

VOLUME SIX OF SEVEN

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM ANDERSON COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAYMONDEZE RIVERA

APPELLANT

RECORD ON APPEAL

KEIR M. WEYBLE
Cornell Law School Death Penalty Clinic
Myron Taylor Hall
Ithaca, NY 14853
(607) 255-3805

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorneys for Appellant

VOLUME SIX
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ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit
PO Box 8002
100 S. Main Street
Anderson, SC 29622-8002
(864) 260-4046

Attorneys for Respondent

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1 birth.

2 A. Okay. I'm going to use my notes because there's so
3 much to tell and I want to get it. Well, just to be more
4 specific -- and the reason we talk about inter-
5 generational histories is because there are two ways that
6 things affect us. Mental illness in particular and
7 perhaps alcoholism can be biologically and genetically
8 traced through families. But we also see behavioral
9 patterns that get traced through families. Things repeat
10 themselves from one generation to another, so that a
11 child's life is at greater risk for developing problems
12 because of the things that they've been exposed to in
13 their families of origin. And that's what we see in this
14 particular family.

15 Looking just at the theme of abuse within families,
16 particularly abuse against children, we -- Elizabeth
17 Rivera, his grandmother, told me stories about how her
18 mother had beaten her repeatedly, even to the point of
19 breaking her fingers so that she was -- lived in constant
20 terror of her mother. Then I heard stories from all of
21 her offspring about how she also beat them with anything
22 she could get her hands on -- brooms, skillets. You
23 heard a story today about a knife. Her -- I heard one of
24 her grandsons describe how she threw a shoe with a
25 stiletto heel that imbedded in his back and how he had to

1 go to the hospital to have the shoe removed.

2 The -- there was also some sexual abuse that
3 happened in the family. There was -- her husband was an
4 alcoholic. They were both military. And there came a
5 time when he just left the family and didn't live with
6 them anymore and left her. This was -- she, at that
7 point, had been discharged from the military -- left her
8 as a single mom under an extreme amount of stress dealing
9 with raising these five children by herself.

10 Stanley was very much like his father and he
11 received more of the abuse than the other children,
12 according to those children. Now, Stanley was deceased
13 by the time I was in the family -- I mean, involved in
14 this meeting the family, and so I was unable to interview
15 him directly.

16 With regard to the history of mental illness, there
17 was a time where grandmother attempted suicide and had to
18 be psychiatrically hospitalized. This particular aunt
19 also had a history of attempted suicide and had to be
20 psychiatrically hospitalized. This aunt has been
21 diagnosed with an anxiety disorder and has to take
22 medication for that every day. This aunt has been
23 psychiatrically hospitalized for depression. And this
24 uncle has schizophrenia, has attempted suicide several
25 times, lives in a halfway house, is in and out of the

1 psychiatric hospital on a regular basis. He lives in the
2 support of the community when he's not homeless.

3 Q. These are all Stanley's brothers and sisters, Mr.
4 Rivera's aunts and uncles?

5 A. Uh-huh (affirmative). So it's -- it's what we would
6 say is a family loaded for risk of mental illness,
7 particularly with anxiety and depressive features. In
8 addition, Stanley, Raymondeze's father, had a very
9 serious problem with alcohol. He had two serious car
10 wrecks and was convicted of driving under the influence
11 several times. He eventually did get into treatment, was
12 in and out of treatment for a while, but then he did go
13 into recovery. But he -- by that point he had already
14 started developing a serious heart conditions as well.

15 Now, with regard to the pattern of broken
16 attachments, we see more of that on this side of the
17 family where Raymondeze's mother was not actually raised
18 by her mother. She was raised more by an aunt, as was
19 her brother. He was raised by someone other than his
20 mother. Now, his -- because his mother was under an
21 extreme amount of stress -- their mother was. She since
22 has been able to develop a more stable environment for
23 her children. But when they were young, that was
24 difficult for her.

25 Now, the reason that these broken attachments are so

1 important between parent and child is that -- is what I
2 mentioned earlier, is the importance of attachment and
3 having a primary stable attachment. And you're going to
4 see how that affected Raymondeze. Now, also, before
5 Raymondeze was even born -- all of these are factors that
6 were present before he was even born -- his mother had
7 already given birth -- his mother gave birth to Duan when
8 she was only fifteen years old, so she was a very young
9 teen mother, unmarried, living with her mom.

10 She met Stanley, who was nineteen, and they married.
11 And very soon she was pregnant with Juan Antonio. By the
12 time she was pregnant with Raymondeze, she was still only
13 eighteen years old, with three children and their high
14 stress. And even though she had married Stanley, their
15 marriage was already on the rocks. They were arguing all
16 the time. So before Raymondeze was even born, she --
17 what she said to me was that she was very angry about
18 being pregnant again and that she wasn't happy at all
19 about having this baby.

20 Q. And how old was she?

21 A. She was eighteen when she was pregnant and nineteen
22 when she gave birth.

23 Q. Can we go into a little bit more detail with regard
24 to after Raymondeze was born and what he was born into?

25 A. Well, as I mentioned, he and his -- his parents were

1 already arguing a lot. Stanley was working the -- and
2 she was trying to go to school. They lived with
3 Katherine Cousins, her mother, for a while, but it didn't
4 work out. And so they tried living on their own. And
5 that's when Stanley came home at one point and found that
6 the boys, Juan Antonio and Raymondeze, had been left
7 together in a crib. And they had been there so long by
8 themselves that the milk in the bottle had soured. And
9 they had just been left there on their own.

10 Q. This is when Stanley's working, he's married to
11 Sheena, Raymondeze's mother, and Sheena is supposed to be
12 watching the boys?

13 A. Right. There was another time when they were left
14 and they were found, and the dehydration story that you
15 heard earlier today occurred. There was another time
16 that Sheena -- and Katherine, Ms. Cousins says that she
17 was trying hard to get Sheena to be a responsible mom.
18 She wanted her to take these boys. She took Duan. It
19 was always Juan Antonio and Raymondeze who were together,
20 but -- and Ms. Cousins had Duan. Stanley was drinking a
21 lot at that point. And when he wasn't working, he was
22 going out, and so it was a very unstable situation for
23 the little boys. The ...

24 And there was another time when Sheena took the
25 boys, left them in a waiting room at Grady Hospital and

1 called Mrs. Rivera, the grandmother Rivera, Stanley's
2 mother, and said please come get them, I can't take care
3 of them. So they, at that point -- and some nurses
4 watched out for them. They called and said my
5 grandmother is on the way -- I mean, their grandmother is
6 on the way. Please just let them stay here. And they
7 were tiny little boys in diapers, and they reported that
8 when they were found, they were filthy, their diapers
9 were dirty, they were in need of a bath, and they
10 obviously hadn't been taken care of for a while.

11 Q. And just to be clear, that's a separate event from
12 when the boys were discovered abandoned at the home,
13 eating the trash, and the neighbors called social
14 services.

15 A. Right. There's another time, too, when Sheena
16 brought the children to Ms. Rivera's place of employment
17 and left them in the break room and basically sent a
18 message back to Mrs. Rivera, please take them home when
19 you get off work. So it was these acts of neglect and
20 abandonment at those times.

21 Obviously there was a lot of tension, and there was
22 a lot of conflict between Grandmother Cousins and
23 Grandmother Rivera at that point in time. So that -- and
24 they were each doing some care for the boys, but I could
25 not find anyone who was the consistent parent for

1 Raymondeze in his first two years of life. There was no
2 one who was his mother every day. There was no one who
3 was his father every day. It was a lot of being passed
4 around. So we know that, in the child development field,
5 that's a really risky situation for the development of
6 attachment problems.

7 Now, Sheena, at that point, was not living a very
8 stable life. Stanley was working, but because of his
9 drunk driving, he had a very serious accident when
10 Raymondeze was about a year and a half. He was
11 hospitalized for a long time. He lost a kidney. But he
12 -- and at that point, his mother, Mrs. Rivera, started
13 helping out with taking care of the boys.

14 Q. And how old are the boys now?

15 A. About two. Raymondeze was about two. Juan Antonio was
16 about one. And she, Mrs. Rivera, has a history of being
17 very moody. We already know that she had problems
18 raising her own children under stressful situations, and
19 that she had these beatings. And we heard testimony
20 earlier today that her children found that she had
21 actually beaten Raymondeze Rivera, that he had bruises on
22 his face.

23 Q. And that's when he was still just a toddler?

24 A. Tiny little thing, still in diapers. Sheena and
25 Stanley became divorced. They were separated most of

1 Raymondeze's childhood, but at age two, they were
2 formally divorced. And Stanley -- and at that point,
3 they were pretty much living at Mrs. Rivera's for the
4 next two years. And they would visit their father on
5 weekends. He would come by. He had an apartment of his
6 own, and sometimes they would see their mother Sheena on
7 the weekend.

8 Q. What's the next significant development in the
9 family with regard to Raymondeze and his brother,
10 Juantonio.

11 A. When they were four, they -- Stanley remarried. He
12 married Elaine. And that -- and they then moved in
13 together and they then had a new stepsister, too.
14 Juantonio was five, Raymondeze -- Teresa was five, and
15 Raymondeze was four. And things were much more stable
16 for them at that point. They were materially much better
17 off in terms of the stability of material provisions.
18 But the other factor about Raymondeze was, from a very
19 early age, everyone noticed that he was very
20 affectionate, very needy, needed a lot of loving is what
21 folks said. He really needed a lot of loving. He always
22 needed to be hugged. He was a huggy kind of a child.
23 Juantonio kept to himself. Juantonio was a quiet
24 child. He kind of always had his own thing he was doing,
25 but Raymondeze always wanted to be interactive. He was

1 also very active, hyperactive. He was always into
2 something. He was here, there, everywhere. And many of
3 us have children like that, and we know how exhausting
4 and stressful that can be, particularly in a difficult
5 situation.

6 So temperament makes a big difference in child
7 development, and any parent -- and I'm sure many of you
8 probably are -- knows that children are just born with
9 different temperaments. Raymondeze was born with a very
10 emotionally needy and hyperactive temperament.

11 Q. And how did his temperament serve him in that
12 household, the new household when Stanley marries Elaine?

13 A. Well, both in Mrs. Rivera's household, as well as in
14 Stanley and Elaine's household, it created difficult
15 problems because, if he couldn't conform to expectations,
16 punishment was the main way that was handled. And so the
17 -- in the -- in Stanley and Elaine's home, there was an
18 expectation that everything be neat and orderly at all
19 times. And people who talked about Stanley about how
20 excessively obsessed he was with things being orderly.
21 This is a story about when they were a little bit older.
22 But Juan Antonio tells the story about once there was one
23 sock on the floor in his bedroom and he got a beating for
24 it because he had let that sock fall on the floor.

25 So it's -- it was very strict expectations, which

1 made it much harder. It's sort of a misfit for a child
2 who's pretty active or who may -- and there was never a
3 diagnosis done of what was going on with Raymondeze. But
4 his early hyper manifest symptoms often are symptoms of
5 an early onset of what may have been a lifelong mental
6 disorder anyway.

7 So they were in this pretty rigid household, lots of
8 expectations. And what happened whenever any of the
9 children didn't do what was expected of them is that they
10 got severely beaten with a belt, often naked with this
11 ritualistic kind of beating that went on. And these
12 beatings only got worse and worse as the years went on.

13 Q. And how old is Raymondeze during this time period as
14 a child?

15 A. He's still four.

16 Q. And he's being beaten naked with a belt?

17 A. It's hard to tell exactly when that started. We
18 know that by the time he was in school, those kinds of
19 beatings were going on, but nobody could seem to remember
20 exactly when the age of onset was, but we know he was
21 very young. We know he was young enough to -- he was
22 little enough to try to hide in the toy box. He was
23 little enough to fit behind the sofa to try to hide, but
24 his dad always pulled him out and got him.

25 So I've prepared a way to summarize some of these

1 early childhood themes because, again, it goes over --
2 because you're going to see these things evolve as
3 Raymondeze grows.¹

4 Q. Dr. Andrews, you referenced a little while ago that
5 Raymondeze was sort of a hyperactive child and his
6 temperament as being hyper. With regards to Juan Antonio
7 and the new stepsister Teresa, did that enter into the
8 discipline that Stanley was meting out?

9 A. It did because they were both very quiet, very
10 organized children by temperament, and then they also
11 learned very quickly to kind of fall in line. There was
12 something about Raymondeze that he couldn't seem to
13 learn. Punishment just didn't work, but they never
14 changed. They always kept trying to punish. They just
15 kept trying to break his will. They thought everything
16 that he was doing was a matter of will. And no matter
17 how hard they beat him, he didn't learn. He kept doing
18 the same things over and over, which for most parents
19 would be a clue.

20 It's like you heard his aunt earlier say she had a
21 child with problems. She went looking for help. Their
22 family didn't do that. They felt that they could control
23 it and that they could -- that through these beatings,
24 that they could somehow management -- manage it. But not
25 only did it not stop his acting out, because it's

1 probably a bio neurological problem he has, but it
2 actually created all kinds of other problems and other
3 disorders.

4 But just to summarize some of the things I've said
5 so far, looking just at his pre-birth history, we're
6 going to see he was born -- I mentioned these family
7 risks, the abuse, the temper, his grandmother's temper,
8 his father had these temper mood swings, the mental
9 illness, the anxiety disorders, addictions, broken
10 relations, the teen mom.

