMIT THOSE CRIMES
23 ARE SO BAD AND SO WICKED AND SO EVIL AND SO
24 HELL-BENT ON DESTRUCTION AND INJURY TO OTHERS THAT
25 THERE IS NO OTHER PENALTY FOR THOSE PEOPLE; THAT

CLOSING ARGUMENT BY MR. THEOS

1 NOTHING CAN BE DONE TO STOP THOSE PEOPLE FROM DOING
2 THINGS; THAT THERE IS A HISTORY OF DOING THOSE
3 SORTS OF THINGS, AND THAT THOSE PEOPLE -- THERE'S
4 AN INDICATION THAT THOSE PEOPLE WILL ALWAYS
5 CONTINUE TO DO THOSE THINGS. THERE IS NO OTHER
6 PUNISHMENT FOR THOSE PEOPLE THAT COMMIT THOSE
7 CRIMES. THEY ARE LIKE RABID ANIMALS OR DOGS THAT
8 OUR SOCIETY NEEDS TO ELIMINATE.

9 KENNETH SIMMONS, AS YOU'VE
10 HEARD FROM PEOPLE WHO HAVE TESTIFIED IN THIS
11 PENALTY PHASE, IS NOT ONE OF THOSE PEOPLE. NOW
12 KENNETH SIMMONS, WE WILL NOT ARGUE -- YOU HAVE
13 FOUND HIM GUILTY, AND WE ACCEPT YOUR VERDICT.
14 KENNETH SIMMONS IS NOT ONE OF THOSE PEOPLE.
15 KENNETH SIMMONS DID, AS YOU FOUND, COMMIT THIS
16 CRIME; AND IT IS INDISPUTABLY AND WITHOUT ANY DOUBT
17 A HORRIBLE CRIME. THE CRIME ITSELF IS HORRIBLE.
18 IT'S BAD. IT'S WICKED. IT IS SOMETHING THAT IS
19 INEXCUSABLE. BUT KENNETH SIMMONS IS NOT THE SORT
20 OF PERSON THAT I SPOKE OF EARLIER; THE WICKED, THE
21 BAD PERSON, THE DEMENTED PERSON, THAT NEEDS TO BE
22 ELIMINATED FROM SOCIETY. HE NEEDS TO BE PUNISHED,
23 AND HE NEEDS TO BE PUNISHED SEVERELY. HE NEEDS TO
24 BE PUNISHED AS SEVERELY AS IS ABSOLUTELY POSSIBLE
25 WITHIN THE BOUNDS OF THE LAW WITHOUT TREATING HIM

CLOSING ARGUMENT BY MR. THEOS

1 THE SAME AS YOU WOULD TREAT THOSE PEOPLE THAT ARE
2 SO DEMENTED AND SO BAD AND HAVE BEEN THAT WAY AND
3 CANNOT BE CHANGED. THOSE PEOPLE DESERVE NOT TO
4 LIVE. THE PEOPLE LIKE KENNETH SIMMONS THAT DON'T
5 HAVE THAT HISTORY, THAT THERE IS NOTHING IN THEIR
6 HISTORY TO INDICATE THAT THEY WOULD EVER DO
7 SOMETHING EVEN REMOTELY SIMILAR TO SOMETHING LIKE
8 THIS; THOSE PEOPLE NEED BE PUNISHED SEVERELY, AND
9 THEY NEED TO BE PLACED IN PRISON FOR THE REST OF
10 THEIR LIVES. AND AS THE JUDGE WILL TELL YOU, THE
11 REST OF KENNETH SIMMONS' LIFE MEANS JUST THAT UNTIL
12 THE DAY HE DIES. HE WILL NEVER GET OUT OF JAIL.

13 NOW YOU'VE RULED. YOU'VE REACHED
14 YOUR VERDICT. WE ACCEPT IT. I'M GOING TO SIT DOWN
15 AND LET YOU LISTEN TO MR. BELL; AND I BELIEVE
16 KENNETH HAS SOMETHING HE WANTS TO SAY TO YOU. AND
17 I ASK YOU TO LISTEN TO HIM. BUT AGAIN, WE ASK YOU
18 TO PUNISH KENNETH SEVERELY. WE ASK YOU NOT TO
19 SENTENCE HIM TO DIE. WE ASK YOU TO ALLOW HIM TO
20 LIVE. BUT KEEP IN MIND THAT LIFE IS NOT LIKE THE
21 REST OF OUR LIVES. THAT LIFE WOULD BE IN PRISON
22 BEHIND BARS FOR THE REST OF HIS LIFE UNTIL HE TAKES
23 HIS LAST DYING BREATH. DON'T SENTENCE HIM TO DIE.
24 KENNETH?

25 - - - - -

CLOSING ARGUMENT BY MR. SIMMONS

CLOSING STATEMENT

BY MR. SIMMONS

LADIES AND GENTLEMEN, I'VE BEEN TRYING TO COME TO YOU AND APOLOGIZE TO YOU. I KNOW WHAT I DID WAS WRONG. BUT, SEE, I DIDN'T KNOW WHAT I DID UNTIL SIX MONTHS LATER. YOU KNOW JOE JOHNSON?

MR. BAILEY: JUDGE, I WOULD OBJECT TO HIM GET ANYTHING INTO FACTS NOT IN EVIDENCE.

THE COURT: SUSTAINED.

MR. SIMMONS: Y'ALL KNOW JOE JOHNSON?

MR. THEOS: EXCUSE ME. YOUR HONOR IF I MIGHT HAVE A MINUTE WITH HIM.

THE COURT: YOU MAY.
(OFF-THE-RECORD DISCUSSION.)

BY MR. SIMMONS

BUT I DIDN'T KNOW UNTIL SIX MONTHS LATER. HE COME AND TOLD ME---

MR. BAILEY: JUDGE---

THE COURT: SUSTAINED.

I'M SORRY. WHAT I WANT TO TELL YOU I CAN'T -- SIX MONTHS LATER AFTER I FOUND THAT OUT -- WILL Y'ALL PLEASE FORGIVE ME? IF ANYONE CAN COME BY AND TALK WITH ME, I'LL BE HAPPY TO TALK TO Y'ALL BECAUSE I'M

CLOSING ARGUMENT BY MR. BELL

1 SORRY FOR WHAT I DID. Y'ALL KNOW ME. I'VE WORKED
2 IN THE CHURCH. I WORKED IN THE COMMUNITY. AND
3 Y'ALL DIDN'T HAVE NO TROUBLE WITH ME. I'M SORRY.
4 I JUST WANT YOU TO FORGIVE ME FOR WHAT I DID. MY
5 FAMILY; I LOVE YOU. PLEASE FORGIVE ME. JUST LOVE
6 ME BECAUSE YOU KNOW I WAS. AND I'M SORRY. I'M
7 SORRY. PEOPLE IN COURT AND THE JURY, MR. THEOS;
8 I'M SORRY FOR WHAT I DID. BUT PLEASE SPARE MY
9 LIFE. IF Y'ALL COULD SPARE MY LIFE. HAVE MERCY ON
10 MY SOUL ALL MY LIFE, PLEASE. WHATEVER Y'ALL DO,
11 I'M SORRY FOR WHAT I DID. I'M SORRY.

12 MR. BELL: MAY IT PLEASE THE COURT?

13 THE COURT: YES, SIR.
14 - - - - -

15 CLOSING ARGUMENT

16 BY MR. BELL

17
18 MADAM FORELADY, LADIES AND
19 GENTLEMEN OF THE JURY, I TOO, WOULD LIKE TO THANK
20 YOU FOR THIS EIGHT DAYS THAT YOU'VE GIVEN US. AND
21 I'M NOT GOING TO GET UP HERE AND BRING IN THE
22 SCHOOL SYSTEM. I'M NOT GOING TO GET UP HERE AND
23 BLAME SOCIETY. YOU HAVE DECIDED THAT ON SEPTEMBER
24 THE FIRST, 1996, KENNETH SIMMONS TOOK A LIFE. AND
25 THERE'S NO EXCUSE FOR IT. YOU'VE FOUND WHAT

CLOSING ARGUMENT BY MR. BELL

1 HAPPENED AND HOW IT HAPPENED. BUT AS MR. THEOS
2 SAID, KENNETH SIMMONS IS NOT A MAD DOG. HE'S NOT A
3 VICIOUS PERSON. HE'S NOT AN ANIMAL THAT NEEDS TO
4 DIE.

5 NOW YOU HAVE HEARD FROM
6 WITNESSES ON THIS WITNESS STAND THAT TALKED TO YOU
7 ABOUT KENNETH SIMMONS; SOME WERE MORE ARTICULATE
8 THAN OTHERS. SOME WERE A LOT LESS BIASED THAN
9 OTHERS. BUT ALL HAD THE SAME GENERAL THEME. THIS
10 IS NOT IN KEEPING WITH KENNETH SIMMONS THAT WE KNOW
11 AND LOVE; AND THAT KENNETH SIMMONS; THAT AFTER
12 SEPTEMBER THE FIRST, 1996, THAT WE STILL KNOW. AND
13 IT'S NOT, REGARDLESS OF WHAT THE SOLICITOR SAID
14 ABOUT THE ACT THAT TOOK PLACE ON THAT DAY THAT HE
15 DID; THIS IS NOT A MAN THAT DESERVES TO DIE. THAT
16 IS WHY AS WAS DISCUSSED WITH YOU EARLIER BY THE
17 SOLICITOR, YOU HAD THE VOIR DIRE. AND YOU WERE
18 ASKED COULD YOU GIVE THE DEATH PENALTY OR COULD YOU
19 GIVE LIFE IMPRISONMENT FOR NO REASON. THERE ARE
20 REASONS. IT'S BEEN READ TO YOU WHAT THE MITIGATING
21 CIRCUMSTANCES ARE STATUTORILY AND NON-STATUTORILY.
22 BUT REGARDLESS OF THAT, BEGINNING WITH THE MAN THAT
23 MADE ONE TREMENDOUS, TREMENDOUS MISTAKE. WELL,
24 WHAT ABOUT THAT MAN THAT YOU'VE HEARD ABOUT? WHAT
25 ABOUT HIM PRIOR TO THAT? YOU HEARD ABOUT HIM

CLOSING ARGUMENT BY MR. BELL

1 COMING FROM A FAMILY OF SIXTEEN CHILDREN, BORN IN
2 1961, IN FACT FEBRUARY THE ELEVENTH, TO FAMILY THAT
3 WAS A FARMING FAMILY WORKED IN THE FIELDS.

4 YOU ALSO HEARD FROM HIS
5 COUSINS, FAMILY OF THE SIMMONSES, CONTAIN SOME
6 MIGHTY GOOD FOLKS; SOME PROMINENT PEOPLE. THEY,
7 NOR ANYONE THAT DEALT WITH KENNETH IN HIS FORMER
8 YEARS, EVER THOUGHT YOU WOULD BE LISTENING TO THIS
9 PART OF HIS LIFE OR THAT HAPPENED IN SEPTEMBER OF
10 '96.

11 NOW YOU'VE GOT A YOUNG MAN THAT
12 WENT TO SUMMERVILLE HIGH SCHOOL; THAT GRADUATED;
13 AND PLAYED FOOTBALL. NO STAR FOOTBALL PLAYER, BUT
14 A GOOD FOOTBALL PLAYER. NO BRAIN TRUST. LEVEL
15 FIFTEEN GRADES WHICH KEPT HIM AROUND THE FIFTH OR
16 SIXTH GRADE LEVEL SO HE COULD CONTINUE ON. AND
17 THIS WAS TESTIFIED TO. THE YOUNG MAN DURING THOSE
18 SAME YEARS HAD A SICK MOTHER AND FATHER THAT HE
19 CARED FOR. HIS SISTER SOME FOUR YEARS YOUNGER THAT
20 HE TOOK CARE OF. THE LAST YEAR OF HIS FATHER'S
21 LIFE, HE BATHED HIS FATHER. HE WAS AN INVALID. IS
22 THIS A GUY AT THAT EARLY AGE THAT IS A BAD, VICIOUS
23 PERSON? NO, IT'S NOT. HE'S A CARING PERSON. HE'S
24 A CARING PERSON. HE DIDN'T GET INVOLVED IN FIGHTS
25 AT SCHOOL. HE WAS RESPECTFUL TO HIS ELDERS. HE

CLOSING ARGUMENT BY MR. BELL

1 WENT TO CHURCH. WALKED FOUR MILES ONE WAY; SUNDAY
2 SCHOOL AND PREACHING. AND YOU HAD A YOUNG LADY
3 THAT CAME UP AND TESTIFIED SHE WAS AT SUMMERVILLE
4 HIGH SCHOOL WITH HIM DURING THAT, THAT SHE KNEW
5 HIM, THAT HE WAS ONE OF THE GOOD OLE BOYS. HE
6 PALLED AROUND WITH A GROUP THAT WEREN'T SMOKERS,
7 WEREN'T THE HIPPIES. KENNETH SIMMONS, CHIP HUSSEY,
8 AND OTHERS WERE THE GOOD OLE BOYS THAT ENJOYED
9 BEING AROUND EACH OTHER, ENJOYED GOOD, CLEAN, FUN,
10 WORKING ON HOMECOMING FLOATS. AND WE'RE NOT
11 TALKING ABOUT A YOUNG MAN THAT'S VICIOUS; THAT IS
12 NOT RESPECTFUL. HE WAS A NICE YOUNG MAN. AND THIS
13 CONTINUED UP AND THROUGH HE LOST HIS FATHER WHICH
14 WOULD BE -- WE'RE DEALING WITH A YOUNG MAN THAT
15 AFTER HIS FATHER DIED, HIS WAS ROLE, HIS ANCHOR.

16 NOW, I'M NOT GETTING INTO GREAT
17 TESTIMONY ABOUT THE EXPERTS THAT YOU'VE HEARD. BUT
18 IT WAS MENTIONED -- YOU REMEMBER DR. WAID SAID
19 AROUND THAT POINT IN HIS LIFE, HE STARTED GOING
20 DOWNHILL. HE HAD PEAKED INTELLECTUALLY; A SENIOR
21 IN HIGH SCHOOL; PROBLEM WITH DRUGS AND ALCOHOL, HE
22 STARTED COMING DOWN-HILL. BUT EVEN THOUGH HE
23 BECAME DIMINISHED IN THIS THINKING, HE WAS STILL A
24 GOOD OLD KENNETH.

25 NOW THE TESTIMONY THAT HAS BEEN

CLOSING ARGUMENT BY MR. BELL

1 PRESENTED REGARDING ANY ASPECT OF HIS LIFE EXCEPT
2 THIS ONE DAY HAS NOT BEEN TESTIMONY OF A BAD
3 PERSON. THROUGHOUT HIS ENTIRE LIFE THERE'S BEEN NO
4 DISPUTE THAT HE HAS BEEN A RESPECTFUL, NON-VIOLENT,
5 NOT CAUSING ANYONE PROBLEMS. THE SOLICITOR TOLD
6 YOU ABOUT THESE CHARGES THAT HE HAS; ALL VERY
7 MINOR, PROPERTY CHARGES, CRIMINAL DOMESTIC
8 VIOLENCE, ALL AS I SAID ARE MINOR CHARGES; NOT A
9 PERSON THAT'S GOT A PROPENSITY TO VIOLENCE OR HAS A
10 VIOLENT CRIMINAL RECORD.

11 I THINK PROBABLY KENNETH
12 SIMMONS THAT IS THE KENNETH SIMMONS, EXCEPT FOR
13 THAT ONE DAY, HE'S SHOWED UP BEST BY MRS. RUSSELL.
14 YOU HEARD HER TESTIFY. MRS. FRANKLIN; MRS.
15 SCHMIEDING; SAME THING; CLASSMATE; ALL CAME BY
16 THEIR HOUSE WHERE HE WORKED. HE WORKED; GAVE OF
17 HIS TIME. OF COURSE HE WAS BASICALLY A HOMELESS,
18 TOO, BUT HE WORKED THERE. HE WAS KIND TO THE
19 ELDERLY. HE CAUSED NO VIOLENCE. ALWAYS HELPFUL.
20 MOPPED THE FLOORS. HE WASHED THE DISHES; DOING
21 CHRISTMAS DECORATIONS, ALL OF THE THINGS THAT ANY
22 GOOD PERSON WOULD DO. AND THAT DIDN'T CHANGE.
23 THAT DID NOT CHANGE THROUGHOUT UP UNTIL OCTOBER OF
24 1997, THE YEAR AFTER THIS INCIDENT TOOK PLACE.

25 WE'RE NOT DEALING WITH A MAN

CLOSING ARGUMENT BY MR. BELL

1 THAT'S A ROCKET SCIENTIST. I'VE HEARD THAT NAME
2 USED. BUT HE IS A MAN WHO WAS A LABORER WHO MIXED
3 MORTAR FOR HIS BROTHER, LAID BRICKS AROUND TREES.
4 YOU'RE DEALING WITH A MAN WHOM AN OLD HIGH SCHOOL
5 CLASSMATE JUST A COUPLE OF YEARS AGO ALLOWED HIM TO
6 KEEP HER CHILD. HE ATE AT HER TABLE. HE HAD THE
7 RUN OF HER HOUSE. THAT'S NOT A VICIOUS PERSON.
8 THAT'S NOT A PERSON THE SOLICITOR IS TRYING TO
9 PAINT TO US AS BAD TO THE POINT THAT HE SHOULD BE
10 PLACED TO DEATH.

11 HE'S GOT TWO CHILDREN. HE
12 PLAYS WITH HIS CHILDREN. HE'LL NEVER GET TO PLAY
13 WITH THEM AGAIN, BUT THEY'LL KNOW THEY'VE GOT A
14 DADDY. HE'S GOT NIECES AND NEPHEWS THAT PLAYED
15 WITH HIM. THEY LOVED HIM, AND HE LOVES THEM. HE'S
16 GOT THE REST OF HIS LIFE TO THINK ABOUT WHAT
17 HAPPENED IF YOU ALLOW IT. IT COULD BE MANY YEARS
18 OR NOT. AND I'M NOT GOING TO SIT HERE AND BEAT YOU
19 IN THE HEAD ABOUT HE DIDN'T DO ANYTHING BECAUSE HE
20 DID. I AM GOING TO TELL YOU THAT YOU'VE HEARD
21 PEOPLE FROM THIS WITNESS STAND THAT SAID THIS IS
22 NOT THE KENNETH SIMMONS I KNOW. THIS IS NOT THE
23 KENNETH SIMMONS I LOVE; NOT THE KENNETH SIMMONS I
24 WOULD TAKE BACK INTO MY HOME TODAY; NOT THE KENNETH
25 SIMMONS THAT WAS RESPECTFUL OF MRS. BOYD, WHO

CLOSING ARGUMENT BY MR. BELL

1 HELPED HER LOAD THE BREAD UP IN HER CAR. THIS IS
2 KENNETH SIMMONS WHO MADE ONE AWFUL MISTAKE AND WILL
3 PAY THE LEGITIMATE PRICE FOR PUNISHMENT BUT SHOULD
4 NOT PAY WITH HIS LIFE.

5 A LOT TO DO WAS MADE ABOUT
6 PEOPLE NOT GETTING TO SEE KENNETH IN JAIL. AND
7 THIS IS A TRIVIAL POINT THAT I THINK WARRANTS BEING
8 MENTIONED. I THINK MRS. RUSSELL CLEARED THAT UP
9 RIGHT EASY WHEN SHE SAID "WE'D GO TO THE JAIL AND
10 COULDN'T GET IN." AND THAT'S THE STATEMENT THAT
11 SOLVED ALL OF THAT. AND YOU THINK THAT NO ONE
12 CARED FOR MR. SIMMONS; NO ONE CARED FOR KENNETH
13 SIMMONS; WOULDN'T COME AND VISIT HIM AS THE
14 SOLICITOR HAS TRIED TO GET TO YOU. WHY WOULDN'T
15 THEY VISIT HIM? BECAUSE THEY COULDN'T GET IN TO
16 SEE HIM.

17 WHAT IS IT ABOUT THIS SITUATION
18 THAT WARRANTS ONLY THE DEATH PENALTY IN THE
19 SOLICITOR'S MIND? I DO NOT KNOW BECAUSE ALL OF
20 THOSE AGGRAVATING CIRCUMSTANCES ARE LISTED IN THE
21 STATUTE THAT WOULD APPLY TO ANY CRIME. AND WHEN
22 THERE IS A DEATH PENALTY TRIAL, IT'S GOT TO BE ONE
23 OF THOSE. THE CIRCUMSTANCES ARE FOR A DEATH
24 PENALTY TO BE GIVEN. BUT JUST THINK, THE
25 LEGISLATURE IN ITS WISDOM ADDED THE CAVEAT YOU

CLOSING ARGUMENT BY MR. BELL

1 DON'T HAVE TO GIVE IT. IT'S NOT NECESSARY IN ALL
2 CIRCUMSTANCES. IT'S NOT NECESSARY TO GIVE THE
3 DEATH PENALTY TO A MAN THAT MADE A MISTAKE, THAT
4 DESERVES TO SPEND THE REST OF HIS LIFE IN JAIL,
5 THAT PRIOR TO THAT CONDUCT WAS NON-VIOLENT,
6 RESPECTFUL, HELPED OTHERS, WORKED IN THE HOMELESS
7 SHELTER WHILE HE WAS THERE; HAD PEOPLE LIKE MRS.
8 RUSSELL COME UP HERE AND TELL YOU "I'VE STILL GOT
9 THE PAINTBRUSH AND THE PAINT WAITING ON HIM. WHEN
10 HE GETS OUT, HE CAN HAVE IT TO DO THE PAINTING."
11 HE'LL NEVER GET OUT, LADIES AND GENTLEMEN OF THE
12 JURY. BUT I STILL THINK HE SHOULD HAVE THE OPTION
13 TO LIVE THE REMAINDER OF HIS LIFE TO A RIPE OLD AGE
14 THE GOOD LORD ALLOWS AND NOT HAVE THAT TAKEN FROM
15 HIM AT THIS STAGE.

16 I'M FUMBLING THROUGH THE NOTES
17 BECAUSE I DON'T WANT TO LEAVE ANYTHING OUT THAT I
18 FEEL WOULD BE IMPORTANT FOR Y'ALL TO REFLECT ON.
19 ALL THAT WAS SAID BY THE PEOPLE THAT CAME UP HERE
20 ON BEHALF OF KENNETH SIMMONS IS IMPORTANT. BECAUSE
21 THEY KNOW AND HAVE BEEN INVOLVED WITH HIM, MOST
22 ESPECIALLY THE LAST SIX OR EIGHT YEARS OF HIS
23 LIFE. AND THEY KNOW HE'S NOT THE TYPE PERSON, AND
24 THEY ASKED YOU TO SPARE HIS LIFE; TO SPARE IT, NOT
25 TO TAKE IT. THEY KNEW HIM; AND THEY TESTIFIED. I

CLOSING ARGUMENT BY MR. BELL

1 DIDN'T TESTIFY BECAUSE I DIDN'T KNOW HIM DURING HIS
2 FORMER YEARS AND THESE LAST FIVE OR TEN YEARS.

3 MADAM FORELADY, LADIES AND
4 GENTLEMEN OF THE JURY, THERE ARE PLENTY OF REASONS
5 IN YOUR HEART THAT YOU CAN JUST SAY "LOOK, HE'S NOT
6 A MAD DOG VICIOUS KILLER; WE'RE GOING TO LET HIM
7 LIVE. WE'VE TRIED TO PRESENT SUCH EVIDENCE TO YOU
8 SO YOU COULD HAVE THAT BACK THERE FOR YOUR
9 DELIBERATIONS. OTHER THAN TO TELL YOU THAT THE
10 DETERRENT PURPOSE, ACTUALLY THERE IS NO PURPOSE
11 THAT TAKING HIS LIFE AT THIS STAGE WOULD SERVE.
12 MRS. BOYD CAN'T BE BROUGHT BACK. BUT THE PERSON
13 THAT TOOK HER LIFE IS NOT, DOES NOT, WANT THE DEATH
14 PENALTY.

15 I KEEP REFLECTING AS I LOOK
16 OVER MY NOTES BACK TO MRS. RUSSELL'S TESTIMONY TO
17 YOU ABOUT KENNETH SIMMONS, ABOUT KENNETH SIMMONS
18 THAT SHE LET PAINT HER HOUSE, THAT SHE LET STAY IN
19 HER HOUSE; NOT EVEN A DRINK OF WATER -- IF IT WAS
20 TAKEN OUT OF THE REFRIGERATOR, IT WAS REPLACED
21 BECAUSE THERE WAS NOTHING MISSING ABOUT THE KENNETH
22 SIMMONS THAT SHE TRUSTED EXPLICITLY BEFORE THIS
23 HAPPENED AND AFTER THIS HAS HAPPENED. THE KENNETH
24 SIMMONS THAT SHE LOVES. THE KENNETH SIMMONS THAT
25 DESERVES TO LIVE.

CLOSING ARGUMENT BY MR. BELL

1 IF IT WERE NOT WITHIN YOUR
2 PROVINCE TO DO SO, YOU WOULD NOT BE GRANTED THE
3 OPPORTUNITY TO GIVE LIFE IMPRISONMENT WITHOUT
4 PAROLE. BUT IT IS WITHIN YOUR PROVINCE. WE WOULD
5 NOT BE AT THIS STAGE IF THE CRIME WERE NOT
6 GRUESOME. BUT THE MAN IS NOT VICIOUS, IS NOT
7 DESERVING TO DIE. AND I TRUST THAT WHEN YOUR
8 DELIBERATIONS ARE OVER, YOU WILL AGREE WITH ME AND
9 NOT SENTENCE HIM TO DIE; SENTENCE HIM TO LIFE
10 IMPRISONMENT. THANK YOU.

11 THE COURT: MADAM FORELADY, LADIES
12 AND GENTLEMEN OF THE JURY; I'M GOING TO EXCUSE YOU
13 TO GO TO YOUR ROOM. YOU'RE NOT TO DELIBERATE AND
14 DECIDE THE CASE. AND WE'RE READY WHEN Y'ALL ARE
15 READY. SO JUST LET US KNOW WHEN YOU'RE READY TO
16 COME IN. MY CHARGE WILL BE ABOUT TWENTY-FIVE
17 MINUTES. THANK YOU.

18 (AT THIS TIME JURY RETIRES TO JURY ROOM FOR A BRIEF
19 RECESS.)

20 THE COURT: NOW, GENTLEMEN, IS THERE
21 ANYTHING FOR THE RECORD AT THIS TIME, PLEASE?

22 MR. BAILEY: NOT FROM THE STATE,
23 YOUR HONOR.

24 THE COURT: ALL RIGHT, NOW. WE'RE
25 GOING TO TAKE A SHORT RECESS. BUT AS SOON AS

CLOSING ARGUMENT BY MR. BELL

1 YOU'RE COMFORTABLE, COME BACK IN SO AS SOON AS THE
2 JURY SAYS THAT THEY ARE READY THAT WE CAN PROCEED.
3 AND TAKE THE DEFENDANT AND LET HIM BE EXCUSED ALSO.
4 BUT Y'ALL HURRY BACK, PLEASE. THANK YOU, LADIES
5 AND GENTLEMEN. COURT STANDS AT EASE.

6 (BRIEF RECESS.)

7 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

8 - - - - -

9 (AT THIS TIME SHERIFF BRINGS A LIST OF JURORS THAT
10 COULD NOT BE REACHED THAT THE SHERIFF HAS HANDED TO
11 ME FOR EXCUSES FOR NOT SERVING ON THE JURY.)

12 THE COURT: IF ANYONE WOULD LIKE TO
13 LEAVE, YOU MAY DO SO AT THIS TIME. THE DOOR IS
14 GOING TO BE LOCKED MOMENTARILY. ALL RIGHT. BRING
15 THE JURY IN, PLEASE.

16 (WHEREUPON AT 7:03 P.M. JURY RETURNS TO OPEN
17 COURT.)

18 - - - - -
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CHARGE TO THE JURY

CHARGE TO THE JURY

MADAM FORELADY AND LADIES AND GENTLEMEN OF THE JURY, IT NOW BECOMES YOUR DUTY TO DECIDE WHAT SENTENCE YOU WILL RECOMMEND THAT THIS COURT IMPOSE UPON THE DEFENDANT, KENNETH SIMMONS. AND WHEN I USE THE WORD "DEFENDANT" IN MY CHARGE I AM REFERRING TO KENNETH SIMMONS.

NOW LADIES AND GENTLEMEN, THERE ARE TWO VERDICTS YOU ARE TO CONSIDER IN THIS CASE. ONE IS THE DEATH PENALTY WHICH IN THIS STATE IS BY ELECTROCUTION OR LETHAL INJECTION AT THE OPTION OF THE DEFENDANT, AND THE OTHER IS LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU SENTENCE THE DEFENDANT TO DEATH, YOU MUST ASSUME THAT THE SENTENCE WILL BE CARRIED OUT. IF A RECOMMENDATION OF DEATH IS NOT MADE, THE DEFENDANT SHALL BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. YOUR SENTENCING RECOMMENDATION WILL BE FOLLOWED BY THIS COURT.

NOW, LADIES AND GENTLEMEN, THE ORDER IN WHICH I EXPLAIN THESE TWO SENTENCES IS IN NO WAY A RECOMMENDATION BY THIS COURT AS TO WHICH SENTENCE YOU SHOULD CHOOSE TO RECOMMEND. IT IS SIMPLY THAT THEY MUST BE STATED IN SOME ORDER, AND ONE MUST BE STATED FIRST; THE OTHER MUST BE STATED

CHARGE TO THE JURY

1 SECOND. NOW, LADIES AND GENTLEMEN, BY THIS
2 RECOMMENDATION OF SENTENCE FORM WHICH I HOLD IN MY
3 HAND WHICH YOU WILL HAVE WITH YOU WHEN YOU GO TO
4 YOUR JURY ROOM, MADAM FORELADY; YOU, THE JURY, MAY
5 RECOMMEND THAT THIS COURT SENTENCE THE DEFENDANT TO
6 DEATH. PLEASE OBSERVE THAT IMMEDIATELY BELOW THE
7 BODY OF THE RECOMMENDATION, THERE ARE TWELVE
8 LINES. THIS IS WHERE, SHOULD YOU DECIDE TO
9 RECOMMEND THE DEATH PENALTY, EACH ONE OF YOU WOULD
10 SIGN YOUR NAME.

11 IT IS THE LAW IN THIS STATE,
12 MADAM FORELADY AND MEMBERS OF THE JURY, THAT A
13 RECOMMENDATION FOR IMPOSITION OF THE DEATH PENALTY
14 BE A UNANIMOUS RECOMMENDATION AND THAT EACH AND
15 EVERY JUROR SIGN HIS OR HER NAME TO THE
16 RECOMMENDATION FORM. I WILL NOW READ THAT TEXT OF
17 THIS FORM, AND I QUOTE: "WE, THE JURY, IN THE
18 ABOVE CAPTIONED CASE HAVE FOUND BEYOND A REASONABLE
19 DOUBT THE EXISTENCE OF THE FOLLOWING STATUTORY
20 AGGRAVATING CIRCUMSTANCES" AND THERE ARE
21 THREE-AND-A-HALF OR FOUR LINES THERE WHICH YOU
22 WOULD WRITE IN ANY STATUTORY AGGRAVATING
23 CIRCUMSTANCE WHICH YOU FIND BEYOND A REASONABLE
24 DOUBT.

25 AND THEN, LADIES AND GENTLEMEN,

CHARGE TO THE JURY

1 IT STATES "NOW RECOMMEND TO THE COURT THAT THE
2 DEFENDANT, KENNETH SIMMONS, BE SENTENCED TO DEATH;"
3 FORELADY; AND THEN THERE ARE ELEVEN OTHER LINES,
4 AND IT'S DATED MARCH 1, 1999, ST. GEORGE, S.C.
5 NOW, LADIES AND GENTLEMEN, FOR THIS RECOMMENDATION
6 TO BE MADE, THAT IS THAT THE DEFENDANT BE SENTENCED
7 TO DEATH, YOU MUST FIRST FIND THAT A STATUTORY
8 AGGRAVATING CIRCUMSTANCE EXISTED BEYOND A
9 REASONABLE DOUBT. A STATUTORY AGGRAVATING
10 CIRCUMSTANCE IS A FACT, AN INCIDENT, A DETAIL, OR
11 AN OCCURRENCE WHICH THE GENERAL ASSEMBLY, THE
12 LEGISLATURE OF THIS STATE, HAS DECLARED BY STATUTE
13 WOULD MAKE IT WORSE, THAT IS AGGRAVATE THE OFFENSE
14 OF MURDER WHEN THE TWO OCCUR TOGETHER. IN OTHER
15 WORDS, IT IS SOMETHING WHICH INCREASES THE ENORMITY
16 OF OR ADDS TO THE INJURIOUS CONSEQUENCES OF THE
17 OFFENSE.

18 NEXT, LADIES AND GENTLEMEN, I
19 HAVE WHAT IS ENTITLED "STATUTORY INSTRUCTIONS."
20 UPON THIS SHEET OF PAPER WHICH I HOLD IN MY HAND
21 ARE WRITTEN THE WORDS "STATUTORY INSTRUCTIONS."
22 AGAIN, YOU WILL HAVE THIS DOCUMENT IN YOUR JURY
23 ROOM DURING YOUR DELIBERATION AND IT SETS FORTH AS
24 FOLLOWS, AND I QUOTE: "IN DETERMINING WHETHER TO
25 RECOMMEND THAT THE DEFENDANT, KENNETH SIMMONS, BE

CHARGE TO THE JURY

1 SENTENCED BY THE COURT TO LIFE IMPRISONMENT WITHOUT
2 THE POSSIBILITY OF PAROLE OR TO DEATH, YOU MAY
3 CONSIDER THE FOLLOWING STATUTORY AGGRAVATING
4 CIRCUMSTANCES: THE MURDER WAS COMMITTED WHILE IN
5 THE COMMISSION OF THE FOLLOWING CRIMES OR ACTS:
6 (1) CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE;
7 (2) KIDNAPPING; (3) BURGLARY IN THE FIRST DEGREE;
8 (4) ROBBERY WHILE ARMED WITH A DEADLY WEAPON; OR
9 (5) PHYSICAL TORTURE. IN DETERMINING WHETHER TO
10 RECOMMEND THAT THE DEFENDANT, KENNETH SIMMONS, BE
11 SENTENCED BY THE COURT TO LIFE IMPRISONMENT OR TO
12 DEATH, YOU MAY CONSIDER THOSE FIVE STATUTORY
13 AGGRAVATING CIRCUMSTANCES. LET ME EMPHASIZE TO YOU
14 THAT THESE ARE THE ONLY CIRCUMSTANCES YOU MAY
15 CONSIDER AS AGGRAVATING CIRCUMSTANCES SHOULD YOU
16 FIND -- AND IT MUST BE A UNANIMOUS FINDING --
17 BEYOND A REASONABLE DOUBT; THAT IS THE FINDING BY
18 EACH AND EVERY ONE OF YOU SHOULD YOU FIND THE STATE
19 HAS PROVEN BEYOND A REASONABLE DOUBT THE EXISTENCE
20 OF ONE OR MORE OF THE CIRCUMSTANCES LISTED AS I'VE
21 JUST READ TO YOU, AND YOU WOULD BE AUTHORIZED WHICH
22 IS TO SAY YOU WOULD BE PERMITTED TO CONSIDER
23 RECOMMENDING TO THIS COURT THAT THE DEFENDANT BE
24 SENTENCED TO DEATH.

25 NOW, BY THE TERM "PROVEN BEYOND A

CHARGE TO THE JURY

1 REASONABLE DOUBT" THAT MEANS, LADIES AND GENTLEMEN,
2 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
3 LEAVES YOU FIRMLY CONVINCED OF THE EXISTENCE OF ONE
4 OR MORE OF THE AGGRAVATING CIRCUMSTANCES. THERE
5 ARE A FEW THINGS IN THIS WORLD THAT WE KNOW WITH
6 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE LAW
7 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY
8 POSSIBLE DOUBT. IF, BASED UPON YOUR CONSIDERATION
9 OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT
10 AGGRAVATING CIRCUMSTANCES EXISTED, THEN YOU WOULD
11 BE AUTHORIZED, WHICH I HAVE TOLD YOU MEANS
12 PERMITTED, TO CONSIDER RECOMMENDING TO THIS COURT
13 THE DEFENDANT BE SENTENCED TO DEATH. ON THE OTHER
14 HAND, IF YOU THINK THERE IS A REAL POSSIBILITY THE
15 AGGRAVATING CIRCUMSTANCES DID NOT EXIST, YOU MUST
16 GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND
17 SENTENCE HIM TO LIFE IMPRISONMENT.

18 AND, LADIES AND GENTLEMEN, YOU
19 ARE NEVER REQUIRED TO RECOMMEND THE DEATH PENALTY
20 EVEN IF YOU FIND THAT A STATUTORY AGGRAVATING
21 CIRCUMSTANCE EXISTED AT THE TIME THE OFFENSE
22 OCCURRED. THAT, OF COURSE, IS UP TO YOU, LADIES
23 AND GENTLEMEN. HOWEVER, IF YOU FIND THE EXISTENCE
24 OF A STATUTORY AGGRAVATING CIRCUMSTANCE, PLEASE, ON
25 THIS FORM WHICH IS ENTITLED "JURY'S FINDING AS TO

CHARGE TO THE JURY

1 AGGRAVATING CIRCUMSTANCE," AND IT SAYS COMPLETE
2 EITHER A OR B AS APPROPRIATE. (A) WE THE JURY IN
3 THE ABOVE-ENTITLED CASE DO NOT UNANIMOUSLY FIND
4 BEYOND A REASONABLE DOUBT THE EXISTENCE OF ANY
5 STATUTORY AGGRAVATING CIRCUMSTANCE. IF THAT BE THE
6 UNANIMOUS FINDING OF THE JURY, THEN MADAM FORELADY,
7 SIGN YOUR NAME ABOVE WHERE THE WORD "FORELADY" IS
8 WRITTEN; OR (B) WE THE JURY IN THE ABOVE-ENTITLED
9 CASE DO UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT
10 THE EXISTENCE OF THE FOLLOWING STATUTORY
11 AGGRAVATING CIRCUMSTANCES; (1) CRIMINAL SEXUAL
12 CONDUCT, NO OR YES; (2) KIDNAPPING, NO OR YES; (3)
13 ARMED ROBBERY, NO OR YES; (4) PHYSICAL TORTURE, NO
14 OR YES; OR (5) BURGLARY, NO OR YES. AND IF YOU
15 FIND THE EXISTENCE OF A STATUTORY AGGRAVATING
16 CIRCUMSTANCE, PLEASE LIST THAT CIRCUMSTANCE ON THE
17 OTHER FORM THAT'S ENTITLED "AGGRAVATING
18 CIRCUMSTANCE" AND ALL TWELVE WILL SIGN IT.

19 NOW, LADIES AND GENTLEMEN, I DO
20 NOT MEAN TO BE REPETITIVE IN MY CHARGE BECAUSE I AM
21 NOW GOING NECESSARILY TO HAVE TO REVIEW WITH YOU
22 THE ELEMENTS OF THE CRIMES FOR WHICH YOU FOUND THE
23 DEFENDANT GUILTY DURING THE GUILT PHASE AND WHICH
24 ARE ASKED BY THE STATE TO BE FOUND AS A STATUTORY
25 AGGRAVATING CIRCUMSTANCE. AND I INSTRUCT YOU,

CHARGE TO THE JURY

1 LADIES AND GENTLEMEN, THAT ARMED ROBBERY UNDER
2 SECTION 16-11-330 OF OUR SOUTH CAROLINA CODE OF
3 LAWS PROVIDES, AND I QUOTE IN PERTINENT PART; "A
4 PERSON WHO COMMITS ROBBERY WHILE ARMED WITH A
5 PISTOL, DIRK, SLINGSHOT, METAL KNUCKLES, RAZOR, OR
6 OTHER DEADLY WEAPON, OR WHILE ALLEGING EITHER BY
7 ACTION OR WORDS THAT HE WAS ARMED WHILE USING A
8 REPRESENTATION OF A DEADLY WEAPON OR ANY OBJECT
9 WHICH A PERSON PRESENT DURING THE COMMISSION OF A
10 ROBBERY REASONABLY BELIEVED TO BE A DEADLY WEAPON
11 IS GUILTY OF MURDER WHILE ARMED WITH A DEADLY
12 WEAPON."

13 SO, LADIES AND GENTLEMEN, IN
14 ORDER TO EXPLAIN THE OFFENSE OF ARMED ROBBERY OR
15 ROBBERY WITH A DEADLY WEAPON, IT IS NECESSARY THAT
16 I EXPLAIN TO YOU TO THE LESSER OFFENSES OF LARCENY
17 AND ROBBERY IN ORDER FOR YOU TO FULLY UNDERSTAND
18 THE ELEMENTS OF ARMED ROBBERY WHICH THE LAW CALLS
19 ROBBERY WHILE ARMED WITH A DEADLY WEAPON. SO,
20 LADIES AND GENTLEMEN, BECAUSE THE CRIME OF LARCENY
21 AND ROBBERY ARE ALL ENCOMPASSED AND INCLUDED IN THE
22 LARGER OFFENSE OF ARMED ROBBERY, I INSTRUCT YOU
23 THAT LARCENY IS COMMONLY CALLED STEALING. THAT'S
24 WHAT IT MEANS IN EVERY DAY SIMPLE LANGUAGE.

25 NOW, YOU PROBABLY KNOW WHAT IT

CHARGE TO THE JURY

1 MEANS, BUT LARCENY IS THE WRONGFUL TAKING AND
2 CARRYING AWAY BY ANY PERSON OF SOMEBODY ELSE'S
3 GOODS OR PERSONAL PROPERTY WITH THE FELONIOUS OR
4 WRONGFUL INTENT TO PERMANENTLY DEPRIVE THE RIGHTFUL
5 OWNER OF THAT PROPERTY AND TO CONVERT THAT PROPERTY
6 TO THE TAKER'S OWN USE. THE ESSENTIAL ELEMENTS OF
7 LARCENY, ORDINARILY CALLED STEALING; FIRST, THERE
8 MUST BE A WRONGFUL TAKING AND THE POSSESSION OF
9 SOMEBODY ELSE'S PERSONAL PROPERTY; SECOND, THERE
10 HAS TO BE A CARRYING AWAY AND REMOVAL OF THAT
11 PERSONAL PROPERTY; THIRD, IT HAS TO BE A FELONIOUS
12 WRONGFUL INTENT, THE INTENT TO STEAL ON THE PART OF
13 THE TAKER SO AS TO PERMANENTLY DEPRIVE THE OWNER OF
14 SUCH GOODS TO CONVERT THE PROPERTY TO THE TAKER'S
15 OWN USE.

16 NOW, THAT'S LARCENY. AND ROBBERY
17 TAKES IT ONE STEP FURTHER BECAUSE THAT IS THE
18 FELONIOUS TAKING AND CARRYING AWAY OF SOMEBODY'S
19 PERSONAL PROPERTY IN THE PRESENCE OF THAT PERSON OR
20 BY PUTTING THAT PERSON IN FEAR OF VIOLENCE. IF ALL
21 THE OTHER ELEMENTS OF THE OFFENSE ARE MET; THE
22 WRONGFUL TAKING, THE CARRYING AWAY OF THE PROPERTY,
23 THE INTENT TO REMOVE IT AND NOT GIVE IT BACK, THE
24 CRIME OF LARCENY WOULD HAVE BEEN PROVEN. BUT
25 ROBBERY IMPLIES AND REQUIRES THE FELONIOUS INTENT

CHARGE TO THE JURY

1 UPON THE PERSON OF THAT PERSON IN THE TAKING BY
2 VIOLENCE OR PUTTING THAT PERSON IN FEAR OF
3 VIOLENCE.

4 NOW, FINALLY, IN ORDER TO RAISE
5 THE CRIME OF ROBBERY AS I HAVE DEFINED IT TO YOU,
6 ROBBERY WHILE ARMED WITH A DEADLY WEAPON; THE LAW
7 REQUIRES ONE MUST HAVE USED A DEADLY WEAPON TO
8 ACCOMPLISH THE PURPOSE OF THE ROBBERY AS THAT HAS
9 BEEN DEFINED TO YOU. SO THE ELEMENTS OF ARMED
10 ROBBERY; FIRST, THE PROPERTY HAS TO HAVE BEEN TAKEN
11 TO BE THE SUBJECT OF LARCENY. AND I TELL YOU THAT
12 LAWFUL CURRENCY OR MONEY OF THE UNITED STATES IS
13 PERSONAL PROPERTY. SECOND, IT HAS TO BE THE
14 WRONGFUL TAKING AND CARRYING AWAY OF THAT PROPERTY;
15 THIRD, IT HAS TO BE DONE WITH A FELONIOUS INTENT;
16 THAT IS WITH THE INTENT TO STEAL IT AND TO
17 PERMANENTLY KEEP IT; FOURTH, THE PROPERTY MUST BE
18 TAKEN FROM THE PERSON OF ANOTHER OR IF IT'S TAKEN
19 IN HER PRESENCE IS TAKEN CONSTRUCTIVELY FROM A
20 PERSON. THE TAKING MUST NOT ONLY BE WITHOUT
21 CONSENT BUT IT MUST BE ACCOMPLISHED BY VIOLENCE OR
22 PUTTING THAT PERSON IN FEAR OF VIOLENCE. AND,
23 FINALLY, THE PERSON DOING THE TAKING MUST BE ARMED
24 WITH A DEADLY WEAPON AS I HAVE DEFINED THAT TERM TO
25 YOU.

CHARGE TO THE JURY

1 AND NEXT, LADIES AND
2 GENTLEMEN, I WILL EXPLAIN TO YOU THE OFFENSE OF
3 BURGLARY IN THE FIRST DEGREE. UNDER SECTION
4 16-11-311 OF OUR SOUTH CAROLINA CODE OF LAWS
5 BURGLARY IN THE FIRST DEGREE IS DEFINED AS THE
6 ENTERING OF THE DWELLING HOUSE OF ANOTHER WITHOUT
7 CONSENT WITH THE INTENT TO COMMIT A CRIME THEREIN
8 AS I WILL DEFINE FOR YOU WHICH IS ACCOMPANIED BY
9 ONE OF THE FOLLOWING CIRCUMSTANCES: (1) WHEN
10 ENTERING OR WHILE IN THE HOUSE THE DEFENDANT (A) IS
11 ARMED WITH A DEADLY WEAPON OR CAUSES PHYSICAL
12 INJURY TO ANYONE NOT PARTICIPATING IN THE CRIME; OR
13 (B) USES OR THREATENS TO USE A DANGEROUS OBJECT, OR
14 (C) THE DEFENDANT ENTERED INTO THE HOUSE AT NIGHT
15 TIME. A COMMON LAW OF THE NIGHT TIME IS THAT
16 PERIOD BETWEEN SUNSET AND SUNRISE DURING WHICH THE
17 FACE OF A PERSON CANNOT BE DISCERNED BY THE LIGHT
18 OF THE SUN.

19 THERE ARE FOUR ESSENTIAL
20 ELEMENTS IN THE REQUIREMENT THE DEFENDANT ENTERING
21 THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT WITH
22 THE INTENT TO COMMIT A CRIME. (1) THERE MUST BE AN
23 ENTERING. THE STATE MUST PROVE THAT THERE WAS AN
24 ENTERING, THAT THE DEFENDANT ACTUALLY WENT INSIDE
25 THE HOUSE OR SOME PART OF IT; (2) THE ENTRY MUST BE

CHARGE TO THE JURY

1 WITHOUT CONSENT. A PERSON IS GUILTY OF BURGLARY IF
2 ONE UNLAWFULLY ENTERS THROUGH AN UNLOCKED OR OPEN
3 DOOR; (3) THE PLACE ENTERED MUST BE A DWELLING
4 HOUSE. THE TERM "DWELLING HOUSE" MEANS ANY
5 BUILDING INHABITED BY A PERSON OR PERSONS AND IN
6 WHICH THEY CUSTOMARILY SLEEP; AND (4) THE DEFENDANT
7 MUST HAVE AN INTENT TO COMMIT A CRIME. THE MERE
8 ENTRY INTO A DWELLING HOUSE WITHOUT CONSENT IS NOT
9 A VIOLATION OF THE BURGLARY STATUTE. IT'S ONLY
10 WHERE THERE IS AN ATTEMPT TO COMMIT A CRIME; THAT
11 THE CRIME IS THE COMPLETE, PROOF OF INTENT AND
12 NECESSARILY RESTS UPON INFERENCE FROM CONDUCT. IT
13 IS ESSENTIAL THAT THE FELONIOUS INTENT EXISTS AT
14 THE TIME OF THE ENTRY. IT IS NOT SUFFICIENT THAT
15 FELONIOUS INTENT IS FORMED AFTERWARDS.

16 NEXT, LADIES AND GENTLEMEN, I
17 DEFINE TO YOU THE LAW RELATIVE TO KIDNAPPING, AND I
18 INSTRUCT YOU THAT UNDER CODE SECTION 16-3-910 OF
19 OUR LAWS OF SOUTH CAROLINA; AND I QUOTE "WHOEVER
20 SHALL UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY,
21 KIDNAP, ABDUCT, OR CARRY AWAY ANY OTHER PERSON BY
22 ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW SHALL
23 BE GUILTY OF KIDNAPPING." KIDNAPPING IS THE
24 INTENTIONAL TAKING OF A PERSON AND COMPELLING HER
25 TO BE DETAINED AGAINST HER WILL. IT IS THE WILLFUL

CHARGE TO THE JURY

1 AND UNLAWFUL SEIZING OF A PERSON AGAINST HER WILL
2 WITH THE INTENT TO CAUSE HER TO BE CONFINED,
3 IMPRISONED, OR DETAINED. THE ESSENCE OF THE
4 OFFENSE OF KIDNAPPING IS THE UNLAWFUL HOLDING OR
5 IMPRISONMENT OF A PERSON. KIDNAPPING MEANS THE
6 CARRYING AWAY OF A PERSON BY UNLAWFUL FORCE AND
7 AGAINST HER WILL OR SEIZING AND DETAINING HER. SO
8 THE THREE ELEMENTS OF KIDNAPPING WOULD BE (1)
9 UNLAWFULLY SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP,
10 ABDUCT, OR CARRY AWAY ANY OTHER PERSON; (2) BY ANY
11 MEANS WHATSOEVER; (3) WITHOUT AUTHORITY OF LAW.
12 AND FINALLY, LADIES AND GENTLEMEN, THE OFFENSE OF
13 KIDNAPPING COMMENCES WHEN ONE IS WRONGFULLY AND
14 UNLAWFULLY DEPRIVED OF HER FREEDOM AND CONTINUES
15 UNTIL HER FREEDOM IS RESTORED.

16 AND NEXT, LADIES AND
17 GENTLEMEN, CRIMINAL SEXUAL CONDUCT IN THE FIRST
18 DEGREE. IT'S NECESSARY THAT I DEFINE CERTAIN TERMS
19 TO YOU. THESE DEFINITIONS ARE FOUND IN 16-3-651 OF
20 OUR LAWS; ACTOR MEANS A PERSON ACCUSED OF CRIMINAL
21 SEXUAL CONDUCT. AGGRAVATED FORCE MEANS THAT THE
22 ACTOR USES PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A
23 HIGH AND AGGRAVATED NATURE TO OVERCOME THE VICTIM.
24 NEXT; SEXUAL BATTERY MEANS SEXUAL INTERCOURSE OR
25 ANY INTRUSION HOWEVER SLIGHT OF ANY PART OF A

CHARGE TO THE JURY

1 PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL
2 OPENINGS OF ANOTHER PERSON'S BODY. AND VICTIM
3 MEANS THE PERSON ALLEGING TO HAVE BEEN SUBJECTED TO
4 CRIMINAL SEXUAL CONDUCT. SO LADIES AND GENTLEMEN,
5 FIRST DEGREE CRIMINAL SEXUAL CONDUCT IS ACTUALLY
6 USING THE FORCE AGAINST THE PERSON TO OVERCOME
7 HER.

8 A PERSON IS GUILTY OF CRIMINAL
9 SEXUAL CONDUCT IN THE FIRST DEGREE UNDER OUR CODE
10 OF LAWS, OF 16-3-652 OF OUR CODE OF LAWS, IF THE
11 ACTOR ENGAGES IN SEXUAL BATTERY WITH THE VICTIM.
12 SEXUAL BATTERY MEANS ANY TYPE OF INTERCOURSE OR ANY
13 INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A
14 PERSON'S BODY OR OF ANY OBJECT INTO OR ON ANOTHER
15 PERSON'S BODY. SO, LADIES AND GENTLEMEN, IN ORDER
16 TO HAVE FIRST DEGREE CRIMINAL SEXUAL CONDUCT, THERE
17 MUST BE A SHOWING THAT THE SEXUAL BATTERY OCCURRED
18 WITH ONE OF THE FOLLOWING CIRCUMSTANCES: THE ACTOR
19 USES AGGRAVATED FORCE TO ACCOMPLISH THE SEXUAL
20 BATTERY; OR THE VICTIM SUBMITS TO SEXUAL BATTERY BY
21 THE ACTOR UNDER CIRCUMSTANCES WHERE THE VICTIM IS
22 ALSO THE VICTIM OF FORCIBLE CONFINEMENT,
23 KIDNAPPING, ROBBERY, BURGLARY, OR OTHER SIMILAR
24 OFFENSE OR ACT. AGGRAVATED FORCE IS DEFINED AS
25 FORCE OR PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED

CHARGE TO THE JURY

1 NATURE TO OVERCOME THE VICTIM AND INCLUDES THE
2 THREAT OF THE USE OF A DEADLY WEAPON.

3 NOW LADIES AND GENTLEMEN, THE
4 NEXT AGGRAVATING STATUTORY CIRCUMSTANCE, OR ONE OF
5 THE OTHER, AND LISTED NOT NECESSARILY IN ANY
6 PARTICULAR ORDER, IS THAT OF TORTURE. I INSTRUCT
7 YOU THAT TORTURE OCCURS WHEN THE VICTIM IS
8 SUBJECTED TO SERIOUS PHYSICAL ABUSE BEFORE DEATH.
9 TORTURE OCCURS WHEN THE VICTIM IS SUBJECTED TO
10 AGGRAVATED BATTERY. AND AGGRAVATED BATTERY IS AN
11 UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF
12 ANOTHER ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION
13 SUCH AS THE USE OF A DANGEROUS AND DEADLY OBJECT,
14 THE INFLICTION OF SERIOUS BODILY INJURY WITH THE
15 INTENT TO COMMIT A FELONY, A GREAT DISPARITY
16 BETWEEN THE AGES AND PHYSICAL CONDITION OF THE
17 PARTIES, A DIFFERENCE IN THE SEXES.

18 PHYSICAL TORTURE IS THE
19 INTENTIONAL INFLICTION OF SERIOUS VILE, HORRIBLE,
20 OR INHUMANE ABUSE UPON THE BODY OF ANOTHER BEFORE
21 DEATH. INSTANTANEOUS DEATH OF THE VICTIM DOES NOT
22 CONSTITUTE TORTURE. PHYSICAL TORTURE MAY INCLUDE
23 THE MALICIOUS INFLICTION OF BODILY HARM TO ANOTHER
24 BY DEPRIVING HER OF A MEMBER OF HER BODY OR BY
25 RENDERING A MEMBER OF HER BODY USELESS OR BY

CHARGE TO THE JURY

1 SERIOUSLY DISFIGURING HER BODY OR A MEMBER OF HER
2 BODY, OR THE INTENTIONAL AND MERCIFUL PROLONGING OF
3 SEVERE PAIN AND ABUSE UPON THE BODY OR THE
4 INTENTIONAL AND UNMERCIFUL INFLECTION OF SERIOUS
5 AND EXTENSIVE PHYSICAL PAIN AND ABUSE TO THE BODY
6 OF ANOTHER.

7 NOW LADIES AND GENTLEMEN, PLEASE
8 RECALL THAT I INSTRUCT YOU, YOU THE JURY, ARE THE
9 SOUL AND ONLY JUDGES OF THE FACTS IN THIS CASE
10 DURING BOTH PHASES, THE GUILT AND THE PENALTY
11 PHASE. IT IS MY DUTY TO RULE UPON THE TESTIMONY,
12 BUT THE WEIGHT OR PROBATIVE VALUE OF EVIDENCE IS
13 ENTIRELY FOR YOU. IT IS YOUR DUTY TO WEIGH AND
14 CONSIDER THE EVIDENCE AND SO DETERMINE WHAT THE
15 FACTS ARE AS YOU HEARD IT FROM THE TESTIMONY FROM
16 THE WITNESSES ON THE STAND. I'M NOT ALLOWED TO
17 INTIMATE ANY OPINION THAT I MAY HAVE ABOUT THE
18 TESTIMONY OR THE EVIDENCE, AND ANY INNUENDO OR
19 INFERENCE THAT YOU MAY HAVE GATHERED OR GARNERED OR
20 GLEANED FROM ANY THE ACTION OR RULING OR SAYING ON
21 MY PART AS TO WHAT I MAY THINK THE FACTS OF THIS
22 CASE ARE OR WHAT YOUR RECOMMENDATION SHOULD BE,
23 PLEASE DISREGARD THE SAME BECAUSE THAT CERTAINLY
24 WAS NOT MY INTENTION. YOU MUST THEREFORE
25 NECESSARILY PASS UPON THE CREDIBILITY OR THE

CHARGE TO THE JURY

1 BELIEVABILITY OF THE WITNESSES.

2 YOU HAVE THE RIGHT TO BELIEVE ONE
3 WITNESS AS OPPOSED TO MANY. YOU MAY BELIEVE MANY
4 AS OPPOSED TO ONE, OR YOU MAY REJECT A WITNESS'
5 TESTIMONY IN ITS ENTIRETY PROVIDED THERE'S A SOUND
6 REASON IN THE RECORD FOR SO DOING BECAUSE YOU'RE
7 NOT ALLOWED TO ARBITRARILY OBJECT TO TESTIMONY.
8 YOU MAY FURTHER, LADIES AND GENTLEMEN, TAKE INTO
9 CONSIDERATION THE INTEREST, THE BIAS, THE PREJUDICE
10 OF A WITNESS AS WELL AS THE DEMEANOR OR THE
11 BEHAVIOR OF THE WITNESS UPON THE STAND; ANYTHING
12 THAT'S IN THE RECORD THAT WILL AID AND ASSIST YOU
13 IN EVALUATING THE TESTIMONY OF THE SEVERAL PERSONS
14 WHO HAVE TESTIFIED DURING THIS PENALTY PHASE OF
15 THIS TRIAL.

16 FURTHER, LADIES AND GENTLEMEN, I
17 REPEAT TO YOU AS I DID ON SATURDAY; THE FACT THAT A
18 DEFENDANT DOES NOT TESTIFY IN HIS OWN BEHALF CANNOT
19 AND MUST NOT BE CONSIDERED AGAINST HIM UNDER ANY
20 CIRCUMSTANCES OR IN ANY MANNER WHATSOEVER. THE
21 FAILURE OF THE DEFENDANT TO TAKE THE WITNESS STAND
22 AND TESTIFY IN HIS OWN BEHALF DOES NOT CREATE ANY
23 INFERENCE FOR OR AGAINST HIM, AND THE JURY IS
24 CHARGED THAT YOU MUST NOT PERMIT THAT FACT TO WEIGH
25 IN THE SLIGHTEST DEGREE AGAINST SUCH DEFENDANT, NOR

CHARGE TO THE JURY

1 SHOULD THIS FACT ENTER INTO THE DISCUSSIONS OR
2 DELIBERATIONS OF THE JURY IN ANY MANNER. BECAUSE A
3 DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN
4 SILENT, THE ASSERTION OF SUCH A CONSTITUTIONAL
5 RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN
6 YOUR DELIBERATIONS.

7 PLEASE RECALL REGARDING EXPERT
8 TESTIMONY, LADIES AND GENTLEMEN, THAT ALTHOUGH LAY
9 WITNESSES ARE MERELY JUST TESTIFYING ABOUT FACTS
10 WITHIN THEIR KNOWLEDGE, AND THEY'RE NOT ALLOWED TO
11 GIVE OPINIONS, CERTAIN WITNESSES WHO BY TRAINING,
12 EDUCATION, OR EXPERIENCE ARE CONSIDERED AS EXPERTS
13 IN A PARTICULAR FIELD. THEY MAY GIVE OPINIONS IN
14 THAT FIELD BASED UPON THE FACTS OF THE MATTER, AND
15 THEIR CONCLUSIONS AND THESE OPINIONS CONSTITUTE
16 EVIDENCE TO BE CONSIDERED BY YOU IN CONNECTION WITH
17 ALL OTHER TESTIMONY AND EVIDENCE IN THE CASE; I.E.
18 YOU MAY CONSIDER THE EXPERT'S OPINION JUST AS YOU
19 DO ALL OTHER EVIDENCE IN THE CASE. IT IS FOR YOU,
20 THE JURY, TO GIVE IT SUCH WEIGHT AS YOU IN YOUR
21 EXPERIENCE AND DISCRETION MAY DETERMINE. BY THIS I
22 MEAN YOU MAY WEIGH SUCH EVIDENCE AND ACCEPT OR
23 REJECT IT IN THE SAME MANNER THAT YOU TREAT ALL
24 OTHER EVIDENCE IN THE TRIAL OF A CASE.

25 PLEASE RECALL THAT THERE ARE TWO

CHARGE TO THE JURY

1 TYPES OF EVIDENCE GENERALLY PRESENTED DURING A
2 TRIAL; DIRECT EVIDENCE AND CIRCUMSTANTIAL
3 EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A
4 PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
5 KNOWLEDGE OF A FACT SUCH AS AN EYE WITNESS.
6 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
7 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF
8 A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION
9 BETWEEN THE WEIGHT AND VALUE TO BE GIVEN TO EITHER
10 DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER
11 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
12 EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH
13 ALL THE EVIDENCE IN THE CASE. IF AFTER WEIGHING
14 ALL THE EVIDENCE YOU ARE NOT CONVINCED OF THE
15 GUILT, YOU SHOULD MAKE A RECOMMENDATION OF A
16 STATUTORY AGGRAVATING CIRCUMSTANCE AND RECOMMEND
17 THE DEATH PENALTY. WHEN YOU DON'T FIND THAT BEYOND
18 A REASONABLE DOUBT, THEN YOU WOULD OF COURSE RETURN
19 THE LESSER. YOU WOULD HAVE THE OPTION OF RETURNING
20 THE LESSER VERDICT OF LIFE IMPRISONMENT WITHOUT
21 PAROLE.

22 NOW, LADIES AND GENTLEMEN, YOU
23 WILL RECALL THAT DURING THE CLOSE OF THE GUILT
24 PHASE THAT THIS COURT HAD INSTRUCTED YOU ABOUT
25 VOLUNTARY INTOXICATION NOT BEING AN EXCUSE FOR A

CHARGE TO THE JURY

1 DEFENSE TO A CRIME. I INSTRUCT YOU, LADIES AND
2 GENTLEMEN, THAT EVIDENCE OF VOLUNTARY INTOXICATION
3 IS A PROPER MATTER FOR CONSIDERATION BY THE JURY IN
4 MITIGATION OF PUNISHMENT. NOW, LADIES AND
5 GENTLEMEN, I REPEAT AGAIN TO YOU THAT SHOULD YOU
6 FIND THE STATE HAS NOT PROVEN BEYOND A REASONABLE
7 DOUBT THAT SUCH A CIRCUMSTANCE EXISTED OF A
8 STATUTORY AGGRAVATING CIRCUMSTANCE, THAT IS TO SAY
9 THAT YOU FIND THAT YOU STILL HAVE A REASONABLE
10 DOUBT AS TO THE EXISTENCE OF SUCH A CIRCUMSTANCE,
11 THEN YOU WOULD NOT BE AUTHORIZED TO RECOMMEND THE
12 DEATH PENALTY, AND YOUR RECOMMENDATION MUST BE LIFE
13 IMPRISONMENT.

14 NOW, SHOULD YOU FIND BEYOND A
15 REASONABLE DOUBT THAT ONE OF THE AGGRAVATING
16 CIRCUMSTANCES LISTED ON THE SHEET OF STATUTORY
17 INSTRUCTIONS -- YOU WILL HAVE WITH YOU IN THE JURY
18 ROOM -- EXISTED AT THE TIME OF THE MURDER OR DURING
19 THE COMMISSION OF THE CRIME OF MURDER, AND SHOULD
20 YOU THEN DECIDE AFTER CONSIDERING THE ELEMENTS IN
21 FAVOR OF A RECOMMENDATION OF LIFE IMPRISONMENT
22 ABOUT WHICH I WILL INSTRUCT YOU IN JUST A MOMENT
23 THAT THE RECOMMENDATION OF THE JURY IS TO BE THAT
24 THE DEFENDANT BE SENTENCED TO DEATH, THEN IT WOULD
25 BE YOUR DUTY, MADAM FORELADY, TO WRITE ON THE

CHARGE TO THE JURY

1 RECOMMENDATION OF THE SENTENCE FORM -- AND I'VE
2 GONE OVER THAT RECOMMENDATION, THE DEATH PENALTY
3 FORM, THE STATUTORY AGGRAVATING CIRCUMSTANCE OR
4 CIRCUMSTANCES WHICH YOU FOUND. THEN MADAM
5 FORELADY, YOU AND EACH AND EVERY JUROR WILL SIGN
6 YOUR NAME IN THE PLACES PROVIDED BY THAT UNANIMOUS
7 VERDICT WHICH IT MUST BE.

8 NOW, LADIES AND GENTLEMEN, OTHER
9 FACTS ABOUT THE DEFENDANT'S BACKGROUND AND RECORD
10 HAVE BEEN INTRODUCED BY THE STATE; I CHARGE YOU
11 THIS EVIDENCE OF THESE CRIMES, THESE OTHER CRIMES,
12 SHOULD NOT BE CONSIDERED AS SUBSTANTIVE EVIDENCE OF
13 AGGRAVATING CIRCUMSTANCES. BUT IF YOU ARE
14 CONVINCED THAT THE DEFENDANT COMMITTED THOSE CRIMES
15 OR ANY OF THEM, YOU MAY CONSIDER THEM AS EVIDENCE
16 OF HIS CHARACTERISTICS. THESE MAY BE CONSIDERED
17 ALONG WITH ALL OF THE OTHER EVIDENCE, AND YOU MAY
18 GIVE THEM WHATEVER WEIGHT YOU DEEM PROPER UNDER THE
19 CIRCUMSTANCES OF THE CASE. HOWEVER, UNDER NO
20 CIRCUMSTANCES MAY YOU CONSIDER THOSE FACTS EVEN AS
21 PROVEN AS EVIDENCE OF PROOF OF STATUTORY
22 AGGRAVATING CIRCUMSTANCES. HOWEVER, LADIES AND
23 GENTLEMEN, CRIMES WHICH YOU MAY HAVE FOUND THE
24 DEFENDANT TO BE GUILTY OF IN THE FIRST PHASE OF
25 THIS TRIAL MAY BE CONSIDERED BY YOU AS STATUTORY

CHARGE TO THE JURY

1 AGGRAVATING CIRCUMSTANCES IF YOU FIND THAT THEY
2 WERE COMMITTED BY THE DEFENDANT WHILE IN THE
3 COMMISSION OF MURDER WHICH YOU HAVE PREVIOUSLY
4 FOUND THE DEFENDANT GUILTY OF. NOW THOSE OTHER
5 FACTS, IF PROVEN, MAY ONLY BE CONSIDERED AS
6 EVIDENCE OF THE DEFENDANT'S CHARACTERISTICS AND
7 GIVEN SUCH SIGNIFICANCE AS YOU DETERMINE THEY ARE
8 ENTITLED TO RECEIVE. THEY'RE NOT PROOF OF
9 STATUTORY AGGRAVATING CIRCUMSTANCES AND MAY NOT BE
10 CONSIDERED AS SUCH.

11 NOW FINALLY, LADIES AND
12 GENTLEMEN, I HAVE THIS FOURTH DOCUMENT, THE
13 RECOMMENDATION OF A LIFE SENTENCE WITHOUT PAROLE.
14 AND BY THIS FORM THE JURY CAN RECOMMEND TO THIS
15 COURT THE DEFENDANT BE SENTENCED TO LIFE
16 IMPRISONMENT, AND IT READS AS FOLLOWS: "WE, THE
17 JURY, IN THE ABOVE ENTITLED CASE, RECOMMEND TO THE
18 COURT THAT THE DEFENDANT, KENNETH SIMMONS, BE
19 SENTENCED TO LIFE IMPRISONMENT WITHOUT PAROLE.
20 PLEASE NOTE THAT ALTHOUGH YOU MUST UNANIMOUSLY
21 AGREE TO RECOMMEND LIFE IMPRISONMENT, ONLY THE
22 FORELADY IS REQUIRED TO SIGN THIS RECOMMENDATION
23 FORM.

24 NOW, I WILL NOW INSTRUCT YOU ON
25 WHAT YOU MAY CONSIDER IN MAKING YOUR DECISION AS TO

CHARGE TO THE JURY

1 WHICH SENTENCE TO RECOMMEND. AS PREVIOUSLY STATED,
2 IF YOU FIND THE EXISTENCE BEYOND A REASONABLE DOUBT
3 OF A STATUTORY AGGRAVATING CIRCUMSTANCE THEN YOU
4 ARE PERMITTED, BUT NOT REQUIRED, TO RECOMMEND THE
5 DEATH PENALTY. THERE ARE THREE CONDITIONS WHICH
6 YOU SHOULD CONSIDER IN REACHING YOUR DECISION.
7 FIRST, WHETHER THE EXISTENCE OF A STATUTORY
8 MITIGATING CIRCUMSTANCE WAS SUPPORTED BY THE
9 EVIDENCE. SECOND, WHETHER THE EXISTENCE OF ANY
10 ANOTHER OTHER MITIGATING CIRCUMSTANCE WAS SUPPORTED
11 BY THE EVIDENCE. AND THIRD, WHETHER FOR ANY REASON
12 YOU CAN THINK OF, OR FOR NO REASON AT ALL, THE
13 DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT
14 WITHOUT PAROLE.

15 NOW A STATUTORY MITIGATING
16 CIRCUMSTANCE IS A FACT, AN INCIDENT, A DETAIL, OR
17 AN OCCURRENCE WHICH OUR LEGISLATURE HAS DECLARED BY
18 STATUTE WOULD REDUCE THE SEVERITY OF THE OFFENSE OF
19 MURDER. IN OTHER WORDS, IT IS A CIRCUMSTANCE
20 RECOGNIZED BY STATUTE AS ONE WHICH IN FAIRNESS AND
21 MERCY MAY BE CONSIDERED AS EXTENUATING OR AS
22 REDUCING THE DEGREE OF MORAL CULPABILITY FOR THE
23 COMMISSION OF THE ACT OF MURDER. A MITIGATING
24 CIRCUMSTANCE IS NEITHER JUSTIFICATION NOR EXCUSE
25 FOR THE MURDER. IT SIMPLY LESSENS THE DEGREE OF

CHARGE TO THE JURY

ONE'S GUILT; THAT IS MAKES HIM LESS BLAME-WORTHY OR
LESS CULPABLE.