11 He did also have the assets. He had -- having his
12 grandmother was an asset. Having a strong education and
13 work ethic in their family was an asset. It's still very
14 important for them. He had two parents. That's a good
15 thing. And they were always involved in a faith
16 community and in a church community of some kind, so
17 that's been a very important part of who he is.

18 The pattern that we saw in his early life before he
19 was five, or through age five, was from birth through age
20 two, his temperament was that he was sociable. He was
21 hyperactive, but he did have this unstable home with lots
22 of very sudden shifts in care giving and no consistent
23 caregiver. A lot of conflict and stress, conflict
24 between his parents, conflict between his grandparents,
25 deprivation, acts of deprivation and neglect. We don't

1 know exactly how long he and Juan Antonio laid there by
2 themselves in that crib.. If it reached the point of
3 dehydration, you know, how long they cried when nobody
4 came. The -- but we know that that was a pretty serious
5 occasion.

6 He had parental divorce. He was with his
7 grandmother who was known for her whippings. And then
8 when he was four, he moved into this situation where
9 there was a demand for order and very high expectations
10 placed on the children. But he couldn't conform, so he
11 was kind of a misfit in this very demanding environment.
12 At the same time his father's drinking was increasing.

13 It only gets worse until he's a teenager. An
14 environment that was -- he's a child whose -- needs lots
15 of loving, hugging. But in the -- his household, that
16 was not what they did. It was not a warmth household.

17 It was very materially provided that people -- that
18 the mother and the father were very good about making
19 sure that he had food. It was a nice house. They had
20 clothing, but there wasn't that emotional -- and where we
21 see a lot of the damage that Raymondeze has suffered is
22 in the emotional realm. A lot of pressure to look good.
23 I didn't mention they were the only African-American kids
24 in their school for a while. And their neighborhood,
25 they were among the only African-American families. The

1 school they went to eventually was about ten percent
2 African-American, but it put more pressure on them. And
3 then these excessive beatings started at a young age.

4 And I'm going to talk about these themes as he
5 develops over time. And I -- at risk of taking a very
6 complicated life and making it sound too simple, I have
7 identified four main themes. And as you hear the story,
8 you may have others, but I found this was one way to help
9 summarize it.

10 The first one I called yearning for affection. This
11 is a child who needed lots of love, but when he went for
12 a hug, he couldn't get one. And you're going to see that
13 over and over again. He had these abandonment
14 experiences at a very vulnerable period in a child's
15 development.

16 The brain develops more in the first three years of
17 life than it ever does for the whole rest of your life.
18 And it was during that period of time when you would want
19 to see some development of how to make positive
20 connections happening, but it wasn't happening. You saw
21 him begin to act a little anxious and clingy, suggesting
22 that there was probably insecure attachment. There's
23 lots of evidence that that was the case.

24 The second theme that we see in his life is one of
25 fear and pain. Not only was there pain from the actual

1 beatings, but he was put in a situation where he had to
2 live in fear of more pain. And it's this anticipation of
3 pain that becomes a very powerful theme in his
4 development.

5 A third theme that we see is this amazing trying and
6 failing and developing shame, and then developing a fear
7 of shame and being shamed. And we see that because he's
8 trying, but he can't. Everyone says he could do the
9 work, he just couldn't pay attention. He could do the
10 work. He just couldn't stay in his seat.

11 And then finally, what's particularly unusual about
12 this case is the theme of chaos and order that becomes
13 this disorder. It's just -- it's even hard to describe
14 because that's where the real illness is. But his
15 father's drinking and all the conflict dynamics in his
16 family, it was like a big family secret. On the surface,
17 everything looked very orderly -- very typical, but it
18 wasn't that way at all from the child's perspective.

19 Q. And then so basically you're describing a -- the
20 house on the street that looks like a normal family, but
21 inside the house, not so?

22 A. Exactly.

23 Q. And then what happens to Raymondeze as he ages in
24 this household and he goes from being a toddler into
25 actually a small boy.

1 A. Well, the next set of things that happened was he
2 started kindergarten at Chapel Hill Elementary School.
3 And he was, as I mentioned, hyperactive at school. And
4 his teachers felt that he could do the work, but he
5 couldn't sit still. So it might be a good idea if they
6 held him back a year, which put him a little bit older
7 than the other kids in his class.

8 The second year, he did do a little bit better. And
9 the -- basically, the rules that all the children were
10 living with -- Teresa and Juan Antonio and Raymondeze --
11 were they had to get high grades at school, they had to
12 stay out of trouble, they had to keep the house neat and
13 in order, and they had to avoid getting into arguments
14 with each other. And that's a reasonable set of rules
15 for anybody's home.

16 Q. And what happened if you broke those rules?

17 A. You got a very severe beating. And the beatings
18 were ritualistic in that there was this anticipation of
19 the beating. It would be, you know, it would be
20 announced that you were going to get a beating, and you
21 had to wait for Stanley to come home.

22 Keep in mind Stanley, in those days, was mostly
23 coming home drunk. So they would have to wait and know
24 that when he walked in the door they were going to get
25 it. And then when they got it, they got it very, very --

1 in a very harsh way. He used not only the kind of belt
2 that comes off a man's pants, he used this weightlifting
3 belt that was huge and would just hit them over and over
4 again.

5 And Raymondeze got hit usually twice as much as
6 anybody else, even though the other kids got hit some.
7 Teresa rarely got hit very much. Juan Antonio, I think
8 everyone agrees is a genius. I'll be telling you more
9 about how his life became. He's a very gifted child, and
10 he very quickly learned to just stay in his room and just
11 stay away from all the trouble. Raymondeze didn't seem
12 to be able to do that, so he was getting beatings a lot,
13 over and over again.

14 The -- as we heard, he, on his deathbed, told his
15 sister that he was sorry that he had beaten the children
16 so much, but he never told Raymondeze that. And it was
17 -- as I mentioned before, it's the anticipation of the
18 beating.

19 When we -- when we look at child abuse, we look at
20 the act itself, the act of abuse, the ritualistic way in
21 which it was done. And I understand Dr. Marti Loring is
22 going to talk a little bit more about ritualistic abuse
23 tomorrow. But the -- we look at the act of abuse and
24 then we look at the effect that it had on the child. And
25 even for people who use hitting a child as punishment,

1 which in South Carolina happens a lot, usually you're
2 going to have an instruction that you use it to teach the
3 child something. Then afterwards, you'll say something
4 like, you know, I'm sorry you had to do that, but this is
5 what you have to do next time and give them some guidance
6 and instruction and so forth. It's the way physical
7 punishment is meted out.

8 This was not physical punishment because they never
9 got guidance. Juan Antonio told me they didn't -- half the
10 time they didn't even know why they were getting beat.
11 They didn't know why, they never got guidance. And
12 afterwards, a lot of times, there would be bleeding or
13 the beating would have been so severe that Raymondeze wet
14 himself. He just had to go by himself in his room to
15 clean up. Nobody came and gave him a hug. Nobody came
16 and explained to him why he had been punished. He was
17 just completely on his own.

18 The beatings were very painful, so much so that
19 Raymondeze didn't think he was going to -- he didn't
20 think he could handle it. It was overwhelming. It was
21 almost unbearable that -- in terms of the severity of it.
22 Q. How old is Raymondeze in this particular part of his
23 life?

24 A. The period ages six to nine when he was still a
25 little elementary student -- we know it was elementary --

1 we can date it by the elementary years is what Juan Antonio
2 recalls. The children never talked about it to each
3 other, and they really learned to sort of shut out each
4 other's pain if they were getting a beating. They just
5 -- they learned to just stay away from each other, so
6 they really didn't spend a lot of time with each other.

7 These conditions can really damage a child's mind.
8 There are neurologists who are doing research on what it
9 does to the nervous system. There are all kinds of ways
10 to describe how it affects a child's capacity to handle
11 stress.

12 The other thing that was happening in the house was
13 that there was control over food in the house. None of
14 the children could go get snacks or have any kind of --
15 they only were allowed to eat at meals, and there was
16 restricted access.

17 They also were beaten more after they visited with
18 their mother's family, which they liked to do. You heard
19 them talk about this morning about how much fun they had
20 when they visited them, but there was a perception by
21 their -- by Elaine and Stanley that they had an attitude
22 after they visited with the Cousins family, so they would
23 get beaten more -- be more likely to get beaten.

24 Q. And those beatings, they wouldn't be -- they
25 wouldn't be tied to misbehavior?

1 A. Well, there might be some where they would say, you
2 know, if you're going to have that attitude, and then
3 they would be beaten. They were -- their mother was also
4 ridiculed and put down so that they had this feeling that
5 there was something to be ashamed about with regard to
6 their mother, or there was something to be ashamed about
7 with regard to themselves since she was their mother.

8 One of the worst things that happened to Raymondeze
9 was when his dad came to the school and beat him, and he
10 did that several times starting in elementary school.
11 You heard a teacher talk about one that happened when he
12 was in middle school. I don't know if you noticed, but
13 middle school is like seventh and eighth grade. Kids are
14 pretty old at that age. Image is everything. And to be
15 publicly humiliated by having your father come and yell
16 and beat you at that age is bad. But these things
17 happened too when he was very little in elementary
18 school. And he said it was just humiliating for him to
19 have to go back in the classroom. He could barely sit
20 down after these beatings that happened in the bathroom.

21 His cousin Keno told me about a time when Raymondeze
22 was about nine years old when he saw Stanley lose his
23 temper and pick Raymondeze up by the collar and jack him
24 up against the wall. And the next -- the very next day,
25 he saw him punch Raymondeze in the chest, knocked the

1 wind out of him, knocked him to the ground. He couldn't
2 breathe.

3 Q. And how old is Raymondeze?

4 A. Keno said nine or ten, little.

5 Q. And Keno is Teresa Rivera's child?

6 A. That's right.

7 Q. And ---

8 A. The cousin who has -- also has hyperactivity and got
9 treatment for it. Now, some of what makes this case
10 particularly difficult is that the family actually had
11 what looked like a normal life. They celebrate
12 Christmas, they got presents at Christmas. They visited
13 a lot with Elaine's family on the weekends. They had a
14 grandmother on that side of the family. They all went to
15 church, and they seemed to be doing the kind of things
16 that a typical family would do.

17 That kind of inconsistency actually makes it very
18 difficult for a child to -- in child development. In
19 fact, the research studies on a phenomenon known as
20 learned helplessness show that inconsistency in parenting
21 is severely damaging to a child. What we saw in
22 Raymondeze was this kind of wishful thinking, wishing
23 that he could have the kind of family life, the happy
24 family life, that he saw other people have and that his
25 family was going through the motions of having.

1 Q. Is that a theme that he carried to his adult life?

2 A. Oh, yes, very much. Now, they were told never,
3 never to ever tell anybody what happened at home. And --
4 but there were some people that noticed some things. His
5 Uncle Gary, who was Katherine Cousins' son, told me that
6 he would come and have fun at their house in the summer
7 with his father and that Raymondeze seemed to be having a
8 good time, but that if you dropped something, he would
9 jump, you know, this like startled reaction.

10 His kindergarten school teacher told me the same
11 thing. She said he would -- if you reached for him, he
12 would pull back, he would jerk back. This is a
13 phenomenon known as hyper-vigilance. We see it in
14 physically abused children a lot where they're like
15 always -- if an adult makes a move toward them, they're
16 afraid that it might be something that's going to hurt
17 them, and so it's kind of an automatic relationship.

18 Q. And this was noticed by his Uncle Gary?

19 A. His Uncle Gary. And I read a statement from his
20 grandfather Helsin, who has died and I wasn't able to
21 interview him. But he was interviewed by an investigator
22 before he died. And in that statement, the grandfather
23 said that as a little child, Raymondeze told him that his
24 parents would beat on him all the time. But when
25 families, often when they hear children say things like

1 that, they can't imagine that this is really going on,
2 particularly for a family that looks so presentable and
3 so together on the surface. He also, when he was staying
4 with his uncle Gary, had nightmares at night and would
5 wake up screaming indicating that there may have been a
6 problem.

7 Now, during this period, the boys would sometimes
8 see their mother. And Raymondeze developed this wishful
9 thinking that his mother would come. And he really
10 wanted his mother to come and protect him. But there
11 were times when she would say she was coming and she just
12 didn't show up. Because at that point, her life was
13 still very disorganized. Her life became organized
14 later, but it's -- it was very disorganized.

15 Q. When Uncle Gary was describing the nightmares, were
16 they sort of typical child's nightmares or something more
17 than that?

18 A. He said he just woke up screaming, so -- but he
19 didn't know what -- he didn't comment on what the comment
20 -- the content of the nightmares were. But he was around
21 other children, his own children and other children at
22 that age. And he seemed to think they were unusual for a
23 child to have the kind of nightmares he was having. I
24 have notes here just about how much drinking Stanley was
25 doing at that point. The -- he even sold some of their

1 toys and jewelry to get beer as his drinking got very
2 bad.

3 Q. And then what's the next stage in the Raymondeze's
4 life?

5 A. Yes. Well, I was going to summarize what happened
6 in this and then talk about what we're starting to see
7 developmentally based on the way people are describing
8 Raymondeze. In terms of what happened, he failed
9 kindergarten for reasons of inattention. There was no
10 help-seeking for these educational problems he was
11 having. His grades weren't failing grades. He was
12 hyperactive and he was beginning to show a temper. He
13 was sociable. He tried to please. He was well-liked.
14 He got lots of criticism and very little praise.

15 Juantonio talks about how their parents just didn't
16 give out praise, that he got a lot of praise at school
17 because he was always the star student. But because
18 Juantonio was having trouble -- I mean, Raymondeze was
19 having trouble controlling his behavior, he didn't have
20 that out-of-home praise. The alcohol was getting worse.
21 The beatings were brutal. He was not giving comfort for
22 the wounds that he had. Inconsistency, the terror. He
23 tries hiding. There's no way out. His wishful thinking
24 about his mom and disappointment.

25 There was one time when Juantonio and Raymondeze

1 were waiting and waiting and waiting for their mother to
2 come pick them up, and she never came. They had their
3 little bags packed, and she just didn't come.

4 Getting beaten at school by his father was
5 humiliating. He then had to repeat the third grade again
6 which made him that much older. And again, his grades
7 weren't that bad. His parents expected them to be very
8 high. The grades -- his grades were seventies and
9 eighties in his subjects. They were Bs and Cs, but they
10 wanted him to do it again.

11 So what we see at this age is people noticing some
12 sadness in him. He's still looking for affection. He's
13 starting to be afraid of getting rejected. He didn't
14 like leaving his relatives, and he's crying for
15 protection in the sense that he really wants someone to
16 come and help him. He talks about how he was in his room
17 by himself. He would pray to God to make the beatings
18 stop, just for someone to come and rescue him. And he
19 began fantasizing when he was in his room about how to
20 get out.

21 Q. And just to be clear, nobody ever intervened. No
22 teacher recognized abuse, no nurse, no social services,
23 no one?

24 A. Not that I could find any record of, no.

25 Q. It was a family secret?

1 A. That's right. So what we see in this area, we still
2 have this very orderly living with underlying
3 disturbance. But you see this confusion between caring
4 and pain. The people who cared for him also inflicted
5 pain on him, and he had to live with this constant
6 anticipation of pain. And they were the only people who
7 cared for him or provided physical care for him.

8 He was getting more and more cut off from his other
9 relatives because they were allowing fewer and fewer
10 visits. And you heard his aunt described that this
11 morning. This was as his father's alcoholism was getting
12 worse and worse. So the family was kind of really
13 starting to deteriorate. And what we see in the theme of
14 trying, fail and shame is he still has the attention
15 deficit and the untreated hyperactivity.

16 He's becoming learning impaired. He's not working
17 or able to achieve -- he's an underachiever -- and he's
18 suffering this humiliation which creates this fear of
19 shame.

20 Q. And how old is he at that time?

21 A. He's still in elementary school. About the time he
22 was nine or ten, things changed a good bit. They changed
23 in part because you just started to see signs that his
24 spirit was breaking. His father had a D.U.I. and a hit-
25 and-run charge. And his mother moved away, so he felt

1 abandoned by his mother for good. She moved to Florida,
2 so that he couldn't possibly visit her even though he
3 occasionally was able to see her when she still lived in
4 Atlanta.

5 Q. And that's his biological mother, Sheena Scott.

6 A. Right.

7 Q. And Stanley and Elaine are still here?

8 A. And the beatings changed because -- and it's -- the
9 pivotal point seemed to be a particular day when
10 Raymondeze had gotten in trouble in school and gone home
11 -- or he knew he was going to get it when his dad got
12 home. His dad walked in, his dad punched him with his
13 fist in the face and knocked him down a flight of stairs
14 and then walked away without even looking at him. And
15 what -- Juantonio saw it happen. But what Raymondeze
16 remembers is thinking he's going to kill me. I'm going
17 to die. And also being so hurt that his dad just looked
18 at him and walked away when he was laying at the bottom
19 of the stairs. He didn't even look to see if he had been
20 injured.

21 Q. And that's at age nine?

22 A. That was when he was nine, according to Juantonio.
23 And at this point, he'd started in his -- he stayed in
24 his room a lot. He became much more withdrawn. He
25 prayed a lot... He wanted to make it go away, wanted to

1 make it stop. He started fantasizing about how much he
2 hated his father, how angry he was, but he could never
3 express this anger.

4 He also -- and this is one of the most telltale
5 signs of the emotional damage, is he stopped crying when
6 he was beaten. He developed this defiant kind of look
7 sometimes or just an empty look when he was being beaten.
8 But you know, Juantonio would say it was weird. He just
9 didn't cry.

10 And there's a psychological phenomenon known as
11 repression or repressed emotions that can happen. That's
12 different. It's an involuntary reaction. It's not like
13 if you have an emotion you want to keep from somebody.
14 Let's say you just found out your mother was diagnosed
15 with a bad disease and you're going to have to tell your
16 child. And he's got a big exam tomorrow and you are
17 really upset, but you decide just to put on a happy face
18 and you're going to tell him about it after the exam.
19 You just don't want to upset him. That's good parenting.
20 That's not repression.

21 With repressed emotions, the emotions are there,
22 they're just not being expressed. So the fear, the pain,
23 the hurt, the emotional anxiety just gets -- it goes
24 inside because there's no way to express it. It's a
25 completely involuntary process, and it can become very

1 ingrained. And that's when you see -- I mean, in our
2 field, in mental health, you might see, for example,
3 these emotions pop out. And you certainly see them in
4 this case.

5 But a typical -- a more typical case might be, say,
6 a mother who was raised in a family where her father was
7 an alcoholic. She felt very helpless/hopeless a lot as a
8 child, very scared. Grew up and said that's never going
9 to happen in my family. Became a very responsible
10 parent. And then when her own child gets seventeen, she
11 finds out they're drinking. And the next thing you know
12 she's in a therapist office totally hopeless/helpless,
13 you know, completely collapses and says I don't know why
14 I'm responding this way. Because all those feelings are
15 still there, but they had become repressed. So that's,
16 you know, the kind of thing you can have.

17 Some of the notes that Raymondeze wrote when he was
18 by himself in his room were I need help, I need help,
19 please help. And he's still having problems with impulse
20 control, still getting in trouble. He still though was a
21 very affectionate person. At school is where this came
22 out. He tried very hard to make friends, and he did make
23 friends. He was very sociable. He was always eager to
24 please. He always tried very hard to please his friends,
25 to be a good buddy. He doesn't have any lifelong

1 friends. He doesn't have anyone who's like his best
2 friend even though he lived there for a long time. But
3 he was always well-liked according to Juantonio and the
4 people who knew him.

5 Q. Is there any evidence of him being a bully or having
6 a mean streak, picking on smaller kids or anything like
7 that in school?

8 A. Nothing unusual because I looked for that, but no.
9 No. No evidence of -- no cruelty to animals or, you
10 know, no bed wetting.

11 Stanley -- after he lost his license, Stanley was
12 very dependent on Elaine. It was harder for him to get
13 access to alcohol, and he was at home more. But a lot of
14 what he did was stay in his room. And this is when
15 Raymondeze first started getting exposed to pornography
16 because Stanley he was in his room watching a lot of
17 pornography. And he and Juantonio would sneak in there
18 sometimes and see it when Stanley was at work. Another
19 example of how there was this sort of superficial
20 morality, and yet underlying there was a problem going
21 on.

22 He also -- before he was about ten years old, he
23 used to do more sports and outdoors activities, but he
24 became much more withdrawn after -- it was after that
25 incident where his dad punched him in the face. And

1 really started punching him more after that too.

2 So just to summarize, what happened at this age is
3 when we start to see the changes.

4 Q. Dr. Andrews ...

5 A. Uh-huh (affirmative).

6 Q. ... when Sheena and Stanley were divorced, in their
7 separation or divorce decree, weren't the boys supposed
8 to go live with Sheena for a period of time?

9 A. Well, it was an interesting way they did it. It was
10 -- they were going to live with Stanley for three years
11 and then live with Sheena for three years. Because I
12 think Sheena would -- felt like she was trying to get her
13 life together, but she knew that Stanley was better able
14 to materially provide for the kids. That never happened.

15 Q. They never lived with Sheena?

16 A. No. So between the ages of nine and twelve is when
17 we saw the changes in Raymondeze. He became more
18 withdrawn. He kept trying to be popular. He kept doing
19 the wishful thinking about wishing there was a way to get
20 out of this, but began feeling hopeless and showing signs
21 of depression. The fear was much more intense. He was
22 afraid his father was going to kill him. He was in
23 extreme pain and he lived with this anticipatory anxiety,
24 this fear of more pain. He never knew exactly when the
25 next beating might be. And we saw this emotional

1 shutting down or this repression of emotions. Again,
2 that's not a voluntary act. That's an involuntary
3 condition.

4 We see this continued pattern of problems at school,
5 and all the punishment wasn't helping with that. And the
6 disorder continued. We saw superficial order, his
7 confusion of caring and pain, the moral expectations of
8 his father's behavior, expecting him to behave, going to
9 church and yet doing the -- having the pornographic and
10 alcoholic behaviors. The repressed emotions, especially
11 this anger and silence. And sort of a splitting of a
12 public and private life, feeling popular yet feeling
13 ashamed and unworthy. And this is how he pretty much
14 entered his teen years.

15 Q. And he's still living with Stanley and Elaine?

16 A. Yes.

17 Q. And this is about when enters high school?

18 A. No, because he's behind, so he hasn't even started
19 middle school yet. But he does start middle school at
20 age thirteen. He starts at Chapel Hill Middle School in
21 the sixth grade. And that year, one of Elaine's nephews
22 came to live with them and -- a boy about his age. And
23 his name is Telly. And he got in a lot of trouble, but
24 he didn't get punished. He wasn't subject to the
25 punishments even though Raymondeze would get punished.

1 And Telly would laugh when Raymondeze was being beaten.

2 And then an incident happened in the spring of his
3 sixth grade year where Raymondeze wanted to go on a field
4 trip with his school. They were going to Emory
5 University, which is in Atlanta. It's an event for the
6 kids to do. And his parents wouldn't give him permission
7 to go, and he went anyway. And he felt like his father
8 was going to kill him when he got back home. This was
9 like a major violation of his father's rules.

10 So while he was on the field trip, he ran away and
11 wouldn't go back home. He jumped on the MARTA, which is
12 a public transportation system in Atlanta, and just
13 started riding in the subway car around Atlanta and
14 thought of a friend of his mother's that he knew about.
15 And he thought that he might try to go visit her. And he
16 went to a mall for a while, and then he got back on the
17 MARTA.

18 Meanwhile, the school had reported him missing.
19 Stanley and the authorities had been looking for him, and
20 the -- he had called Sheena, his mother, in Florida who
21 was so concerned she said, I'm just going to come on up
22 there. She caught an airplane, flew into Atlanta, got on
23 the Marta and amazingly met Raymondeze at a MARTA station
24 and took him with her.

25 And at that point, he went to try to live in Florida

1 with his mom. And this is the first time he had lived
2 with his mom since those few episodes when he was very,
3 very little.

4 Now, she had gotten her life much more organized at
5 that point. She was remarried. And she noticed that
6 when he came to Florida, that he wouldn't talk to her
7 about what was happening at his home and that he seemed
8 to withdraw into himself. And he spent a lot of time
9 alone which was unusual because the time she remembered
10 him, he had been a very sociable child. So he was
11 showing signs of this emotional problem through his
12 withdrawal.

13 He also, while he was there, he witnessed his
14 stepfather beating on his stepmother -- I mean, on his
15 mother and calling her derogatory names. And he had a
16 hard time adjusting. He didn't do well at school. His
17 grades were poor. And this was a period of time though
18 when he was very involved with church. It's when he
19 first met Canessa. And he was trying to make friends
20 through the church. But it didn't work out for him, and
21 so he went back to live at Stanley and Elaine's for a
22 while.

23 His mother was pregnant at that time with his half-
24 sister. And so he tried living again with his father.
25 And the beatings started again. Nothing had changed

1 about that.

2 Q. And where's Juan Antonio when this is going on?

3 A. Juan Antonio is in high school at this point, and he
4 talked to me a lot about that because he talked about how
5 he was a gifted student. He was doing really well in
6 school. But his parents were never there for him. He
7 said he noticed how other kids' parents would come. They
8 would even come and have lunch sometime. They would come
9 to school events. He ran track. His father never saw
10 him run track. They would sometimes go watch his sister
11 Teresa run track. This is his stepsister. He even had
12 to buy his own track shoes which was hard for him. And
13 the way he would save money to buy his track shoes was he
14 would use his lunch money, so he went without lunch. But
15 then he almost collapsed one day because he didn't have
16 enough energy to do the running because he hadn't had
17 lunch because he had to work things out for himself.

18 He was invited to go to Ivy League schools to visit
19 their campuses, but his parents wouldn't help support him
20 and they would not file the application for him to get
21 financial aid to do that because they didn't want anybody
22 to know that they didn't have enough money to send him.
23 So they just didn't give him permission to go, so he
24 didn't get to go on the Ivy League tours even though the
25 other gifted students were going on those. The -- and it

1 was at this school, in middle school, that Raymondeze was
2 beaten by his father at the school and the kids knew
3 about it. At about this time too, his cousin Keno saw
4 Raymondeze with bruises and a black eye and a purple mark
5 on his chest. And Raymondeze told him that his dad had
6 beaten him with his fist.