NOW, WHAT STATUTORY MITIGATING
CIRCUMSTANCES SHOULD YOU CONSIDER IN THE CASE? YOU
WILL RECALL THAT I HAD PREVIOUSLY STATED TO YOU
THAT THERE IS ONE FORM THAT'S ENTITLED "STATUTORY
INSTRUCTIONS," AND I HAD READ TO YOU THE FIVE
STATUTORY AGGRAVATING CIRCUMSTANCES WHICH THE STATE
CONTENDS THAT YOU SHOULD FIND BEYOND A REASONABLE
DOUBT OCCURRED DURING THE COMMISSION OF THE
MURDER.

NOW, YOU MAY ALSO CONSIDER THE
FOLLOWING STATUTORY MITIGATING CIRCUMSTANCES WHICH
ARE AS FOLLOWS: (1) THE DEFENDANT HAS NO
SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTION
INVOLVING THE USE OF VIOLENCE AGAINST ANOTHER
PERSON; (2) THE MURDER WAS COMMITTED WHILE THE
DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL
OR EMOTIONAL DISTURBANCE; (3) THE CAPACITY OF THE
DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS
CONDUCT OR TO CONFORM HIS CONDUCT TO THE
REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED; (4)
THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME
OF THE CRIME. YOU MAY ALSO, LADIES AND GENTLEMEN,
CONSIDER ANY NONSTATUTORY MITIGATING

CHARGE TO THE JURY

1 CIRCUMSTANCES. AND I BEG YOUR PARDON; THERE WAS A
2 FIFTH STATUTORY MITIGATING CIRCUMSTANCE ON THE
3 SECOND SHEET, AND IT IS THAT THE DEFENDANT HAD
4 MENTAL RETARDATION AT THE TIME OF THE CRIME. AND
5 MENTAL RETARDATION MEANS SIGNIFICANTLY SUB-AVERAGE
6 GENERAL INTELLECTUAL FUNCTIONING EXISTING
7 CONCURRENTLY WITH DEFICITS AND ADAPTIVE BEHAVIOR
8 AND MANIFESTED DURING THE DEVELOPMENT PERIOD.

9 AND THEN AS I STATED, YOU MAY
10 ALSO CONSIDER ANY NONSTATUTORY MITIGATING
11 CIRCUMSTANCE. THERE ARE THREE LISTED: (1) THE
12 DEFENDANT WOULD NOT POSE DANGER IF HIS LIFE IS
13 SPARED BUT INCARCERATED; (2) THE DEFENDANT'S
14 LONG-TERM ADDICTION TO ALCOHOL AND DRUGS; OR (3)
15 THE DEFENDANT'S INTOXICATION AT THE TIME OF THE
16 COMMISSION OF THE CRIME. SO, LADIES AND GENTLEMEN,
17 A NONSTATUTORY MITIGATING CIRCUMSTANCE IS ONE WHICH
18 IS NOT PROVIDED FOR BY STATUTE BUT IS ONE WHICH THE
19 DEFENDANT CLAIMS SERVES THE SAME PURPOSE; THAT IS
20 TO REDUCE THE DEGREE OF HIS MORAL CULPABILITY OR
21 BLAME IN THE OFFENSE. WHILE THERE MUST BE SOME
22 EVIDENCE WHICH SUPPORTS THE FINDING BY YOU THAT A
23 STATUTORY OR NONSTATUTORY MITIGATING CIRCUMSTANCE
24 EXISTS, YOU NEED NOT FIND THE EXISTENCE OF SUCH A
25 CIRCUMSTANCE BEYOND A REASONABLE DOUBT. YOU MAY

CHARGE TO THE JURY

1 CONSIDER ANY MITIGATING CIRCUMSTANCE SUPPORTED BY
2 THE EVIDENCE SUBMITTED, AND YOU MUST DETERMINE
3 WHETHER THE EVIDENCE EXISTS AND THE SIGNIFICANCE TO
4 BE GIVEN THAT EVIDENCE.

5 IN REACHING YOUR DECISION AS TO
6 WHICH SENTENCE TO RECOMMEND, YOU WILL CONSIDER THE
7 AGGRAVATING AND MITIGATING CIRCUMSTANCES. WHILE A
8 STATUTORY AGGRAVATING CIRCUMSTANCE MUST BE FOUND
9 BEFORE YOU CAN EVEN CONSIDER RECOMMENDING THE DEATH
10 PENALTY, ONCE SUCH A FINDING IS MADE BEYOND A
11 REASONABLE DOUBT, YOU MAY RECOMMEND THE DEATH
12 SENTENCE EVEN THOUGH YOU FIND THE EXISTENCE OF A
13 STATUTORY MITIGATING CIRCUMSTANCE. IN OTHER WORDS,
14 THE EXISTENCE OF AN ALLEGED STATUTORY MITIGATING
15 CIRCUMSTANCE IS NOT A BAR TO THE IMPOSITION OF THE
16 DEATH PENALTY.

17 THE THIRD ELEMENT YOU MAY
18 CONSIDER IF YOU SHOULD CONCLUDE THAT A STATUTORY
19 AGGRAVATING CIRCUMSTANCE EXISTS IS WHETHER THE
20 DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT
21 FOR ANY REASON OR FOR NO REASON AT ALL. THIS IS
22 WHAT HAS BEEN TRADITIONALLY REFERRED TO AS A
23 RECOMMENDATION OF MERCY. AND SHOULD SUCH BE YOUR
24 DECISION, YOU WOULD SO INDICATE BY RETURNING TO THE
25 COURT THE RECOMMENDATION OF LIFE IMPRISONMENT FORM

CHARGE TO THE JURY

1 WHICH WOULD BE SIGNED ONLY BY THE FORELADY. IN
2 OTHER WORDS, YOU MAY CHOOSE TO RECOMMEND LIFE
3 IMPRISONMENT IF YOU FIND A STATUTORY OR A
4 NONSTATUTORY MITIGATING CIRCUMSTANCE, OR YOU MAY
5 CHOOSE TO RECOMMEND LIFE IMPRISONMENT AS AN ACT OF
6 MERCY. IN ANY INSTANCE, SHOULD YOU CHOOSE TO
7 RECOMMEND LIFE IMPRISONMENT, YOUR DECISION MUST BE
8 A UNANIMOUS ONE, AND THE FORELADY WILL ONLY BE
9 REQUIRED TO SIGN THE RECOMMENDATION FORM.

10 SO, FINALLY, LADIES AND
11 GENTLEMEN, BY WAY OF SUMMARY, YOU WILL HAVE WHEN
12 YOU GO TO YOUR JURY ROOM THESE FOUR DIFFERENT
13 FORMS. AND PLEASE DISREGARD THE ORDER IN WHICH I
14 STATE THEM TO YOU. I HAVE TO STATE BOTH THINGS IN
15 SOME ORDER. ONE IS RECOMMENDATION OF A LIFE
16 SENTENCE WITHOUT PAROLE. THE OTHER ARE STATUTORY
17 INSTRUCTIONS WHICH CONTAIN AGGRAVATING
18 CIRCUMSTANCES, STATUTORY; MITIGATING CIRCUMSTANCES,
19 STATUTORY; AND NONSTATUTORY MITIGATING
20 CIRCUMSTANCES. THEN THERE'S A JURY'S FINDING AS TO
21 AGGRAVATING CIRCUMSTANCE. AND THEN THERE'S A
22 RECOMMENDATION OF A SENTENCE OF THE DEATH PENALTY.

23 NOW, THE STATUTORY INSTRUCTIONS
24 STATE THE ONLY AGGRAVATING CIRCUMSTANCES YOU SHALL
25 CONSIDER IN THIS CASE, SHOULD YOU FAIL TO FIND

CHARGE TO THE JURY

1 BEYOND A REASONABLE DOUBT ONE OF THESE
2 CIRCUMSTANCES EXISTED AT THE TIME THE MURDER WAS
3 COMMITTED, THEN YOU WOULD GO NO FURTHER. YOUR
4 RECOMMENDATION MUST THEN BE FOR LIFE IMPRISONMENT.
5 SHOULD YOU FIND BEYOND A REASONABLE DOUBT THE
6 EXISTENCE OF AN AGGRAVATED CIRCUMSTANCE OR
7 CIRCUMSTANCES, YOU WOULD THEN BE AUTHORIZED TO
8 CONSIDER RECOMMENDING THE DEATH PENALTY. IN YOUR
9 DELIBERATIONS YOU WILL CONSIDER ANY STATUTORY OR
10 NONSTATUTORY MITIGATING CIRCUMSTANCES WHICH ARE
11 SUPPORTED BY THE EVIDENCE. YOU WILL CONSIDER THE
12 AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES YOU FIND
13 AND THE MITIGATING CIRCUMSTANCES YOU FIND, AND YOU
14 WILL THEN DECIDE WHETHER YOU WILL RECOMMEND THE
15 DEATH PENALTY OR LIFE IMPRISONMENT WITHOUT PAROLE.
16 YOU MAY ALSO CONSIDER ANY OTHER FACT IN MITIGATION
17 OF THE OFFENSE, AND YOU CAN RECOMMEND A SENTENCE OF
18 LIFE IN PRISON FOR NO REASON AT ALL. IF YOU DECIDE
19 TO RECOMMEND THE DEATH PENALTY, YOU WILL COMPLETE
20 THE PROPER FORM. YOU MUST WRITE OUT THE
21 AGGRAVATING CIRCUMSTANCE YOU FIND, AND ALL TWELVE
22 JURORS MUST SIGN THE RECOMMENDATION. SHOULD YOU
23 DECIDE TO RECOMMEND LIFE IMPRISONMENT WITHOUT
24 PAROLE, ONLY THE FORELADY MUST SIGN THE
25 RECOMMENDATION, AND NO REASON IS TO BE GIVEN FOR

CHARGE TO THE JURY

YOUR DECISION.

WHATEVER YOUR RECOMMENDATION IS,
IT MUST BE A UNANIMOUS ONE. THAT IS TO SAY, I.E.
IT MUST BE THE VERDICT OF EACH AND EVERY JUROR.
YOUR SENTENCE AND RECOMMENDATION WILL BE FOLLOWED
BY THE COURT. IN CONSIDERING WHETHER TO RECOMMEND
WHETHER THE DEFENDANT IS TO BE SENTENCED TO DEATH
OR LIFE IMPRISONMENT WITHOUT PAROLE, I CHARGE YOU
THAT AS JURORS YOU MUST DECIDE THOSE ISSUES
INVOLVED IN THIS PROCEEDING WITHOUT BIAS AND
WITHOUT PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW
YOURSELVES TO BE GOVERNED BY MERE SYMPATHY, BY
PREJUDICE, BY PASSION, BY PUBLIC OPINION, OR ANY
OTHER ARBITRARY FACTOR. BOTH THE STATE AND THE
DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF YOU
WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE
EVIDENCE IN THE CASE AND YOU WILL FOLLOW THE LAW AS
I HAVE JUST EXPLAINED IT TO YOU IN DETERMINING AND
ARRIVING AT YOUR RECOMMENDATION TO THE COURT.

NOW AT THIS TIME, MR. THIRTEENTH
JUROR, MY REGULAR TWELVE, ALL FEEL HEALTHY,
WEALTHY, AND WISE; I'M GOING TO ASK YOU TO REMAIN
SEATED OR STAND AT THE END SO THE OTHERS CAN GET
OUT. AND THEN I'M GOING TO SEND THE BALANCE OF THE
JURY TO THE JURY ROOM. PLEASE DO NOT BEGIN YOUR

CHARGE TO THE JURY

1 DELIBERATIONS UNTIL I SEND THE DOCUMENTS IN TO YOU
2 INCLUDING THESE -- AS A MATTER OF FACT, I'M GOING
3 TO -- WELL, I'LL SEND THESE FORMS OF VERDICT AND
4 OTHER THINGS IN TO YOU, AND THEN YOU MAY COMMENCE
5 YOUR DELIBERATIONS. AND LADIES AND GENTLEMEN, I
6 REALIZE THAT IT'S NOW TWENTY MINUTES OF EIGHT. AND
7 IF Y'ALL WOULD LIKE TO ORDER ANY FOOD TO BE BROUGHT
8 IN, LET US KNOW. I'VE TOLD YOU REPEATEDLY, I DON'T
9 WANT TO HURRY UP; I DON'T WANT TO SLOW YOU DOWN.
10 BUT IF Y'ALL DECIDE THAT YOU WANT TO CEASE YOUR
11 DELIBERATIONS AND RETIRE FOR THE EVENING AND START
12 BACK IN THE MORNING, PLEASE JUST SEND WORD TO US.
13 SO YOU'RE EXCUSED TO GO TO YOUR ROOM. DO NOT
14 COMMENCE YOUR DELIBERATIONS UNTIL I SEND THE
15 EXHIBITS AND THESE FORMS IN TO YOU. THANK YOU SO
16 MUCH.

17 (WHEREUPON AT 7:40 P.M. JURY RETIRES TO JURY ROOM.)

18 THE COURT: MR. THIRTEENTH ALTERNATE
19 JUROR, PLEASE, YOU ARE UNDER THE CONTINUING
20 ADMONITION NOT TO DISCUSS THIS CASE WITH ANYONE OR
21 NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY
22 INFORMATION ABOUT IT FROM ANY SOURCE, WHETHER IT BE
23 THE NEWSPAPER, T.V., RADIO, OR OTHERWISE. AND I'M
24 GOING TO LET YOU GO AT THIS TIME TO GO BACK TO YOUR
25 ROOM, ENJOY YOUR T.V. OR WHATEVER YOUR PLEASURE MAY

CHARGE TO THE JURY

1 BE; AND WE'LL BE IN TOUCH WITH YOU. AND I ASSUME
2 AS IN THE OTHER CASE THAT YOU'D LIKE TO BE CALLED
3 IN. THANK YOU SO MUCH. AND PLEASE, MA'AM, PLEASE
4 ARRANGEMENTS FOR THIS GENTLEMAN TO BE PROPERLY FED.
5 BUT, I DON'T KNOW; THEY MAY BRING THE FOOD IN. GET
6 THEM TO ORDER YOU SOMETHING.

7 NOW, GENTLEMEN, I UNDERSTAND THAT
8 I STILL HAVE TO PUT ON THE RECORD THE OBJECTIONS TO
9 THE CHARGES IN THE GUILT OR THE PENALTY PHASE. AT
10 THIS TIME ARE THERE ANY OBJECTIONS OR ADDITIONAL
11 REQUESTS TO CHARGE BY THE STATE?

12 MR. BAILEY: NONE FROM THE STATE.

13 THE COURT: BY THE DEFENDANT?

14 MR. THEOS: NO, SIR.

15 THE COURT: ALL RIGHT, THEN. MA'AM,
16 IF YOU WOULD -- GENTLEMEN, COULD YOU COME FORWARD
17 AND MAKE SURE THE EXHIBITS ARE IN ORDER? AND LET
18 ME AGAIN -- LET ME AGAIN GET Y'ALL TO LOOK AT
19 THESE. ALL RIGHT. WOULD YOU ALL LIKE FOR ME TO
20 INSTRUCT THOSE AGAIN NOT TO DISCUSS THE CASE OR
21 DELIBERATE UNTIL IN THE MORNING; JUST BRING THEM
22 BACK IN?

23 MR. BAILEY: I DON'T, JUDGE.

24 THE COURT: I MEAN, I'VE INSTRUCTED
25 THEM MANY TIMES NOT TO EXPOSE THEMSELVES, OR

CHARGE TO THE JURY

1 WHATEVER.

2 (BRIEF RECESS.)

3 THE COURT: ALL RIGHT. SO, MADAM
4 COURT REPORTER, THE JURY BY WORD OF LT. CAPTAIN,
5 MAJOR, LIEUTENANT, COLONEL EDWARDS HAS ADVISED THE
6 COURT THAT THE JURY INDICATED TO HIM THAT THEY WISH
7 TO RETIRE TO THEIR LIVING QUARTERS FOR THE EVENING
8 AND TO COMMENCE THE DELIBERATIONS AT NINE O'CLOCK
9 IN THE MORNING. AND I YIELD TO THE REQUEST OF THE
10 JURY. AND SO AT THIS TIME GENERAL EDWARDS, IF YOU
11 WOULD ADVISE THEM THAT THE EXHIBITS WILL BE IN THE
12 JURY ROOM FOR THEM AT NINE O'CLOCK AND THESE
13 VERDICT FORMS AND TO PLEASE REMEMBER THE JUDGE'S
14 INSTRUCTION NOT TO DELIBERATE TONIGHT AND NOT TO
15 TALK TO ANYBODY ABOUT THE CASE OR LET ANYBODY
16 INFLUENCE THEN. AND YOU MAY WANT TO LET THAT
17 THIRTEENTH JUROR WE JUST SENT BACK SO HE WON'T BE A
18 LONESOME DOVE; IF HE WOULD LIKE TO JOIN THEM FOR
19 DINNER, HE IS WELCOME TO DO THAT.

20 MR. EDWARDS: THANK YOU, JUDGE.

21 THE COURT: THANK YOU. AND HAVE
22 THEM HERE AT NINE O'CLOCK IN THE MORNING. THAT
23 WILL BE FINE. WHO NOW IS GOING TO BE RESPONSIBLE,
24 MADAM CLERK, AT A QUARTER TO NINE IN THE MORNING,
25 CAN I HAVE YOU PLACE THESE EXHIBITS HERE -- MADAM

CHARGE TO THE JURY

1 COURT REPORTER, ARE YOU GOING TO TURN THEM OVER TO
2 THE CLERK?

3 THE COURT REPORTER: YES, SIR.

4 THE COURT: AND THESE ARE THOSE FOUR
5 FORMS TO GIVE TO THEM. AND IN THE MEANTIME, IF ANY
6 OF Y'ALL -- THE JURY HAS ALREADY ASKED FOR SOME OF
7 THOSE WHITE LONG SHEETS THAT THEY HAD. AND WE HAVE
8 ONLY ONE THAT'S NOT MARKED ON. AND I DON'T THINK
9 WE SHOULD SEND THEM ANY EXHIBITS SHOWING A HAND AND
10 DISSECTION OF IT FROM A CIVIL CASE TO THEM. AND OF
11 COURSE THEY CAN WRITE ON THE BACK SIDE OF THIS IF
12 THEY'D LIKE. BUT Y'ALL CHECK YOUR OFFICE AND SEE
13 IF YOU DON'T HAVE SOME OF THAT LONG PAPER SO THAT
14 -- YOU KNOW, IT'S IN TABLET FORM. IT'S NOT THAT
15 EXPENSIVE.

16 MR. BAILEY: THERE SHOULD BE SOME UP
17 HERE SOMEWHERE, JUDGE.

18 THE COURT: BUT WE HAVEN'T FOUND IT
19 YET. SO IF Y'ALL WOULD LOOK AROUND; AND IF YOU CAN
20 FIND, IT GIVE IT TO THE SHERIFF AND MS. CHERYL BY A
21 QUARTER 'TIL NINE. AND GENTLEMEN, WHY DON'T WE GO
22 AHEAD -- AND I KNOW EVERYBODY IS TIRED. BUT WHY
23 DON'T WE GO AHEAD AND TAKE A TEN MINUTE RECESS.
24 AND LET'S GO AHEAD AND THESE CHARGES, REQUESTS TO
25 CHARGE, AND EXCEPTIONS AND THINGS ON THE RECORD.

CHARGE TO THE JURY

1 THERE'S NO NEED TO WAIT TO DO THAT TOMORROW, IS
2 THERE? OR DO YOU WANT TO WAIT AND DO IT TOMORROW?

3 MR. BAILEY: IT DOESN'T MATTER TO ME.

4 MR. THEOS: WHATEVER YOU WANT TO DO,
5 JUDGE.

6 THE COURT: WELL, WE'RE GOING TO BE
7 HERE A WHILE TOMORROW. SO I RECKON WE JUST AS WELL
8 WAIT AND DO IT TOMORROW. WE'LL DO THAT. WE'LL
9 WAIT AND DO IT TOMORROW. AND I NEED TO GET ON THE
10 RECORD, GENTLEMEN, YOU AND MR. BELL'S
11 QUALIFICATIONS AND WHEN YOU WERE ADMITTED TO THE
12 BAR, YOUR BAR NUMBER, AND CERTIFIED AND SO FORTH.
13 ANYTHING ELSE Y'ALL WANT TO PUT ON THE RECORD?

14 MR. THEOS: YES, SIR.

15 THE COURT: ALL RIGHT, LADIES AND
16 GENTLEMEN, AND ALL; MAY I PLEASE THANK YOU. AND I
17 REALLY WANT TO WAIT AND SEE IF THE JURY IS GONE YET
18 BECAUSE I DON'T WANT US TO SCATTER UNTIL THAT JURY
19 IS GONE. LET'S JUST WAIT A MINUTE, PLEASE. LADIES
20 AND GENTLEMEN, THANK YOU. YOU HAVE A SAFE TRIP
21 HOME. COURT WILL CONVENE AT NINE O'CLOCK IN THE
22 MORNING.

23 (WHEREUPON AT 7:50 P.M. COURT WAS ADJOURNED FOR THE
24 EVENING.)
25

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MOTIONS

TUESDAY, MARCH 2, 1999

(WHEREUPON AT 9:00 A.M. JURY CONTINUES
DELIBERATIONS.)

THE COURT: MADAM COURT REPORTER,
PLEASE MA'AM, MR. MILFORD E. CARTER IS HERE BEFORE
THE BENCH. HE IS THE REMAINING ALTERNATE JUROR,
ORIGINALLY ALTERNATE NUMBER THREE. THE JURY HAS
BEEN INSTRUCTED AND CHARGED IN THE PENALTY PHASE,
AND THEY'RE NOW DELIBERATING. AND I WANTED TO FIND
OUT FROM MR. CARTER IF HE WOULD LIKE TO -- WE WANT
TO MAKE YOU AS COMFORTABLE AS POSSIBLE. IF YOU'D
LIKE TO SIT IN THE COURTROOM, YOU MAY DO THAT IN
THE JURY BOX HERE. OR THERE'S ANOTHER JURY ROOM IN
THE BACK THAT YOU CAN SIT IN. OR YOU CAN REMAIN AT
THE MOTEL AND WATCH T.V.

MR. CARTER: I'LL STAY.

THE COURT: WHERE WOULD YOU LIKE TO
STAY?

MR. CARTER: I'LL STAY HERE.

THE COURT: IN THE COURTROOM OR IN
THE JURY ROOM?

MR. CARTER: BACK THERE.

THE COURT: BACK IN THE JURY ROOM.

MOTIONS

1 ALL RIGHT. SO, MR. CARTER, AS I TOLD YOU ON
2 YESTERDAY, PLEASE DON'T ALLOW YOURSELF TO BE
3 EXPOSED TO ANYTHING ABOUT THIS CASE OR DISCUSS IT
4 WITH ANYONE OR ALLOW ANYONE TO DISCUSS IT WITH YOU
5 IN YOUR PRESENCE. AND WE MAY -- HOPEFULLY THE
6 REMAINING TWELVE JURORS WILL REMAIN HEALTHY,
7 WEALTHY AND WISE. BUT IN THE EVENT THAT WE DID
8 NEED TO CALL YOU IN SERVICE, WE WOULD NEED YOU TO
9 BE IN A POSTURE TO WHERE YOU HAVEN'T DISCUSSED THE
10 CASE WITH ANYONE. AND THANK YOU FOR BEING WITH
11 US. AND Y'ALL TAKE GOOD CARE OF HIM.

12 MR. CARTER: THANK YOU.

13 (WHEREUPON AT 9:00 A.M. JURY CONTINUES
14 DELIBERATIONS.)

15 - - - - -

16 THE COURT: ALL RIGHT, LIEUTENANT,
17 IF YOU WOULD HAVE MY ALTERNATE JUROR MOVE ON THE
18 OTHER SIDE FOR THE MOMENT BECAUSE THE JURY, AS YOU
19 INDICATED, WANTED TO BE RECHARGED ON C.S.C.?

20 MR. EDWARDS: YES, SIR.

21 THE COURT: MADAM COURT REPORTER,
22 LET THE RECORD REFLECT, PLEASE, THAT THE DEFENDANT
23 IS PRESENT WITH HIS COUNSEL; THE STATE REPRESENTED
24 BY SOLICITOR BAILEY, ET AL. AND THE JURY HAS
25 REQUESTED THE COURT TO RECHARGE ON CRIMINAL SEXUAL

MOTIONS

1 CONDUCT WHICH IS OF COURSE IN THE FIRST DEGREE. SO
2 WE'LL BRING THEM IN AT THIS TIME AND PERFORM THAT
3 FUNCTION.

4 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

5 THE COURT: GOOD MORNING, LADIES AND
6 GENTLEMEN. THANK YOU KINDLY FOR BEING HERE AT 8:30
7 THIS MORNING. YOU WERE THIRTY MINUTES AHEAD OF
8 TIME. YOU'RE VERY PUNCTUAL. I UNDERSTOOD FROM LT.
9 EDWARDS THAT YOU, LADIES AND GENTLEMEN, WISH TO
10 HAVE THE COURT REDEFINE OR RECHARGE THE LAW OF
11 CRIMINAL SEXUAL CONDUCT?

12 THE FORELADY: NO; IT WASN'T THAT.

13 THE COURT: NO? WHERE IS LT.
14 EDWARDS?

15 MR. EDWARDS: RIGHT HERE, SIR.

16 THE COURT: ALL RIGHT. EXCUSE ME,
17 THEN, MA'AM.

18 THE FORELADY: IT WAS CRIMINAL
19 SEXUAL ASSAULT AND DOMESTIC VIOLENCE.

20 THE COURT: ALL RIGHT. LET ME KEEP
21 YOU SEATED AND CONFER WITH THE ATTORNEYS FOR ONE
22 MINUTE, PLEASE. GENTLEMEN, COULD I SEE YOU FOR A
23 MOMENT?

24 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

25 THE COURT: EXCUSE US, PLEASE, FOR

MOTIONS

1 THE DELAY MADAM FORELADY AND LADIES AND GENTLEMEN
2 OF THE JURY. UNDER THE CONSTITUTION OF THIS STATE,
3 THE TRIAL JUDGE IS NOT ALLOWED TO COMMENT ON THE
4 FACTS OF A CASE. THE ATTORNEYS, HOWEVER, HAVE
5 STIPULATED THE FOLLOWING WAS IN EVIDENCE IN THE
6 GUILT PHASE; AND I QUOTE: "THE DEFENDANT WAS IN
7 THE RICHLAND COUNTY DETENTION CENTER ON A
8 SHOPLIFTING CHARGE." AND THAT'S IN RESPONSE,
9 MA'AM, TO YOUR WRITTEN INQUIRY. WHAT WAS THE ACT
10 COMMITTED IN '97 THAT LED TO THE ARREST. SO I'M
11 GOING TO SEND YOU BACK TO YOUR ROOM AND ASK YOU TO
12 CONTINUE YOUR DELIBERATIONS. IF YOU HAVE FURTHER
13 INQUIRY OF THE COURT, ALWAYS PLEASE WRITE IT OUT ON
14 A SHEET OF PAPER AND PASS IT OUT TO THE BAILIFF,
15 AND THE BAILIFF WILL GIVE IT TO ME. THANK YOU.
16 AND OBVIOUSLY, MA'AM, THERE SHOULD BE COFFEE, SOFT
17 DRINKS. IF YOU HAVE ANY NEEDS, PLEASE LET US
18 KNOW. THANK YOU.

19 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

20 THE COURT: MR. THIRTEENTH ALTERNATE
21 JUROR; I'M GOING TO HAVE TO SEND YOU BACK TO THE
22 OTHER LITTLE JURY ROOM THERE. Y'ALL MAKE HIM
23 COMFORTABLE, PLEASE SIR. SO GENTLEMEN, I AM GOING
24 TO AT THIS TIME PLACE WITH THE COURT REPORTER AND
25 ASK HER TO MAKE THIS A COURT'S EXHIBIT. AND THE

MOTIONS

NUMBER WILL BE?

THE COURT REPORTER: NUMBER FOUR.

THE COURT: FOUR; AND THEN FIVE IS
THE INSTRUCTION I GAVE TO THE JURY AS REGARDS THE
STIPULATION. WE'LL JUST MAKE THAT NUMBER FIVE.
ANY OBJECTION BY THE STATE; OR ANY OBJECTION BY THE
DEFENDANT?

COURT'S EXHIBIT NOS. 4 & 5

MARKED FOR IDENTIFIATION

MR. BAILEY: NO, SIR.

THE COURT: ANY OBJECTION BY THE
DEFENDANT?

MR. THEOS: NO, SIR.

THE COURT: ALL RIGHT. AND
GENTLEMEN, SHALL WE WAIT UNTIL WE RECEIVE THIS
OTHER INFORMATION BEFORE WE DISCUSS ANYTHING
FURTHER FOR THAT; UNDERSTANDING THE RECORD IS
ALWAYS OPEN FOR ANY OBJECTION, ANY MOTION, OR
ANYTHING THAT YOU GENTLEMEN FEEL IS PERTINENT.

MR. THEOS: YES, SIR.

THE COURT: AND IF Y'ALL WOULD,
WOULD YOU BE GETTING YOUR RECORDS TOGETHER ON YOUR
REQUESTS TO CHARGE BECAUSE I'M GOING TO BE GETTING
MINE TOGETHER. WE NEED TO PUT THAT IN THE RECORD.
WE ALSO, MR. BELL AND MR. THEOS, NEED TO PUT IN THE

MOTIONS

1 QUALIFICATIONS RELATIVE TO A DEATH PENALTY
2 QUALIFIED ATTORNEYS, YOUR BAR NUMBER, DATE OF
3 ADMISSION, YOUR EXPERIENCE IN FELONY CASES, DEATH
4 PENALTY CASES, LEAD COUNSEL, SECOND CHAIR,
5 OTHERWISE, PLEASE. THANK YOU. COURT WILL STAND AT
6 EASE.

7 (RECESS.)

8 - - - - -

9 THE COURT: READY, GENTLEMEN?

10 MR. BAILEY: THE STATE'S READY, YOUR
11 HONOR.

12 MR. THEOS: YES, SIR.

13 THE COURT: MADAM COURT REPORTER,
14 PLEASE AT THIS TIME THE COURT AND THE ATTORNEYS
15 WILL MAKE A RECORD AS TO THE REQUEST TO CHARGE BY
16 THE STATE AND THE DEFENDANT AS TO THE GUILT PHASE
17 AS WELL AS TO THE PENALTY PHASE. AND AGAIN I WANT
18 THE RECORD TO REFLECT THAT I DO THANK THE LAWYERS
19 FOR THEIR RESEARCH, FOR THEIR PREPARATION, FOR
20 THEIR SHARING OF INFORMATION TO THE COURT RELATIVE
21 TO THE REQUEST TO CHARGE. AND I INVITE YOU AS I
22 PROCEED THROUGH THESE TO PLEASE AS WE ARE SPEAKING
23 ABOUT A PARTICULAR CHARGE, WHETHER FROM THE STATE
24 OR THE DEFENDANT, I INVITE AND ENCOURAGE EACH OF
25 YOU TO STAND -- OR YOU DON'T EVEN HAVE TO STAND,

CONFERENCE ON REQUESTS TO CHARGE

1 BUT TO ADDRESS THE COURT SO THAT WE CAN WHILE WE'RE
2 SPEAKING ABOUT NUMBER 27, LET'S TALK ABOUT 27
3 RATHER THAN GOING THROUGH THIRTY-THREE REQUESTS FOR
4 THE DEFENDANT AND NINE REQUESTS FOR THE STATE, OR
5 WHATEVER, THEN TO COME BACK TO IT. IT WOULD BE
6 MUCH EASIER IF WE DID IT AS WE WERE PROCEEDING.
7 AND, GENTLEMEN, EACH OF YOU HAVE YOUR NUMBERED
8 REQUESTS. SO I ASSUME THAT YOU AGREE RATHER THAN
9 DETAILING IN THE RECORD WHAT THE CHARGE IS ABOUT
10 UNLESS YOU DISAGREE WITH ANYTHING I SAY AS TO WHAT
11 THE RULING WAS OR THE CHARGE WAS, THAT WE CAN JUST
12 REFER SIMPLY TO THE REQUEST BY THE STATE OR THE
13 DEFENDANT, OKAY?

14 MR. BAILEY: YES, SIR.

15 MR. THEOS: YES, SIR.

16 THE COURT: AND ON THE STATE'S
17 REQUEST TO CHARGE NUMBER ONE, THAT WAS AGREED TO
18 AND CHARGED. STATE'S NUMBER TWO WAS INCLUDED IN
19 THE GENERAL CHARGE OF THE COURT. AND THE DEFENDANT
20 DID INTERPOSE AN OBJECTION THERETO; STATE VS.
21 CANARINS, KIDPNAPPING---

22 MR. BAILEY: YES, SIR; THAT'S
23 CORRECT; YES, SIR.

24 THE COURT: STATE'S NUMBER THREE;
25 THERE WAS NO OBJECTION. AND GENTLEMEN, BECAUSE

CONFERENCE ON REQUESTS TO CHARGE

1 I'VE USED SOME OF THE CHARGES IN ONE AND SOME IN
2 THE OTHER, I'M NOT GOING PRECISELY IN CHRONOLOGICAL
3 SEQUENCE. BUT PUT A CHECK-MARK BY THOSE WE'VE GONE
4 THROUGH. THE STATE'S NUMBER SIX WAS CHARGED
5 WITHOUT OBJECTION. THEN, GENTLEMEN, AS TO THE
6 CHARGES OF THE DEFENDANT, THE DEFENDANT'S NUMBER
7 ONE WITHDRAWN; NUMBER TWO WITHDRAWN. AND AGAIN I
8 THINK THIS IS ALREADY IN THE RECORD THAT, FOR
9 EXAMPLE ON NUMBER TWO, THE DEFENDANT'S RIGHT NOT TO
10 TESTIFY OFTEN TIMES, AND MOST OF THE TIME, THESE
11 WERE WITHDRAWN BECAUSE THE COURT CHARGED THE
12 GENERAL LAW, AND THE COURT'S USUAL CHARGE ON THE
13 DEFENDANT'S RIGHT TO TESTIFY WHICH MET THAT WHICH
14 THE REQUEST THE DEFENDANT WANTED; AND FOR THAT
15 REASON IT WAS WITHDRAWN. NUMBER FOUR IS THE
16 GENERAL CHARGE. IT WAS CHARGED. NUMBER FIVE CASE
17 VS. LOUISIANA -- YES, SIR?

18 MR. THEOS: YOUR HONOR, NUMBER
19 THREE.

20 THE COURT: I UNDERSTAND. I'VE GOT
21 THEM SEPARATED OUT HERE IN A CERTAIN STACK. SO YOU
22 REMIND ME TO COME BACK TO THREE. NUMBER FIVE WAS
23 CHARGED. NUMBER SEVEN WAS WITHDRAWN. NUMBER EIGHT
24 WAS INCLUDED IN MY GENERAL CHARGE DURING THE OFFER
25 BY THE STATE OF THE ALLEGED STATEMENT OR

CONFERENCE ON REQUESTS TO CHARGE

1 CONFESSION; AND THAT WAS CHARGED IN GENERAL, TOO,
2 BY THE COURT AT THE TIME OF THE ADMISSION. NUMBER
3 TEN WAS WITHDRAWN. NUMBER TWELVE WAS WITHDRAWN.
4 AGAIN THAT'S WHERE THE ATTORNEYS FOR BOTH SIDES
5 AGREED TO ACCEPT THE EXPERT TESTIMONY CHARGE OF THE
6 COURT.