7 Now, the other thing Juan Antonio told me is he said
8 that when he graduated from high school -- this is when
9 Raymondeze was still in middle school -- on the day he
10 graduated, he told his father that he hated him so much
11 that he would not go to his funeral when he died. And
12 then he went on to a scholarship. He went to Furman. He
13 struggled there for a while and then joined the Navy and
14 then ended up going to the U.S. Naval Academy and
15 graduated from the Naval Academy. And he says he never
16 got any help at all from his parents in doing that.

17 The fact that Juan Antonio could express his anger at
18 his father -- which frankly I think is justified anger --
19 is a sign of mental health. Even though it may be rude,
20 it may be mean, to be able to let your anger out is
21 something that sometimes has to be done. Raymondeze was
22 never able to do that. He never was able to tell his
23 father because he was emotionally shut down.

24 Things didn't work out with his -- with living with
25 his dad again, so Raymondeze tried going to Florida again

1 living with Sheila [sic]. He was back down in the eighth
2 grade in Florida. At that point, his grades really
3 started dropping. And so he moved back to Atlanta and
4 his grandmother, Katherine Cousins, became his legal
5 guardian. And he never lived with his father again after
6 that.

7 He went to high school while living with his
8 grandmother. And for about a year, he seemed really
9 withdrawn and depressed, but he was real involved with a
10 group called Black Teens for America. And I talked with
11 Dr. Johnson, who was the leader of that group. And he
12 talks about some of the things you heard today, how
13 Raymondeze was a gentleman, he was very quiet, he was
14 well-dressed, he was trustworthy, he worked -- they were
15 groups of young men that were meeting, and he would help
16 calm the group if the group got too lively. But he did
17 observe that many of the young men in the group shared
18 feelings about what was going on in their lives, but
19 Raymondeze never shared. He never shared anything.

20 And he also didn't travel with the group even though
21 the group had these opportunities to go to Washington
22 D.C. and New York City. And he didn't -- he said most of
23 the families at the school that Raymondeze was at were
24 middle-class or affluent and that he lived with his
25 grandmother and probably didn't have the means to take

1 those trips. But he would not ask for help with the
2 funds. He was -- he said he felt like he was too ashamed
3 to ask for help.

4 He, at that point, was still involved with church,
5 but sometimes he would hang out with guys and he would
6 start going to parties and clubs. He sometimes drank
7 beer, but drinking was never really something Raymondeze
8 did a lot of. He would sometimes do it, but he did not
9 have a drinking problem. He did see a little bit more of
10 his older brother -- half brother Duan who tried to
11 encourage him to finish school. But at that point, his
12 grades were really dropping and he never really went
13 beyond the tenth grade. He did try to go to evening
14 school for a while, but his grades were really bad when
15 he tried that.

16 Q. During this period of his life, did he -- with some
17 kids you see them fall into criminal activity, gangs,
18 dealing drugs on the corner. Any indication that he was
19 trying to join or be part of groups like that?

20 A. No, nothing -- no crime or gang activity. He did
21 take some clothes that belonged to a friend of his, but
22 it was obvious he took the clothes. I mean, it wasn't
23 like a big crime that was a big secret. He wore the
24 clothes, and so it was -- but he did take them, and that
25 was an act of theft. And he -- the child's mother he

1 took the clothes from confronted Raymondeze, and he gave
2 them back.

3 So that takes us to his adulthood when he's grown to
4 eighteen. And at that point, we see a pattern for about
5 ten years when Raymondeze is a young adult of a pretty
6 consistent kind of behavior deteriorating over time. And
7 that pattern looks like this. He tries to work, the job
8 doesn't last very long, he fails the same way he was
9 having problems in school. Usually he would get rave
10 reviews on performance. He was a hard worker. But then
11 there would be a no-show or he would have an attitude.
12 And he had a temper problem. What we start to see then
13 though is that he tries to connect to partners, to
14 girlfriends. But in many cases, that relationship ended
15 up with his having some kind of temper -- violent act.
16 He had never had any effective help for his emotional
17 behavioral problems. Even though he went into adulthood
18 carrying all his past from childhood, none of it had ever
19 been treated. No one had ever asked for help. We do see
20 though that he stayed connected to parts of his family.
21 He really honors family, he really wants a family, and he
22 stayed connected to church.

23 Q. How many jobs did he hold after, say, eighteen?

24 A. It was -- no, I don't -- I have a tally somewhere.

25 At some point -- it was twenty-five, thirty. There were

1 a lot. There would be three or four a year, short-term
2 jobs.

3 Q. And it would be the same thing, getting a job, being
4 successful at it, and then sabotaging his own success,
5 losing the job?

6 A. Right. Uh-huh (affirmative). And it was almost
7 always related to this temper problem, this -- again, a
8 basic emotional damage that would come through. His
9 inability to handle stress, inability to deal with
10 anxiety. You know, something would happen and it would
11 be like this overreaction. There was a period of time
12 where he was smoking a lot of marijuana. That didn't
13 last very long. And watching a lot of pornography. That
14 also didn't last very long.

15 He had a period where he did get trained at Job
16 Corp. He spent time there. The -- but he was terminated
17 because he took something that belonged to other
18 students. He was eighteen when that happened. He had an
19 experience where he needed a place to stay, and he was
20 basically sexually approached by this person that he was
21 trying to stay with, so that didn't work out for him.
22 And it was someone who was a member of the church he was
23 attending. It was under the guise that this is a
24 religious practice -- I need you to strip naked and this
25 oil rubbed on you. It was a frightening kind of

1 experience for him, but it was another example of a male
2 in an authoritative role who disappointed him.

3 Some of the things that happened, he had these
4 series of jobs. He had a report of family violence with
5 the victim of Arlene Bennett because he got in a fight
6 with her and grabbed a necklace off of her neck and
7 caused a scratch on her neck and took some money from
8 her. He was living with his grandmother. He met Teshara
9 Hooks, who was a student at Spelman College at the time.
10 And about 1999, while he was going to the Cathedral of
11 Faith, which is a church that he was very involved in,
12 the -- he had the episode in 1999 when he was twenty-one,
13 with the assault on Phoebe Kenney that I think you've
14 heard about.

15 I couldn't find anything in the record that
16 Raymondeze had received rehabilitation or treatment
17 services for any of these emotional outbursts or acts of
18 violence except an anger management course he went to
19 later. I couldn't find anyone who had pushed for him to
20 get help or who might have identified this as a mental
21 health problem.

22 Now, that's not unusual. There's a great stigma
23 around issues related to mental health. People don't
24 want to admit they have a mental health problem. People
25 don't want to say it's a mental health problem even

1 though a huge percentage of us have mental health
2 problems. And so the -- but in their particular case, he
3 was raised in a family system where shame was to be
4 avoided. Appearances were very important. And so he had
5 always been raised to never ask for help.

6 There was an episode around the year 2000 when he
7 became suicidal. He took a car from a church member in
8 Atlanta and called his cousin and said he didn't want to
9 live anymore. The cousin organized a group of men to go
10 confront Raymondeze about it, get the car back and
11 basically try and calm him down.

12 It was about that time that he met Renee Karls, who
13 is the mother of his son, Justice, his only son. Renee
14 had recently broken up with another relationship and she
15 didn't really want to get committed into another
16 relationship. But she and Raymondeze became intimate and
17 she did become pregnant. But they didn't -- they weren't
18 together that long. And so while she was pregnant, he
19 was dating -- I think I have these dates correct -- Paula
20 Stowers and was charged with having an act of domestic
21 violence against her.

22 But he also met Keisha Greenwade. And while he was
23 dating Keisha, his son Justice was born to Renee. He
24 went to the birth -- to the hospital at the time of
25 birth. He was very excited to be a father. He loved

1 being a father. He still loves being a father. And at
2 that point, Renee had another boyfriend. But soon after
3 that, she and Raymondeze got together and they did try
4 making a family and living together for a while. He had
5 -- right after the birth of Justice, he and Keisha
6 started arguing. He wasn't with Renee yet. And he was
7 charged with domestic violence against Keisha.

8 So he had a whole series that year of acts of
9 domestic violence. But then he tried living with Renee
10 until things did -- that there was an act of violence
11 that caused him to be arrested.

12 And Renee talked a long time about Raymondeze and
13 how he shared with her that he had this terrible temper
14 problem and he didn't know why it happened. He felt like
15 he had demons inside of him because he would be so angry
16 and then so sorry. And he -- it could -- it would be the
17 littlest things that bothered him, and then he would seem
18 very concerned because he felt like he had these demons.
19 So she knew that he had a problem. And he did get
20 ordered into anger management, but that was not what he
21 needed. Anger management is for people who have a simple
22 anger problem or need to learn some communication skills.
23 He has a very profound disability.

24 Q. What is ---

25 MS. BYFORD: I'm sorry, Your Honor. If I could

1 object just briefly. I'm okay with her testifying as to
2 themes and social history, but she has not been qualified
3 as an expert in what might be wrong with him. And I'm
4 going to object to any testimony about any disability ---

5 THE COURT: All right. Very well.

6 MS. BYFORD: --- or diagnosis.

7 THE COURT: You want to restate your question?

8 MR. MCGUIRE: Sure. Sure, Your Honor.

9 Q. With regard to Mr. Rivera's parenting role with
10 Justice, what does Renee report about that?

11 A. That he was consistently a very good parent. He was
12 very patient. She tells stories about how he got cake
13 for Justice on his first birthday. He was good about
14 changing his diaper. He didn't care if the baby urinated
15 on him. You know, he was just like a good father.

16 Due to this thing, a third charge of family
17 violence, Raymondeze was sentenced to two years
18 incarceration. And he did serve two years, several
19 months in prison and then in a transition house. He also
20 was banned from the state of Georgia upon his release
21 which meant that he would lose all contact with his
22 family. And the -- at this point, he's already dealing
23 with these things in his condition.

24 Q. When he was sentenced ---

25 A. Uh-huh (affirmative).

1 Q. --- to prison, that was from the domestic violence
2 assaults with Renee Karls?

3 A. That's correct. The mother of Justice.

4 Q. Right. And ---

5 A. He was sentenced for that.

6 Q. And upon release, he was banished from the state of
7 Georgia?

8 A. Yes, I think he was except for one county, which was
9 nowhere near ---

10 Q. Echols County. Does that sound familiar?

11 A. Yes.

12 Q. And so where did he go after ---

13 A. He went to Florida with his mother. But the being
14 banished -- keeping in mind that he had this damage
15 already because what he wanted was to have a family, he
16 was hypersensitive to rejection -- had a pretty
17 significant impact on him. We also hear him -- this care
18 pain connection had become a repeated theme with him. He
19 had tried and failed so many times, he was becoming very
20 sensitive to criticism. And again, he still had those
21 mood swings, compulsion to be orderly, seeking to control
22 things, and having repressed emotions, and just a general
23 inability to handle stress.

24 So upon his release from the prison, he went down
25 and tried to live in Florida. And this was in the year

1 2005. It was about a year and a half when he was
2 released from prison.

3 Q: And where did he go in Florida?

4 A. He went to Florida, first to Tampa. And that's when
5 he connected with Canessa and -- but he was having a hard
6 time feeling well-adjusted there, although, as we heard
7 from Canessa, they did try to get together. He did have
8 another child while he was there. But he also met Sonja
9 and became engaged to her. There was no violence in that
10 relationship at all.

11 He went to Ohio, but he was in violation of his
12 parole by leaving the state because he was on parole
13 supervision while he was in Florida. And by going to
14 Ohio, he was in a risk situation. But what he
15 experienced in Ohio was kind of a loving family, almost
16 for the first time in his life.

17 Q: And why did he leave Ohio?

18 A. Because his mother insisted that he come back
19 because she was afraid -- she was afraid he was going to
20 get in trouble with his parole officer. So he came back
21 to Florida and tried working for a while and tried making
22 a family with Canessa, but then his temper came up again.
23 He was violent again, and he was charged again even
24 though he had been living his life as a really good
25 father. And you know, what we see is this pattern of his

1 being able to be very socially responsible in some ways,
2 very caring, very eager to please, well-mannered, working
3 hard. He always got another job. He lost a job, he'd
4 always be right back out there. It's amazing how many
5 jobs he got. But on the other hand, he had this
6 emotional flare up, temper on the job and in his
7 relationships.

8 In 2006 -- well, let me just put another summary up
9 here of those two events that I've mentioned so you've
10 got the summary. In his adult life, some of the most
11 important things that happened were the birth of his son,
12 the birth of his daughter, Janiah with Keisha Greenwade.
13 He was incarcerated for two years. This act where he was
14 banished from Georgia and cut off from his family, except
15 his mother in Florida. He was engaged and then the
16 engagement was broken, and then his son was born.

17 And that takes us to the year 2006. In the spring
18 is when he realized that his relationship with Sonja was
19 broken and he was going to try to make it with Canessa.
20 And then when they broke up, he was homeless for a while
21 and lived in a shelter.

22 And then he, for the first time, moved into an
23 apartment on his own and was working. But then he lost
24 that job. His car got repossessed and he was relying on
25 his landlord for rides to work. But he lost that next

1 job too. He had like three jobs that year.

2 And on Thanksgiving of that year, he realized that
3 he was losing just about everything. His grandmother
4 Cousins came up -- came down to Florida on a bus and
5 noticed that Raymondeze was highly agitated. He just
6 kept moving, was very different than he normally is, and
7 she knew something was wrong. And he also had told
8 Canessa that he was hoping that they could get back
9 together, and she said no.