7 MR. THEOS: YOUR HONOR, WITH RESPECT
8 TO THE INITIAL CHARGE AT THE TIME OF ADMISSION; I
9 HAVE NUMBERED EIGHT THAT YOU DID YOUR GENERAL
10 CHARGE. I WOULD SIMPLY TAKE EXCEPTION TO THE WORD
11 "INTELLIGENTLY" NOT BEING REFERENCED. THERE WAS A
12 GENERAL CHARGE, I BELIEVE, REGARDING A KNOWING AND
13 VOLUNTARY WAIVER. AND AGAIN WE TAKE EXCEPTION TO
14 THE TERMINOLOGY.

15 THE COURT: ALL RIGHT. I THINK THE
16 RECORD WILL REFLECT THAT THERE WAS AN EXCEPTION TO
17 THE CHARGE AT THE END OF THE CASE ON THAT. BUT
18 THERE WAS NOT AN EXCEPTION AS I RECALL AT THE TIME
19 THE CHARGE WAS GIVEN BY THE COURT. BUT THE RECORD
20 WILL REFLECT WHATEVER IT REFLECTS. NUMBER TWELVE
21 EXPERT TESTIMONY WAS WITHDRAWN. NUMBER 13
22 WITHDRAWN GENERAL. AND NUMBER 16 WAS WITHDRAWN.
23 NOW NUMBER 16-A WHICH IS A SHORT CHARGE; ROBBERY IS
24 A LESSER INCLUDED OFFENSE OF ARMED ROBBERY. THE
25 COURT DECLINED TO SUBMIT TO THE JURY LESSER

CONFERENCE ON REQUESTS TO CHARGE

1 INCLUDED OFFENSES OF BOTH ROBBERY AND LARCENY,
2 THOSE BEING PART AND PARCEL OF THE ELEMENTS OF
3 ARMED ROBBERY. BUT IT WAS EITHER ARMED ROBBERY OR
4 NOTHING. BUT NOTE THE OBJECTION TO THAT OF THE
5 DEFENDANT. IT'S GOOD LAW, BUT IT JUST WASN'T
6 APPLICABLE TO THE UNCONTRADICTED FACTS IN VIEW OF
7 THE COURT. NUMBER SEVENTEEN WAS WITHDRAWN.
8 EIGHTEEN WAS WITHDRAWN. NINETEEN WAS WITHDRAWN.
9 TWENTY WAS WITHDRAWN. TWENTY-ONE WAS WITHDRAWN.
10 TWENTY-TWO, WITHDRAWN. TWENTY-THREE, WITHDRAWN.
11 TWENTY-FOUR, WITHDRAWN. TWENTY-FIVE, WITHDRAWN.
12 TWENTY-SIX, TWENTY-SEVEN WERE WITHDRAWN. AND
13 TWENTY-EIGHT WAS WITHDRAWN. NUMBERS THIRTY AND
14 THIRTY-ONE WERE WITHDRAWN BY THE DEFENDANT. ALL
15 RIGHT, GENTLEMEN; LET'S GO TO CHAMBERS. WE'LL GET
16 BACK TO THEM LATER, MA'AM.
17 (WHEREUPON AT 10:10 JURY COMES INTO OPEN COURT
18 WITH A QUESTION.)

19 THE COURT: GENTLEMEN, WHILE THE
20 JURY IS WAITING, LET ME JUST PUT IN THE RECORD HERE
21 THAT THE ORDER OF APPOINTMENT OF COUNSEL -- THERE
22 IS AN ORDER HERE WHERE ON JANUARY THE 22ND -- (AT
23 THIS TIME DEFENDANT COMES INTO COURTROOM.) ALL
24 RIGHT. THANK YOU. BE SEATED, PLEASE. WHY WAS HE
25 OUT OF THE COURTROOM, SMITTY?

CONFERENCE ON REQUESTS TO CHARGE

1 MR. SMITH: HE WAS IN THE BACK.

2 THE COURT: WHO TOLD YOU TO TAKE HIM
3 OUT?

4 MR. SMITH: WHEN WE TOOK A BREAK, WE
5 TOOK HIM OUT.

6 THE COURT: WELL, UNLESS HE NEEDS
7 TO EXCUSE HIMSELF, JUST KEEP HIM SITTING THERE,
8 PLEASE.

9 MR. SMITH: YES, SIR.

10 THE COURT: BRING THEM IN.

11 (AT THIS TIME JURY RETURNS TO OPEN COURT WITH A
12 QUESTION.)

13 THE COURT: MADAM FORELADY AND
14 LADIES AND GENTLEMEN, I HAVE RECEIVED YOUR
15 COMMUNICATION. AND WHAT EXHIBIT NUMBER WILL THAT
16 BE?

17 COURTS EXHIBIT NO. 6

18 MARKED FOR IDENTIFICATION

19 THE COURT REPORTER: NUMBER SIX.

20 THE COURT: COURT'S NUMBER SIX;
21 THANK YOU. AND THAT IS COURT'S EXHIBIT NUMBER SIX
22 FOR THE RECORD.

23 THE COURT: MADAM FOREMAN AND LADIES
24 AND GENTLEMEN. THANK YOU. I HAVE RECEIVED YOUR
25 COMMUNICATION. I HAVE PLACED IT WITH THE COURT

CONFERENCE ON REQUESTS TO CHARGE

1 REPORTER; AND THAT IS COURT'S EXHIBIT NUMBER SIX
2 FOR THE RECORD. NOW, MA'AM AND LADIES AND
3 GENTLEMEN, I REPEAT TO YOU AGAIN THAT BY
4 CONSTITUTIONAL LAW AND STATUTORY LAW AND CASE LAW
5 AND COMMON LAW THAT THE COURT IS NOT ALLOWED TO
6 COMMENT ON THE FACTS THE FACT. FURTHER I INSTRUCT
7 YOU THAT YOU ARE ONLY ALLOWED TO CONSIDER THAT
8 WHICH IS IN EVIDENCE IN THE TRIAL OF THE CASE. YOU
9 MUST NOT SPECULATE OR ENGAGE IN CONJECTURE ABOUT
10 SOMETHING THAT IS NOT IN EVIDENCE IN THE CASE
11 BECAUSE YOU MUST DECIDE THE CASE UNDER YOUR OATH
12 BASED UPON THE EVIDENCE IN THE RECORD, ANY
13 TESTIMONY AND ANY EXHIBITS. I INSTRUCT YOU
14 FURTHER, MADAM FORELADY AND LADIES AND GENTLEMEN,
15 THAT CODE SECTION 16-25-10 OF OUR SOUTH CAROLINA
16 CODE OF LAWS AS AMENDED PROVIDES AS FOLLOWS; AND I
17 QUOTE: "AS USED IN THIS ARTICLE, HOUSEHOLD MEMBER
18 MEANS SPOUSES, FORMER SPOUSES, PARENTS AND
19 CHILDREN, PERSONS RELATED BY CONSANGUINITY OR
20 AFFINITY WITHIN THE SECOND DEGREE PERSONS WHO HAVE
21 A CHILD IN COMMON AND A MALE AND FEMALE WHO ARE
22 COHABITING OR FORMERLY HAVE COHABITED." THAT IS THE
23 DEFINITION OF HOUSEHOLD MEMBER UNDER THE LAW.
24 SECTION 16-25-20 PROVIDES "IT IS UNLAWFUL TO (1);
25 CAUSE PHYSICAL HARM OR INJURY TO A PERSON'S OWN

CONFERENCE ON REQUESTS TO CHARGE

1 HOUSEHOLD MEMBER; (2) OFFER OR ATTEMPT TO CAUSE
2 PHYSICAL HARM OR INJURY TO A PERSON'S OWN HOUSEHOLD
3 MEMBER WITH APPARENT PRESENT ABILITY UNDER
4 CIRCUMSTANCES REASONABLY CREATING FEAR OF IMMINENT
5 PERIL AND;" I FURTHER CHARGE YOU THAT UNDER SECTION
6 16-25-30 THAT CRIMINAL DOMESTIC VIOLENCE IS A
7 MISDEMEANOR IN SOUTH CAROLINA. SO WITH THAT,
8 LADIES AND GENTLEMEN, YOU ARE EXCUSED TO RETURN TO
9 YOUR ROOM TO COMMENCE YOUR DELIBERATIONS. AND
10 PLEASE NOW, MA'AM, IF Y'ALL HAVE ANY COMMUNICATION,
11 DON'T BE RELUCTANT TO WRITE THEM AND SEND THEM TO
12 ME BECAUSE WHEN I CAN HELP YOU, I WANT TO HELP
13 YOU. BUT YOU JUST MUST UNDERSTAND THAT I HAVE AN
14 OATH, AND I HAVE A RESPONSIBILITY AND PARAMETERS.
15 THANK YOU.

16 (WHEREUPON AT 10:30 JURY RETIRES TO JURY ROOM FOR
17 FURTHER DELIBERATIONS.)

18 THE COURT: ARE THERE ANY EXCEPTIONS
19 OR ADDITIONAL REQUESTS FROM THE STATE?

20 MR. BAILEY: NOT FROM THE STATE.

21 THE COURT: FROM THE DEFENDANT?

22 MR. THEOS: YOUR HONOR, WE HAD
23 REQUESTED THAT IN THAT INSTRUCTION IN RESPONSE TO
24 THE QUESTION OF THE JURY THAT THEY ALSO BE
25 INSTRUCTED AS TO THE PENALTY. AND YOU HAD

CONFERENCE ON REQUESTS TO CHARGE

1 INDICATED IN CHAMBERS YOU WOULD NOT SO CHARGE
2 THEM. AND WE WOULD SIMPLY TAKE EXCEPTION TO THAT.

3 THE COURT: CERTAINLY. AND THE
4 STATE OBJECTED TO THAT CHARGE BECAUSE I INDICATED
5 TO YOU I HAVE NO PROBLEM IN SHARING THE PENALTY
6 WITH THEM, BUT THE STATE IS CORRECT IN THEIR
7 OBJECTION THAT THE PENALTY IS NOT AN ELEMENT OF THE
8 OFFENSE. AND EXCEPT FOR A CAPITAL MURDER CASE, I'M
9 NOT AWARE OF ANY CASES, ANY CRIME IN SOUTH CAROLINA
10 IN WHICH THE JURY IS CHARGED OF THE PENALTY.

11 MR. THEOS: YES, SIR. AND I
12 UNDERSTAND THAT THE RECORDS RELATED TO THAT
13 CONVICTION HAVE NOT YET ARRIVED. SO I WOULD
14 RESERVE ANY COMMENT RELATED TO THAT CONVICTION
15 UNTIL WE HAVE AN OPPORTUNITY TO REVIEW THOSE.

16 THE COURT: CERTAINLY. I'LL PERMIT
17 A RECONVENING OF THIS PROCEEDING BECAUSE MY JOB IS
18 TO PROTECT THE RECORD, GENTLEMEN, FOR BOTH THE
19 STATE AND THE DEFENDANT. AND AFTER YOU'VE HAD A
20 TIME TO DIGEST, ANALYZE, AND DISCUSS THE
21 INFORMATION RELATIVE TO THE C.D.V. CONVICTION IN
22 THE SUMMERVILLE MUNICIPAL COURT, THEN CERTAINLY WE
23 WILL RECONVENE AND PUT ANYTHING ON THE RECORD THAT
24 YOU GENTLEMEN FOR THE STATE AND THE DEFENSE DEEM
25 APPROPRIATE. YES, SIR, MR. BELL?

CONFERENCE ON REQUESTS TO CHARGE

1 MR. BELL: NOTHING, YOUR HONOR.

2 THE COURT: ALL RIGHT, THEN

3 GENTLEMEN, SHALL WE PROCEED AT THIS TIME WITH THE
4 CONTINUATION IN THE RECORD RELATIVE TO ANY
5 OBJECTIONS THAT MAY HAVE BEEN INTERPOSED RELATIVE
6 TO THE CHARGES OF THE COURT? PLEASE, MADAM COURT
7 REPORTER, IN REGARD TO THE COURT CHARGING VOLUNTARY
8 INTOXICATION, THE LAW OF STATE VS. FURMAN VAUGHN
9 AND STATE VS. SCOTT; THE DEFENDANT OBJECTED TO THAT
10 BEING CHARGED DURING THE GUILT PHASE. AND THE
11 COURT NOTED HIS OBJECTION AND DID CHARGE VOLUNTARY
12 INTOXICATION IN THE GUILT PHASE. DURING THE
13 PENALTY PHASE THE RECORD WILL SPEAK FOR ITSELF AS
14 TO WHAT THE COURT DID INDEED CHARGE. BUT MY
15 RECOLLECTION WAS THAT I CHARGED THE JURY THAT
16 "LADIES AND GENTLEMEN, WHILE IN THE GUILT PHASE OF
17 THE CASE I HAD INSTRUCTED YOU THAT VOLUNTARY
18 INTOXICATION IS NEVER AN EXCUSE FOR OR A DEFENSE TO
19 THE COMMISSION OF A CRIME; THAT THE LAW IS THAT
20 EVIDENCE OF VOLUNTARY INTOXICATION IS A PROPER
21 MATTER FOR CONSIDERATION BY THE JURY IN MITIGATION
22 OR PUNISHMENT." AND, OF COURSE, THAT DISCLAIMER OR
23 EXPLANATION ABOUT MITIGATING COMES FROM STATE VS.
24 PEARCE, 346 S.E.2D 707. AND AGAIN, MR. THEOS AND
25 BELL, I DON'T MEAN TO SPEAK FOR YOU, BUT I'M JUST

CONFERENCE ON REQUESTS TO CHARGE

1 TRYING TO MOVE ON ALONG. AND MY UNDERSTANDING WAS
2 THAT THERE WAS NO OBJECTION TO THAT WHICH WAS
3 CHARGED DURING THE PENALTY PHASE RELATIVE TO
4 VOLUNTARY INTOXICATION BEING ALLOWED TO BE
5 CONSIDERED IN THE MITIGATION PHASE. IS THAT
6 CORRECT?

7 MR. THEOS: THAT'S CORRECT, YOUR
8 HONOR.

9 THE COURT: GENTLEMEN, EXCUSE ME FOR
10 THE INTERRUPTION. THE JURY WOULD LIKE TO HAVE A
11 TRANSCRIPT OF THE TESTIMONY OF DR. NICHOLS, THE
12 FIRST AND SECOND APPEARANCE. AND WE DO NOT HAVE A
13 TRANSCRIPT OF THAT. AND OBVIOUSLY THE JURY WOULD
14 BE PERMITTED TO LISTEN TO THE TESTIMONY. AND
15 ACCORDING TO MY NOTES IN THE PENALTY PHASE, DR.
16 NICHOLS TOOK THE STAND AT 11:15. THE NEXT WITNESS
17 JESSIE MAE WILSON, TOOK THE STAND AT 11:30. AND
18 REGARDING THE FIRST PHASE OF THE TRIAL, MY NOTES
19 REFLECT THAT DR. CLAY NICHOLS TESTIFIED -- HE GAVE
20 HIS TESTIMONY AT 5:27, AND THAT AT SIX O'CLOCK
21 CROSS TOOK PLACE, CROSS-EXAMINATION, AT 6:10.
22 THERE WAS RE-DIRECT ONLY BRIEFLY OF RE-DIRECT. SO
23 THAT TESTIMONY WAS APPROXIMATELY FORTY TO
24 FORTY-FIVE MINUTES ON THE GUILT PHASE. AND WOULD
25 IT BE THE PLEASURE OF YOU GENTLEMEN AT THIS TIME TO

CONFERENCE ON REQUESTS TO CHARGE

BRING THE JURY IN FOR THE PURPOSE OF LISTENING TO
DR. CLAY NICHOLS' TESTIMONY IN THE FIRST AND SECOND
PHASE OF THE TRIAL?

MR. BAILEY: YES, SIR, YOUR HONOR.

MR. THEOS: EVIDENTLY THAT'S WHAT
THEY REQUESTED.

THE COURT: AND GENTLEMEN AND
LADIES, WE MUST UNDERSTAND THIS COURT REPORTER'S
HANDS HAVE BEEN DOING A LOT OF WALKING HERE FOR THE
LAST TEN DAYS. AND IT WILL TAKE HER A FEW MINUTES
TO FIND THOSE ON THE TAPE. AND WE'LL MARK THIS
REQUEST HERE AS COURT'S NUMBER SEVEN, MA'AM?

THE COURT REPORTER: YES, SIR.

THE COURT: AND I'LL GIVE IT TO YOU
IN JUST A MINUTE BECAUSE I WANT TO BE ABLE TO READ
IT. BUT IF YOU'LL BE LOOKING AT THAT. AND
GENTLEMEN, IS THERE ANY OBJECTION TO THE LIEUTENANT
GOING TO THE JURY ROOM AND TELLING THEM TO PLEASE
BEAR WITH US; WE'RE LOCATING THE TAPE OF THAT ON
THE RECORD, AND WE'LL BRING THEM IN VERY BRIEFLY?

COURT'S EXHIBIT NO. 7

MARKED FOR IDENTIFICATION

MR. BAILEY: NOT FROM THE STATE,
YOUR HONOR.

MR. THEOS: THAT'S FINE, YOUR HONOR.

CONFERENCE ON REQUESTS TO CHARGE

1 THE COURT: WOULD YOU EXPLAIN THAT
2 TO THEM; THAT WE ARE GOING TO BRING THEM INTO THE
3 COURTROOM TO HEAR THE TESTIMONY OF DR. CLAY NICHOLS
4 BUT TO PLEASE BARE WITH US BECAUSE WE HAVE TO
5 LOCATE IN THE SPECIFIC PORTION OF THE TAPE. AND
6 THEY MAY CONTINUE THEIR DELIBERATIONS. I DON'T
7 MEAN TO PUSH THEM. BUT I DON'T WANT THEM TO START
8 THE GAME OF TIDDLY-WINKS.

9 (BRIEF RECESS.)

10 (WHEREUPON AT 10:45 COURT RETURNS TO OPEN COURT TO
11 LISTEN TO THE TESTIMONY OF DR. CLAY NICHOLS.)

12 THE COURT: MADAM FORELADY AND
13 LADIES AND GENTLEMEN OF THE JURY; I HAVE RECEIVED
14 YOUR NOTE THAT YOU NEED A COPY OF THE TRANSCRIPT OF
15 TESTIMONY OF DR. NICHOLS' FIRST AND SECOND AND
16 APPEARANCE. I'VE MARKED THAT COURT'S EXHIBIT
17 NUMBER SEVEN. AND I REGRET THAT WE DON'T HAVE A
18 TYPED TRANSCRIPT OF THAT READY FOR YOU. BUT WE'VE
19 BEEN IN THE TRIAL OF THE CASE; AND SO IT'S NOT BEEN
20 TYPED. BUT THERE IS A BACK-UP MACHINE THAT'S
21 REQUIRED THAT HAS A RECORDING OF THAT TESTIMONY.
22 AND IT TOOK SOME TIME TO FIND THAT ON THE FIRST AND
23 SECOND OCCASION OF THE TESTIMONY. THE FIRST
24 TESTIMONY WAS ON WEDNESDAY, FEBRUARY 24TH, OF
25 1999. THAT WILL BE PLAYED FIRST. THE SECOND

CONFERENCE ON REQUESTS TO CHARGE

1 TESTIMONY WAS ON MARCH THE FIRST WHICH WAS
2 YESTERDAY, MONDAY THE FIRST ONE BEING WEDNESDAY OF
3 THE PREVIOUS WEEK. NOW, WE'RE HAPPY TO PROVIDE YOU
4 EVERYTHING THAT WE CAN PROVIDE YOU. AND WE WILL
5 PLAY THESE FROM BEGINNING TO END ON BOTH THE FIRST
6 AND THE SECOND TAPE. BUT WE DO NOT KNOW, AND WOULD
7 NOT ASK YOU, WHAT YOU'RE LOOKING FOR OR WHY YOU
8 WANT TO LISTEN. AND I TELL YOU THAT TO THAT YOU
9 MUST LOOK AT THE WHOLE PICTURE. BUT IF YOU GET TO
10 THE POINT WHERE YOU DO NOT NEED TO HEAR THE BALANCE
11 OF EITHER OF THE TAPES -- AND I DON'T MEAN TO
12 SUGGEST TO YOU NOT TO LISTEN TO THE FULL TAPE. I
13 INVITE YOU TO DO THAT. BUT YOU JUST SIGNAL TO ME
14 AND LET ME KNOW. AND IF AT ANY TIME ANY MEMBER OF
15 THE JURY PANEL CANNOT HEAR OR DISCERN THAT WHICH IS
16 BEING SAID ON THE TAPE, WE WILL ATTEMPT TO ADJUST
17 THE VOLUME OR TO DO WHATEVER. BUT LET ME KNOW IF
18 YOU'RE HAVING ANY TYPE OF PROBLEMS. SO AT THIS
19 TIME YOU MAY PROCEED, MA'AM, WITH THE PLAYING OF
20 THE TRANSCRIPT OF THE WEDNESDAY, FEBRUARY THE 24TH
21 WHICH WAS THE TESTIMONY IN THE GUILT PHASE, PLEASE.
22 (AT THIS TIME TESTIMONY OF DR. CLAY NICHOLS WAS
23 PLAYED FOR THE JURY.)

24 THE COURT: ALL RIGHT. Y'ALL ARE
25 EXCUSED TO GO TO YOUR ROOM TO CONTINUE YOUR

CONFERENCE ON REQUESTS TO CHARGE
DELIBERATIONS.

(WHEREUPON AT 11:28 P.M. JURY RETIRES TO JURY ROOM
FOR FURTHER DELIBERATIONS.)

THE COURT: LET ME EXCUSE THEM.
THEY HAVE ALREADY TAKEN THE -- LET THE RECORD
REFLECT THAT THE THIRTEENTH JUROR WAS PRESENT
DURING THE PLAYING OF DR. CLAY NICHOLS' TESTIMONY
DURING THE GUILT PHASE. ANYTHING FOR THE RECORD,
GENTLEMEN? ANY OBJECTION?

MR. BAILEY: NOT FROM THE STATE,
YOUR HONOR.

MR. THEOS: NO, SIR.

THE COURT: ALL RIGHT, THEN.
GENTLEMEN, SHALL WE CONTINUE WITH THE EXCEPTIONS TO
THE CHARGE? AND AGAIN, LADIES AND GENTLEMEN, THESE
ARE TECHNICAL NICETIES THAT WE'RE DEALING WITH. IF
ANY OF YOU WANT TO BE EXCUSED TO GET UP AND LEAVE
OR COME AND GO AS YOU PLEASE, FEEL FREE TO DO SO.
I BELIEVE, GENTLEMEN, I HAD JUST PLACED IN THE
RECORD CHARGE OF THE COURT ON VOLUNTARY
INTOXICATION DURING THE GUILT PHASE AND THE
ABBREVIATED EXPLANATION BY WAY OF -- DURING THE
PENALTY PHASE UNDER STATE VS. PEARCE THAT VOLUNTARY
INTOXICATION; THAT THAT WOULD BE A PROPER MATTER
FOR THEIR CONSIDERATION IN MITIGATION. AND

CONFERENCE ON REQUESTS TO CHARGE

ANYTHING FURTHER ON THAT?

MR. BAILEY: NOT FROM THE STATE,
YOUR HONOR.

MR. THEOS: NO, SIR.

THE COURT: ALL RIGHT. AND,
GENTLEMEN, DEFENDANT'S REQUEST TO CHARGE NUMBER
THREE RELATIVE TO MULTIPLE INDICTMENTS AGAINST THE
DEFENDANT, THAT WAS CHARGED VERBATIM. AND LADIES
AND GENTLEMEN, AS REGARD THE REQUEST NUMBER FIFTEEN
OF THE DEFENDANT, THE COURT DID CHARGE THE SECOND
PARAGRAPH OF THAT; QUOTE "A DEFENDANT HAS A
CONSTITUTIONAL RIGHT TO REMAIN SILENT. THE
ASSERTION OF SUCH A CONSTITUTIONAL RIGHT CANNOT AND
MUST NOT BE CONSIDERED BY YOU IN YOUR
DELIBERATIONS." AND I THINK THAT THE FIRST AND
THIRD PARAGRAPHS WERE INCLUDED IN THAT WHICH WAS
CHARGED. BUT PLEASE FEEL FREE TO COMMENT THEREUPON
IF I HAVE MISSTATED ANYTHING; MR. BAILEY OR MR.
THEOS?

MR. BAILEY: NO COMMENT FROM THE
STATE.

MR. THEOS: NO, SIR. I THINK YOUR
COMMENT IS CORRECT.

THE COURT: ALL RIGHT. THE STATE'S
REQUEST TO CHARGE NUMBER FIVE, THE GRIPPON VS.

CONFERENCE ON REQUESTS TO CHARGE

1 STATE DIRECTIVE IN THE MAJORITY OF THREE OPINION OF
2 OUR SUPREME COURT; THAT WAS CHARGED BY THE COURT.
3 AND THE DEFENDANT HAD OBJECTED TO THAT CHARGE. AND
4 IN ADDITION TO THE VERBATIM REQUEST AND CHARGE ON
5 NUMBER FIVE, THE COURT DID ADD THAT DURING THE
6 GUILT PHASE, BECAUSE THIS WOULD NOT BE PERTINENT
7 DURING THE PENALTY PHASE, THE FOLLOWING LANGUAGE.
8 "I CHARGE YOU FURTHER THAT SUSPICION, HOWEVER
9 STRONG, DOES NOT SUFFICE TO SUSTAIN CONVICTION, AND
10 POSSIBLE OR PROBABLE GUILT WILL NOT SUSTAIN
11 CONVICTION. AND I'LL BE GLAD TO HEAR FROM YOU. IS
12 THERE ANY FURTHER OR OTHER OBJECTION RELATIVE TO
13 THAT? YOU DID OBJECT TO THE COURT NOT CHARGING THE
14 DEFENDANT'S REQUEST NUMBER ELEVEN ON DIRECT AND
15 CIRCUMSTANTIAL EVIDENCE. AND THERE'S LANGUAGE IN
16 THERE ABOUT A MORAL CERTAINTY AMONG OTHER THINGS.
17 BUT THE LANGUAGE WILL SPEAK FOR ITSELF. ANY
18 FURTHER COMMENT ON THAT, GENTLEMEN?

19 MR. BAILEY: NOT FROM THE STATE,
20 YOUR HONOR.

21 MR. THEOS: NOTHING FURTHER, YOUR
22 HONOR.

23 THE COURT: AND, GENTLEMEN, IN
24 REGARD TO THE CONFESSION CHARGE, THERE WAS A
25 REQUEST BY THE DEFENDANT OF NUMBER SIX. AND THE

CONFERENCE ON REQUESTS TO CHARGE

1 COURT DID NOT CHARGE THAT, RATHER BEING OF THE VIEW
2 THAT THAT WAS CONTAINED IN THE COURT'S GENERAL
3 CHARGE AND THAT THAT WILL SPEAK FOR ITSELF. THERE
4 WAS AN OBJECTION AT THE CLOSE OF THE CHARGES BY THE
5 COURT ON LAST SATURDAY AFTERNOON, FEBRUARY THE
6 27TH, BECAUSE MR. THEOS CONTENTED THAT IN ADDITION
7 TO STATING WHETHER IT WAS MADE BY THE DEFENDANT
8 VOLUNTARILY AND OF HIS OWN FREE WILL THAT HE -- AND
9 AGAIN, THE COURT; I CHARGE YOU THAT IF YOU
10 DETERMINE AN ALLEGED CONFESSION WAS NOT A FREE AND
11 VOLUNTARY WILLED EXPRESSION OF THE DEFENDANT." AND
12 I ADDED LANGUAGE IN THERE "YOU MAY FURTHER CONSIDER
13 THE ABILITY OF THE DEFENDANT TO UNDERSTAND AND
14 COMPREHEND THE MIRANDA WARNINGS AND WHETHER OR NOT
15 HE KNOWINGLY AND VOLUNTARILY GAVE UP HIS RIGHTS."
16 AND THERE WAS A REQUEST FOR AN ADDITIONAL
17 INSTRUCTION THAT NOT ONLY MUST HE VOLUNTARILY DO IT
18 BUT THAT HE ALSO MUST INTELLIGENTLY MAKE THAT
19 DECISION. AND IN CONJUNCTION WITH THE CONFESSION
20 CHARGE THAT THE COURT MADE, THE COURT ALSO CHARGED
21 LANGUAGE FROM STATE VS. BREWER AND STATE VS. REID
22 WHICH IS THE STATE'S REQUEST TO CHARGE NUMBER NINE;
23 "A DECISION CAN BE MADE INTELLIGENTLY WITH AN
24 UNDERSTANDING OF THE CONSEQUENCES WITHOUT THE
25 DECISION ITSELF BEING A WISE ONE." AND MAY I

CONFERENCE ON REQUESTS TO CHARGE

1 INVITE YOU FOR THE STATE AND THE DEFENSE TO COMMENT
2 ANY FURTHER OR OTHER OBJECTION THAT YOU HAD
3 RELATIVE TO THAT CHARGE?

4 MR. BAILEY: NOTHING FURTHER FROM
5 THE STATE, YOUR HONOR.

6 MR. THEOS: NO FURTHER COMMENT,
7 JUDGE.

8 THE COURT: AND, GENTLEMEN, THEN WE
9 MOVE ON TO THE PENALTY PHASE WHERE THEY REQUEST
10 NUMBER TWENTY-NINE OF THE DEFENDANT WAS INCLUDED IN
11 THE COURT'S CHARGE. NUMBER THIRTY-TWO; THE COURT
12 CHARGED -- THIS IS DEFENDANT'S REQUEST THIRTY-TWO
13 -- I BEG YOUR PARDON; THIRTY-THREE. THE COURT
14 CHARGED THE GENERAL PROPOSITIONS OF LAW CONTAINED
15 IN PARAGRAPHS ONE, TWO, AND THREE. AND IN THREE I
16 HAVE ADDED, MR. THEOS, WHERE YOU SAID ANY STATUTORY
17 CIRCUMSTANCE, I HAVE ADDED AGGRAVATING CIRCUMSTANCE
18 BECAUSE I WAS TELLING HIM THAT THEY HAD TO FIND IT
19 BEYOND A REASONABLE DOUBT. AND THAT'S NOT THE CASE
20 FOR MITIGATING. SO I HAD TO HAD ADDED THAT WORD
21 "AGGRAVATING" IN WHICH I'M SURE YOU WANTED IT IN.

22 MR. THEOS: YES, SIR.

23 THE COURT: AND THE LAST PARAGRAPH
24 THE COURT DECLINED TO CHARGE THAT THE -- IF THE
25 VOTE FOR THE DEATH PENALTY IS NOT UNANIMOUS, THEN

CONFERENCE ON REQUESTS TO CHARGE

1 THE JURY SHALL NOT RECOMMEND THE DEATH PENALTY AT
2 WHICH TIME THE JURY WOULD BE DISMISSED AND THE
3 DEFENDANT WOULD BE SENTENCED BY THE COURT/JUDGE TO
4 LIFE IMPRISONMENT. THE COURT DECLINED TO CHARGE
5 THAT. THERE'S SEVERAL CASES DIRECTLY ON POINT, I
6 BELIEVE STATE VS. ADAMS BEING ONE, WHERE THE CHARGE
7 OF THE COURT IS IN ANTICIPATION OF A RESOLUTION BY
8 THE JURY AND A DECISION BY THE JURY. AND THAT NEED
9 NOT BE CHARGED. ANYTHING FURTHER ON THAT, MR.
10 SOLICITOR?

11 MR. BAILEY: NO, SIR, YOUR HONOR.

12 THE COURT: MR. THEOS?

13 MR. THEOS: YOUR HONOR, JUST NOTE
14 OUR OBJECTION AND OUR EXCEPTION TO THAT RULE. I
15 THINK THERE WAS---

16 THE COURT: CERTAINLY YOU DID OBJECT
17 TO THAT.

18 MR. THEOS: --A PRE-TRIAL MOTION
19 RELATED TO THAT VERY ISSUE.

20 THE COURT: PRECISELY. AND WE'RE
21 GOING TO PUT THOSE MOTIONS IN THE RECORD NEXT AND
22 THE COURT'S RULING ON IT. BUT CERTAINLY MR. THEOS
23 OBJECTED TO THE COURT NOT CHARGING THAT. AS TO THE
24 DEFENSE REQUEST TO CHARGE NUMBER THIRTY-TWO, THE
25 COURT DID IN ITS GENERAL CHARGE THE FIRST

CONFERENCE ON REQUESTS TO CHARGE

1 PARAGRAPH, THAT SECOND PARAGRAPH ABOUT THE BELIEF
2 LONG HELD BY THE SOCIETY AND THAT DEFENDANTS WHO
3 COMMIT CRIMINAL ACTS THAT ARE ATTRIBUTABLE TO
4 DISADVANTAGED BACKGROUND OR EMOTIONAL OR MENTAL
5 PROBLEMS ARE LESS CULPABLE THAN DEFENDANTS WHO HAVE
6 NO SUCH EXCUSE. AND SECOND "IN ARRIVING AT THE
7 TIME PUNISHMENT IS ESSENTIAL FOR YOU TO CONSIDER
8 ANY COMPASSIONATE OR MITIGATING FACTORS STEMMING
9 FROM THE DIVERSE FRAILTIES OF MANKIND. THE COURT
10 DECLINED TO CHARGE THAT. BUT CERTAINLY THE CHARGE
11 DID INSTRUCT THEM TO CONSIDER ANY AND ALL EVIDENCE
12 IN MITIGATION ON BEHALF OF THE DEFENDANT. AND I
13 THINK THE TOP OF PAGE TWO OF THIS DEFENDANT'S
14 REQUEST NUMBER THIRTY-TWO THAT THE COURT DID IN ITS
15 GENERAL CHARGE THAT RELATIVE TO A MITIGATING
16 CIRCUMSTANCE LESSENS THE DEFENDANT'S GUILT, MAKES
17 HIM LESS BLAMEWORTHY OR LESS CULPABLE.

18 AND THE REMAINDER OF THAT
19 PARAGRAPH WAS INCLUDED IN THE GENERAL CHARGE. AND
20 THE STATUTORY MITIGATING CIRCUMSTANCES; THE RECORD
21 WILL REFLECT THOSE THAT WERE PRESENTED TO THE
22 COURT. AND THAT WAS, I BELIEVE, WITH THE APPROVAL
23 OVER SOME OBJECTION TO THE STATE WHICH THE STATE
24 FINALLY WITHDREW. BUT I THINK THE DEFENDANT AGREED
25 TO THE STATUTORY AND NONSTATUTORY MITIGATING THAT

CONFERENCE ON REQUESTS TO CHARGE

1 WERE SUBMITTED TO THE JURY. AND I AFFORDED AN
2 OPPORTUNITY TO THE DEFENDANT TO REQUEST ADDITIONAL
3 OR TO WAIVE THOSE PRIOR TO THE PROCEEDING. AND THE
4 BOTTOM OF THE PAGE THREE OF THAT CHARGE, THAT WAS
5 INCLUDED IN MY GENERAL CHARGE AS WAS PAGE FOUR.
6 AND OF COURSE THE REQUEST SAYS "RATHER YOU MAY
7 SENTENCE THE DEFENDANT." AND I HAVE ADDED IN THERE
8 "YOU MAY RECOMMEND THE SENTENCE" BECAUSE THE COURT
9 TECHNICALLY DOES THE SENTENCING. THEIRS WAS A
10 RECOMMENDATION. AND MAY I INVITE YOU, PLEASE
11 GENTLEMEN TO COMMENT ON THOSE PRO OR CON?