10 He got fired on November 29th, right after
11 Thanksgiving, from the Turf Master, his last job. So at
12 this point, he had no job, no car. He was late on his
13 rent. Canessa had rejected him. Sonja had broken up
14 with him. He exhausted his family's support. His mother
15 was mad at him. And he was facing charges of assault on
16 Canessa which was going to cause his parole to be revoked
17 and he was going to go back to prison. So things were
18 really sinking for him.

19 And at that point, he decided to leave Florida and
20 -- I can't remember which car he went in. But he drove
21 from Florida to Atlanta and started going around
22 visiting. Even though he wasn't supposed to be in
23 Georgia, he started going around visiting and saying --
24 and everyone was saying it was like he was saying
25 goodbye. He went to see his grandparents on Elaine's

1 side. He went to see his grandmother and his aunts and
2 uncles who are here. He went to see his father and
3 Elaine. And they said Raymondeze acted like he was never
4 going to see us again.

5 He went to see his Grandmother Rivera. He went to
6 see his aunt Anita. He went to Aunt Teresa's house. He
7 called Renee, the mother of Justice, at work because he
8 wanted to see Justice. And she told him he couldn't. He
9 called his grandmother Cousins. She said he was crying
10 on the phone when he called.

11 And then he got a phone call from Teshara Hooks who
12 was a friend of his from a long time ago that he had kept
13 in touch with who lived up in D.C. He hadn't seen her in
14 about eight years. And she invited him to come visit, so
15 he went up to Washington D.C. He was up there for about
16 six days visiting her family. He went up to New York
17 City and visited her grandmother. He was basically
18 around a healthy family.

19 And then it was when he was driving back to South
20 Carolina that things were feeling like they were crashing
21 in on him.

22 Q. And Teshara Hooks is the young woman he met in
23 Atlanta when she was a student?

24 A. Could I just get a glass of water?

25 Q. Oh, sure.

1 A. Just that as he was driving back, that's when he was
2 reflecting on how he had lost everything.

3 Q. He was driving back from visiting with ---

4 A. From visiting with Teshara Hooks.

5 Q. And that was the young lady he met when she was a
6 student at Spelman-Morehouse?

7 A. Right. Several years before, but they had stayed in
8 touch.

9 Q. They were just sort of friends. That brings him all
10 the way driving to -- back to Georgia?

11 A. Uh-huh (affirmative).

12 Q. And coming to Anderson, South Carolina?

13 A. Right. And basically what we see at that point is
14 he's still trying to act like everything is okay. He's
15 expecting going back to prison where -- and he was afraid
16 to go back. His uncle had been raped brutally when he
17 was in prison. So those are the kind of things that are
18 complex.

19 Q. And actually, I engaged you just to do a social
20 assessment up and to these crimes in Anderson. And that
21 takes us to the end of your assessment in this regard?

22 A. That's correct, yeah.

23 Q. Dr. Andrews, I don't have any further questions for
24 you. I think the Prosecution might have some questions.

25 THE COURT: All right. May I see the Counsel,

1 please.

2 (WHEREUPON, a bench conference was held off the
3 record.)

4 THE COURT: Mr. Foreman, ladies and gentlemen
5 of the jury, obviously this is a time we're going to
6 break for the evening. Now, I mentioned I did not like
7 to break testimony between direct examination and cross-
8 examination. But in order to complete the direct
9 testimony of the witness, I went a little bit beyond
10 5:30, but then we'll start in the morning with the cross
11 examination. Now, is ten o'clock still your hour?

12 THE JUROR: (Nodded head up and down in the
13 affirmative)

14 THE COURT: Very good. Then if you will come
15 back at ten o'clock, we will continue with this witness'
16 testimony and the trial of the case.

17 Again, do not undertake a discussion of the case
18 among yourselves or permit anyone to discuss it with you,
19 nor should you see or pay any attention to the media or
20 any other information outside what you receive here in
21 the courtroom or by way of exhibit or other evidence.
22 With that, I'll excuse you and look forward to seeing you
23 at ten o'clock in the morning.

24 (WHEREUPON, the jury exited the courtroom at
25 approximately 5:29 p.m.)

1 THE COURT: All right. Has the State got what
2 they need ---

3 MS. ADAMS: Yes, sir.

4 THE COURT: --- from the -- as far as this
5 witness' testimony?

6 MS. BYFORD: Yes, sir, we do.

7 THE COURT: Very good.

8 Now, of course, you're going to be able to step
9 down. But do remember, you cannot discuss your testimony
10 with anyone to include any of the attorneys or anyone
11 else?

12 THE WITNESS: I understand.

13 THE COURT: Very good. Thank you ma'am. Now
14 you may step down if you'd like.

15 All right. Is there anything from the State before
16 we recede for the evening?

17 MS. ADAMS: No, sir, Your Honor.

18 THE COURT: From the Defense?

19 MR. MCGUIRE: No, sir.

20 THE COURT: Very good. I'll see you in the
21 morning a little bit before ten o'clock.

22 THE WITNESS: Sir, could I ---

23 THE COURT: Oh.

24 THE WITNESS: Could I just leave these here?

25 THE COURT: Yes, ma'am, you certainly can,

1 please. And the courtroom will be locked, so you don't
2 have to worry about anything.

3 Now, one thing though, no attorney leaves the
4 courtroom until the court reporter has all of the
5 exhibits.

6 MR. MCGUIRE: Yes, sir.

7 (WHEREUPON, court stood at recess for the day at
8 approximately 5:30 p.m.)

9
10 *** END OF VOLUME IX ***

County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume X of X

The Honorable Alexander Macaulay, Judge

Christina Adams, Esquire
Solicitor for the Tenth Judicial Circuit

Jennings Byford, Esquire
Rame Campbell, Esquire
Assistant Solicitors for the Tenth Judicial Circuit

Attorneys for the State

Bill McGuire, Esquire
John Delgado, Esquire
Attorneys for the Defendant

R. Daniel Day, Esquire
Guardian ad Litem for the Defendant

Renee H. Tollison
Circuit Court Reporter

25 THE COURT: Now, Dr. Andrews, you understand

1 you're still under oath?

2 THE WITNESS: Yes, sir.

3 THE COURT: Very good. All right. Anything
4 further from the Defendant before we bring the jury in
5 and do the cross-examination?

6 MR. MCGUIRE: No, sir.

7 THE COURT: Very good. Ask the jury to join
8 us.

9 (WHEREUPON, the jury entered the courtroom at
10 approximately 10:14 a.m.)

11 THE COURT: All right. Let the record reflect
12 the jury and alternates are in the jury box.

13 Ladies and gentlemen of the jury, does anyone need
14 to report any breach or violation of the Court's order as
15 to exposure to the outside -- to outside information on
16 media coverage or have any other concerns to bring to the
17 Court's attention at this time? If so, if you would
18 please raise your right hand.

19 (No response)

20 THE COURT: Let the record reflect no member of
21 the panel raised their hands.

22 I think we're at the point of cross-examination with
23 this witness. I'll recognize the Solicitor.

24 MS. BYFORD: Yes, sir. Thank you, Your Honor.
25 May it please the Court.

1 ARLENE BOWERS ANDREWS,

2 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

3 CROSS-EXAMINATION

4 BY MS. BYFORD:

5 Q. Dr. Andrews, I'm going to stand at the podium and
6 make sure everybody can hear me. I'm just going to take
7 this down for just a few minutes so I can see you.

8 Since we've sort of taken a break in between, I just
9 want to start -- I just want to refresh and remind the
10 jury a little bit about what you are here to testify
11 about today. You testified yesterday a little bit about
12 your years of experience and that you are a social
13 assessment expert; is that correct?

14 A. That's correct.

15 Q. Okay. As a social assessment expert, it's your job
16 to sort of collect the family history of the Defendant?

17 A. That's correct.

18 Q. Okay. And then you come into court and you present
19 all the information that you gathered and you sort of
20 construct these themes to sort of illustrate to the jury
21 how these events affected his life; is that fair to say?

22 A. That's correct.

23 Q. And how long have you been testifying in this field?

24 A. I believe I started in 1989.

25 Q. Okay. And you're actually sort of a pioneer in this

1 field; would that be fair to say?

2 A. Do you mean in the field of social history
3 assessment?

4 Q. Yes, ma'am.

5 A. Or in the field of testifying?

6 Q. In the field of social history assessment?

7 A. In the field of social history assessment, no.

8 That's been going on for a hundred years. It's a well
9 established social work practice.

10 Q. As it applies to death penalty litigation?

11 A. As it applies to death penalty litigation, yes.

12 Q. And, in fact, you wrote an article back -- I think
13 around that same time, '89 to '91, called Social Work
14 Expert Testimony Regarding Mitigation in Capital
15 Sentencing Proceedings?

16 A. That's correct.

17 Q. Okay. And over the course of your career, you've
18 written numerous articles; is that fair to say?

19 A. I've written numerous articles, not about ---

20 Q. Not just about this, no. I'm talking about ---

21 A. Mostly about family issues, parenting and community
22 systems.

23 Q. And you've also just recently, I think in 2007
24 maybe, you wrote a book?

25 A. I did.

1 Q. Okay. And it's called In the Shadow of Death?

2 A. I was a coauthor on that book. I also wrote a book
3 called Social History Assessment. But I coauthored a
4 book about how the death penalty affects families.
5 Elizabeth Beck was the primary author of that book.

6 Q. Is there a chapter in that book entitled Organizing
7 for Abolition?

8 A. I would have to see the book. I did not write that
9 chapter.

10 Q. Is that the book?

11 A. Yes, that is.

12 Q. Okay. And chapter nine is entitled?

13 A. Organizing for Abolition. And this is the chapter
14 that describes some of the work that's been done by
15 families and others who have been affected by the death
16 penalty, including victim's families.

17 Q. Thank you, Dr. Andrews.

18 Dr. Andrews, you, yourself are opposed to the death
19 penalty?

20 A. For personal and religious reasons, yes.

21 Q. Okay. Have you spent part -- at least a portion of
22 your career actively opposing the death penalty?

23 A. Not as a policy advocate.

24 Q. Not as a policy advocate? As an advocate in getting
25 juries to consider lessening the moral culpability of the

1 defendant as a testifying witness?

2 A. I testified with regard to the truth in family life
3 histories before court. But yes, I've been called by the
4 Defense.

5 Q. Okay. And I believe in your article you put, the
6 objective during the sentencing hearing is to reduce the
7 blame worthiness and moral culpability of the defendant?

8 A. That's generally the objective of mitigation, yes.

9 Q. Okay. Let's talk a little bit about the social
10 history assessment that you did in this particular case.
11 One of the things you did was interview family members?

12 A. Yes.

13 Q. Is that correct? And I believe you gave us a list
14 yesterday of some of the family members you interviewed,
15 and they included some of the individuals that we saw
16 yesterday testify on the stand?

17 A. Right.

18 Q. Is that correct?

19 A. Correct.

20 Q. And you relied on what I believe Denise Rivera and
21 Teresa Rivera told you in forming your -- your themes and
22 assessments; is that correct?

23 A. Yes.

24 Q. Okay. Were you in here yesterday when they
25 testified?

1 A. Yes.

2 Q. Okay. So you saw them swear to tell the truth and
3 take that stand?

4 A. Yes.

5 Q. Did you hear them say that neither one of them had
6 ever witnessed first-hand this abuse?

7 A. That is correct.

8 Q. Okay. And knowing that they were not an eyewitness,
9 you still relied on them in forming your -- the basis of
10 your opinion?

11 A. I relied on -- yes, because even though they were
12 not an eyewitness, Denise in particular had heard her
13 brother -- had discussions with him about what he said
14 that he had done. And she, in fact, said some things
15 that she didn't say in court yesterday about how he said
16 that he had used the children as a punching bag.

17 Q. And I believe she testified yesterday that that was
18 on his deathbed, I believe, when he was sick?

19 A. That's correct.

20 Q. Do you remember when Stanley Rivera passed away?

21 A. He passed away, I believe, in 2007.

22 Q. In March of 2007?

23 A. Uh-huh (affirmative).

24 Q. And that was five months after -- well, March of
25 2007, January, February, March -- four months after his

1 son had been arrested for double homicide; is that
2 correct?

3 A. That's right.

4 Q. Is it fair to say that based on the testimony of
5 Denise and Teresa, those two individuals specifically did
6 not know anything about this abuse until after the
7 Defendant had been arrested for murder?

8 A. I don't know when they first knew about the abuse.
9 I know that they know about it now, but I don't think
10 that they did.

11 Q. But I believe they testified to that yesterday?

12 A. That they didn't know before this?

13 Q. That they didn't know until ---

14 A. They said they didn't know when he was a child.

15 Q. When he was a child?

16 A. He spent ten years as an adult before this happened.
17 And so I don't know when they first realized it. And I'm
18 not sure that when Denise was talking to Stanley -- he
19 was very ill for quite a long time. And she had -- she
20 also said that she had encouraged him to basically ask
21 his sons for forgiveness before these crimes happened.