12 MR. BAILEY: YOUR HONOR, THE STATE
13 HAS NO COMMENTS FOR THE RECORD.

14 MR. THEOS: YOUR HONOR, NO FURTHER
15 COMMENT OTHER THAN WE REQUESTED IT AND IT WAS NOT
16 SO CHARGED.

17 THE COURT: SURE. THE STATE'S
18 REQUEST NUMBER SEVEN WAS CHARGED VERBATIM. THAT'S
19 RELATIVE TO TORTURE, RELATIVE TO THE STATE VS.
20 DAVIS. AND THE STATE'S NUMBER EIGHT WAS CHARGED
21 REGARDING NOT TO ALLOW PASSION OR PREJUDICE OR
22 OTHER ARBITRARY FACTORS TO ENTER INTO THE
23 DELIBERATIONS OF THE JURY. SO, GENTLEMEN, IF I
24 HAVE FAILED TO COMMENT UPON ANY OF THE REQUESTS BY
25 THE STATE OR BY THE DEFENDANT, I WOULD INVITE YOU,

CONFERENCE ON REQUESTS TO CHARGE

PLEASE, TO CORRECT THE RECORD OR AMEND THE RECORD.

MR. BAILEY: YOUR HONOR, IF THAT'S MY KNOWLEDGE OF THE RECORD, IT IS CLEAR ON ALL OF THE MATTERS REGARDING THE CHARGE IN THE PENALTY PHASE AND THE GUILT PHASE.

THE COURT: MR. THEOS?

MR. THEOS: YES, SIR; I BELIEVE IT'S CLEAR.

THE COURT: ALL RIGHT. THANK YOU, GENTLEMEN. NOW MAY WE PLEASE GO TO THE PRE-TRIAL MOTIONS THAT WERE MADE? THERE WAS IN THESE MOTIONS -- THE RECORD WILL INDICATE, OF COURSE -- PRECISELY THE DATE THAT THEY WERE CLOCKED IN OR FILED. BUT THERE IS A JANUARY 27TH, 1999, MOTION. ALL OF THESE WERE IN LIMINE. AND THAT WAS TO PROHIBIT BOTH THE STATE AND THE DEFENDANT FROM INJECTING RELIGIOUS ARGUMENTS AT ANY STAGE DURING THE TRIAL OF THE MATTER. AND THEY CITED STATE VS. RAYMOND PATTERNSON. AND THE RULING OF THE COURT WAS TO BE GUARDED AND CAREFUL AS TO HOW YOU ARGUE; THAT I MAY HAVE TO SUSTAIN AN OBJECTION IF YOU DELVE TOO DEEPLY IN A BIBLICAL ILLUSTRATION. BUT I DID NOT CART BLANC OR COMPLETELY RULE OUT ANY REFERENCE BY WAY OF RELIGIOUS ARGUMENT, BUT JUST ASKED EACH OF YOU TO PROCEED CAUTIOUSLY. AND

CONFERENCE ON REQUESTS TO CHARGE

1 FRANKLY I DON'T RECALL ANY SIGNIFICANT ARGUMENT ON
2 THAT MATTER. BUT THE COURT DID NOT GRANT THE
3 MOTION BUT RATHER GAVE A RESPECTFUL REQUESTED
4 ADMONITION TO THE ATTORNEYS RELATIVE TO THE
5 PARAMETERS OF THAT. AND, GENTLEMEN, WOULD ANY OF
6 YOU WANT TO COMMENT ON THAT? AND I HAVE BEEN
7 PROVIDED A MEMORANDUM OF LAW IN OPPOSITION TO THE
8 STATE'S MOTION TO PROHIBIT RELIGIOUS ARGUMENTS. I
9 SHOW THAT WAS FILED FEBRUARY THE 17TH. AND I THANK
10 YOU AGAIN FOR YOUR PREPARATION. ANY DESIRE TO
11 COMMENT FURTHER ON THAT, GENTLEMEN?

12 MR. BAILEY: NONE FROM THE STATE,
13 YOUR HONOR.

14 MR. THEOS: NO, SIR.

15 THE COURT: THEN THERE WAS A MOTION
16 IN LIMINE, SAME DATE, JANUARY THE 27TH, 1997, BY
17 SOLICITOR BAILEY PROHIBITING THE DEFENDANT EITHER
18 DURING VOIR DIRE OR THE TRIAL IN ATTEMPTING TO
19 ADVISE THE JURY AS TO THE LEGAL EFFECT OF A DIVIDED
20 VERDICT AT THE PENALTY PHASE. AND THE COURT DID
21 GRANT THAT MOTION. AND THAT IS WHAT WAS MENTIONED
22 A FEW MOMENTS AGO ABOUT THE 16-3-20 SUB-PART C THAT
23 "ADDRESSING THE LEGAL EFFECT GIVEN TO THE
24 EXISTENCE OF A DIVIDED JURY AS ADDRESSED AT A
25 TRIAL, JUDGE ONLY SHOULD NOT BE DIVULGED TO THE

CONFERENCE ON REQUESTS TO CHARGE

1 JURY." AND VARIOUS CASES WERE CITED FOR THAT. AND
2 AGAIN THE DEFENDANT OBJECTED TO THAT RULING AND
3 TIMELY DID SO IN PRETRIAL MOTIONS. LET THE RECORD
4 BE PROTECTED. AND GENTLEMEN AND LADIES, THERE WAS
5 A MOTION IN LIMINE TO EXCLUDE ANY AND ALL REFERENCE
6 AND/OR TESTIMONY EVIDENCE REGARDING ANY AND ALL
7 REFERENCE BY THE STATE TO THE DEATH PENALTY AS A
8 DETERRENT ON THE GROUND THE PREJUDICIAL VALUE OF
9 SUCH SUBJECTS FAR OUTWEIGHS ANY PROBATIVE OR
10 EVIDENTIARY VALUE IN THIS CASE." AND WHILE THE
11 COURT DID DENY THAT MOTION, IT WAS WITH, AGAIN, A
12 RESPECTFUL AND A GUARDED ADMONITION TO THE
13 ATTORNEYS OR TO THE STATE THAT CASE LAW DOES ALLOW
14 COMMENT THEREUPON; BUT TO ATTEMPT TO AVOID ANY
15 DETAILED ANALYSIS OF DISCUSSION OF IT. AND I THINK
16 WHILE THE RECORD WILL SPEAK FOR ITSELF, THAT THERE
17 WAS NOT ANY DETAIL ARGUMENT AGAINST THE DEATH
18 PENALTY BEING A DETERRENT. BUT I OFFER YOU
19 GENTLEMEN THE OPPORTUNITY TO COMMENT THEREON.

20 MR. BAILEY: YOUR HONOR, I BELIEVE
21 THAT'S CORRECT.

22 THE COURT: MR. THEOS?

23 MR. THEOS: NO COMMENT, YOUR HONOR.

24 THE COURT: AND THEN THERE WAS A
25 MOTION IN LIMINE IN THAT LAST MOTION, MADAM COURT

CONFERENCE ON REQUESTS TO CHARGE

1 REPORTER, WAS A MOTION OF THE DEFENDANT BY MR.
2 THEOS AND MR. BELL ON BEHALF OF THE DEFENDANT, MR.
3 SIMMONS. AND THEN THERE WAS A MOTION IN LIMINE OF
4 THE DEFENSE TO EXCLUDE ANY AND ALL REFERENCE AND/OR
5 TESTIMONY OR EVIDENCE REGARDING ANY AND ALL
6 REFERENCE BY THE STATE TO THE DEFENDANT AS SKIN RAT
7 ON THE GROUNDS THE PREJUDICIAL VALUE OF SUCH
8 SUBJECTS FAR OUTWEIGHS ANY PROBATIVE OR EVIDENTIARY
9 VALUE IN THE CASE. AND THE STATE DID REDACT
10 PURSUANT TO THAT MOTION FROM THE AUDIO RECORDINGS
11 AND THE TRANSCRIPTS OF THOSE RECORDING THE
12 REFERENCE TO SKIN RAT. AND THE STATE WAS
13 INSTRUCTED NOT TO EMPHASIZE IT. I DO NOT RECALL
14 ANY COMMENT BY THE SOLICITOR OR USE OF THE WORD
15 "SKIN RAT." I DO BELIEVE THAT PERHAPS ON THE
16 WARRANT THERE'S A DOCUMENT IN EVIDENCE ON ONE
17 OCCASION THAT MAY HAVE HAD "SKIN RAT" ON IT, OR WAS
18 THAT REDACTED, MR. BAILEY?

19 MR. BAILEY: YOUR HONOR, THAT WAS
20 THE HANDWRITTEN FEBRUARY THE FIFTH STATEMENT OF MR.
21 SIMMONS IN WHICH HIS NAME WAS UP AT THE TOP "A/K/A
22 SKIN RAT."

23 THE COURT: DECEMBER THE FIFTH OR
24 FEBRUARY THE FIFTH?

25 MR. BAILEY: DECEMBER THE FIFTH.

CONFERENCE ON REQUESTS TO CHARGE

1 THE COURT: OKAY.

2 MR. BAILEY: AND I BELIEVE WHEN MR.
3 MEARS PUBLISHED THAT TO THE JURY, HE DID READ THAT
4 IN ITS ENTIRETY. BUT THAT WAS THE ONLY REFERENCE
5 IN THE ENTIRE TRIAL TO THE NAME "SKIN RAT."

6 THE COURT: AGREED, GENTLEMEN?

7 MR. THEOS: YES, SIR.

8 THE COURT: AND THIS IS UNLIKE THE
9 CHEESEBORO CASE OVER WHICH JUDGE COOPER PRESIDED,
10 THE DEATH PENALTY IN COLUMBIA, WHERE I BELIEVE THE
11 DEFENDANT HAD HAD HIS LEGAL NAME CHANGED TO KING
12 JUSTICE. SO OBVIOUSLY THEY WERE ALLOWED TO REFER
13 TO HIM AS KING JUSTICE BECAUSE HE HAD MADE THAT
14 LEGAL CHANGE. AND ON VARIOUS OF THESE MOTIONS,
15 THERE WERE MEMORANDUMS BOTH FROM THE STATE AND THE
16 DEFENDANT. AND I AGAIN COMMEND THE ATTORNEYS FOR
17 THEIR WORK ETHIC AND PREPARATION. AND THEN THERE
18 WAS A MOTION IN LIMINE BY THE DEFENSE TO EXCLUDE
19 ANY AND ALL REFERENCE AND/OR TESTIMONY EVIDENCE
20 REGARDING ALL PHOTOGRAPHS OF THE DECEASED ON THE
21 GROUNDS OF PREJUDICIAL VALUE OF SUCH SUBJECTS FAR
22 OUTWEIGHS ANY PROBATIVE OR EVIDENTIARY VALUE IN
23 INSTANT CASE.

24 IN THE GUILT PHASE THESE
25 PHOTOGRAPHS WERE NOT OFFERED INTO EVIDENCE, BUT

CONFERENCE ON REQUESTS TO CHARGE

1 THEY WERE PERMITTED IN EVIDENCE DURING THE PENALTY
2 PHASE. SO I DID ALLOW THOSE. AND THE COURT DID
3 REVIEW THOSE PHOTOGRAPHS, AND THERE WERE MORE --
4 THERE WERE SOME PHOTOGRAPHS THAT PERHAPS THE COURT
5 WOULD NOT HAVE ALLOWED IN, BUT THE SOLICITOR DID
6 NOT OFFER THOSE. AND I THOUGHT THAT THERE WAS NOT
7 -- THE PREJUDICE DID NOT EXCEED THE RELEVANCY.
8 AND THE COURT DID REVIEW THEM. AND UNLIKE ONE
9 OTHER CASE I RECALL READING WHERE THE PHOTOGRAPH OF
10 THE HEAD OF THE DECEASED DURING THE AUTOPSY THAT
11 HAD BEEN SAWED IN HALF WAS ALLOWED IN, AND THE
12 COURT HELD THAT THAT WAS IMPROPER. BUT I DEEM
13 THOSE PICTURES TO HAVE BEEN PROPERLY ALLOWED IN
14 EVIDENCE. ANY COMMENT FOR THE RECORD ON THAT, MR.
15 SOLICITOR?

16 MR. BAILEY: NOT FROM THE STATE,
17 YOUR HONOR.

18 THE COURT: DEFENSE?

19 MR. THEOS: YES, SIR. YOUR HONOR,
20 WE DID IN FACT IN PRETRIAL MOTIONS THAT YOU RULED
21 ON OBJECTED TO THE PHOTOGRAPHS. INCLUSIVE WAS OUR
22 OBJECTION TO THE ADMISSION OF THE VIDEO TAPE WHICH
23 MR. BELL AND I APPROACHED MR. BAILEY AT THE SIDE
24 BAR YESTERDAY. AND I BELIEVE THAT OUR OBJECTION
25 WAS NOTED FOR THE RECORD AT THAT TIME. BUT I

CONFERENCE ON REQUESTS TO CHARGE

WANTED TO MAKE SURE THAT THAT WAS NOTED AT THIS
POINT AS WELL.

THE COURT: SURE. BUT THE COURT DID
NOT HAVE THE BENEFIT OF HAVING REVIEWED THAT VIDEO
TAPE PRIOR TO PRETRIAL AS IT DID THE PHOTOGRAPHS.
BUT YOU ARE CORRECT THAT YOU DID OBJECT TO THE
ADMISSIBILITY AT THE SIDE BAR AND THAT THE COURT
OVERRULED YOUR OBJECTION AND DID ALLOW THE
VIDEOTAPE TAPE IN.

MR. BAILEY: YOUR HONOR, WHILE WE'RE
ON THAT; I WOULD LIKE TO STATE FOR THE RECORD THAT
I DID PROVIDE MR. THEOS WITH A COPY OF THE VIDEO
TAPE PRIOR TO TRIAL, SO HE DID HAVE ACCESS TO IT
BEFORE.

THE COURT: I'M SURE, SOLICITOR
BAILEY, YOU'VE BEEN WELL PREPARED, VERY
COOPERATIVE, AND VERY ETHICAL. AND I'M SURE YOU
DID. FURTHER MOTION IN LIMINE BY THE DEFENDANT
SEEKING TO PROHIBIT THE STATE FROM ARGUING AGAINST
A RECOMMENDATION OF MERCY BY THE JURY. AND I
DENIED THAT MOTION. THESE MOTIONS WERE HEARD ON
FEBRUARY THE 17TH, 1999. THE JURY REPORTED IN ON
MONDAY, FEBRUARY THE 22ND. AND THERE WAS A
MEMORANDUM, OF COURSE -- EXCUSE ME -- THE NEXT
MATTER WAS THE MOTION BY THE DEFENDANT TO PRECLUDE

CONFERENCE ON REQUESTS TO CHARGE

1 THE SOLICITOR FROM ARGUING THAT A LIFE SENTENCE
2 REQUIRES A JURY AS TAX PAYERS TO SUPPORT THE
3 DEFENDANT. THAT MOTION WAS GRANTED; BUT IT WAS
4 REALLY UNNECESSARY FOR THE COURT TO RULE UPON IT
5 BECAUSE THE STATE ASSURED THE COURT THAT THAT WOULD
6 NOT BE ARGUED. BUT FOR THE RECORD, I DID GRANT THE
7 MOTION. BUT THE STATE HAD AGREED NOT TO ARGUE.
8 AND I THINK, GENTLEMEN, THAT WE HAVE ALREADY
9 DISCUSSED THE MOTION OF THE DEFENDANT IN LIMINE
10 SEEKING TO PRECLUDE DEFENSE COUNSEL FROM ARGUING
11 SECTION 16-3-20, SUB-PART C. I DENIED THAT MOTION,
12 AND I BELIEVE WE'VE ALREADY PLACED THAT COMMENT IN
13 THE RECORD.

14 THEN THERE WAS A MOTION OF THE
15 STATE FOR AN ORDER PROHIBITING DEFENDANT FROM
16 MENTIONING POLYGRAPHS OR SOLICITING ANY INFORMATION
17 REGARDING POLYGRAPHS AT TRIAL ON THE GROUNDS
18 POLYGRAPH RESULTS WERE TOTALLY IRRELEVANT AND
19 INTENDED TO MISLEAD THE JURY; AND THE COURT
20 SUSTAINED THAT MOTION, OR GRANTED THE MOTION
21 PROHIBITING REFERENCE TO A POLYGRAPH, ALBEIT I
22 REALLY DON'T RECALL ANYTHING ABOUT A POLYGRAPH.
23 NOW, GENTLEMEN, WERE THERE ANY OTHER MOTIONS THAT
24 WE HEARD THAT WERE NOT PLACED IN THE RECORD THAT
25 YOU CAN THINK OF?

MOTIONS

1 MR. BAILEY: YOUR HONOR, MY
2 RECOLLECTION IS ALL THE MOTIONS WERE IN THE RECORD
3 AT ONE POINT OR ANOTHER AND WERE TRANSCRIBED BY THE
4 COURT REPORTER.

5 MR. THEOS: YES, SIR. I DON'T
6 RECALL ANY OTHERS. BUT, AGAIN, I AGREE WITH MR.
7 BAILEY; WHATEVER OTHER MOTIONS THERE MAY HAVE BEEN
8 WOULD BE IN THE RECORD.

9 THE COURT: ALL RIGHT. AND WE HAVE
10 HAD SIDE BARS AND OFFICE CONFERENCES AT VARIOUS
11 TIMES DURING THE TRIAL SO WE COULD PROCEDURALLY
12 MOVE ON DOWN THE ROAD. BUT I THINK WE'VE PLACED
13 EVERYTHING IN THE RECORD THAT NEED BE. I DO --
14 MADAM COURT REPORTER, THE RECORD WILL REFLECT, AND
15 I WISH I HAD HAD YOU, MA'AM IN EACH AND ALL OF
16 THESE MOTIONS. I HOPE THAT IN THE FUTURE THAT IN
17 ALL DEATH PENALTY CASES THAT THE SAME COURT
18 REPORTER WILL BE ASSIGNED TO THE PRETRIAL MOTIONS,
19 TRIAL, AND THEN POST-TRIAL BECAUSE IT MAKES FOR A
20 MORE ORDERLY PROCESS. THE RECORD WILL REFLECT THAT
21 THE DEFENDANT WAS ARRAIGNED AND THAT HE DID RECEIVE
22 SIGHT OF THE INDICTMENT MORE THAN THREE DAYS PRIOR
23 TO THE COMMENCEMENT OF THE TRIAL. AND JUST FOR THE
24 RECORD, MADAM COURT REPORTER, THESE VARIOUS ARREST
25 WARRANTS, I'M NOTING THAT THEY WERE DELIVERED AND

MOTIONS

1 SERVED UPON THE DEFENDANT, KENNETH SIMMONS, ON
2 DECEMBER THE NINTH OF 1997.

3 THE AFFIDAVITS TO PROCURE THE
4 ARREST WARRANTS WERE DATED DECEMBER THE EIGHTH OF
5 1997. AND THE RECORD SHOULD REFLECT, PLEASE, THAT
6 THE DEFENDANT IN THIS CASE; THAT HE WAS ARRAIGNED
7 ON DECEMBER 10, 1997. THERE WAS AN ORDER OF
8 CUSTODY; AND IT APPEARS TO BE MAGISTRATE B.G.
9 STEPHENS. BUT THE CHECKLIST OF THE ARRAIGNMENT AND
10 THE BAIL PROCEEDING IS CONTAINED IN THE RECORD.
11 AND ON DECEMBER THE FIFTEENTH OF 1997 THAT GENE
12 DUKES, ATTORNEY AT LAW, WAS APPOINTED AS COUNSEL
13 FOR THE DEFENDANT. AND MR. SIMMONS SIGNED THAT
14 DECEMBER THE TENTH OF 1997 -- I DON'T KNOW HOW
15 THAT'S POSSIBLE -- THE CRIMINAL JUSTICE COORDINATOR
16 STATES THAT THAT ORDER OF APPOINTMENT WAS DECEMBER
17 THE FIFTEENTH OF '97, BUT ON THE BACK PAGE, MR.
18 SIMMONS, THE NOTIFICATION, WAS DECEMBER TEN OF
19 '97. SO IT WAS SOMEWHERE IN BETWEEN THAT TIME.
20 AND THEN THE BOND HEARING WAS HELD ON DECEMBER TEN
21 OF 1997. AND A BOND OF \$350,000 ON ALL WARRANTS
22 EXCEPT MURDER AND BURGLARY; AND THEY WERE DENIED.
23 AND THEN WE HAVE THE JANUARY 22ND OF '98
24 APPOINTMENT OF ALAN D. TOPOREK AS COUNSEL FOR THE
25 DEFENDANT. DO YOU KNOW IF MR. TOPOREK IS DEATH

MOTIONS

1 PENALTY CERTIFIED?

2 MR. THEOS: I DON'T BELIEVE HE IS.
3 I'M SURE HE'S NOT.

4 THE COURT: AND THEN, OF COURSE, THE
5 JANUARY 26TH OF '98, MR. JERRY THEOS WHO IS A
6 PARTNER IN THE FIRM OF URICHIO HALL, CRAIL,
7 TOPOREK, THEOS, ETC. WAS APPOINTED. AND THEN,
8 GENTLEMEN, I WAS APPOINTED BY ORDER OF FEBRUARY 19
9 OF '98, I WAS ASSIGNED TO THIS CASE. AND I SHOULD
10 BACK UP A MOMENT TO STATE THE FACT THAT THESE
11 INDICTMENTS WERE TRUE BILLED BY THE GRAND JURY FOR
12 DORCHESTER COUNTY. IT INDICATES THAT A TERM OF
13 GENERAL SESSIONS COURT CONVENED ON JANUARY 19TH OF
14 1998; HOWEVER, THAT'S USUALLY THE OPENING TERM.
15 THE GRAND JURY USUALLY CONVENES ON THE FIRST MONDAY
16 OF COURT. BUT DO Y'ALL RECALL IF PERHAPS THAT WAS
17 -- IF THEY WERE CONVENED EARLIER THAN THAT?

18 MR. BAILEY: YOUR HONOR, TO THE BEST
19 OF MY KNOWLEDGE IT WAS THAT MONDAY. IT WAS THE
20 FIRST MONDAY.

21 THE COURT: ALL RIGHT. AND THOSE
22 ORIGINAL INDICTMENTS WOULD SO INDICATE. AND THERE
23 ARE VARIOUS MOTIONS FOR PRODUCTION AND SO FORTH.
24 THERE'S A CONSENT ORDER OF SUBSTITUTION OF COUNSEL
25 DATED SEPTEMBER THE THIRD OF 1998 WHERE MR. JAMES

MOTIONS

1 A. BELL WAS SUBSTITUTED FOR MR. GENE W. DUKES. I
2 THINK PERHAPS YOU HAD UNDERTAKEN YOUR
3 REPRESENTATION PERHAPS SOME TIME PRIOR TO THAT.
4 BUT THAT'S THE DATE OF THE ORDER. OR MAYBE IT WAS
5 ON THAT DATE. AND THEN THERE'S AN ORDER FOR
6 PROTECTION FOR THE ATTORNEYS DATED DECEMBER THE
7 29TH OF '98 GIVING MR. BELL AND MR. THEOS
8 PROTECTION FROM JANUARY FOUR, '99 THROUGH MARCH
9 FIVE OF '99. TODAY IS MARCH THE SECOND OF '99.
10 AND, GENTLEMEN, CAN YOU THINK OF ANYTHING, PLEASE,
11 THAT WE SHOULD -- THERE ARE THINGS IN THE RECORD;
12 BUT I WANT TO MAKE SURE THAT WE HAVE IT IN AN
13 ORDERLY PROCESS SO ANY ONE REVIEWING THE RECORD MAY
14 PUT THEIR HANDS ON IT WITHOUT.

15 MR. BAILEY: YOUR HONOR, THE ONLY
16 THING -- THIS MAY BE IN THE RECORD ALREADY. BUT
17 YOUR HONOR REFERENCED AT SIDE BARS, AND TO THE BEST
18 OF MY KNOWLEDGE THERE WAS NOTHING THAT WAS
19 DISCUSSED IN CHAMBERS OR AT SIDE BAR THAT HAS NOT
20 AT SOME POINT BEEN PLACED ON THE RECORD. THE
21 RECORD COULD REFLECT THAT.

22 THE COURT: THAT'S CERTAINLY MY
23 UNDERSTANDING. MR. THEOS, DO YOU AGREE?

24 MR. THEOS: YES, SIR; WITH THE
25 EXCEPTION OF THE CRIMINAL DOMESTIC VIOLENCE

MOTIONS

1 CONVICTION. WE WERE GOING TO REVIEW THAT FILE---

2 THE COURT: THAT HASN'T BEEN
3 RESOLVED YET.

4 MR. THEOS: RIGHT.

5 THE COURT: THAT'S WHY I DIDN'T GET
6 INTO THAT YET.

7 MR. THEOS: YES, SIR; WITH THAT ONE
8 EXCEPTION, I AGREE WITH MR. BAILEY.

9 THE COURT: SURE. SO SHALL WE STAND
10 AT EASE WHILE YOU GENTLEMEN REVIEW THAT AND
11 CONSIDER IT?

12 MR. THEOS: YES, SIR.

13 THE COURT: THANK YOU.

14 (BRIEF RECESS.)

15 - - - - -

16 THE COURT: THE JURY HAS PASSED OUT
17 AN INQUIRY AS FOLLOWS: AND I'M GOING TO PLACE A
18 DUPLICATE ORIGINAL WITH THE COURT AND ASK THE
19 BAILIFFS WHEN THE JURORS DO COME IN AND WE GET THE
20 EXHIBITS BACK TO GET THIS NOTE BACK AND PUT IT IN
21 THE RECORD EVEN THOUGH WE HAVE A DUPLICATE
22 ORIGINAL. (1) MUST BOTH THE VERDICT OF DEATH OR
23 LIFE IMPRISON BE UNANIMOUS (ALL TWELVE JURORS AGREE
24 TO THE VERDICT.) THE COURT HAS WRITTEN "YES." (2)
25 "MUST THE FORM QUOTE THE JURY'S FINDING AS TO

MOTIONS

1 AGGRAVATING CIRCUMSTANCES BE SIGNED IF A VERDICT OF
2 LIFE IMPRISON IS REACHED?" THE ANSWER IS YES.
3 I'VE CONFERRED WITH THE ATTORNEYS IN CHAMBERS, AND
4 THEY AGREE THAT THAT IS THE LAW. AND FURTHER SINCE
5 THE JURORS HAVE BEEN BROUGHT IN THREE TIMES ALREADY
6 SINCE A QUARTER TO NINE THIS MORNING THAT WE JUST
7 HAVE THE BAILIFF HAND THIS TO THEM. AGREED,
8 GENTLEMEN?

9 MR. BAILEY: AGREED, YOUR HONOR.

10 THE COURT: AGREED, GENTLEMEN?

11 MR. THEOS: YES, SIR. AND, YOUR
12 HONOR, THAT WOULD BE SUBJECT OF COURSE TO, FOR
13 PURPOSES OF THE RECORD, SUBJECT TO THAT---

14 THE COURT: RULING REGARDING
15 16-3-20, SUB-PART C WHEREIN YOU WANTED THE JURY TO
16 BE INSTRUCTED BY THE COURT THAT IN THE EVENT
17 THEY'RE UNABLE TO EACH A UNANIMOUS VERDICT THAT THE
18 COURT WOULD, AFTER A REASONABLE PERIOD OF
19 DELIBERATION, WOULD CALL THEM BACK IN, DISCHARGE
20 THEM, AND SENTENCE LIFE IMPRISONMENT?

21 MR. THEOS: THAT'S CORRECT, YOUR
22 HONOR.

23 THE COURT: YES, SIR. AND THE COURT
24 DECLINED TO CHARGE THAT. LET HIM BE PROTECTED ON
25 THE RECORD. WOULD YOU HAND THAT TO THE JURORS?

MOTIONS

1 AND, GENTLEMEN, AGAIN; I DON'T WANT TO SPEED THE
2 JURY UP. I DON'T WANT TO SLOW THEM DOWN. BUT IT'S
3 TEN AFTER ONE; AND IS THERE ANY PROBLEM WITH THE
4 BAILIFF INQUIRING OF THE JURY IF THEY'D LIKE TO
5 ORDER LUNCH OR IF THEY'D LIKE TO HAVE LUNCH BROUGHT
6 IN? I DON'T WANT TO BE SUGGESTIVE OF HASTE. BUT
7 IF THEY ORDER FOR IT TO BE BROUGHT IN, IT MIGHT
8 TAKE THIRTY OR FORTY-FIVE MINUTES FOR IT TO GET
9 HERE.

10 MR. BAILEY: YES, SIR. NO
11 OBJECTION. HOWEVER YOU WANT TO HANDLE IT, JUDGE.

12 MR. THEOS: YOUR HONOR, WE WOULDN'T
13 TAKE A POSITION. WHATEVER YOU WANT TO DO.

14 THE COURT: ALL RIGHT. SO MENTION
15 THAT TO THEM. TELL THEM I'M NOT TRYING TO SPEED
16 THEM UP OR SLOW THEM DOWN, BUT IF THEY'D LIKE TO GO
17 OUT FOR LUNCH OR HAVE LUNCH ORDERED, THEY MAY DO
18 SO.

19 THE COURT: COURT WILL STAND AT
20 EASE. THANK YOU, LADIES AND GENTLEMEN.

21 (BRIEF RECESS.)

22 THE COURT: MA'AM, THE COURT
23 NEGLECTED TO PLACE IN THE RECORD THE FACT THAT AS
24 TO DEFENDANT'S REQUEST TO CHARGE NUMBER NINE THAT
25 THE COURT DID CHARGE THE CORPUS DELICTI BEFORE ANY

MOTIONS

1 CONFESSON MAY BE RELIED UPON TO CONVICT A
2 DEFENDANT THAT THE CRIME HAD BEEN INDEPENDENTLY
3 PROVEN. AND I JUST WANTED TO PLACE THAT IN THE
4 RECORD, PLEASE. I HAD IT FOLDED OVER AND PAPER
5 CLIPPED AND MISSED IT.

6 THE COURT REPORTER: YES, SIR.

7 THE COURT: ON THE RECORD, PLEASE.

8 EARLIER THIS MORNING THERE WAS AN INQUIRY BY THE
9 JURY REQUESTING THE DEFINITION OF CRIMINAL DOMESTIC
10 VIOLENCE AND CERTAIN DISCUSSION. AND STATE'S
11 EXHIBIT NUMBER -- DO YOU HAVE THAT, MR.
12 SOLICITOR---

13 MR. BAILEY: YES, SIR.

14 THE COURT: --AS TO THE PRIOR CRIME
15 CHARGED?

16 MR. BAILEY: PENALTY PHASE ONE, YOUR
17 HONOR.

18 THE COURT: I HAVE THE EXHIBIT LIST
19 FROM THE GUILT PHASE. PENALTY PHASE WITNESS;
20 REQUESTS TO CHARGE; MEMORANDUMS I DO NOT HAVE. BUT
21 I THINK WE NEED TO -- DO YOU HAVE A LITTLE SMALL
22 COPY OF THAT BEFORE YOU PUT IT ON THE CHART, MR.
23 SOLICITOR?

24 MR. BAILEY: LET ME CHECK. I DON'T
25 BELIEVE I DO, BUT LET ME CHECK.

MOTIONS

1 THE COURT: YOU HAD IT BECAUSE IT'S
2 IN ONE OF THESE NOTEBOOKS THAT YOU HAD GIVEN TO
3 ME. BUT I CAN'T PUT MY HAND ON IT THIS MOMENT. IN
4 ANY EVENT WE WILL GET A COPY OF THAT AND PLACE IT
5 IN THE RECORD BECAUSE IT'S MUCH SMALLER THAN THE
6 CHART. BUT IT IS, AS I RECALL, IDENTICAL TO THE
7 CHART. AND A DISCUSSION ENSUED, MADAM COURT
8 REPORTER, IN REGARD TO THE PRIOR RECORD OF THE
9 DEFENDANT AND THE DATE OF HIS ARREST ON THAT, THE
10 DATE OF THE CHARGE, THE DATE OF THE CONVICTION.
11 AND I BELIEVE THAT IT'S NECESSARY THAT A RECORD BE
12 MADE OF THAT INFORMATION. THE SOLICITOR WAS KIND
13 ENOUGH TO OBTAIN THAT WHICH -- THE FILE THAT
14 EXISTED FROM THE CITY OF SUMMERVILLE MUNICIPAL
15 COURT RECORDS?

16 MR. BAILEY: YES, SIR.

17 THE COURT: AND THE SOLICITOR
18 PROMPTLY HAD THOSE TRANSPORTED HERE. COPIES WERE
19 SHARED WITH THE DEFENSE COUNSEL. AND IT APPEARS,
20 LADIES AND GENTLEMEN, THAT THERE WAS; AND I THINK
21 THESE SHOULD BE PLACED IN THE RECORD, MR.
22 SOLICITOR; LET'S SAY DUPLICATE ORIGINALS THEREOF.
23 THERE WAS AN AFFIDAVIT HERE DATED JANUARY THE 17TH
24 OF '97 OF MARY BRADY IN WHICH SHE ALLEGED THAT ON
25 JANUARY ONE, 1997, AT APPROXIMATELY 12:45 A.M. --

MOTIONS

1 IT WOULD HAVE BEEN EARLY HOURS OF NEW YEAR'S DAY --
2 THAT IN THE AREA OF 206 VIOLET DRIVE IN SUMMERVILLE
3 KENNETH SIMMONS DID WILLFULLY AND UNLAWFULLY STRIKE
4 THE VICTIM, BARBARA JONES IN THE FACE. AND THE
5 SUBJECT, MR. KENNETH SIMMONS, WAS ISSUED A UNIFORM
6 TRAFFIC TICKET CITATION. AND THEN HE HAD BOND SET
7 IN THE AMOUNT OF -- HERE'S A -- WELL IT'S NOT IN
8 THE ORDER. HERE'S AN ORDER OF CUSTODY BOND OF \$500
9 SURETY WAS SET. AND THERE'S AN ORDER OF RELEASE ON
10 JANUARY THIRD OF '97. THERE IS AN INCIDENT REPORT
11 FROM THE TOWN OF SUMMERVILLE POLICE DEPARTMENT
12 ABOUT THE RESPONDING OFFICER RESPONDED TO A FIGHT
13 IN PROGRESS; CALL AT INCIDENT LOCATION; UPON
14 ARRIVAL R.O. -- THAT'S RESPONDING OFFICER --
15 OBSERVED SUBJECT AND ANOTHER INDIVIDUAL YELLING AT
16 EACH OTHER. BOTH INDIVIDUALS WERE ABOUT TO GET
17 PHYSICALLY VIOLENT. THE INDIVIDUAL WAS YELLING AT
18 SUBJECT FOR HITTING HIS AUNT. VICTIM STATED THAT
19 SUBJECT HIT HER IN THE FACE BECAUSE THEY WERE
20 ARGUING ABOUT SUBJECT DANCING WITH ANOTHER WOMAN.
21 SUBJECT WAS ARRESTED FOR CRIMINAL DOMESTIC VIOLENCE
22 AND TRANSPORTED TO DORCHESTER LAW ENFORCEMENT
23 CENTER BY OFFICER BRADY.
24 AND THEN VICTIM TWO; THE INCIDENT
25 REPORT STATES KENNETH "SKIN-RAT" SIMMONS ASSAULTED

MOTIONS

1 HIM BY PUNCHING HIM IN THE MOUTH. VICTIM WAS
2 OBSERVED TO BE BLEEDING FROM THE MOUTH. HE WISHES
3 TO TAKE A WARRANT FOR HIS ARREST. AND THEN THERE'S
4 A BOOKING REPORT HERE ON KENNETH SIMMONS. AND
5 CHRONOLOGICALLY SPEAKING, OF COURSE, THERE'S A
6 CHECKLIST FOR THE MAGISTRATE. THERE'S A BOND FOR
7 FEBRUARY ELEVENTH OF '97; APPEARANCE DATE; THE BOND
8 AMOUNT \$500 DATED -- I BELIEVE THAT'S JANUARY THE
9 THIRD OF '97. AND THEN THERE'S A COMMITMENT HERE
10 BY TOM FINUCAN.

11 MR. BAILEY: FINUCAN, YOUR HONOR.

12 THE COURT: FINUCAN -- THAT ON
13 JANUARY 13, 1998, SENTENCE KENNETH SIMMONS TO SERVE
14 THIRTY DAYS OR OKAY TO PAY \$845 CASH IN FULL. AND
15 THAT WAS CITATION NUMBER 56006. AND THAT'S DATED
16 JANUARY 13 OF 1998 WHERE HE WAS SENTENCED TO THIRTY
17 DAYS OR ALLOWED TO PAY THE FINE. AND I'VE READ
18 INTO THE RECORD THE DAY OF THE APPOINTMENT OF MR.
19 DUKES AND THE APPOINTMENT OF MR. TOPOREK. I NEVER
20 DID SEE THE ORDER EXCUSING MR. TOPOREK. BUT THEN
21 THE ORDER APPOINTING MR. THEOS; THE ORDER RELIEVING
22 MR. DUKES; AND THE ORDER APPOINTING MR. BELL. SO,
23 GENTLEMEN, MAY I HEAR FROM YOU ON THE RECORD,
24 PLEASE?

25 MR. BAILEY: YOUR HONOR, I DEFER TO

MOTIONS

1 THE DEFENSE. AND THEN I WOULD LIKE TO RESPOND TO
2 WHATEVER THEY SAY.

3 THE COURT: CERTAINLY.

4 MR. THEOS: YOUR HONOR, THE EXHIBIT
5 THAT WAS INTRODUCED INTO EVIDENCE IN THE PENALTY
6 PHASE -- AND I DON'T RECALL THE NUMBER -- BUT IT
7 WAS THE POSTER.

8 THE COURT: PENALTY PHASE NUMBER
9 ONE, I BELIEVE THE SOLICITOR SAID.

10 MR. THEOS: OKAY. THE POSTER OF THE
11 CONVICTIONS REFLECTED THAT THE CONVICTION FOR THE
12 CRIMINAL DOMESTIC VIOLENT WAS -- I BELIEVE THAT'S
13 DATED 1/13 OF '97. AND THAT IS THE CONVICTION THAT
14 -- THAT IS THE SAME DOCUMENT THAT WAS AFFORDED BY
15 MR. BAILEY IN OUR OFFICE THAT WE DID IN FACT
16 STIPULATE---

17 THE COURT: DO YOU HAVE A COPY OF
18 THAT?

19 MR. THEOS: NO, SIR, I DON'T.

20 THE COURT: ALL RIGHT, SIR. IF YOU
21 DID I JUST WANTED TO -- WE'RE GOING TO GET A COPY.

22 MR. BAILEY: YOUR HONOR, THERE
23 SHOULD BE A COPY IN THE DISCOVERY MATERIAL I
24 FILED. I BELIEVE THAT I ATTACHED THAT TO THAT. IF
25 I CAN GET THAT FROM THE COURT REPORTER.

MOTIONS

1 MR. THEOS: I BELIEVE I'M CORRECT IN
2 STATING THAT THAT EXHIBIT IS A BLOW-UP OF THAT
3 DOCUMENT.

4 MR. BAILEY: THAT'S CORRECT.

5 MR. THEOS: AND, YOUR HONOR, WHAT WE
6 HAVE SINCE DISCOVERED IS THAT MR. SIMMONS WAS
7 ACTUALLY ARRESTED ON THAT DATE.

8 THE COURT: EXCUSE ME, NOW. WHAT
9 DATE? BECAUSE HE WAS ARRESTED EARLIER. AND HE WAS
10 ARRESTED IN DECEMBER. HE WAS ALREADY UNDER ARREST
11 IN THE RICHLAND COUNTY JAIL FOR SHOPLIFTING FROM
12 FOOD LION, TAKING STEAKS AND PUTTING IN HIS PANTS.
13 THAT WAS IN SOME TIME MID NOVEMBER OF '97. BUT HE
14 WAS NOT FORMALLY ARRESTED DOWN HERE UNTIL I BELIEVE
15 DECEMBER THE EIGHTH OF '97.

16 MR. THEOS: ON THE CHARGES FOR WHICH
17 HE STANDS TRIAL NOW. BUT ON THE CRIMINAL DOMESTIC
18 VIOLENCE, HE WAS ARRESTED -- IT LOOKS LIKE THE
19 WARRANT WAS SWORN OUT ON 1/17/97. THE TICKET THAT
20 YOU REFERENCED EARLIER STATES THAT THE DATE OF
21 ARREST IS 1/01/97. SO I'M A LITTLE CONFUSED AS TO
22 EXACTLY WHAT DATE HE WAS ARRESTED ON IT AND
23 FORMALLY CHARGED.

24 THE COURT: AND IT'S TYPED IN THERE
25 1/17/97, SWORN TO, EVEN THOUGH IT'S NOT SWORN. BUT

MOTIONS

1 IT APPEARS FROM THE ABOVE AFFIDAVIT REASON AND
2 GROUNDS TO BELIEVE THAT ON JANUARY ONE. BUT ASSUME
3 HE WAS ARRESTED EITHER JANUARY ONE OR JANUARY 17TH,
4 IT DOESN'T MATTER.

5 MR. THEOS: AND THEN IT LOOKS---

6 THE COURT: I THINK THAT IT WILL
7 REFLECT THAT HE WAS ARRESTED ON JANUARY ONE BECAUSE
8 HE WAS BONDED OUT ON JANUARY THE THIRD OF '97 FOR
9 THE C.D.V.

10 MR. THEOS: THE BOND DOES REFLECT A
11 1/03/97 DATE. AND THEN, YOUR HONOR, THE TICKET WAS
12 -- THE WARRANT THAT I BELIEVE YOU REFERENCED --
13 YOU REFERENCED AFFIDAVIT IN THE WARRANT EARLIER.
14 THAT WARRANT REFLECTS THE COPY THAT I'VE GOT THAT
15 IT WAS VOIDED, THIS WARRANT WAS VOIDED. AND IT
16 SAYS "SEE TICKET." AND THEN THERE'S A COPY OF A
17 TICKET THAT WE'VE GOT THAT APPARENTLY IS THE
18 DOCUMENT THAT WAS USED IN LIEU OF THE WARRANT ON
19 JANUARY THE 13TH OF '98 WHEN MR. SIMMONS' CASE WAS
20 DISPOSED OF. YOUR HONOR, AS YOU STATED EARLIER,
21 THE RECORD DOES REFLECT THE DATE MR. DUKES WAS
22 APPOINTED. AND THE DATE I WROTE DOWN, YOUR HONOR,
23 WAS DECEMBER THE FIFTEENTH OF '97, ALTHOUGH THERE
24 WAS A DECEMBER TENTH DATE REFERENCED, I THINK IT'S
25 CLEAR IT WAS DECEMBER THE FIFTEENTH. YOUR HONOR,

MOTIONS

OUR---

THE COURT: WELL, THE ORDER OF --
BACK THEN APPARENTLY IN DORCHESTER COUNTY THE
MAGISTRATE APPOINTS INDIGENT DEFENDANTS AN ATTORNEY
BECAUSE THE DECEMBER EIGHT DATE IS THE DATE OF THE
APPOINTMENT THAT I READ TO YOU. BUT ASSUME IT'S
EITHER THE EIGHTH OR THE FIFTEENTH, WHATEVER.

MR. THEOS: YES, SIR. AND IN EITHER
EVENT IT WOULD HAVE BEEN PRIOR TO THE DATE THAT MR.
SIMMONS WAS CONVICTED OF THE CRIMINAL DOMESTIC
VIOLENCE.

THE COURT: WELL, DID HE HAVE A
BENCH TRIAL, FORFEIT BOND, OR A GUILTY PLEA?

MR. THEOS: YOUR HONOR, IT APPEARS
FROM THE RECORD---

THE COURT: WELL, HE'S RIGHT THERE.
ASK HIM. WE'RE JUST TRYING TO GET TO THE TRUTH.
ASK HIM.

MR. THEOS: AND FROM TALKING TO MR.
SIMMONS---

THE COURT: THANK YOU.

MR. THEOS: HE WAS TRANSPORTED BY
THE DORCHESTER COUNTY SHERIFF'S DEPARTMENT AND
ENTERED A GUILTY PLEA TO THE CHARGE. THE TICKET
DOES NOT REFLECT THAT HE ENTERED A GUILTY PLEA. IT

MOTIONS

1 JUST REFLECTS THAT HE APPEARED AND THE DISPOSITION
2 WAS GUILTY. BUT I UNDERSTAND THAT HE ENTERED A
3 GUILTY PLEA. YOUR HONOR, HE WAS NOT AFFORDED AN
4 OPPORTUNITY TO HAVE AN ATTORNEY. HE WAS NOT
5 ADVISED OF HIS RIGHTS RELATED TO HIS ABILITY TO
6 HAVE AN ATTORNEY. AND ALTHOUGH I DON'T HAVE THAT
7 TRANSCRIPT OF KNOW IF THERE EVEN IS ONE FOR US TO
8 CONFIRM THAT.

9 THE COURT: MY GUESS IS THAT THERE'S
10 NOT A TRANSCRIPT AVAILABLE BECAUSE EVEN IN THE
11 CIRCUIT COURT AFTER SIXTY OR NINETY DAYS IF THERE'S
12 NOT A REQUEST FOR A TRANSCRIPT, I THINK THE TAPES
13 ARE DESTROYED OR ERASED AND USED AGAIN.

14 MR. THEOS: I DON'T KNOW. BUT
15 ASSUMING THAT TO BE THE CASE, YOUR HONOR, THEN
16 THERE WOULDN'T BE A TRANSCRIPT, THERE MIGHT BE ANY
17 RECORD AS TO EXACTLY WHAT WAS SAID, WHAT THE
18 DEFENDANT WAS ADVISED OF.

19 THE COURT: BUT CAN WE AGREE THAT IT
20 WAS A GUILTY PLEA?

21 MR. THEOS: YES, SIR.

22 THE COURT: ALL RIGHT.

23 MR. THEOS: HOWEVER, YOUR HONOR, MR.
24 DUKES WAS APPOINTED. AND IT'S OUR POSITION THAT IT
25 WOULD HAVE BEEN INCUMBENT UPON HIM TO DETERMINE

MOTIONS

1 WHAT OTHER OUTSTANDING CHARGES THERE WERE AT THE
2 TIME OF MR. SIMMONS -- AT THE TIME OF HIS
3 APPOINTMENT -- WHAT THE STATUS OF THOSE CHARGES MAY
4 HAVE BEEN, AND WHAT ACTIONS, IF ANY, SHOULD BE
5 TAKEN RELATED TO THOSE CHARGES. AND CLEARLY IN ANY
6 CASE, BUT IN PARTICULAR IN A CASE IN WHICH THE
7 STATE SEEKS THE DEATH PENALTY, IT IS INCUMBENT UPON
8 COUNSEL TO DETERMINE WHAT IS OR IS NOT IN THE BEST
9 INTEREST OF THAT DEFENDANT. AND IT'S OUR
10 CONTENTION THAT AT THAT POINT AND TIME MR. SIMMONS
11 SHOULD HAVE EITHER BEEN AFFORDED AN ATTORNEY, OR
12 MR. DUKES SHOULD HAVE APPEARED ON HIS BEHALF,
13 MONITORED THAT CHARGE, SEEN TO IT THAT THERE WASN'T
14 A CONVICTION THAT MIGHT BE HELD AGAINST HIM EITHER
15 IN THE PENALTY OR THE GUILT PHASE. AND APPARENTLY
16 THAT WASN'T DONE.

17 THE COURT: IT'S MY UNDERSTANDING
18 THAT ANY TIME PUNISHMENT OF INCARCERATION CAN BE
19 IMPOSED THAT ATTORNEYS ARE APPOINTED.

20 MR. THEOS: I HAVE---

21 THE COURT: DOES SUMMERVILLE NOT DO
22 THAT, MR. BAILEY?

23 MR. BAILEY: YOUR HONOR, I'M NOT
24 SURE WHAT TRANSPIRED BETWEEN MR. SIMMONS OR JUDGE
25 FINUCAN OR THE EMPLOYEES IN HIS OFFICE. I'M NOT

MOTIONS

1 SURE WHAT QUESTIONS WERE ASKED OF HIM ON WHETHER HE
2 WANTED A LAWYER OR NOT. I JUST DON'T KNOW.

3 MR. THEOS: I WILL SAY, YOUR HONOR,
4 THAT MR. BELL AND I BOTH PRACTICE IN MUNICIPAL AND
5 MAGISTRATES COURTS AS WELL. AND THERE ARE SOME
6 COURTS THAT DO ADVISE DEFENDANTS OF THEIR RIGHT TO
7 HAVE COUNSEL APPOINTED, AND THERE ARE SOME THAT
8 DON'T. I JUST CAN'T TELL YOU WHAT HAPPENED THAT
9 DAY.

10 THE COURT: WELL, I DO NOT SEE IN
11 THE DOCUMENTS THAT WERE GIVEN TO ME THE CHECKLIST
12 FOR MAGISTRATES AND MUNICIPAL JUDGES. THERE AT THE
13 BOTTOM OF THE PAGE THE RIGHT TO COUNSEL AND THE
14 RIGHT TO COURT-APPOINTED COUNSEL IF FINANCIALLY
15 UNABLE. I'M LOOKING AT 5(B). AND IT LOOKS LIKE
16 THAT IS MARKED THROUGH LIKE ONE, TWO, THREE, FOUR
17 AND FIVE ARE. WELL, ONE, TWO, FOUR, AND FIVE AS
18 THE MAGISTRATE WENT THROUGH THOSE THAT THEY WERE --
19 I WOULD ASSUME THAT WERE EXPLAINED TO HIM.

20 MR. THEOS: I JUST DON'T KNOW.

21 THE COURT: I DON'T KNOW THAT. I
22 JUST SAY THAT'S AN ASSUMPTION. THAT'S FEBRUARY THE
23 ELEVENTH, '97 AT 9:00 A.M. WAS HIS APPEARANCE, THE
24 HEARING DATE; AND APPARENTLY HE DID NOT APPEAR.

25 MR. THEOS: YES, SIR. THE ONLY

MOTIONS

1 THING I WOULD SAY, YOUR HONOR, IS JUST WHAT YOU
2 POINTED OUT WAS IS THAT APPARENTLY ON 2/11/97 MR.
3 SIMMONS WASN'T THERE. OR THERE'S NO RECORD THAT HE
4 WAS---

5 THE COURT: FOR THE TRIAL DATE?

6 MR. THEOS: AS THE TRIAL DATE.

7 THE COURT: FOR DISPOSITION OR PLEA,
8 OR WHATEVER.

9 MR. THEOS: THAT'S ALSO THE SAME
10 DATE REFLECTED ON THE AFFIDAVIT OF THE WARRANT
11 WHERE IT SAYS "VOID; SEE TICKET." AND THEN AT THE
12 BOTTOM LEFT-HAND CORNER IT STATES 2/11/97 P.M.. SO
13 I DON'T KNOW WHETHER THAT WARRANT WAS VOIDED AT
14 THAT POINT; WHETHER HE WAS TRIED IN HIS ABSENCE;
15 WHETHER ANOTHER TICKET WAS WRITTEN AT THAT TIME.
16 I'M NOT EXACTLY SURE WHAT HAPPENED. BUT AGAIN OUR
17 CONTENTION IS THAT IT WOULD HAVE BEEN INCUMBENT ON
18 COUNSEL APPOINTED FOR PURPOSES OF THIS CASE TO
19 MONITOR TO DETERMINE THE STATUS OF ANY OUTSTANDING
20 CHARGES TO MONITOR THEM AND DO WHATEVER WOULD HAVE
21 BEEN NECESSARY TO PROTECT MR. SIMMONS.

22 THE COURT: ALL RIGHT, SIR.
23 ANYTHING ELSE?

24 MR. THEOS: NO, SIR.

25 THE COURT: MR. SOLICITOR MAY I HEAR

MOTIONS

FROM YOU, PLEASE?

MR. BAILEY: YOUR HONOR, I WOULD JUST STATE THAT MY UNDERSTANDING OF THE SIXTH AMENDMENT RIGHT TO COUNSEL IN THIS CASE IS SPECIFIC. MR. DUKES WAS APPOINTED TO REPRESENT MR. SIMMONS ON THE CHARGES THAT HE'S ACCUSED OF AND BEEN FOUND GUILTY OF IN THIS CASE. BUT I DON'T THINK THAT THAT MEANS JUST BECAUSE YOU'RE APPOINTED ON ONE CASE THAT IF YOU GET IN TROUBLE AGAIN, THAT COURT APPOINTED LAWYER IS AUTOMATICALLY GOING TO BE ASSIGNED THAT CASE. I WOULD ASSUME -- AND I DON'T KNOW BECAUSE I WASN'T THERE -- THAT MR. SIMMONS' CASE WAS HANDLED IN THE REGULAR COURSE OF BUSINESS IN THE TERM OF MUNICIPAL COURT AND THAT CONVICTION RESULTED. I'M NOT PREPARED TO RE-LITIGATE THAT C.D.V. CASE AT THIS TIME, YOUR HONOR. AND I JUST DEFER TO THE RECORD. I HAVE PROVIDED MR. THEOS WITH MY ENTIRE FILE INCLUDING THE RAP SHEET. THE RAP SHEET WAS RUN, YOUR HONOR, ON OCTOBER THE 27TH, 1997, PRIOR TO THE CONVICTION. THE RAP SHEET DOES SHOW THE ARREST FOR C.D.V. SO WHEN I THOUGHT -- I THOUGHT WHAT I WAS DOING WHEN I COMPARED THE SUMMARY OF THE RECORD WAS AN ATTEMPT TO KEEP THE RECORD CLEAN; TO KEEP OUT AFFIDAVITS AND OTHER THINGS YOU FIND IN LOWER COURT RECORDS THAT MIGHT

MOTIONS

1 PREJUDICE THE DEFENSE AND CLOUD THE RECORD UP. AND
2 MR. THEOS AND I HAVE AGREED TO STIPULATE ON THAT
3 SUMMARY. AND AS I SAID, I THINK HE HAD ALL THE
4 INFORMATION THAT I HAD AT THE TIME WE STIPULATED
5 AND WE BOTH DID IT AFTER CONSIDERING THE PROS AND
6 CONS OF IT.

7 THE COURT: AND THAT RECORD WAS
8 PROVIDED TO HIM FROM YOU TO HAVE A NOTATION OF WHEN
9 YOU RESPONDED TO HIS REQUEST FOR PRODUCTION?

10 MR. BAILEY: YOUR HONOR, I RESPONDED
11 TO HIS REQUEST FOR PRODUCTION AT VARIOUS TIMES. AS
12 I WOULD ACQUIRE DOCUMENTS, I WOULD SEND THOSE TO
13 MR. THEOS, AND I ITEMIZED EACH ONE OF THOSE
14 DOCUMENTS. AND IF I CAN GET THE EXHIBIT I FILED
15 WITH THE CLERK, I CAN FIND THE NOTATION THERE WHERE
16 I SENT THE RAP SHEET TO HIM.

17 THE COURT: AFTER WE COMPLETE THE
18 SHARING; DO YOU MIND THUMBING THROUGH THERE AND
19 JUST CALLING IT TO THE ATTENTION OF THE COURT
20 REPORTER AND LET MR. THEOS SEE SO THEY'LL BE NO
21 DISPUTE. WHAT I'M TRYING TO DO IS TRACK THIS
22 RECORD SO ANYBODY ELSE CAN TRACK IT AND PUT THEIR
23 HANDS ON WHAT THEY NEED.

24 MR. BAILEY: YES, SIR.

25 THE COURT: OKAY.

MOTIONS

1 MR. BAILEY: I WOULD ALSO, YOUR
2 HONOR, JUST -- OF COURSE THIS IS ALL IN THE
3 RECORD. BUT FOR A GREAT PORTION OF THE TIME
4 BETWEEN THE INITIAL ARREST DATE ON JANUARY FIRST,
5 1997, AND THE DISPOSITION DATE OF JANUARY, 1998;
6 FOR THE RECORD MR. SIMMONS HAD LEFT THE AREA; THAT
7 HE HAD GONE TO COLUMBIA; HE HAD GOTTEN ARRESTED AND
8 INCARCERATED THERE. SO I THINK THAT WOULD ACCOUNT
9 FOR THE LENGTH OF TIME IT TOOK TO DISPOSE OF THAT
10 CASE THAT HE WASN'T AROUND.

11 THE COURT: THANK YOU, GENTLEMEN.
12 SO IS ANYTHING ELSE THAT YOU WANT TO PLACE IN THIS
13 RECORD REGARDING THAT MATTER OR ANY OTHER MATTER?

14 MR. BAILEY: THE STATE HAS NOTHING
15 FURTHER, YOUR HONOR.

16 MR. THEOS: YOUR HONOR, ONE SECOND,
17 PLEASE.

18 THE COURT: CERTAINLY. SOLICITOR,
19 DID YOU RUN A LATER RAP SHEET SO IT WOULD SHOW THAT
20 DISPOSITION OF THE JANUARY 13 OF '98?

21 MR. BAILEY: I DON'T BELIEVE I DID,
22 YOUR HONOR. THE REASON FOR THAT IS THAT I DIDN'T
23 EVEN KNOW THE DISPOSITION OF THE SHOPLIFTING
24 CHARGE.

25 THE COURT: AND OF COURSE IF

MOTIONS

1 SOMEBODY IS IN CUSTODY FROM DECEMBER OF '97 UNTIL
2 FEBRUARY THE 22ND OF '99, THERE'S NO USE TO---

3 MR. BAILEY: YES, SIR.

4 THE COURT: --TO CONCEDE THE THOUGHT
5 THAT THERE HAD BEEN ANY ADDITIONAL CHARGES AND/OR
6 CONVICTIONS BECAUSE HE'S BEEN CONFINED IN THE
7 DORCHESTER COUNTY DETENTION CENTER.

8 MR. BAILEY: YES, SIR.

9 THE COURT: ALL RIGHT. WE'LL STAND
10 AT EASE, THEN. EXCUSE ME; I'M SORRY.

11 MR. THEOS: YOUR HONOR, THE ONLY
12 THING THAT I WOULD ASK FOR THE RECORD IS NEITHER
13 MR. BELL NOR I FEEL THAT MR. BAILEY DID ANYTHING
14 INTENTIONALLY. OUR ONLY POINT WAS THAT THE
15 DOCUMENT AS HAS BEEN ADMITTED INTO EVIDENCE AND HAS
16 GONE BACK TO THE JURY DOES REFLECT A COURT
17 DISPOSITION DATE, A CONVICTION DATE, THAT IS
18 ERRONEOUS. AND AGAIN, MR. SIMMONS WAS DENIED HIS
19 SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF
20 COUNSEL EITHER BECAUSE COUNSEL WASN'T APPOINTED FOR
21 THAT PARTICULAR CHARGE OR THAT THE ATTORNEY THAT
22 WAS APPOINTED RELATED TO THESE CHARGES DID NOT ACT
23 ON THAT OUTSTANDING CHARGE

24 THE COURT: OR THE ATTORNEYS PRESENT
25 COMPANY INCLUDED, OR THEOS AND BELL DIDN'T RESEARCH

MOTIONS

1 HIS PRIOR RECORD TO DETERMINE THAT THE CONVICTION
2 WAS SUBSEQUENT.

3 MR. THEOS: YES, SIR.

4 THE COURT: THANK YOU, GENTLEMEN.
5 WE'LL STAND AT EASE. LET'S RECONVENE AND PUT THE
6 QUALIFICATIONS OF COUNSEL WHICH IS REQUIRED IN THE
7 RECORD.

8 MR. THEOS: YOUR HONOR, IF WE COULD,
9 BOTH JIM AND I HAVE PREPARED AFFIDAVITS THAT WE'VE
10 PREVIOUSLY FILED WITH THE COURT. IF WE COULD JUST
11 MARK THEM FOR PURPOSES OF THIS HEARING AS COURT'S
12 EXHIBITS. AND WE'LL BE HAPPY TO ANSWER ANY
13 QUESTIONS THAT WE HAVE. BUT I THINK WE'VE GOT
14 ALL---

15 THE COURT: DO YOU HAVE A COPY THE
16 COURT CAN LOOK AT AND SEE IF IT MEETS THE
17 REQUIREMENTS OF FELONY REPRESENTATION AND CERTIFIED
18 BY THE SUPREME COURT?

19 MR. THEOS: YES, SIR.

20 THE COURT: AND, GENTLEMEN, PLEASE
21 UNDERSTAND THE COURT CERTAINLY DOES NOT QUESTION
22 YOUR PROFESSIONALISM OR YOUR CAPABILITY BECAUSE
23 I'VE COMMENDED YOU TIME AND AGAIN FOR YOUR RESEARCH
24 AND YOUR THOROUGHNESS AND YOUR EFFORTS. BUT, AS
25 YOU KNOW, THE RULE REQUIRES -- THE STATUTE REQUIRES

MOTIONS

1 -- THAT WE HAVE THIS INFORMATION. AND, MR. BELL,
2 YOUR AFFIDAVIT IS DATED MARCH SECOND WHICH IS
3 TODAY. AND I DO NOT SEE WHERE YOU STATE ANY
4 EXPERIENCE IN REGARD TO DEATH PENALTY CASES.

5 MR. BELL: MAY IT PLEASE THE COURT?
6 EXPERIENCE WAS GAINED THIS WEEK. I'VE NOT
7 PARTICIPATED IN A DEATH PENALTY CASE PRIOR TO NOW.

8 THE COURT: THANK YOU. AND YOU SAT
9 IN THE SECOND CHAIR.

10 MR. BELL: I MEAN FOR TRIAL. I
11 MEAN, I PREPARED IN '83 FOR ONE WITH THE SOLICITOR,
12 BUT WE DID NOT GO INTO THE -- WE WENT INTO THE
13 TRIAL, AND THE SOLICITOR HAD WITHDRAWN THE REQUEST
14 FOR A DEATH PENALTY.

15 THE COURT: AND IT PLED OUT TO
16 MURDER?

17 MR. BELL: WELL, NO. WE TRIED IT
18 FOR MURDER.

19 THE COURT: YOU TRIED IT FOR MURDER?

20 MR. BELL: YES, SIR.

21 THE COURT: BUT YOU HAVE TRIED --
22 HOW MANY MURDER CASES IN YOUR CAREER?

23 MR. BELL: TWELVE OR FIFTEEN.

24 THE COURT: TWELVE OR FIFTEEN?
25 CERTAINLY YOU'RE QUALIFIED. I DON'T QUESTION

MOTIONS

1 THAT. WE JUST NEED IT IN THE RECORD. NOW, MR.
2 THEOS, THE DATE OF YOUR AFFIDAVIT IS BACK ON MAY
3 THE FOURTH OF 1998. AND I JUST WANTED -- AND IT'S
4 DETAILED WELL. BUT THERE HAVE BEEN NO CHANGES IN
5 THIS SINCE YOU FILED IT. YOU'RE STILL ON THE
6 APPROVED ATTORNEY LIST MAINTAINED BY THE SUPREME
7 COURT FOR QUALIFIED DEATH PENALTY COUNSEL
8 APPOINTMENT AS LEAD COUNSEL?

9 MR. THEOS: YES, SIR; AS FAR AS I
10 KNOW. I HAVE NOT BEEN REMOVED FROM THAT LIST.

11 THE COURT: ALL RIGHT. WELL, THAT
12 CERTAINLY SATISFIES THE COURT. BUT I THINK WE NEED
13 TO MAKE THESE COURT'S EXHIBITS, PLEASE, MA'AM

14 MR. BELL: YOUR HONOR, I DON'T HAVE
15 A BAR NUMBER ON THAT ONE. I SHOULD WRITE IT ON MY
16 AFFIDAVIT.

17 THE COURT: DO YOU KNOW IT?

18 MR. BELL: SURE.

19 THE COURT: DO YOU WANT TO WRITE
20 YOUR BAR NUMBER ON THERE? (COUNSEL COMPLIES.) ALL
21 RIGHT, GENTLEMEN. LET ME SEE YOU IN CHAMBERS; AND
22 LET'S REVIEW THIS SENTENCING REPORT THAT I HAVE TO
23 FILE WITH THE -- POTENTIALLY HAVE TO FILE WITH THE
24 SUPREME COURT. OTHERWISE WE'LL STAND AT EASE.
25 (BRIEF RECESS.)

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THE COURT: LADIES AND GENTLEMEN,
I'M ADVISED THAT THE JURY HAS ARRIVED AT A
VERDICT. AS I ANNOUNCED TO THIS COURT AT THE TIME
OF RECEIVING OR JUST PRIOR TO RECEIVING THE VERDICT
OF THE GUILT PHASE IN THE CASE; WE MUST MAINTAIN
PROPER DECORUM. WE CANNOT ALLOW ANYONE TO IN ANY
WAY EXHIBIT ANY EMOTIONS. AND PLEASE, LADIES AND
GENTLEMEN, I INVITE YOU NOW. I DON'T WANT TO HAVE
ANY DIFFICULTY WITH ANY ONE OF YOU. BUT I DO NOT
WANT TO SEE A FROWN, A SMILE. I DON'T WANT ANY
DISPLAY OF EMOTIONS BY ANYONE ON BEHALF OF THE
STATE, DEFENDANT, OR OTHERWISE. SO I WOULD BEG OF
YOU, PLEASE, IF YOU THINK YOU'RE GOING TO HAVE ANY
TROUBLE CONTROLLING YOUR EMOTIONS, I WOULD ASK THAT
YOU DEPART THE COURTROOM AT THIS TIME. OTHERWISE
THE DOORS ARE LOCKED. AND BRING THE JURY IN,
PLEASE.

(WHEREUPON AT 3:28 P.M. JURY RETURNS TO OPEN COURT
WITH VERDICT.)

THE COURT: MADAM FORELADY, LADIES
AND GENTLEMEN OF THE JURY; HAVE YOU ARRIVED AT A
VERDICT?

THE FORELADY: YES, SIR, WE HAVE.

THE COURT: PASS THEM UP, PLEASE.

VERDICT

1 ALL RIGHT. MADAM CLERK, I WOULD ASK THAT YOU
2 PLEASE PUBLISH THE VERDICT OF THE JURY.

3 THE CLERK: THE STATE OF SOUTH
4 CAROLINA, COUNTY OF DORCHESTER; INDICTMENT NUMBER
5 98-GS-1875, THE STATE OF SOUTH CAROLINA VS. KENNETH
6 SIMMONS, DEFENDANT; JURY FINDING AS TO AGGRAVATING
7 CIRCUMSTANCES; WE THE JURY IN THE ABOVE ENTITLED
8 CASE DO UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT
9 THE EXISTENCE OF THE FOLLOWING STATUTORY
10 AGGRAVATING CIRCUMSTANCES: CRIMINAL SEXUAL
11 CONDUCT; YES. KIDNAPPING; YES. ARMED ROBBERY;
12 YES. PHYSICAL TORTURE, YES; BURGLARY, YES. THESE
13 ARE SIGNED BY JAN WHITMORE, FORELADY; ROBERT
14 HUGHES;, MARK WILLIAMSON, DEBORAH SHUFORD, BRIAN
15 ROBERT HUGHES, REBADELLE AHL, BRIAN SULLIVAN, PAUL
16 RANDOLPH, MILTON CHANDLER, JR., ALICE POSTELL,
17 HERBERT SIMMONS, JR., AND DONALD SHORT, JR. IF
18 THIS IS YOUR VERDICT, WOULD YOU PLEASE ALL RAISE
19 YOU'RE RIGHT HANDS? (ALL JURORS RAISE HANDS IN THE
20 AFFIRMATIVE.) THE STATE OF SOUTH CAROLINA VS.
21 KENNETH SIMMONS, INDICTMENT NUMBER 98-GS-18-075;
22 RECOMMENDATION OF SENTENCE, DEATH PENALTY. WE THE
23 JURY IN THE ABOVE-CAPTIONED CASE HAVE FOUND BEYOND
24 A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING
25 STATUTORY AGGRAVATING CIRCUMSTANCES; CRIMINAL

POLLING OF THE JURY

1 SEXUAL CONDUCT, KIDNAPPING, ARMED ROBBERY, PHYSICAL
2 TORTURE, AND BURGLARY; NOW RECOMMEND TO THE COURT
3 THAT THE DEFENDANT, KENNETH SIMMONS, BE SENTENCED
4 TO DEATH. FORELADY JAN WHITMORE, ROBERT HUGHES,
5 MARK WILLIAMSON, DEBORAH SHUFORD, BRIAN SULLIVAN,
6 BENJAMIN DURHAM, REBADELLE AHL, BRIAN SULLIVAN,
7 PAUL RANDOLPH, MILTON HANDLER, ALICE POSTELL,
8 HERBERT SIMMONS, JR., AND DONALD SHORT, JR. IF
9 THIS IS YOUR VERDICT WOULD YOU ALL PLEASE RAISE
10 YOUR RIGHT HAND? (ALL JURORS RAISE HANDS IN THE
11 AFFIRMATIVE.)

12 THE COURT: THANK YOU. YOU CAN PUT
13 THEM DOWN. MADAM CLERK, PLEASE POLL THE JURY AS TO
14 EACH OF THE SAID FINDINGS, PLEASE.