22 Q. I believe you said you also spoke with Juan Antonio
23 Rivera; is that correct?

24 A. I did.

25 Q. Okay. And when was that?

1 A. I'd have to check my records to see the date.

2 Q. I mean, just approximately?

3 A. It was last fall.

4 Q. Last fall?

5 A. Uh-huh (affirmative).

6 Q. Okay. And how long did you -- did you talk to him
7 one time or several times?

8 A. I talked to him for about four hours one day.

9 Q. One day, okay. And I believe he's currently
10 stationed in Iraq; is that correct? Deployed in Iraq?

11 A. If he is, I don't know that. At that time he was
12 stationed in Alabama.

13 Q. Okay. But he is currently in the military?

14 A. He is.

15 Q. And doing very well; is that correct?

16 A. He did after some adjustment issues right after high
17 school. He was an honor student in high school. He
18 graduated from high school. He went on a scholarship to
19 college. Ended up dropping out of that college but then
20 joined the Navy. Spent two years in the Navy and then
21 was accepted into the U.S. Naval Academy and graduated
22 from the U.S. Naval Academy.

23 Q. So he's very successful?

24 A. He's been successful in his career track, yes.

25 Q. So besides talking to family members and collecting

1 history from family members, you also rely on reviewing
2 records and documents?

3 A. Yes.

4 Q. Okay. I want to talk a little bit about some of the
5 records that you reviewed in this case. I got a big box
6 of them last night, so bare with me just a minute. And
7 these are -- I don't -- is this what you reviewed? This
8 is what the Defense party has provided us. Is this ---

9 A. I don't know what's in that box, so I can't answer
10 that question.

11 Q. Okay. Did you see Mr. McGuire hand me this box
12 yesterday?

13 A. I saw them give you a box. I can assume it is.

14 Q. Okay.

15 A. A lot of what I looked at was on PDFs that were
16 actually on the computer.

17 Q. Okay. In that entire box of records, there are two
18 documents that actually chronicle some type of abuse; is
19 that correct?

20 A. I can't answer that. I'd have to see which two
21 documents that you ---

22 Q. Oh, yes, and I did make copies. And that first
23 document is a South Carolina Department of Corrections
24 health services medical summary where Raymondeze Rivera
25 reports to an S.C.D.C. worker that he was abused. And

1 that has the story about -- if you look down -- I'm
2 sorry, I don't have a highlighted copy. But if you look
3 down to the next to the last, right above that last
4 indentation where it says, inmate reports that his mother
5 and father divorced during his early adolescence,
6 however, his mother was unable to care for him and his
7 brother, she took them to Grady Memorial Hospital and
8 called his father's parents who contacted their father
9 who got full custody of them?

10 A. Uh-huh (affirmative).

11 Q. Is that -- okay.

12 THE COURT: Slow down, please.

13 MS. BYFORD: I'm sorry. I'm sorry, Judge.

14 THE COURT: Thank you.

15 MS. BYFORD: I apologize, Renee.

16 Q. And you shared this information yesterday with the
17 jury?

18 A. The information that I shared, I got primarily from
19 Juan Antonio and Raymondeze in interviews that I had with
20 them.

21 Q. Okay. But that's also contained in this record?

22 A. Some of it.

23 Q. Okay. And you shared that with the jury yesterday?

24 A. I shared some of it. There are other incidents of
25 physical abuse in particular that I haven't told.

1 Q. Okay. That are documented in that box?

2 A. No.

3 Q. The other document that's in that box is a Georgia
4 Department of Corrections diagnostic family history page
5 that I believe was filled out by Katherine Cousins; is
6 that correct? I think -- is that the second document I
7 handed you?

8 A. This -- I don't see that either of these are filled
9 out by Katherine Cousins.

10 Q. Well, it says to -- if you see, it says, to Ms.
11 Cousins, and it says, inmate, Raymondeze Rivera, and she
12 -- at the bottom it said, this inmate had a very abusive
13 life as a child with his father who never offered to love
14 him. He's a good young man. Please get him some help.
15 And please is underlined?

16 A. Right.

17 Q. Okay. Signature of person completing -- oh, did it
18 not -- I'm sorry. Did it not copy the back?

19 A. Uh-uh (negative), I have no signature.

20 Q. I apologize. Signature of the person completing the
21 form, who is that?

22 A. Katherine Cousins, yes.

23 Q. Okay. And this was in 2003?

24 A. Yes. It was when he was incarcerated at Lee
25 Arrendale Prison.

1 Q. Okay. And on here it talks about how he ran away
2 from home, which I believe you told the jury about
3 yesterday. There was child abuse from the father and
4 stepmother, and that was in 1994. But then it has, I
5 think on the -- if you flip over on the same side that
6 has the signature?

7 A. Uh-huh (affirmative).

8 Q. I believe it also says that Katherine Cousins was
9 his legal guardian from 1994 on?

10 A. Yes, she was.

11 Q. Okay. And she has -- on the front page, she has
12 he's a church worker, good job. He just needs some help
13 with his behavioral problem. He wants to love and take
14 care of the two kids he has. She talks about the
15 punishment he received at home and she asks for whoever
16 this form was addressed to, to get him some help; is that
17 correct?

18 A. That's correct.

19 Q. And that is in 2003. And he did, in fact, complete
20 counseling?

21 A. I didn't get any records of how he completed
22 counseling. He went to an anger management program.

23 Q. Okay. But that's a record that you would have -- if
24 there was a record of him completing counseling, that's
25 something that you would have reviewed as part of the ---

1 A. I would have -- I would have looked for that, yes.

2 Q. Okay. I'm going to show you -- this is a
3 certificate of completion. If you could read that to the
4 jury?

5 A. Certificate of completion of something -- a program
6 called Motivation for Change.

7 Q. Okay. And that's also -- that's dated July 2nd,
8 2004?

9 A. Right.

10 Q. Okay. So here we've got a document of some abuse
11 and also the relative attempting to get him some help in
12 2003; is that fair to say?

13 A. Uh-huh (affirmative).

14 Q. Okay. And I believe you shared that with the jury
15 yesterday too, a little bit about that?

16 A. That his grandmother was concerned about him?

17 Q. Yes.

18 A. What I said yesterday was that actually when he was
19 very young that he did not get any help for the abuse,
20 and it was never disclosed. It wasn't disclosed until he
21 was older, and he was already exhibiting very serious
22 problems at that time. An educational program on
23 motivation for change would not deal with the kind of
24 deep-seeded mental health problems that he had at that
25 point. What he never received help for were the serious

1 emotional and mental disturbances that he was exhibiting.

2 Q. Okay. But in 2003 and 2004 he did receive some sort
3 of counseling or anger management?

4 A. When he was an inmate, yes.

5 Q. Okay. And part of the abuse and -- oh, it also says
6 on here that his father had a bad alcohol case. You
7 shared that with the jury?

8 A. Yes.

9 Q. Okay. And that's also from this other document that
10 was in that box?

11 A. His history of alcoholism, I got from every one of
12 his family members.

13 Q. Okay. Does it say anywhere on that sheet that he
14 was beaten with a belt?

15 A. No. But one of the things that happens in his
16 family is they tend -- and this happens a lot with
17 severely physically abused children, is they don't have a
18 language to express what happened to them and they
19 minimize -- they actually understate what happened until
20 you sit quietly and talk with them for an extended period
21 of time, and they are able to begin to share and express
22 some of the -- describe some of the acts that happened
23 and express some of the emotions that happen with that.
24 The kind of programs that these were, were educational
25 programs. That's different than therapy programs.

1 Q. And back to my sort of original question. Is there
2 a single document in this box where someone reported --
3 where it was documented that he was beaten with a belt?

4 A. No. If there had been a DSS report, there may have
5 been some help offered to him.

6 Q. And, in fact, there were no DSS reports at all?

7 A. No.

8 Q. Okay. I want to talk about briefly some things that
9 were in the box that you didn't share with the jury. And
10 I'm going to show you -- we talked a lot -- or you talked
11 a lot yesterday about his experience with jobs and how
12 many different jobs he had including some Job Corp
13 records. There's ten there. As part of his experience
14 in Job Corp, he had to be evaluated by his instructors
15 from time to time; is that correct?

16 A. That's correct.

17 Q. Okay. And I believe what I've just handed you are
18 his student performance evaluation records?

19 A. Uh-huh (affirmative).

20 Q. And across the top it has performance scale, and it
21 says, one is acceptable, two is poor, three is
22 satisfactory, four is above average, and five is
23 outstanding?

24 A. Right.

25 Q. And the first one that I'm looking at, this one is

1 dated November 18, 1997, and it's signed by Ann Freeman
2 who was the instructor. Did you talk to Ann Freeman?

3 A. I did not.

4 Q. Okay. And she has under skills revealing feelings

5 ---

6 A. Wait a minute.

7 Q. Oh, I'm sorry.

8 A. Did you say 11/18 because I've got 11/14?

9 Q. There's a whole bunch of them.

10 A. Uh-huh (affirmative).

11 Q. Do you have one that says 11/15 and it's signed by
12 Jane Single? Well, I'll give you a minute to flip
13 through them. But in skills revealing and feelings,
14 skill alternatives progression and skills for dealing
15 with stress, do any of the numerous instructors who
16 evaluated him ever give him anything less than an above
17 average grade?

18 A. I don't have the documents, so I can't come up with
19 -- the ones I have are generally on personal skills,
20 social skills.

21 Q. Right, if you look under social ---

22 A. Skills for dealing with feelings.

23 Q. Yes, ma'am. Under social factors, the last three
24 things?

25 A. Right.

- 1 Q. Skills for dealing with feelings?
- 2 A. He gets above average and outstanding.
- 3 Q. Right.
- 4 A. That's correct.
- 5 Q. And that was in 1996?
- 6 A. That's correct.
- 7 Q. Okay. And you didn't share that with the jury
- 8 yesterday, did you?
- 9 A. What I said was that he is very sociable, and he
- 10 will -- he presents -- and several of the witnesses said
- 11 this too -- he can be very caring, very expressive, and
- 12 then he has these temper outbursts so that he switches.
- 13 So he -- these are not at all unusual in terms of his
- 14 normal presentation.
- 15 Q. And I believe also in regards to his job, you
- 16 testified that it was sort of -- your interpretation of
- 17 the records that it was sort of a normal thing for him to
- 18 get these jobs and do well and then sort of sabotage?
- 19 A. I didn't say sabotage, but he would have performance
- 20 problems ---
- 21 Q. Okay.
- 22 A. --- that would have a fairly sudden onset usually.
- 23 Q. Okay. And that's why he would leave?
- 24 A. He would either leave or have to leave.
- 25 Q. Okay. He had a -- I believe there was a Social

1 Security statement of earnings in there that had -- I
2 think we said -- I mean, I think it was about right,
3 twenty to twenty-five jobs on there that he had?

4 A. Uh-huh (affirmative).

5 Q. So he convinced twenty to twenty-five people to hire
6 him at some point?

7 A. Well, he actually was a good worker. He has good
8 work performance and he would get good work evaluations
9 up until a point.

10 Q. He also -- in there, there was a lot of things
11 filled out as previous employment records. And on those
12 he often listed his reasons for leaving?

13 A. Uh-huh (affirmative).

14 Q. For National Linen Service, he has the reason for
15 leaving that he moved to Tampa?

16 A. That's correct. That's when he was -- as far as I
17 understand that, he had gotten that job because he was
18 being released from the work release, the community
19 living center that he was living in that was part of his
20 serving time in Atlanta. And he had to leave the state
21 of Georgia, so he got a job in Florida and was
22 transferred into Florida with that company.

23 Q. Okay. He also worked for Career USA, and he has as
24 his reason for leaving is that that was just a temporary
25 job?

1 A. I -- you know, there were so many jobs, I don't know
2 the exact reason for each job.

3 Q. Okay. Coca Cola Parts, that was just seasonal
4 employment?

5 A. Uh-huh (affirmative).

6 Q. Okay. Quality -- it looks like a printing place,
7 Quality Photography or something like that, he left
8 because he was looking for more hours?

9 A. Yes. Some of his jobs were part-time jobs.

10 Q. Okay. Pepsi Cola, he left because they wanted him
11 to use his own car, and that was not an option for him at
12 the time?

13 A. He didn't have one.

14 Q. Okay. Bruno's, he also left because he moved to a
15 new location?

16 A. I didn't go over each and every job with him in
17 terms of what the explanation is behind what was stated
18 on the record.

19 Q. Okay. Is it fair to say that some of these he left
20 for fairly normal reasons?

21 A. Right.

22 Q. I want to talk to you a little bit about some of the
23 charts you had up yesterday. I want -- and be careful
24 because I don't want to -- I'm just going to pin this up
25 here for just a second. If you could step down for me

1 for just a second. Sorry.

2 (WHEREUPON, the witness stepped down from the
3 witness stand.)

4 Q. And you've got listed right here his family assets?

5 A. Uh-huh (affirmative).

6 Q. Okay.

7 A. Those were the family assets that he had before he
8 was born. He was born into a family that had those
9 assets.

10 Q. And he had his grandmother Katherine Cousins?

11 A. He did.

12 Q. He had a good education. We talked about how well
13 he did in school, good work ethic. And he had his faith
14 and church. And that was a pretty predominant theme in
15 his life, wasn't it?

16 A. That's correct.

17 Q. I believe Ms. Cumberlander testified yesterday she
18 was one of his teachers. She said she loved him as one
19 of her own -- that was in middle school -- and he would
20 go over to her house to play. Is that someone who could
21 be listed too as an asset in his life?