15 THE CLERK: AS I CALL YOUR NAME,
16 WOULD YOU PLEASE STAND? PAUL RANDOLPH, IS THIS
17 YOUR VERDICT.

18 MR. RANDOLPH: YES, MA'AM.

19 THE CLERK: IS IT STILL YOUR
20 VERDICT?

21 MR. RANDOLPH: YES, MA'AM.

22 THE CLERK: HERBERT SIMMONS, JR.
23 WAS THIS YOUR VERDICT?

24 MR. SIMMONS: YES, MA'AM.

25 THE CLERK: AND IS IT STILL YOUR

POLLING OF THE JURY

1 VERDICT?

2 MR. SIMMONS: YES, MA'AM.

3 THE CLERK: BENJAMIN DURHAM, III;
4 WAS THIS YOUR VERDICT?

5 MR. DURHAM: YES.

6 THE CLERK: AND IS IT STILL YOUR
7 VERDICT?

8 MR. DURHAM: YES.

9 THE CLERK: ALICE T. POSTELL; WAS
10 THIS YOUR VERDICT?

11 MRS. POSTELL: YES.

12 THE CLERK: AND IS IT STILL YOUR
13 VERDICT?

14 MRS. POSTELL: YES.

15 THE CLERK: MILTON HANDLER, JR.; WAS
16 THIS YOUR VERDICT?

17 MR. HANDLER: YES, MA'AM.

18 THE CLERK: AND IS IT STILL YOUR
19 VERDICT?

20 MR. HANDLER: YES, MA'AM.

21 THE CLERK: REBADELLE AHL; WAS THIS
22 YOUR VERDICT?

23 MRS. AHL: YES.

24 THE CLERK: AND IS IT STILL YOUR
25 VERDICT?

POLLING OF THE JURY

1 MRS. AHL: YES.

2 THE CLERK: DEBORAH SHUFORD; WAS
3 THIS YOUR VERDICT?

4 MRS. SHUFORD: YES.

5 THE CLERK: AND IS IT STILL YOUR
6 VERDICT?

7 MRS. SHUFORD: YES.

8 THE CLERK: MARK WILLIAMSON; WAS
9 THIS YOUR VERDICT?

10 MR. WILLIAMSON: YES, IT IS.

11 THE CLERK: AND IS IT STILL YOUR
12 VERDICT?

13 MR. WILLIAMSON: YES, MA'AM.

14 THE CLERK: BRIAN SULLIVAN; WAS THIS
15 YOUR VERDICT?

16 MR. SULLIVAN: YES, MA'AM.

17 THE CLERK: AND IS IT STILL YOUR
18 VERDICT?

19 MR. SULLIVAN: YES, MA'AM.

20 THE CLERK: DONALD SHORT, JR.; WAS
21 THIS YOUR VERDICT?

22 MR. SULLIVAN: YES.

23 THE CLERK: IS IT STILL YOUR
24 VERDICT?

25 MR. SULLIVAN: YES.

POLLING OF THE JURY

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THE CLERK: JAN WHITMORE; WAS THIS
YOUR VERDICT?

MRS. WHITMORE: YES, MA'AM.

THE CLERK: AND IS IT STILL YOUR
VERDICT?

MRS. WHITMORE: YES, MA'AM.

THE CLERK: ROBERT HUGHES; WAS THIS
YOUR VERDICT?

MR. HUGHES: YES, MA'AM.

THE CLERK: AND IS IT STILL YOUR
VERDICT?

MR. HUGHES: YES, MA'AM.

THE COURT: LET THE RECORD REFLECT
THE JURY HAS BEEN POLLED. ALL JURORS HAVE ANSWERED
IN THE AFFIRMATIVE. LADIES AND GENTLEMEN OF THE
JURY, FOR THIS COURT TO SAY THANK YOU IS CERTAINLY
AN INADEQUATE EXPRESSION FOR WHAT YOU LADIES AND
GENTLEMEN HAVE ENDURED SINCE MONDAY, FEBRUARY THE
22ND, WHEN WE COMMENCED THE JURY APPEARANCE VOIR
DIRE AND TO HAVE THE TRIAL OF THE CASE. CERTAINLY
WE APOLOGIZE TO YOU FOR HAVING TO EXPOSE YOU DURING
THESE PAST EIGHT DAYS OF TESTIMONY TO A SIDE OF
HUMAN EXISTENCE PERHAPS THAT YOU WOULD RATHER HAVE
NOT SEEN AND WE WOULD NOT HAVE LIKED TO EXPOSE YOU
TO. BUT YOU HAVE SEEN FIRSTHAND HUMAN LOSS AND

MOTIONS

1 HUMAN SUFFERING. AND YOU'VE HAD A DIFFICULT TASK
2 OF DETERMINING HOW THESE MATTERS SHOULD NECESSARILY
3 BE ADDRESSED. AND YOU NOW CONCLUDE YOUR SERVICE
4 AND GO BACK TO YOUR HOMES. AND ANY INNOCENCE THAT
5 YOU MAY HAVE HAD ABOUT WHAT DOES IN FACT HAPPEN IN
6 SITUATIONS SUCH AS THIS, YOU NOW HAVE BEEN
7 PRESENTED WITH THE CRIME AND CRIMINAL ACTIVITY AND
8 HUMAN SUFFERING. AND I'M SORRY THAT YOU HAD TO DO
9 THAT. BUT IT'S NECESSARY IN THIS CASE AND IN EVERY
10 TYPE DEATH PENALTY CASE THAT THE PROCEDURE THAT WAS
11 FOLLOWED, TO BE FOLLOWED, TO ENSURE THE RIGHT OF
12 THE DEFENDANT TO HAVE A FAIR, IMPARTIAL TRIAL, AS
13 WELL AS THE STATE TO HAVE A FAIR AND IMPARTIAL
14 TRIAL AND NOT TO TAKE A CHANCE ON ANY OF YOU BEING
15 EXPOSED TO ANY PUBLICITY BY WAY OF PRINT MEDIA,
16 ELECTRONIC, OR OTHERWISE. BUT I TELL YOU, LADIES
17 AND GENTLEMEN, THAT YOUR VERDICT AND YOUR SENTENCE
18 WERE SUPPORTED BY THE LAW IN THIS CASE. IT WAS
19 SUPPORTED BY THE EVIDENCE IN THE CASE. WHAT YOU
20 HAVE BEEN ASKED TO DO IN SERVING AS JURORS IN THIS
21 CASE WAS TO SIT IN JUDGMENT OF A FELLOW HUMAN BEING
22 AND TO PASS JUDGMENT ON THAT MAN'S LIFE. AND THAT
23 IS NOT EASY FOR ANYONE TO DO. BUT I MUST TELL YOU
24 THAT YOU HAVE PERFORMED YOUR DUTY IN THE TRADITION
25 OF THE SYSTEM OF JUSTICE THAT I BELIEVE WE HAVE IN

MOTIONS

1 SOUTH CAROLINA IN THE HIGHEST MANNER THAT IT COULD
2 BE PERFORMED AS EVIDENCED BY IT'S TWENTY-FIVE
3 MINUTES OF FOUR, AND Y'ALL HAVEN'T EVEN THOUGHT
4 ABOUT HAVING LUNCH. IF YOU THOUGHT ABOUT IT, YOU
5 DIDN'T ASK FOR IT.

6 BUT YOU'VE LISTENED DURING THIS
7 TRIAL. YOU HAVE BEEN ATTENTIVE DURING THE TRIAL.
8 YOU'VE BEEN COOPERATIVE WITH THE SECURITY STAFF AND
9 WITH THE BAILIFFS AND THE COURT PERSONNEL. AND YOU
10 CERTAINLY HAVE SATISFIED THE OATH THAT YOU TOOK
11 BEFORE YOU STARTED THE TRIAL OF THIS CASE. AND
12 NOW, LADIES AND GENTLEMEN, YOU WILL RECALL THAT
13 WHEN WE COMMENCED THE TRIAL OF THIS CASE THAT I
14 TOLD YOU AT THAT TIME THAT YOU COULD NOT SPEAK TO
15 ANYONE ABOUT THE CASE OR ALLOW ANYONE TO TALK TO
16 YOU ABOUT IT OR IN ANY WAY BE EXPOSED TO
17 INFORMATION CONCERNING THIS CASE. I HAVE NOW
18 PASSED OUT TO YOU, AND I INDIVIDUALLY SIGNED COPIES
19 OF THIS ORDER. AND MADAM CLERK, I GIVE ONE TO YOU
20 TO GIVE TO THE COURT REPORTER TO MARK AS A COURT'S
21 EXHIBIT. AND THAT DOCUMENT STATES THAT AFTER YOUR
22 SERVICE IN THIS TRIAL HAS CONCLUDED, THE STATE VS.
23 KENNETH SIMMONS, YOU HAVE THE RIGHT TO EITHER
24 REFUSE TO DISCUSS THE VERDICT YOU HAVE RENDERED OR
25 TO DISCUSS THE VERDICT TO THE EXTENT YOU SO

MOTIONS

1 DESIRE. IF YOU CHOOSE TO DISCUSS THE VERDICT, YOU
2 ARE FREE TO TERMINATE ANY SUCH DISCUSSION AT ANY
3 POINT.

4 IF THE PERSON WITH WHOM YOU'RE
5 SPEAKING CONTINUES TO PURSUE A DISCUSSION OF THE
6 VERDICT AFTER YOU HAVE COMMUNICATED A DESIRE TO
7 TERMINATE THE DISCUSSION, OR IF A PERSON CONTINUES
8 TO HARASS YOU AFTER YOU HAVE REFUSED TO DISCUSS THE
9 VERDICT, YOU SHOULD REPORT THAT PERSON TO ME. I'VE
10 PUT MY MAILING ADDRESS. I'VE PUT MY TELEPHONE
11 NUMBER. I'LL BE IN LEXINGTON THE NEXT FIVE WEEKS
12 IN COURT, BUT MY SECRETARY AT MY OFFICE HAS A
13 NUMBER WHERE I CAN BE REACHED ANY TIME DAY OR
14 NIGHT. AND IF YOU NEED TO CONTACT ME, DON'T
15 HESITATE TO DO SO. AND IT'S ENTIRELY IN YOUR
16 DISCRETION AS TO WHO YOU TALK TO OR WHETHER YOU
17 TALK TO NO ONE ABOUT THE CASE AT ALL BECAUSE YOU
18 ARE JUDGES OF THE FACTS. YOU ARE A JUDGE JUST LIKE
19 I AM, AND YOU'RE ENTITLED TO CERTAIN PROTECTION, SO
20 TO SPEAK, FROM ANYONE WHO MAY WANT TO DISCUSS THIS
21 WITH YOU IN ANY WAY. SO DO ANY OF YOU HAVE ANY
22 QUESTIONS ABOUT THIS DOCUMENT? (NO RESPONSE.)

23 NOW, LADIES AND GENTLEMEN, I
24 WOULD ASK YOU FURTHER, AND I REALIZE THE LATENESS
25 OF THE HOUR. AND PLEASE HAND ONE OF THESE TO MY

MOTIONS

1 ALTERNATE WHO HAS BEEN FAITHFUL. HE SAID IF THE
2 JURY IS NOT GOING TO EAT, THEN I'M NOT GOING TO
3 EAT. SO HE WOULDN'T PERMIT US TO BRING HIM ANY
4 BREAD OR GRITS OR GROCERIES OR ANYTHING ELSE. BUT,
5 LADIES AND GENTLEMEN, AGAIN YOU'VE BEEN DETAINED,
6 AS I SAID, SINCE LAST WEDNESDAY MORNING WHEN THE
7 JURY WAS STRUCK. I AGAIN LEAVE IT TO YOUR OPTION;
8 WOULD Y'ALL LIKE TO STAY ANOTHER FIVE OR TEN
9 MINUTES WHILE WE GO THROUGH THE SENTENCING
10 PROCEEDING, OR WOULD YOU LIKE TO LEAVE AT THIS
11 TIME? IT IS CERTAINLY IN YOUR DISCRETION.

12 THE FORELADY: WE'LL STAY, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT. THEN WE
15 SHALL DO SO. YOU MIGHT GO AHEAD -- DO YOU HAVE
16 THOSE CHECKS?

17 THE CLERK: YES, SIR.

18 THE COURT: GO AHEAD AND BE PASSING
19 THEM OUT SO WE'LL HAVE THAT BEHIND US. GENTLEMEN,
20 ARE THERE ANY MOTIONS AT THIS TIME?

21 MR. BAILEY: NONE FROM THE STATE,
22 YOUR HONOR.

23 MR. THEOS: NOT AT THIS TIME. WE
24 RESERVE ANY POST-TRIAL MOTIONS ACCORDING TO RULE
25 29.

MOTIONS

1 THE COURT: I'M SO SORRY?

2 MR. THEOS: WE WOULD RESERVE ANY
3 POST-TRIAL MOTIONS THAT WE MIGHT MAKE IN ACCORDANCE
4 TO RULE 29 OF THE RULES OF CRIMINAL PROCEDURE.

5 THE COURT: ARE YOU SAYING YOU WANT
6 A CERTAIN NUMBER OF DAYS?

7 MR. THEOS: YES, SIR. WE WOULD ASK
8 FOR THAT IN ACCORDANCE WITH RULE 29.

9 THE COURT: ALL RIGHT. WELL, AFTER
10 WE FINISH WITH THE SENTENCING, AND SO FORTH, AND
11 THE JURY HAS BEEN EXCUSED, I WOULD CERTAINLY GIVE
12 YOU AS MUCH -- I'LL COMPLY WITH RULE 29 AND ALLOW
13 YOU TO DO THAT. BUT I'D RATHER YOU GO AHEAD AND
14 MAKE ANY MOTIONS THAT YOU'RE AWARE OF AT THIS TIME
15 SO THE COURT CAN RULE UPON THEM WITH THE CERTAINTY
16 TO LEAVE AND RIGHT UNDER RULE 29 WITHIN A GIVEN
17 TIME TO SUBMIT ANY ADDITIONAL MOTIONS. SO MADAM
18 COURT REPORTER. AS THE TRIAL JUDGE IN THE ABOVE
19 ACTION CASE, THE STATE VS. KENNETH SIMMONS,
20 INDICTMENT NUMBER 98-GS-18-075, AND PRIOR TO THE
21 IMPOSITION OF THE DEATH SENTENCE UPON THE
22 DEFENDANT, KENNETH SIMMONS, THIS COURT FINDS AS AN
23 AFFIRMATIVE FACT THAT THE EVIDENCE OF THE CASE
24 WARRANTS THE IMPOSITION OF THE DEATH PENALTY AND
25 ITS IMPOSITION IS NOT A RESULT OF PREJUDICE,

MOTIONS

1 PASSION, OR OF ANY OTHER ARBITRARY FACTOR. AND I
2 HAVE SIGNED THAT DOCUMENT, AND I HAVE PLACED IT IN
3 THE OFFICIAL RECORD, PLEASE, MA'AM. MADAM CLERK, I
4 NEED TO HAVE THE SENTENCE FORMS AND THE INDICTMENTS
5 IN THE FIRST FOUR CASES; INDICTMENT 76, 78, AND
6 79. AND, GENTLEMEN, MY UNDERSTANDING OF THE DEATH
7 PENALTY UNDER 16-23-20 THAT WHERE THE DEATH PENALTY
8 IS IMPOSED THAT THERE WILL NOT BE A SENTENCE FOR
9 KIDNAPPING. AND THERE IS CASE LAW TO THAT EFFECT.
10 ARE WE IN AGREEMENT?

11 MR. BAILEY: THAT IS CORRECT, YOUR
12 HONOR.

13 MR. THEOS: YES, SIR.

14 THE COURT: ALL RIGHT, GENTLEMEN;
15 SHALL WE APPROACH THE BENCH FOR SENTENCING? IS
16 THERE ANYTHING OTHER OR FURTHER FROM THE STATE IN
17 THIS REGARD, PLEASE?

18 MR. BAILEY: NOT FROM THE STATE,
19 YOUR HONOR.

20 THE COURT: ALL RIGHT. MR. KENNETH
21 SIMMONS, I WILL BE GLAD TO HEAR FROM YOU PRIOR TO
22 THE IMPOSITION OF THE SENTENCE IF YOU HAVE ANYTHING
23 FURTHER TO SAY WHY JUDGMENT OF THIS COURT SHOULD
24 NOT BE PRONOUNCED AGAINST YOU.

25 MR. SIMMONS: YOUR HONOR, YES; I

SENTENCING

1 WANT TO APOLOGIZE TO THE FAMILY.

2 THE COURT: TURN AROUND AND TELL
3 THEM.

4 MR. SIMMONS: I WANT TO APOLOGIZE TO
5 Y'ALL. I HOPE Y'ALL CAN FORGIVE ME FOR WHAT
6 HAPPENED. I LOVE YOU; ALWAYS WILL; ALWAYS PRAY FOR
7 YOU. MY FAMILY, I LOVE Y'ALL, AND I WILL BE
8 PRAYING FOR Y'ALL. AND JURY, YOU KNOW I FORGIVE
9 YOU FOR JUDGING ME, BUT Y'ALL HAVE TO DO WHAT YOU
10 HAVE TO DO AND THE WAY Y'ALL FEEL ABOUT IT AND WHAT
11 Y'ALL HAVE SEEN. I CAN ACCEPT THAT. AND I LOVE
12 Y'ALL, TOO.

13 THE COURT: ANYTHING OTHER OR
14 FURTHER, MR. SIMMONS, PLEASE?

15 MR. SIMMONS: NO, SIR.

16 THE COURT: ALL RIGHT, MR. JERRY
17 THEOS; I'LL BE GLAD TO HEAR FROM YOU, SIR.

18 MR. THEOS: YOUR HONOR, I HAVE
19 NOTHING TO SAY.

20 THE COURT: MR. JIM BELL, I'LL BE
21 GLAD TO HEAR FROM YOU, SIR.

22 MR. BELL: I HAVE NOTHING TO SAY,
23 YOUR HONOR.

24 THE COURT: MADAM CLERK, AS YOU KNOW
25 THESE JUROR SENTENCING FORMS WENT INTO EFFECT ON

SENTENCING

1 YESTERDAY, MARCH THE SECOND. I HAVE NOT HAD
2 OCCASION TO USE THE JUDGE'S CODE. IT'S ASSIGNED --
3 EACH JUDGE HAS A NUMBER. AND MY RECOLLECTION IS
4 THAT I AM TEN.

5 THE CLERK: IS THAT CORRECT.

6 THE COURT: THANK YOU.

7 THE CLERK: YOU'RE WELCOME.

8 THE COURT: MADAM COURT REPORTER,
9 FOR THE RECORD, STATE VS. PERRY AND STATE VS.
10 COKELAND AND ROBERTS AND STATE VS. ADAMS, ALL STAND
11 FOR THE PROPOSITION THAT THERE WHERE THE DEFENDANT
12 WAS SENTENCED TO LIFE IMPRISONMENT FOR MURDER, THE
13 LIFE IMPRISONMENT SENTENCE FOR KIDNAPPING MURDER
14 VICTIM WAS PRECLUDED. SO CERTAINLY THAT WOULD ALSO
15 BE PRECLUDED IN A DEATH PENALTY CASE. AND
16 KIDNAPPING; THERE WILL BE NO SENTENCE IN THIS
17 CASE.

18 MR. BAILEY: YES, SIR.

19 THE COURT: ALL RIGHT. ANYTHING
20 OTHER OR FURTHER FROM THE STATE OR ANYONE ON BEHALF
21 OF THE STATE OR THE DEFENDANT BEFORE SENTENCE IS
22 IMPOSED BY THIS COURT?

23 MR. BAILEY: NOT FROM THE STATE,
24 YOUR HONOR.

25 MR. THEOS: NO, SIR.

SENTENCING

1 MR. BELL: NO, SIR.

2 THE COURT: ALL RIGHT, GENTLEMEN AND

3 LADIES, I SHARE WITH YOU THAT UNFORTUNATELY IT IS

4 INDEED A SAD COMMENTARY THAT ANY CITIZEN, WHETHER

5 IN DORCHESTER COUNTY OR ANYWHERE IN SOUTH CAROLINA

6 OR OTHERWISE, SHOULD HAVE TO ENDURE AND SUFFER SUCH

7 AN ATROCIOUS AND BRUTAL DEATH AS DID MRS. LILLY

8 BELL BOYD. EVERY PERSON UNDER OUR LAW AND OUR

9 CONSTITUTION AND THE MORAYS OF SOCIETY, REGARDLESS

10 OF THEIR WALK OR STATION IN LIFE, IS GUARANTEED THE

11 RIGHT TO BE SAFE AND SECURE IN THEIR HOMES. WHAT

12 WE'VE HEARD HERE FOR THE LAST EIGHT DAYS IS JUST

13 ANOTHER EXAMPLE OF HUMAN TRAGEDY DIRECTLY CAUSED BY

14 CRACK COCAINE. AN EIGHTY-NINE YEAR OLD LADY LIVING

15 ALONE, APPARENTLY A FINE PERSON, ACTIVE IN HER

16 CHURCH AND IN HER COMMUNITY, A VICTIM OF BURGLARY

17 IN HER OWN HOME; ARMED ROBBERY, KIDNAPPING,

18 PHYSICAL TORTURE, AND WITH HER HANDS TIED BEHIND

19 HER BACK WAS RAPED, FOURTEEN RIBS BROKEN, THEN

20 STRANGLED TO DEATH ALL BECAUSE THIS DEFENDANT WAS

21 HIGH ON CRACK COCAINE OR BECAUSE HE NEEDED MORE

22 MONEY TO BUY MORE CRACK COCAINE FOR HIS ADDICTION.

23 THIS TYPE BEHAVIOR CANNOT, MUST NOT, AND WILL NOT

24 BE TOLERATED IN A CIVILIZED SOCIETY.

25 THE DEFENDANT, KENNETH SIMMONS,

SENTENCING

HAVING BEEN FOUND BY THE JURY TO BE GUILTY OF THE
OFFENSE OF MURDER, THE JURY HAS RECOMMENDED THE
DEFENDANT SHOULD BE SENTENCED TO DEATH. IT IS
THEREFORE THE JUDGMENT OF THE LAW AND THE SENTENCE
OF THIS COURT THAT THE DEFENDANT, KENNETH SIMMONS,
BE TRANSPORTED TO THE COUNTY JAIL OF DORCHESTER
COUNTY AND THEN TO THE STATE DEPARTMENT OF
CORRECTIONS HENCEFORTH TO BE KEPT IN CLOSE AND SAFE
CONFINEMENT UNTIL THE FIRST DAY OF MAY, 1999, UPON
WHICH DAY BETWEEN THE HOURS OF SIX O'CLOCK P.M. AND
SIX O'CLOCK A.M., THE DEFENDANT, KENNETH SIMMONS,
SHALL SUFFER DEATH BY ELECTROCUTION OR LETHAL
INJECTION IN THE MANNER PROVIDED BY LAW; AND MAY
GOD HAVE MERCY ON YOUR SOUL. AS REGARD THE
INDICTMENT FOR KIDNAPPING, THE COURT HAS WRITTEN
UPON THIS SHEET "NOT APPLICABLE; SEE CODE SECTION
16-3-20 AND 16-3-910 OF OUR SOUTH CAROLINA CODE OF
LAWS." AS REGARDS INDICTMENT 98-GS-18-76 FOR
BURGLARY IN THE FIRST DEGREE OF A DWELLING; THE
SENTENCE OF THE COURT IS THAT THE DEFENDANT BE
COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
FOR A DETERMINATE PERIOD OF LIFE IMPRISONMENT.
THAT IS CONSIDERED THE NUMBER TWO SENTENCE, THE
NUMBER ONE SENTENCE BEING THE DEATH PENALTY. AS
REGARDS INDICTMENT 98-GS-18-77 FOR ARMED ROBBERY,

MOTIONS

1 THE SENTENCE OF THE COURT IS THAT THE DEFENDANT BE
2 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
3 FOR A PERIOD OF THIRTY YEARS PROVIDED THAT BE A
4 CONSECUTIVE SENTENCE TO THE NUMBER TWO SENTENCE.
5 AS TO INDICTMENT NUMBER 98-GS-18-78 WHICH IS THE
6 NUMBER FOUR SENTENCE FOR CRIMINAL SEXUAL CONDUCT IN
7 THE FIRST DEGREE, THE SENTENCE OF THE COURT IS
8 THIRTY YEARS IN THE STATE DEPARTMENT OF
9 CORRECTIONS. AND NUMBER FOUR IS CONSECUTIVE TO
10 THREE AS THREE IS CONSECUTIVE TO TWO. THANK YOU;
11 AND GOOD LUCK TO YOU.

12 MR. SIMMONS: THANK YOU, SIR.

13 THE COURT: LADIES AND GENTLEMEN,
14 BEFORE WE TAKE A SHORT RECESS BECAUSE I WANT TO
15 COME BACK IN AND HEAR THESE MOTIONS; I WANT TO
16 PUBLICLY THANK THE ATTORNEYS, SOLICITOR BAILEY, MR.
17 THEOS AND MR. BELL, THEIR STAFF, THEIR SUPPORT
18 GROUP FOR THEIR THOROUGH RESEARCH, PREPARATION AND
19 COOPERATION. ADDITIONALLY, THE CLERK OF COURT, THE
20 STAFF, THE BAILIFFS, SECURITY, MY FRIENDS FROM
21 SLED, AND CHIEF ROY WHITEHEAD OF THE SUMMERVILLE
22 POLICE DEPARTMENT, SHERIFF RAY NASH, DORCHESTER
23 COUNTY SHERIFF'S DEPARTMENT. I COMMEND YOU FOR THE
24 AID AND ASSISTANCE YOU'VE RENDERED TO THIS COURT
25 AND ENSURING THAT JUSTICE BE DONE IN THE TRIAL OF

MOTIONS

1 THIS CASE. AND LT. BUSTER EDWARDS; I THANK YOU AND
2 YOUR VERY NICE SMILING, POLITE SLED FOLKS WHO HAVE
3 HELPED US AND THE TWO GENTLEMEN FROM THE HIGHWAY
4 PATROL. ALL OF YOU HAVE BEEN SO VERY
5 ACCOMMODATING. YOU'VE BEEN COOPERATIVE; YOU'VE
6 BEEN PLEASANT.

7 IT'S NOT A PLEASANT THING TO HAVE
8 TO GO THROUGH A DEATH PENALTY CASE. BUT EVERY EYE
9 HAS TO BE DOTTED, EVERY T CROSSED. AND THERE'S A
10 LOT OF STRESS INVOLVED WITH IT FOR THE JURORS, FOR
11 WITNESSES. YOU KNOW, I DIDN'T TELL THE JURY
12 EARLIER, BUT THE REASON WE TOOK AN HOUR-AND-A-HALF
13 RECESS LAST THURSDAY AND DELAYED THINGS IS BECAUSE
14 OF THE BLIZZARD UP NORTH AND THE DNA EXPERTS MISSED
15 THEIR FLIGHT THAT WAS SUPPOSED TO BE HERE AT 2:30.
16 WELL, THEY DIDN'T GET HERE UNTIL 4:30. BUT NOBODY
17 CAN HELP THAT. THINGS HAPPEN. AND EVERYBODY HAS
18 CERTAINLY BEEN VERY COOPERATIVE AND VERY POLITE.
19 AND I THANK YOU. AND YOU'VE BEEN PARTICULARLY NICE
20 TO ME. I'VE EATEN SO MANY SUGAR WAFERS AND PARCHED
21 PEANUTS, I'M GOING TO HAVE TO GO HOME AND GO ON A
22 DIET. I DO WANT EACH OF YOU KNOW THAT I APPRECIATE
23 EACH AND EVERY COURTESY THAT YOU AFFORDED TO THE
24 COURT. THANK YOU. WE'RE GOING TO STAND IN RECESS
25 FOR ABOUT TEN MINUTES AT THIS TIME. AND I'D ASK

MOTIONS

1 THE JURY TO GO BACK TO THEIR ROOM SO THAT I CAN
2 BRIEFLY VISIT WITH YOU, PLEASE.

3 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

4 THE CLERK: IS THERE ANYTHING YOU
5 WANT TO PUT ON THE RECORD ABOUT THE CLOTHES?

6 THE COURT: THAT'S IN THAT ORDER.
7 THAT \$119 FOR THOSE CLOTHES THAT WERE BOUGHT FOR
8 THE DEFENDANT, THEY'RE TO BE TURNED OVER TO THE
9 DETENTION CENTER, AND LET THE NEXT PERSON THAT
10 NEEDS THEM USE THEM, PLEASE.

11 (BRIEF RECESS.)

12 - - - - -
13 THE COURT: LET THE RECORD REFLECT
14 THAT THE DEFENDANT IS PRESENT WITH HIS COUNSEL.
15 AND GENTLEMEN, AGAIN, PURSUANT TO RULE 29 YOU WILL
16 BE AFFORDED TEN DAYS FOR ANY POST-TRIAL MOTIONS.
17 YOU HAVE TEN DAYS AFTER THE IMPOSITION OF THE
18 SENTENCE. AND, SO, I CERTAINLY WILL AFFORD THAT
19 OPPORTUNITY TO YOU. BUT AS I MENTIONED, IF THERE'S
20 ANYTHING AT THIS TIME WHILE IT'S FRESH ON YOUR MIND
21 THAT YOU WANT TO DO IN THE RECORD, I'LL BE HAPPY TO
22 HEAR FROM YOU.

23 MR. THEOS: YOUR HONOR, THE ONLY
24 THING I CAN THINK OF AT THIS POINT WOULD BE TO
25 RENEW ALL MOTIONS PREVIOUSLY MADE; THE MOTIONS FOR

MOTIONS

1 DIRECTED VERDICT; OUR RENEWED MOTION FOR DIRECTED
2 VERDICT AT THE END OF THE CASE. AND WE WOULD ONCE
3 AGAIN RENEW THOSE MOTIONS BASED UPON THE SAME
4 GROUNDS THAT WE PREVIOUSLY STATED. OTHER THAN
5 THOSE AT THIS POINT, YOUR HONOR, I WOULD ASK TO BE
6 ALLOWED PURSUANT TO RULE 29 TO MAKE ANY ADDITIONAL
7 OR POST-TRIAL MOTIONS

8 THE COURT: CERTAINLY. AND IF YOU
9 WOULD DIRECT THOSE TO MY ATTENTION IN BARNWELL,
10 PERHAPS THE ORIGINAL TO THE CLERK, A COPY TO ME, A
11 COPY TO THE SOLICITOR. AND IF THERE ARE ANY
12 FURTHER OR OTHER MOTIONS, WE WILL JUST HAVE TO
13 ARRANGE A TIME CONVENIENT WITH EVERYONE, THE
14 LAWYERS AND THE COURTS, BUSY SCHEDULE. AND
15 ANYTHING FURTHER FROM THE STATE?

16 MR. BAILEY: YOUR HONOR, THE ONLY
17 OTHER THING, JUST FOR THE RECORD; COURT'S EXHIBIT
18 TWO IS A COPY OF THE TRANSMITTAL LETTERS ON
19 DISCOVERY. AND IN CONNECTION WITH THE C.D.V.
20 CONVICTION, I ADVISED THE COURT THAT I WOULD
21 PROVIDE THE DEFENSE WITH A COPY OF THE RAP SHEET.
22 AND, YOUR HONOR, ACCORDING TO COURT'S EXHIBIT NUMBER
23 TWO, THAT WAS PROVIDED TO THE DEFENSE ON MARCH THE
24 SIXTH, 1998, AND THE SUMMARY OF THE CONVICTION
25 WHICH WE AGREED TO STIPULATE TO WAS PROVIDED ON

MOTIONS

1 DECEMBER THE 29TH, 1998. I HAVE A COPY OF THAT
2 LARGE EXHIBIT THAT'S ALSO CONTAINED WITHIN COURT'S
3 NUMBER TWO.

4 THE COURT: ALL RIGHT. AND IF WE
5 CAN, WE'LL MAKE THAT A SPECIFIC COURT EXHIBIT ASIDE
6 FROM THE COURT'S EXHIBIT TWO JUST SO IT WILL BE
7 CORRELATED IN THE RECORD CLOSER.

8 MR. BAILEY: YES, SIR.

9 THE COURT: ALL RIGHT. SO IS THERE
10 ANYTHING OTHER OR FURTHER FOR THE RECORD? AND
11 THAT HAS THE ARREST CONVICTION DATE AS JANUARY OF
12 '97.

13 MR. BAILEY: YES, SIR.

14 THE COURT: ALL RIGHT. SO IS THERE
15 ANYTHING OTHER OR FURTHER, LADIES AND GENTLEMEN?

16 MR. BAILEY: NOT FROM THE STATE,
17 YOUR HONOR.

18 MR. THEOS: NOT THAT WE CAN THINK
19 OF, YOUR HONOR.

20 THE COURT: ALL RIGHT. WELL, AGAIN,
21 LADIES OF THE CLERK'S OFFICE, BAILIFFS, COURT
22 REPORTER, LAWYERS, STAFF, T.V. MAN, AND ELECTRONIC
23 EXPERT, HARRISON; LET ME JUST SINCERELY THANK
24 Y'ALL. AND Y'ALL HAVE JUST REALLY TRIED. AND
25 EVERYBODY HAS. AND IF I OFFENDED ANYBODY IN ANY

MOTIONS

1 WAY, I APOLOGIZE TO YOU PUBLICLY. I HOPE THAT I
2 DIDN'T. BUT, YOU KNOW, WE JUST HAD TO STAY WITHIN
3 THE TRACES. BUT I WISH ALL OF YOU WELL. GOOD LUCK
4 TO YOU. THANK YOU.