22 A. That was -- he certainly was around people who were
23 positive influences in terms of helping to direct him in
24 a right way. They were not people though in whom he
25 could confide his deepest feelings. There was no one

1 that he felt he could really share what was happening,
2 plus he had been given specific instructions never to
3 tell what was happening at home.

4 Q. But you said they were a positive influence in his
5 life?

6 A. So for example, she didn't know that his father had
7 a drinking problem even though he had gotten several
8 DUIs, had had accidents and was disabled. It was very
9 serious drinking problem.

10 Q. But you did just say that she was a positive
11 influence in his life?

12 A. Uh-huh (affirmative), yes.

13 Q. Okay. Additionally, he -- I believe Canessa Thomas
14 testified yesterday that they actually met at church and
15 went to church together?

16 A. Yes.

17 Q. Okay. And I think we all remember Minister Allen's
18 testimony yesterday that she really took him into her
19 family, didn't she?

20 A. Yes.

21 Q. And they read the Bible together, that she wanted
22 him to be a part of her family. That was a very loving
23 experience for him, wasn't it?

24 A. Very much.

25 Q. And then Ms. Cousins, who you can tell from that

1 form that she filled out, she was -- that -- and that was
2 early on. That was in 1990 -- oh, I'm sorry. That was
3 in 2003, so three years before the incident that brings
4 us here today. She was a -- she's listed as one of his
5 assets, and she actively sought help for him?
6 A. She did after he was a teenager. When he was very
7 young, she wasn't able to take care of him -- she had a
8 lot of stress in her life right then -- even though he
9 and his mom lived there when he was a tiny baby. She had
10 tried keeping him for a while. There was a time though
11 when his father came and his mother Sheena was, as I
12 described yesterday, living a very disorganized life and
13 she had left Juan Antonio and Raymondeze with Ms. Cousins.
14 And while she was working, she had the next door neighbor
15 babysitting. And Stanley came and took both boys and --
16 very suddenly -- and moved them to his grandmother's.
17 And she -- and at that point Ms. Cousins wasn't taking
18 care of him anymore, and instead he was at Ms. Rivera's.
19 So -- and so for a period of time he did not visit with
20 her very often. Less and less into the teen years
21 because his parents wouldn't take him over there. And
22 there was this tension between the families until he ran
23 away, tried living with his mom. And then he went back
24 in high school his Grandmother Cousins gained custody of
25 them -- of him. And at that point she realized he was

1 having some very serious problems and noticed he was
2 depressed.

3 Q. And just to sort of make sure that we've all got the
4 time line on this correct, that Ms. Cousin's sort of
5 reaching out and trying to get him help in 2003, that was
6 after the assault on Ms. Kenny?

7 A. That's right.

8 Q. Before the brutal murder of Asha Wiley and Kwana
9 Burns?

10 A. That's right.

11 Q. So in between those two things, he had Katherine
12 Cousins, his grandmother, his asset, trying to get him
13 some help?

14 A. That's right.

15 Q. Okay.

16 A. He didn't get the help, but she was definitely
17 trying.

18 Q. I want to talk -- I know you talked to Juan Antonio for
19 awhile, and he told you a lot about what happened to
20 them. And you told the story that the reason that
21 Juan Antonio was sort of able to overcome and excel --
22 because he and Rivera did have a share -- or he and
23 Raymondeze did have a shared abusive history, did they
24 not?

25 A. They did although there were some significant

1 differences in their abuse histories. One is Raymondeze
2 -- and Juan Antonio says that Raymondeze was beaten a lot
3 more than he was, at least twice as much, and that when
4 he was hit, he was hit much more severely.

5 We also know that Juan Antonio's earliest, very
6 earliest, years weren't as damaged as Raymondeze's were.
7 Raymondeze, from the time he was born, was born into a
8 situation where his parents were in terrific conflict.
9 When Juan Antonio was born, they were still together. He
10 had one year of life where he had a mom that was trying
11 to be a mom. By the time Raymondeze was born, his mom
12 was running around, his dad was running around, things
13 were chaotic. So the attachment issues for Raymondeze
14 were much more severe from the beginning. The abuse was
15 much more severe.

16 Juan Antonio is an exceptionally gifted person.
17 Everyone who knows him says that he excelled in
18 everything he did. He also had a very quiet temperament.
19 He was able to withdraw. He withdrew into his room. He
20 stayed away as much as he could. As soon as he was old
21 enough, he stayed away from home. Raymondeze wasn't able
22 to do that. He was -- one of his punishments was he
23 wasn't allowed to do sports, he wasn't allowed to do
24 things outside the home, so he was at home more. And as
25 his father's alcoholism became more disabling, he was

1 subject to being at home more and thus was -- it was
2 relentless and constant in the beatings he was getting.
3 And Juantonio ---

4 Q. So that's why he was able to rise above that?

5 A. It was very different. I mean ---

6 Q. Okay.

7 A. --- people respond to stress differently. I mean,
8 we ---

9 Q. Okay.

10 A. You know, it's ---

11 Q. Absolutely. You also indicated -- okay. Red is
12 abuse -- so all -- and these are the children of
13 Elizabeth Rivera; is that correct?

14 A. That is correct.

15 Q. And blue is mental illness?

16 A. Uh-huh (affirmative).

17 Q. And I noticed -- I'm sorry. Where is Juantonio?

18 Okay. So he doesn't -- there's no mental illness over
19 here which is, I think, kind of what you're talking
20 about?

21 A. Not that I'm aware of.

22 Q. Okay. And all of these people are also the victims
23 of abuse; is that correct?

24 A. Correct.

25 Q. And they all also suffer from mental illness?

1 A. Right.

2 Q. But there's only one person on this entire chart
3 who's brutally strangled two people; isn't that correct?

4 A. That's correct.

5 Q. So none of these children who were abused -- I think
6 you said something about fingers broken, some terrible,
7 terrible stuff -- and who also suffer from an actual
8 diagnosed mental illness, nobody right here strangled two
9 women, did they?

10 A. No.

11 Q. And one more question for you and I -- you can go
12 back and sit down.

13 (WHEREUPON, the witness resumed the witness stand.)

14 Q. You testified yesterday -- and I want to make sure I
15 get this absolutely right. You said -- you were talking
16 about the abuse and punishment and also about how
17 Juan Antonio was excelling, you said Raymondeze couldn't
18 seem to learn. No matter how they punished him, it never
19 seemed to help. Do you still agree with that statement
20 today? You did say it yesterday?

21 A. Yes.

22 Q. Yes?

23 A. Uh-huh (affirmative).

24 MS. BYFORD: Your Honor, I have nothing
25 further.

1 THE COURT: Re-examine?

2 MR. MCGUIRE: No further questions. Thank you.

3 THE COURT: Very good. You may step down.

4 MR. DELGADO: Your Honor, the Defense calls Dr.
5 Nicholas Cooper-Lewter, L-E-W-T-E-R.

6 NICHOLAS COOPER-LEWTER,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. DELGADO:

10 Q. Dr. Lewter, I'd like to be able to turn your chair
11 as I want you to address our jury. Give them a bit of
12 your background sir, what you do, your educational
13 experience, and what you do vocationally and
14 professionally, if you would.

15 A. Yes. Currently, I am a lecturer at the University
16 of South Carolina both in the graduate program and in the
17 undergraduate program. It's a brand new B.S.W. program.
18 I also have been a professor and lecturer ---

19 Q. In what department, I'm sorry?

20 A. College of Social Work.

21 Q. All right.

22 A. I've also been a lecturer, visiting professor in the
23 Honors College at the University of South Carolina. I
24 currently also have Cooper-Lewter Consulting. I'm
25 supervising licensed independent social worker clinical

1 practice. This means that I supervise people who wish to
2 become licensed as social workers in the state of South
3 Carolina. And of course, I do social history assessment,
4 and I'm also an ordained clergy.

5 Q. Doctor, if you would, give us a bit of your academic
6 background, where you went to college, where you went to
7 graduate schools, that sort of thing?

8 A. Yes. I went to Ashland College which is now Ashland
9 University in Ashland, Ohio. I also -- that was where I
10 got a Bachelor's, a B.A. I went to the University of
11 Minnesota where I got a Masters in social work. I went
12 to California Coastal University where I got a Ph.D. in
13 psychology. I also attended the Ecumenical Center for
14 Black Church Studies which was affiliated with the
15 American Baptist Seminary West. I audited courses, in
16 particular for the D-men track. And as a result of that,
17 I published a book.

18 Q. Doctor, what professional associations, both in the
19 state and nationally, are you a member of?

20 A. I am a member of the National Association of Social
21 Workers which is the national association for membership
22 for social workers. I also hold the A.C.S.W.
23 accreditation which is the independent, highest form of
24 independent certification -- I guess they now have the
25 diplomat also -- that basically says I've gone through a

1 process of testing and supervision and have been found to
2 be competent to be independent. And so I'm a member of
3 the A.C.S.W. also.

4 Q. Doctor, you have a speciality as relates to African-
5 American men, do you not, sir, relating to social work?

6 A. Yes.

7 Q. Could you explain that and then your expertise in
8 that area as a result of publications that you've
9 written?

10 A. I teach at the University of South Carolina a
11 subject called psycho pathology. In fact, I teach almost
12 all of the courses and I have for a number of years.
13 These are courses that students need in order to be
14 licensed as social workers. I teach that.

15 Also, I specialize in human behavior in the social
16 environment. And I also specialize in looking at multi-
17 generational legacies of grief and trauma as it relates
18 to the African-American experience. And I've written
19 several books dealing with the issues surrounding what we
20 call the Black Experience and attempting to look at what
21 families need, what their risks and challenges are, what
22 they pass on, and what's successful, what's not
23 successful, that kind of thing.

24 MR. DELGADO: Your Honor, I offer Dr. Nicholas
25 Cooper-Lewter in the area of trauma in African American

1 males.

2 THE COURT: Any voir dire?

3 MS. ADAMS: We have no objection, Your Honor.

4 THE COURT: All right. The witness will be
5 qualified by reason of background, training, and
6 experience as an expert in trauma in African ...

7 Is it African-American males?

8 THE WITNESS: African-American.

9 THE COURT: ... African-American males.

10 Mr. Foreman, ladies and gentlemen of the jury, he of
11 course, by reason of his background, training, and
12 experience, will be permitted to give his opinion in this
13 area. All witness' testimony for your evaluation.

14 You may proceed.

15 Q. Doctor, you have been asked by the Defense team in
16 this matter to consult with Raymondeze Rivera; is that
17 correct?

18 A. Yes, sir.

19 Q. Can you explain for our jury when that began and
20 over how many hours that evolved into?

21 A. It began in June of 2009, and twenty-seven hours of
22 face-to-face work with him and another two and a half
23 hours working with his mother.

24 Q. Doctor, as a result of that, do you have information
25 as to how this man, Raymondeze Rivera, as a result of his

1 background and his history, how he relates to the
2 external world as a result of what you have found?

3 A. Yes.

4 Q. Could you explain that for our jury?

5 A. I would like to start with a quote from his mother.
6 His mother told me in the interview that, my son is a boy
7 who lives in a man's body and he cannot get out of his
8 childhood.

9 I was asked by Defense counsel to go see him because
10 they felt that there might be some additional information
11 that was missing. Their desire was to better understand
12 their client. And so I have been very successful in the
13 past, particularly when it comes to African-American
14 males, in getting African-American males to talk about
15 things they typically will not talk about.

16 One of the things that we find in social work -- and
17 I've been in private practice for over thirty years -- is
18 that people typically do not talk about sexual abuse.
19 Women will not discuss rape, molestation. Men will not
20 do it either. But in particular in the African-American
21 community, it's particularly taboo to ever reveal that
22 you've been vulnerable sexually.

23 And so when I found out that I was going to go see
24 Mr. Raymondeze Rivera, I asked him a number of questions.
25 It took quite a few hours to establish rapport, which is

1 one of the things we attempt to do, trust, because he --
2 he said, the first time I met him, that I'm the first
3 successful African-American male he's ever been in close
4 contact with, the first time in his life. And so he just
5 wasn't sure what I was. How I got to where I am, he just
6 didn't know. So it took a while for me to establish a
7 relationship with him.

8 Upon establishing a pretty trusting relationship as
9 best as we could, he revealed to me the nature of the
10 abuse, particularly at the hands of his father, that was
11 particularly noteworthy for me. And that had to do with
12 ritualistic beatings, sexual abuse. Imagine with me for
13 a second. I will tell you what he shared with me.

14 When you're a small child, six years old, and you're
15 standing there before a very large adult and they strip
16 you naked, much like they did in Auschwitz, strip you
17 naked for the purpose of humiliating you. Make fun of
18 your genitalia, make fun of your littleness, and make fun
19 of you and say they're going to beat you, beat the devil
20 out of you, they're going to beat you. And when they
21 start beating you, they may grab your arm, they may grab
22 your leg, they may grab your throat. And as they beat
23 you, they strike you not just in a few places, but
24 anywhere, but on a number of occasions, particularly in
25 the genitalia.

1 Imagine being struck with a large belt in your penis
2 or your testicles, for those who are male. As a female,
3 I think you can at least relate to what that might be,
4 particularly for a six-year-old to be struck in that way
5 repeatedly on a number of occasions by the father figure
6 who one is hoping would be the protector rather than the
7 punisher. And so that's a very traumatic platform upon
8 which to begin to build your notion of what the world is
9 really like.