5 MR. BAILEY: THANK YOU, YOUR HONOR.

6 MR. THEOS: THANK YOU, YOUR HONOR.

7 * * *END OF TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, THE UNDERSIGNED KATHI W. ADDISON, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD IN THE TRIAL OF THE CAPTIONED CASE IN THE COURT OF GENERAL SESSIONS IN DORCHESTER COUNTY, ON FEBRUARY 22-28 AND MARCH 1-2, 1999.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

OFFICIAL COURT REPORTER

MY COMMISSION EXPIRES: 2/23/2008

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER) IN THE
 COURT OF GENERAL SESSIONS
 FOR THE FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
)

PLAINTIFF,)
)

- VS -)
)

KENNETH SIMMONS,)
)

DEFENDANT.)
)

TRANSCRIPT OF RECORD
 CASE #98-GS-18-075, 076,
 077, 078, AND 079

ST. GEORGE, S.C.
 FEBRUARY 11-12, 1999

B E F O R E:

HONORABLE RODNEY A. PEEPLES; JUDGE

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

WALTER L. BAILEY, JR., SOLICITOR
 ROBERT ROBBINS, ASST. SOLICITOR
 ATTORNEYS FOR THE STATE

JERRY N. THEOS, ESQUIRE
 JAMES A. BELL, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT

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I N D E X

	<u>PAGE</u>
TITLE PAGE	1
INDEX	2-3
EXHIBITS.	4

PAULA WALSH

DIRECT EXAMINATION BY MR. BAILEY.	13
CROSS-EXAMINATION BY MR. THEOS.	16
RE-DIRECT EXAMINATION BY MR. BAILEY	21
RE-CROSS EXAMINATION BY MR. THEOS	21

JAN HILTON

DIRECT EXAMINATION BY MR. BAILEY.	22
CROSS-EXAMINATION BY MR. THEOS.	26
RE-DIRECT EXAMINATION BY MR. BAILEY	35

PRISCILLA JOHNSON

DIRECT EXAMINATION BY MR. BAILEY.	36
CROSS-EXAMINATION BY MR. THEOS.	52

SIDNEY JACKSON

DIRECT EXAMINATION BY MR. BAILEY.	69
CROSS-EXAMINATION BY MR. THEOS.	82
RE-DIRECT EXAMINATION BY MR. BAILEY	101

EMMETT MCKINNEY

DIRECT EXAMINATION BY MR. BAILEY.	103
CROSS-EXAMINATION BY MR. THEOS.	106

LESLIE SANDLER

DIRECT EXAMINATION BY MR. BAILEY.	118
CROSS-EXAMINATION BY MR. THEOS.	122
RE-DIRECT EXAMINATION BY MR. BAILEY	129
RE-CROSS EXAMINATION BY MR. THEOS	157

THOMAS A. MCABEE

DIRECT EXAMINATION BY MR. THEOS	197
CROSS-EXAMINATION BY MR. BAILEY	223

(CONTINUED)

INDEX (CONTINUED)

THOMAS V. BEHRMANN

DIRECT EXAMINATION BY MR. THEOS	229
CROSS-EXAMINATION BY MR. BAILEY	249

JEFFREY JON VIDIC

DIRECT EXAMINATION BY MR. THEOS	251

JACKSON V. DINNO HEARINGMARGARET BUSH

DIRECT EXAMINATION BY MR. BAILEY.	308
CROSS-EXAMINATION BY MR. THEOS.	312

SAMUEL JACKSON

DIRECT EXAMINATION BY MR. BAILEY.	314
CROSS-EXAMINATION BY MR. THEOS.	315

NATHAN PERRYMAN

DIRECT EXAMINATION BY MR. BAILEY.	316
CROSS-EXAMINATION BY MR. THEOS.	318

EVERETT HOWARD

DIRECT EXAMINATION BY MR. BAILEY.	323
CROSS-EXAMINATION BY MR. THEOS.	338

ANN REESE

DIRECT EXAMINATION BY MR. BAILEY.	357
CROSS-EXAMINATION BY MR. THEOS.	364

MAYBELLE HENDRICKS

DIRECT EXAMINATION BY MR. BAILEY.	382
CROSS-EXAMINATION BY MR. THEOS.	387

KENNY MEARS

DIRECT EXAMINATION BY MR. BAILEY.	398
CROSS-EXAMINATION BY MR. THEOS.	423

NOTARY CERTIFICATE.	533

E X H I B I T S

	<u>PAGE</u>
S-1 (SCHOOL RECORDS)	15
S-2 (CONTINUATION	39
S-3 (ORDER FORM)	39
S-4 (MAIL LOG SHEET)	47
S-5 (MAIL LOG SHEET)	47
S-6 (LIBRARY SHEET)	52
S-7 (C.V.-DR. SANDLER)	119
 D 1-4 (WAIVER OF RIGHTS FORM)	 159
D-5 (C.V. - DR.MCABEE)	199
D-6 (C.V. - DR. BEHRMANN)	230

JACKSON V. DINNO HEARING

S-1 (NOTE FROM DEFENDANT)	310
S-2 (WAIVER FORM)	361
S-3 (CASSETTE TAPE)	403
S-4 (TRANSCRIPT)	404
S-5 (STATEMENT)	406
S-6 (MIRANDA RIGHTS)	412
S-7 (CASSETTE TAPE)	416
S-8 (TRANSCRIPT)	417
S-9 (RIGHTS FORM)	420
S-10 (CASSETTE TAPE)	422
S-11 (TRANSCRIPT)	422
 D-1 (REPORT)	 346
D-2 (MIRANDA CARD)	357

MOTIONS

THE COURT: GOOD MORNING, LADIES; GOOD MORNING, GENTLEMEN. MAY I PLEASE THANK EACH OF YOU FOR BEING HERE PRESENT WITH US TODAY. I REALIZE THE SUN IS SHINING AND IT'S A NICE DAY, AND EVERYONE HAS SOMEWHERE PERHAPS THEY WOULD RATHER BE. MADAM COURT REPORTER, PLEASE LET THE RECORD REFLECT THAT WE ARE PROCEEDING AT THIS TIME IN REGARD TO DORCHESTER GENERAL SESSIONS INDICTMENTS 98-GS-18-75, 76, 77, 78, AND 79. THIS CASE IS STYLED THE STATE VS. KENNETH SIMMONS. AND THE STATE IS REPRESENTED BY SOLICITOR WALTER BAILEY, AND THE DEFENDANT IS HERE PRESENT REPRESENTED BY HIS COUNSEL, JERRY THEOS AND JAMES BELL. THE COURT REPORTER, LADIES AND GENTLEMEN, IS MRS. KATHI GIBSON ADDISON. IF ANY OF YOU WOULD LIKE TO ORDER A TRANSCRIPT OF THE PROCEEDING, SHE HAS A CARD THAT SHE WILL GIVE TO YOU AND MAKE THAT AVAILABLE AS SOON AS CONVENIENTLY POSSIBLE IN VIEW OF THE FACT THAT SHE HAS OTHER TRANSCRIPTS AND WORK, I'M SURE, PENDING. LET ME INTRODUCE YOU, PLEASE; TO MY LEFT IS MICHAEL HENDERSON. HE IS MY LAWYER AND WORKS WITH ME AS MY LAW CLERK. THE PURPOSE OF CONVENING THE HEARING TODAY IS THAT THERE IS

MOTIONS

WHAT IS COMMONLY DENOTED AS A BLAIR HEARING. THE COURT HAS BEFORE IT A COPY OF THE REPORT OF THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH FROM THE W.S. HALL PSYCHIATRIC INSTITUTE, THE FORENSIC SERVICES GROUP. AND THIS REPORT HAS TO DO WITH THE EVALUATION OF NOVEMBER THE 23, 1998 AND JANUARY 8 OF 1999 WITH DR. THOMAS W. BEHRMAN WAS THE PRESIDING DOCTOR AT THAT TIME RELATIVE TO THE COMPETENCY TO STAND TRIAL AND HIS CRIMINAL RESPONSIBILITY AS WELL AS THE CAPACITY TO CONFORM. AND THIS WAS STAFFED, I SUPPOSE YOU WOULD SAY, ON JANUARY THE 13TH OF 1999. AND THAT REPORT HAS BEEN FILED WITH THE CLERK OF COURT; AND OBVIOUSLY ALL COUNSEL HAVE RECEIVED THAT. THE COURT HAS FURTHER RECEIVED UNDER DATE OF FEBRUARY 10, 1999, THE REPORT OF THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS REFLECTING THAT MR. SIMMONS WAS EVALUATED ON FOUR DIFFERENT OCCASIONS, OR SEEN ON FOUR DIFFERENT OCCASIONS FOR APPROXIMATELY TWO HOURS EACH ON JANUARY THE 28TH, FEBRUARY 2, FEBRUARY 4, AND FEBRUARY 9. THE LEAD PSYCHOLOGIST WAS DR. LESLIE N. SANDLER AND, OF COURSE, DR. THOMAS MCABEE WAS THE PSYCHOLOGIST

MOTIONS

FOR A SECONDARY EXAMINER. AND THIS REPORT HAS BEEN FILED WITH THE CLERK, I TRUST, MR. SOLICITOR. AND IF NOT, IT SHALL BE PLACED AS A PART OF THE PERMANENT RECORD IN THIS FILE. AND I DO WANT TO THANK ALL PARTIES FROM ATTORNEYS TO RETAINED EXPERTS TO THE STATE GROUP WHO HAVE HAD OCCASION TO PARTICIPATE IN THIS NECESSARY EVALUATION AND PROCEEDING BECAUSE OF THE TIME FRAME UNDER WHICH WE WERE OPERATING. WE JUST HOPE THAT WE DID NOT CAUSE ANY INCONVENIENCE. CERTAINLY IF WE DID, IT WAS NOT INTENTIONAL. SO I DO THANK EACH AND ALL, BOTH FOR THE STATE AND THE DEFENSE, FOR THEIR COOPERATION IN THIS MATTER BECAUSE WE DID, BACK ON ABOUT THE 25TH OF JANUARY SUMMONS SOME 350 JURORS FOR APPEARANCE ON FEBRUARY THE 22ND; AND OBVIOUSLY, DEPENDING ON THE OUTCOME OF THE HEARING HERE TODAY AS TO WHETHER OR NOT THAT WILL BE RENDERED A MUTE ISSUE BUT WE STILL HAD TO MAKE THE NECESSARY ARRANGEMENTS IN ORDER FOR THINGS TO PROCEED IN AN ORDERLY FASHION. MADAM COURT REPORTER, THERE WAS A TELEPHONE CONFERENCE THAT WAS HAD BY THIS COURT WITH THE SOLICITOR AND MR. THEOS AND DR. SANDEL WITH THE DEPARTMENT OF DISABILITIES AND

MOTIONS

SPECIAL NEEDS. AND I'M JUST GOING TO REFER TO THEM HEREAFTER AS DDSN. Y'ALL MAY PREFER ANOTHER ACRONYM OR WHATEVER. BUT JUST TO TRY TO ABBREVIATE THE RECORD WHEN AND IF WE CAN. AND THERE WAS A RULING BY THE COURT, AND THEN THERE WAS A MOTION FOR RECONSIDERATION BY THE COURT. AND IT MIGHT TAKE FIFTEEN OR TWENTY MINUTES FOR THAT MATTER TO BE PLACED IN THE RECORD, MA'AM. BUT BECAUSE WE HAVE SOME THIRTY PLUS PERSONS HERE PRESENT TODAY; AND IN AN EFFORT NOT TO FURTHER INCONVENIENCE THOSE FOLKS FROM THEIR NORMAL ACTIVITIES OR RESPONSIBILITIES, THERE WAS AN INQUIRY IN CHAMBERS ABOUT PLACING THAT ON THE RECORD. AND I ADVISED COUNSEL AT THAT TIME THAT IT SHALL BE DONE, BUT IT WOULD BE DONE NUNC PRO TUNC. NOW, IS THAT AGREEABLE, MR. SOLICITOR?

MR. BAILEY: YES, SIR, YOUR HONOR.

THE COURT: MR. THEOS, IS THAT AGREEABLE?

MR. THEOS: YES, SIR.

THE COURT: ALL RIGHT. SO, GENTLEMEN, UNLESS YOU WISH TO ADDRESS ANYTHING OTHER FURTHER, I WOULD SUGGEST THAT WE PROCEED AT THIS TIME WITH THE HEARING. AND THE CLERK SAID THAT SHE OR ONE OF HER STAFF WOULD BE PRESENT HERE TO

MOTIONS

2484⁹

AID, ABET, AND ASSIST US. AND I TOLD HER WE WOULD BE PLEASED TO HAVE THEM. BUT I KNOW HOW BUSY THEY ARE WITH CRIMINAL, CIVIL, FAMILY, AND OTHER MATTERS. SO UNLESS ANYONE HAS AN OBJECTION, IF Y'ALL WILL FIND THE BIBLE FOR ME HERE.

MR. BAILEY: YOUR HONOR, I HAD MENTIONED IN CHAMBERS IF I COULD BRIEFLY ADDRESS THE ISSUE INVOLVING SOME RECORDS FROM THE DEPARTMENT OF ALCOHOL AND DRUG ABUSE COMMISSION.

THE COURT: CERTAINLY IF YOU WOULD LIKE TO TAKE YOUR WITNESSES OUT OF ORDER FOR ANY REASON OR ADDRESSING THE MATTER RELATIVE TO RECORDS OR AUTHENTICITY OR ADMISSIBILITY, THE COURT WILL BE GLAD TO HEAR FROM YOU. MR. SOLICITOR?

MR. BAILEY: THANK YOU, YOUR HONOR. YOUR HONOR, THE PERSONNEL AT THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS HAS REQUESTED THAT I ATTEMPT TO OBTAIN RECORDS FROM THE DORCHESTER COUNTY MENTAL HEALTH COMMISSION AS WELL AS THE ALCOHOL AND DRUG ABUSE COMMISSION. WE SUBPOENAED THOSE RECORDS.

MRS. ADELLE CHELLIS WITH THE ALCOHOL AND DRUG ABUSE COMMISSION IS HERE, AND SHE HAS ADVISED

MOTIONS

ME AND DISCUSSED THIS MATTER WITH ME, AND FEELS THAT UNDER HER GUIDELINES -- AND SHE CAN ADDRESS THE COURT ON THIS ISSUE -- THAT SHE IS PROHIBITED WITHOUT A COURT ORDER ON PRODUCING THOSE RECORDS.

THE COURT: I APPRECIATE MRS. CHELLIS' DESIRE TO COMPLY WITH THE MANDATES OF HER DEPARTMENT AS WELL AS TO OBEY THE LAW. AND MRS. CHELLIS, WE THANK YOU FOR BEING HERE PRESENT WITH US. AND IF YOU WOULD LIKE TO BE HEARD, OR COUNSEL ON YOUR BEHALF WOULD LIKE TO BE HEARD, WE'LL BE HAPPY TO GIVE YOU THE OPPORTUNITY TO SHARE WITH US ANY INFORMATION YOU'D LIKE AS TO YOUR POSITION. BUT OBVIOUSLY I MUST SHARE WITH YOU THAT THESE ARE NECESSARY RECORDS, AND WE ARE AWARE OF THE RESTRICTIONS UPON DISSEMINATION BECAUSE IN THE MENTAL HEALTH FIELD AND THE ALCOHOL AND DRUG ABUSE FIELD, OBVIOUSLY THERE IS A NEED FOR CONFIDENTIALITY SO THAT THOSE PERSONS THAT YOU'RE TRYING TO HELP THAT YOU'RE TREATING, THAT THEY WILL BE COMPLETELY FRANK AND OPEN WITH YOU. AND THIS IS NOT INFORMATION THAT'S GENERALLY AVAILABLE TO THE PUBLIC. AND THERE'S A REASON WHY YOU HAVE YOUR RULES. I RESPECT THAT. BUT I LIKEWISE

MOTIONS

HOPE THAT YOU RESPECT THE FACT THAT IT IS A NECESSARY THING FOR THIS COURT AND THE ATTORNEYS TO HAVE THE BENEFIT OF THOSE RECORDS.

MRS. CHELLIS: YES, SIR. IT'S MY UNDERSTANDING THAT ALL I NEED IS THE COURT ORDER.

THE COURT: ALL RIGHT. MAY I POLITELY ORDER YOU TO PRODUCE AND MAKE THOSE RECORDS AVAILABLE FOR US, THEN?

MRS. CHELLIS: YES, SIR. I ONLY HAVE THE ORIGINALS. WHAT WOULD YOU LIKE FOR ME TO DO ABOUT THAT?

THE COURT: WELL, I WOULD SUGGEST THAT PERHAPS THAT -- GENTLEMEN, I DON'T WANT TO TAKE THE ORIGINAL RECORDS. DO WE HAVE A COPY MACHINE THAT WOULD BE CAPABLE OF MAKING APPROPRIATE COPIES? I WOULD ASSUME THAT YOU WOULD WANT A COPY FOR THE STATE, A COPY FOR THE DEFENSE; AND THEN WE WOULD NEED A COPY, IF YOU INTEND TO PROFFER THOSE FOR THE RECORD, SO IF WE HAD THREE COPIES MADE OF THEM -- BECAUSE I WANT HER TO BE ABLE TO TAKE HER ORIGINAL RECORDS BACK, AND WE COULD CONSIDER THEM DUPLICATE ORIGINALS?

MR. BAILEY: YES, SIR.

THE COURT: OR TRIPLICATE ORIGINALS, OR
HOWEVER WE DENOTE IT. IS THAT AGREEABLE?

MR. BAILEY: THAT'S FINE WITH US, YOUR HONOR.

THE COURT: MR. THEOS?

MR. THEOS: THAT'S FINE, YOUR HONOR.

THE COURT: AND, SO, WOULD WE NEED MRS.
CHELLIS ANY FURTHER?

MR. BAILEY: NO, SIR.

THE COURT: AND HOW VOLUMINOUS ARE THOSE
DOCUMENTS? ARE THEY TWO PAGES OR 287?

MRS. CHELLIS: IT'S REALLY NOT THAT MUCH.

THE COURT: ALL RIGHT.

MRS. CHELLIS: AND THE INFORMATION IN HERE --
WE HAVE INFORMATION THAT'S NOT NECESSARILY
PERTINENT TO THE CLINICALS, THE TREATMENT OF
THIS CLIENT. DO YOU WANT EVERYTHING THAT'S IN
THE CHART; DEMOGRAPHIC INFORMATION?

THE COURT: I YIELD TO THE GENTLEMEN WHO SEEK
IT BECAUSE I DIDN'T ASK FOR IT, EVEN THOUGH I
POLITELY ORDERED YOU TO SHARE IT WITH US.

MR. BAILEY: JUDGE, NOT KNOWING WHAT'S THERE,
I FEEL LIKE IT WOULD BE SAFER TO ASK FOR THE
WHOLE THING. IF IT'S IRRELEVANT, WE JUST
WOULDN'T USE IT.

THE COURT: IS THERE ANY OTHER MATTER, THEN
SOLICITOR, THAT YOU NEED TO TAKE UP
PRELIMINARILY TO PROCEEDING?

MR. BAILEY: NO, SIR; I DON'T BELIEVE SO.

THE COURT: MR. THEOS, OTHER THAN THE MOTION
RULING I NEED TO PUT ON THE RECORD; BUT WE CAN
HANDLE THAT AFTER WE'VE EXCUSED OUR PAYING
CLIENTS.

MR. THEOS: THAT'S FINE, YOUR HONOR.

THE COURT: ALL RIGHT. YOU MAY PROCEED,
GENTLEMEN.

MR. BAILEY: THANK YOU, YOUR HONOR. THE STATE
WOULD CALL PAULA WALSH.

- - - - -

WHEREUPON,

PAULA WALSH, WHO AFTER BEING FIRST DULY
SWORN TO TELL THE TRUTH, TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

- Q. MRS. WALSH, YOU'RE EMPLOYED BY SCHOOL DISTRICT TWO?
- A. YES, SIR.
- Q. WHAT IS YOUR JOB AT THE SCHOOL DISTRICT?
- A. I'M THE GUIDANCE SECRETARY AND REGISTRAR RECORDS
CLERK AT SUMMERVILLE HIGH SCHOOL.

PAULA WALSH - DIRECT/MR. BAILEY

Q. AND AS THE RECORDS CLERK, ARE YOU THE CUSTODIAN OF THE PERMANENT SCHOOL RECORDS THE SCHOOL KEEPS ON STUDENTS?

A. YES, SIR.

Q. WHAT TYPE RECORDS DO Y'ALL MAINTAIN OF PEOPLE WHO GRADUATE FROM THE SCHOOL SYSTEM?

A. WELL, WE MAINTAIN THEIR WHOLE FOLDER FROM ELEMENTARY THROUGH HIGH SCHOOL.

Q. ALL RIGHT. AND DOES THAT FOLDER CONTAIN THE GRADES THAT THEY'VE MADE AND EACH GRADING SESSION EACH NINE WEEK PERIOD?

A. YES, SIR.

Q. DOES THAT CONTAIN THE RESULTS OF ANY KIND OF ACHIEVEMENT TESTS OR I.Q. TESTS GIVEN THE CHILD THROUGHOUT THEIR SCHOOL YEARS?

A. YES, SIR.

Q. ALL RIGHT. AND AT MY REQUEST AND PURSUANT TO A SUBPOENA, DID YOU GET THE ORIGINAL SCHOOL FILE FOR KENNETH SIMMONS, THE DEFENDANT IN THIS CASE?

A. YES, SIR.

Q. DO YOU HAVE THAT WITH YOU?

A. YES, SIR.

Q. OKAY. AND YOU'RE FAMILIAR WITH THESE RECORDS; IS THAT CORRECT? AND THEY'RE KEPT IN THE NORMAL COURSE OF SCHOOL BUSINESS?

PAULA WALSH - DIRECT/MR. BAILEY

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A. YES, SIR.

Q. NOW, COULD I SEE THE RECORDS YOU BROUGHT WITH YOU, PLEASE?

A. YES, SIR.

Q. WHAT YOU'VE HANDED ME IS A MANILA ENVELOPE. IS THIS THE COMPLETE SCHOOL FILE OF KENNETH SIMMONS?

A. YES, SIR.

Q. THERE'S NOTHING ELSE THE SCHOOL HAS PERTAINING TO HIM TO YOUR KNOWLEDGE?

A. NOT TO MY KNOWLEDGE; NO, SIR.

MR. BAILEY: YOUR HONOR, I WOULD INTRODUCE THIS FOR PURPOSES OF THIS HEARING ONLY. AND I THINK THE SCHOOL PROBABLY WANTS THE ORIGINAL BACK; SO IF I COULD SUBSTITUTE A COPY OF THIS.

THE COURT: DUPE THE ORIGINALS BY AGREEMENT?

MR. THEOS: YES, SIR.

THE COURT: SO YOU'RE OFFERING THIS, MR. SOLICITOR?

MR. BAILEY: YES, SIR.

THE COURT: IS THERE ANY OBJECTION?

MR. THEOS: NO, SIR.

STATE'S EXHIBIT NO. 1

MARKED FOR IDENTIFICATION.

Q. MRS. WALSH, I'M GOING TO HAND YOU STATE'S ONE WHICH IS THE ORIGINAL SCHOOL RECORD ON KENNETH SIMMONS,

PAULA WALSH - DIRECT/MR. BAILEY

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16

AND ASK YOU TO REFER TO THAT RECORD, AND LET ME
KNOW WHETHER OR NOT THAT RECORD INDICATES THAT MR.
SIMMONS GRADUATED FROM SUMMERVILLE HIGH SCHOOL?

A. YES, IT DOES.

Q. DID HE RECEIVE A REGULAR HIGH SCHOOL DIPLOMA?

A. YES, HE DID.

Q. MRS. WALSH, THAT'S ALL I HAVE. PLEASE ANSWER ANY
QUESTIONS THE DEFENSE MAY HAVE FOR YOU.

THE COURT: CROSS?

MR. THEOS: YES, SIR.

CROSS-EXAMINATION

BY MR. THEOS:

Q. MRS. WALSH, YOU WERE NOT ONE OF KENNETH'S TEACHERS?

A. NO, SIR.

Q. YOU DON'T HAVE ANY DIRECT KNOWLEDGE OF WHAT ANY OF
THESE GRADES ARE SIGNIFICANT -- THE SIGNIFICANCE OF
ANY OF THESE GRADES OR TEST SCORES OTHER THAN THE
FACT THAT YOU ARE NOW READING THOSE RECORDS;
CORRECT?

A. I DON'T KNOW ABOUT THE TEST SCORES. LOOKING AT THE
COURSES THAT ARE LISTED; I MEAN, THEY ARE REGULAR
COURSES.

Q. HAVE YOU SPOKEN WITH ANY OF THE TEACHERS REGARDING
MR. SIMMONS AND WHAT THOSE TEST SCORES OR GRADES
MAY INDICATE?

PAULA WALSH - CROSS/MR. THEOS

A. NO, SIR.

Q. OKAY. AND YOU SAID MR. SIMMONS GRADUATED -- FROM THOSE RECORDS -- CAN TELL UNDER WHAT CIRCUMSTANCES HE MAY HAVE GRADUATED?

A. HE GRADUATED IN MAY OF 1980 WITH A REGULAR HIGH SCHOOL DIPLOMA.

Q. IN MAY OF 1980 WERE CERTIFICATES AWARDED RATHER THAN DIPLOMAS?

A. A CERTIFICATE---

Q. THOSE PEOPLE THAT MAY HAVE JUST BEEN PROMOTED UP THROUGH THE SYSTEM?

A. CERTIFICATES OF ATTENDANCE; YES.

Q. THOSE RECORDS DO REFLECT THAT MR. SIMMONS WAS PROMOTED SEVERAL TIMES THROUGH THE SCHOOL SYSTEM; CORRECT?

A. YES, SIR.

Q. NOW, I UNDERSTAND FROM YOUR TESTIMONY THAT THOSE ARE THE COMPLETE FILES?

A. YES, SIR.

Q. THERE ARE SOME TEST SCORES THAT ARE CATEGORIZED AS I.Q. TESTS THAT APPEAR IN THE RIGHT-HAND COLUMNS OF SOME OF THESE REPORTS. IS THERE ANY DATA WITHIN THE SCHOOL RECORDS RELATED TO THOSE TEST SCORES OTHER THAN WHAT'S IN THIS FILE?

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

PAULA WALSH - CROSS/MR. THEOS

Q. CERTAINLY THERE WAS TEST DATA RELATED TO THOSE TESTS AT ONE POINT?

A. IT COULD HAVE BEEN.

Q. CAN YOU TELL US, SINCE YOU'RE THE CUSTODIAN OF RECORDS, WHERE THAT DATA MIGHT BE?

A. I HAVE NO IDEA.

Q. IS IT THE PRACTICE, OR HAS IT BEEN THE PRACTICE OF DORCHESTER COUNTY, TO BRING AN INDEPENDENT PSYCHOLOGIST OR PSYCHIATRIST TO ADMINISTER THIS TEST, OR WAS IT DONE IN HOUSE, SO TO SPEAK, BY THE SCHOOL PSYCHOLOGIST?

A. AS FAR AS I KNOW IT IS BY A SCHOOL PSYCHOLOGIST. ANY OF THOSE RECORDS WOULD BE AT OUR PSYCHOLOGICAL SERVICES BUILDING ON MAIN STREET.

Q. OKAY. SO CAN YOU TELL US WHO WE WOULD NEED TO CONTACT THERE TO GET THOSE SPECIFIC RECORDS?

A. YOU COULD CALL MRS. FLOY SHULER.

Q. I'M SORRY; COULD YOU SPELL BOTH OF THOSE?

A. IT'S F-L-O-Y; AND THEN HER LAST NAME IS S-H-U-L-E-R.

Q. AND AGAIN SHE IS AT?

A. SHE IS AT THE PSYCHOLOGICAL SERVICES BUILDING.

THE COURT: YOU WOULDN'T KNOW THAT PHONE NUMBER?

MRS. WALSH: OH, YES, SIR. IT'S 875-4161.

PAULA WALSH - CROSS/MR. THEOS

Q. NOW, DID YOU CHECK WITH HER BEFORE YOU CAME HERE TODAY TO FIND OUT IF IN FACT THEY DID HAVE RECORDS ON MR. SIMMONS?

A. NO, SIR, I DID NOT.

Q. ARE THERE ANY OTHER BUILDINGS OR DEPARTMENTS THAT MAY HAVE RECORDS RELATED TO MR. SIMMONS?

A. NOT THAT I'M AWARE OF.

Q. IS IT PROPER PROCEDURE TO CONTACT THEM DIRECTLY, OR IS THIS SOMETHING THAT YOU CAN DO FOR US TO GET THOSE RECORDS, WHAT RECORDS, IF ANY, THE SCHOOL MIGHT HAVE?

THE COURT: MA'AM, WHEN YOU LEAVE HERE ARE YOU GOING BACK TO SUMMERVILLE?

MRS. WALSH: YES, SIR.

THE COURT: AND YOU KNOW THIS LADY? YOU KNOW THE PHONE NUMBER. WOULD YOU DO A COURTESY IN AN EFFORT TO TRY TO HELP CALL THE LADY, MRS. SHULER, AND INQUIRE WHAT RECORDS, IF ANY, SHE HAS REGARDING ANY TESTING OF KENNETH SIMMONS AT ANY STAGE OF HIS EDUCATION OR ATTENDANCE DURING THE TWELVE YEARS OR THIRTEEN YEARS, OR WHATEVER, THAT HE HAD ENROLLED IN SCHOOL DISTRICT TWO? AND TELL HER WE'RE GOING TO HAVE MR. JIM BELL CALL; OR MAYBE WE COULD JUST HAVE -- WELL, IT MAY BE BETTER, MR. BELL, FOR

PAULA WALSH - CROSS/MR. THEOS

YOU TO, WHILE MR. THEOS IS PROCEEDING HERE, TO GO IN MY CHAMBERS AND CALL THE LADY. IT'S TWENTY 'TIL ELEVEN NOW. AND DO YOU THINK, MA'AM, BY ONE O'CLOCK YOU WOULD HAVE A CHANCE TO TALK TO MRS. SHULER? SHE'S A REGULAR EMPLOYEE?

MRS. WALSH: SHE'S A REGULAR EMPLOYEE.

THE COURT: AS FAR AS YOU KNOW SHE'S NOT OUT OF STATE OR ATTENDING A CONTINUING EDUCATION PROGRAM OR ANYTHING?

MRS. WALSH: NOT THAT I KNOW OF.

THE COURT: SO, WOULD YOU ASK HER TO TRY TO BE SEARCHING FOR WHAT SHE HAS, AND THAT MR. BELL IS GOING TO CALL HER AROUND ONE O'CLOCK TO SEE IF THERE IS ANYTHING THAT MIGHT BE AVAILABLE.

MRS. WALSH: OKAY.

THE COURT: DO YOU MIND DOING THAT?

MRS. WALSH: NO, SIR.

THE COURT: THAT'S NOT AN ORDER.

MRS. WALSH: OH, NO; I DO NOT MIND.

THE COURT: THAT'S A POLITE REQUEST.

MRS. WALSH: THAT'S FINE.

THE COURT: ALL RIGHT. MR. THEOS, PROCEED. I DIDN'T MEAN TO INTERRUPT YOU. ANY FURTHER QUESTIONS, OR ANYTHING IN REPLY?

PAULA WALSH - RE-DIRECT/MR. BAILEY

MR. THEOS: THAT'S IT, JUDGE.

MR. BAILEY: JUST VERY BRIEFLY, YOUR HONOR, IF
I MIGHT.

RE-DIRECT EXAMINATION

BY MR. BAILEY:

- Q. MRS. WALSH, MR. THEOS ASKED YOU SOMETHING ABOUT
WHETHER OR NOT THEY AWARDED CERTIFICATES OF
ATTENDANCE IF YOU DIDN'T COMPLETE HIGH SCHOOL. TO
MAKE IT REAL CLEAR, DID MR. SIMMONS GET A
CERTIFICATE OF ATTENDANCE OR A HIGH SCHOOL DIPLOMA?
- A. HE RECEIVED A HIGH SCHOOL DIPLOMA.
- Q. OKAY. AND HOW MANY CREDIT HOURS DID HE GET
ACCORDING TO THOSE RECORDS? HOW MANY CREDITS, I
GUESS IS WHAT I MEAN?
- A. EIGHTEEN.
- Q. THANK YOU, MA'AM. THAT'S ALL I HAVE.

THE COURT: AND THE REQUIREMENT FOR GRADUATION
IS HOW MANY CREDIT HOURS?

MRS. WALSH: AT THAT TIME IT WAS EIGHTEEN.

THE COURT: IT'S BEEN A LONG TIME SINCE I---

MR. BAILEY: YOUR HONOR, CAN I ASK TWO
FOLLOW-UP QUESTIONS, PLEASE?

THE COURT: CERTAINLY.

RE-CROSS EXAMINATION

BY MR. THEOS:

PAULA WALSH - RE-DIRECT/MR. BAILEY

Q. WITH RESPECT TO THOSE CREDIT HOURS, MRS. WALSH, HOW MANY OF THOSE WERE IN REMEDIAL CLASSES?

A. I'LL HAVE TO LOOK AND SEE.

Q. CAN YOU TELL THAT FROM THOSE RECORDS, FIRST OF ALL?

A. IT LOOKS LIKE MAYBE TWO.

Q. ANY FROM SPECIAL ED CLASSES?

A. NO, SIR.

MR. THEOS: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: WITHOUT OBJECTION, THIS LADY MAY BE EXCUSED. DRIVE CAREFULLY. THANK YOU FOR CALLING MRS. SHULER FOR US. HAVE A NICE DAY.

MR. BAILEY: THE STATE CALLS JAN HILTON.

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WHEREUPON,

JAN HILTON, WHO AFTER BEING FIRST DULY SWORN TO TELL THE TRUTH, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. BAILEY:

Q. YOU'RE JAN HILTON?

A. YES, I AM.

Q. AND THAT'S H-I-L-T-O-N?

A. YES.

Q. ALL RIGHT. MRS. HILTON, PLEASE TELL US WHAT YOUR EDUCATIONAL BACKGROUND IS.

JAN HILTON - DIRECT/MR. BAILEY

- A. I GRADUATED FROM NEWBERRY COLLEGE WITH A BACHELOR OF ARTS, AND HAVE A MASTER'S DEGREE FROM THE CITADEL. AND I HAVE THE MASTER'S PLUS THIRTY CERTIFICATION.
- Q. ALL RIGHT. ARE WHERE ARE YOU EMPLOYED AT THIS TIME?
- A. I'M GUIDANCE DIRECTOR AT AUSTIN MIDDLE SCHOOL.
- Q. HOW LONG HAVE YOU BEEN EMPLOYED BY DISTRICT TWO?
- A. ABOUT TWENTY-SIX AND A HALF (26-1/2) YEARS.
- Q. NOW, BACK IN THE SCHOOL YEAR 1978-79 HOW WERE YOU EMPLOYED WITH THE SCHOOL DISTRICT?
- A. I TAUGHT ENGLISH AT SUMMERVILLE HIGH SCHOOL.
- Q. ALL RIGHT. AND AT THE BEGINNING OF THAT SCHOOL YEAR, 1978, WOULD YOU STATE WHETHER OR NOT KENNETH SIMMONS WAS A STUDENT OF YOURS?
- A. YES, HE WAS.
- Q. WHAT DID YOU TEACH MR. SIMMONS?
- A. ENGLISH.
- Q. AND HAVE YOU PREVIOUSLY REVIEWED THE SCHOOL RECORDS FOR MR. SIMMONS AT MY REQUEST?
- A. YES, SIR, I HAVE.
- Q. AND I THINK WE HAVE THESE UP HERE SOMEWHERE?
- A. I HAVE MY COPY.
- Q. YOU HAVE A COPY OF THEM?
- A. YES, SIR.

JAN HILTON - DIRECT/MR. BAILEY

Q. LET ME GET YOU TO PULL YOUR COPY. I THINK MRS. WALSH MAY HAVE TAKEN THE ORIGINAL WITH HER. BUT DO YOU HAVE A COPY OF THAT?

A. YES, SIR, I DO.

Q. DO YOU REMEMBER MR. SIMMONS?

A. YES, SIR.

Q. FOR THE RECORD, COULD YOU POINT HIM OUT, PLEASE?

A. RIGHT THERE. (INDICATING THE DEFENDANT.)

Q. AND YOU'VE INDICATED THE MAN AT THE END OF THE TABLE WITH THE RED JUMPSUIT ON?

A. RIGHT.

Q. HOW LONG WAS MR. SIMMONS IN YOUR CLASS IN 1978?

A. I THINK ONLY FOR ONE NINE WEEK PERIOD.

Q. OKAY. DO YOU RECALL WHAT HIS READING AND WRITING LEVEL WAS AT THAT TIME, GENERALLY?

A. I CAN ONLY TESTIFY TO WHAT'S IN THE RECORD.

Q. OKAY.

A. AND I WOULD SAY THAT'S APPROXIMATELY FIFTH OR SIXTH GRADE.

Q. FIFTH OR SIXTH GRADE READING AND WRITING LEVEL?

A. RIGHT.

Q. OKAY. DURING THAT INITIAL NINE WEEK PERIOD AT THE BEGINNING OF 1978, WHAT WAS MR. SIMMONS' GRADE IN YOUR CLASS?

A. HE WAS FAILING.

Q. AS A RESULT OF HIM FAILING YOUR CLASS, WHAT DID YOU DO?

A. I RECOMMEND THAT WE MOVE HIM TO REMEDIAL ENGLISH.

Q. WAS HE MOVED TO A REMEDIAL ENGLISH CLASS?

A. YES, HE WAS.

Q. WHAT WAS HIS GRADE ACCORDING TO THE RECORDS THAT YOU HAVE IN FRONT OF YOU FOR THE SECOND NINE WEEK PERIOD?

A. HE WENT FROM FAILING GRADE TO AN A AVERAGE.

Q. OKAY.

THE COURT: WHAT SCHOOL GRADE WAS HE IN THAT YEAR, MA'AM?

MR. HILTON: WELL---

THE COURT: TENTH, ELEVENTH? DO YOU KNOW?

MRS. HILTON: HE WAS IN THE 11TH GRADE.

THE COURT: ELEVENTH GRADE? THANK YOU.

Q. AND YOU'RE FAMILIAR WITH THE SCHOOL RECORDS, ARE YOU NOT? YOU HAVE A COPY OF THEM, AND YOU'VE WORKED WITH THE SCHOOL DISTRICT AS BOTH A GUIDANCE COUNSELOR AND A TEACHER; IS THAT CORRECT?

A. YES, SIR.

Q. OKAY. AND IS THERE ANY INDICATION IN MR. SIMMONS' RECORDS THAT HE WAS A SPECIAL ED STUDENT?

A. NO, SIR, THERE'S NOT.

Q. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.