10 Q. Doctor, if you'll explain further for the
11 edification for our jury, when you met with Raymondeze,
12 where are you doing that? Physically, where are you
13 located?

14 A. I met with him at Broad River Correctional
15 Institution.

16 Q. That's where he is presently housed in the South
17 Carolina Department of Corrections?

18 A. Yes, sir.

19 Q. You started back in the summer, I think you said, of
20 2009?

21 A. Yes, sir.

22 Q. How long did that continue, until when?

23 A. Up until the last week in November of 2009.

24 Q. Over the course of that, you had to maintain -- or
25 you had to establish a rapport with him?

1 A. Yes, sir.

2 Q. Is he, to use your phraseology, is he risk aversive?

3 By that. I mean, does he trust?

4 A. It's hard for him to trust.

5 Q. Why?

6 A. One of the reasons it's very hard for him to trust
7 is the type of unpredictable, repeated abuse, neglect and
8 abandonment issues that he experienced, both at the hands
9 of his father. And then when he wanted his mother to
10 protect him or want him, he had too many experiences
11 where she abandoned him. And so for him it was very hard
12 to trust. There were some individuals who were loving
13 and caring. That accounts for -- that's a positive. But
14 there was an overwhelming amount of just the opposite,
15 and it's very early on.

16 If you think of a person like you think of a
17 container, the container would be kind of your genetics,
18 your temperament. Every container is a little different.
19 The issue then becomes what do you put in the container.
20 What do you fill it with? If you fill it mostly with
21 bitter, toxic, sour substance, then no amount of sweet
22 tasting, anything you add to it, overwhelms the bitter
23 taste, the bad taste. And so I use that to attempt to
24 explain that once you fill that container, you fill it
25 with the pain, with the suffering, the shame, the

1 humiliation repeatedly, it's very deep.

2 And another thing that happens is people don't want
3 to talk about it. And in the African-American community
4 particularly, we don't talk about it. And so on top of
5 that, the whole issue of how can I say that the person
6 who I wanted to love me treated me so poorly. We see
7 this often in child abuse. They cling to the abuser.
8 They seek love from the very person they most fear.

9 And so I saw that pattern also in him during the
10 times that we interacted. And thus it took a little
11 longer to get any trust out of him because, once again, I
12 was a -- I'm a large male, black male. And his
13 experience had not been very good with large black males.

14 Q. Doctor, over your period of time, how did he come to
15 react and relate to you? How did he come to see you?

16 A. One of the very first questions that he broached
17 after we began to get past the whole issue of any rapport
18 was, when you look at me, what do you see. And I said to
19 him I see a person who's done some very, very, very bad
20 thing, according to the records. He said, you see a
21 person. I said yes. He said, you just don't see a
22 monster. I said I think we start with a person. And I
23 asked him a very simple question. When you were
24 conceived, when you were in your mother's womb, when you
25 were a toddler, did you choose to become like you are

1 today. And he said no. I said, so my question to you
2 is, human being, what has happened that we sit here today
3 across from each other with you shackled and me not.

4 And that was some of our very early discussions. He
5 wanted to know how I saw him. I was consistent. I kept
6 my word to him. When I said I would be there, I was
7 there. Every time I went to see him, even if there were
8 some difficulties going on in terms of just in the
9 prison, he was respectful. And he also shared with me
10 his fear of prison. After all, it's a place that's going
11 to be filled and is filled with men. And there's a part
12 of him, the little boy in him, that suffered severely at
13 the hands of more powerful men, this case starting with
14 his father. And he had a tremendous fear.

15 And so whenever we got ready to go, he would walk on
16 my left shoulder behind me. I never detected anything
17 but respect from him, didn't worry about it. And I would
18 escort him back to the room where the correctional
19 officers were. He also asked me to make sure that the
20 halls were clear because he feared that at any point he
21 could be attacked while in prison.

22 And so through consistency, through keeping my word,
23 through listening to him, attempting to understand him,
24 hear his story, and also the actions that I took in terms
25 of letting him walk as I did when we would leave -- also

1 I talked to Warden Stevenson on one occasion. He came
2 out and got me and brought me in, past security. And he
3 said, Raymondeze is not a problem as long as he is on his
4 meds.

5 MS. ADAMS: Objection, Your Honor. Hearsay.

6 MR. DELGADO: He has a right to ---

7 THE COURT: He's testifying as an expert
8 witness and I trust this is the type of interview you
9 would make.

10 Overruled, you may proceed.

11 Q. Would you repeat that again for the jury, Doctor?

12 A. The last part was is that I was escorted by the
13 warden, Warden Stephenson, on one occasion and past
14 security -- you have to be cleared for security just kind
15 of like when you come in here. And I asked him how was
16 Raymondeze acting. He said he's not a problem. When
17 he's on his medication he's very easy to deal with.

18 Q. Doctor, will you explain to the jury the mood
19 swings, because you had discussed that with me. Over the
20 period of time you saw him in various states of mood.
21 Would you explain that for the jury?

22 A. Yes. In fact, Warden Stevenson kind of spoke to
23 this, and some of the other correctional officers kind of
24 spoke to this. And Raymondeze also spoke to this. There
25 was some confusion at times about him getting his

1 medication. And I saw on different occasions ---

2 MS. ADAMS: Your Honor, I'm going to object. I
3 don't see how this relates to him forming an opinion
4 about Mr. Rivera.

5 THE COURT: Overruled.

6 You may proceed. But let's just stay within the
7 expertise of this particular witness.

8 MR. DELGADO: I think that's exactly what he's
9 doing.

10 THE COURT: That's why I overruled the
11 objection.

12 MR. DELGADO: Yes, sir.

13 Q. Continue, Doctor.

14 A. Raymondeze had told me that he had been diagnosed
15 with bipolar. I teach psycho pathology.

16 MS. ADAMS: Your Honor, I object. He's not
17 qualified to diagnose Mr. Rivera with any mental illness,
18 and there's been no evidence of that.

19 THE COURT: Again, now, that is not something
20 that's a part of the record.

21 MR. DELGADO: Your Honor, it's what -- it's
22 what the Defendant told him.

23 THE COURT: It's still not part of the record
24 so. That's a medical condition that requires expert
25 testimony. Go ahead, you may proceed.

1 Q. Did you see -- to help our Solicitor -- did you see
2 -- without explaining it or defining it, sir, or giving
3 it an actual diagnosis, did you see diagnosable
4 conditions in your interviews over the periods of time
5 with Raymondeze Rivera?

6 MS. ADAMS: Objection, Your Honor.

7 THE COURT: Again, let's --

8 Mr. Foreman, ladies and gentlemen of the jury, let's
9 -- I need to take this matter up with the attorneys,
10 matters of law. Please, if you would, retire to the jury
11 room. And do not undertake the discussion of this case
12 among yourselves in any way.

13 (WHEREUPON, the jury exited the courtroom at
14 approximately 11:04 a.m.)

15 THE COURT: All right. State your objection,
16 Madam Solicitor.

17 MS. ADAMS: Your Honor, this witness is not
18 qualified to diagnose Mr. Rivera as being bipolar. We
19 have seen no forensic expert come in here and testify
20 that he is bipolar. And it is simply not the area of his
21 expertise. He's been qualified as an expert in trauma in
22 African-American males. That does not qualify him to
23 diagnose Mr. Rivera as being bipolar.

24 MR. DELGADO: I'm not asking him to diagnose
25 it, Your Honor. He has seen the records from the South

1 Carolina Department of Corrections where they diagnosed
2 him as bipolar. They give him the medicine he takes
3 every day. That, in his expertise, he has a right to
4 rely on that.

5 THE COURT: Not for a diagnosis, he does not.

6 MR. DELGADO: Yes, he does.

7 THE COURT: I don't think that -- what is it --
8 the fact that there's something in a record that would
9 lead somebody else who is qualified to make a diagnosis
10 would permit a witness who is not qualified in that area
11 to repeat the diagnosis. He can state to what effect
12 that trauma would have on this particular individual.
13 But to say that he is bipolar or that he would suggest to
14 this jury is misleading.

15 MR. DELGADO: Your Honor, I never asked him
16 that. He said ---

17 THE COURT: Well, that's why I sent the jury
18 out, because I think that, of course, he's not an
19 attorney either.

20 MR. DELGADO: I agree, Your Honor.

21 THE COURT: And so he doesn't know the rules of
22 evidence. But -- so maybe it was -- and it was obviously
23 inadvertently, if he knew that he was not proffered as a
24 psychiatrist or somebody else in the medical field who
25 would be able to diagnose a medical condition.

1 MR. DELGADO: All right, sir. That's fine.

2 THE COURT: Very well. All right. So let's
3 just -- let's do stay within the ---

4 MR. DELGADO: Yes, sir.

5 THE COURT: --- expertise of this particular
6 witness.

7 MR. DELGADO: Fine.

8 MS. ADAMS: Your Honor, we'd ask that that be
9 explained to the jury, that he is not qualified to
10 diagnose, that is not within his expertise and there has
11 been no evidence of any mental illness.

12 THE COURT: I'll see if I can fashion some
13 curative instruction.

14 All right. Anything else before I bring the jury
15 back?

16 I tell you what, let's take a very short break if we
17 could. We've been here for a while.

18 Doctor, you understand, you're still under oath.
19 You could step down, of course, but don't discuss your
20 testimony with anyone.

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you, sir.

23 (WHEREUPON, court stood at recess for a short
24 break.)

25 THE COURT: All right. Is the doctor still

1 with us?

2 MR. DELGADO: Yes, Your Honor, he is.

3 THE COURT: All right. Mr. Delgado?

4 MR. DELGADO: Thank you, Your Honor.

5 Your Honor, I would like to be able to proffer the
6 basis for our asking the questions of Dr. Lewter relating
7 to the bipolar diagnosis given to Mr. Rivera by the South
8 Carolina Department of Corrections. First, Your Honor,
9 in a United States Supreme Court case, *Mills v. Maryland*
10 -- the cite on that is 486 U.S. 367. It's reported in
11 1988. And I'll quote a little of page six. It is beyond
12 dispute that in a capital case, quote, the sentencer may
13 not be precluded from considering as a mitigating factor
14 any aspect of the defendant's character or record or any
15 of the circumstances of the offense that the defendant
16 proffers as the basis for a sentence less than death.
17 Citing *Eddings* and *Lockett* and then *Skipper v. South*
18 *Carolina*. The opinion then goes on to say, the corollary
19 that, quote, the sentencer may not refuse to consider or
20 be prevented from considering any relevant mitigating
21 evidence is equally well established. Again, citing and
22 quoting from *Eddings v. Oklahoma*.

23 THE COURT: Is not the operative word,
24 evidence, in both quotes?

25 MR. DELGADO: Yes, sir.

1 THE COURT: Well, not everything is evidence.

2 MR. DELGADO: It certainly isn't. But with
3 this gentleman as an expert ---

4 THE COURT: But he's not an expert in
5 psychology -- I mean, psychiatric -- psychiatric or other
6 medical fields.

7 MR. DELGADO: All right, sir.

8 THE COURT: Which bipolar is a diagnosis. In
9 other words, to get a bipolar diagnosis and to show any
10 relationship to a condition, you would have to have an
11 expert to testify as to causation.

12 MR. DELGADO: All right. The other side of
13 that may be, Your Honor, that I have not asked ---

14 THE COURT: Or physiological, excuse me.

15 MR. DELGADO: Your Honor, I'm not asking for a
16 diagnosis from the doctor. But if he sees things in his
17 communications with Mr. Rivera, mood swings, depression
18 and then elation.

19 THE COURT: Well, now, let's be careful.
20 Bipolar is a definite diagnosis.

21 MR. DELGADO: That's correct.

22 THE COURT: And it can be -- and this expert's
23 -- and he's been qualified as an expert in trauma in
24 American -- African-American males.

25 MR. DELGADO: Yes, sir.

1 THE COURT: Bipolar is not related to trauma.
2 In fact, you can have doctors, lawyers, preachers,
3 professors who are all subject to bipolar and have no
4 history of trauma.

5 MR. DELGADO: That may well be.

6 THE COURT: Well, it's not well be. I think
7 that's why we have -- that's why you have to rely on an
8 expert to diagnose that.

9 MR. DELGADO: I'm not going to argue with you.

10 THE COURT: Very good. So I mean, it's not
11 evidence. And the mere fact that it's mentioned in some
12 record does not in any way affect this witness' ability
13 to establish it as being causation, a cause of this
14 Defendant's condition. His expertise is in trauma.

15 MR. DELGADO: All right, sir.

16 THE COURT: And again, bipolar is not a
17 traumatic condition. And again, as far as the effect of
18 the trauma, I mean, the effect of the bipolar condition,
19 would have to be a matter of causation as to whatever
20 acts it's related to, if any. In fact, bipolar, if it
21 did have the effect -- and again, this is supposition --
22 that it did affect the ability of a person to conform to
23 society or what is expected of them, that would either be
24 a question of the sanity or the mental health, the mental
25 condition, of the Defendant. Both of those are defenses,

1 not merely information or -- you know, if you were going
2 to rely on either a defense of insanity, which is an
3 absolute defense, or guilty but mentally ill, which is a
4 possible verdict, you would have to have notified the
5 State.

6 MR. DELGADO: Yes, sir.

7 THE COURT: Have you done that?

8 MR. DELGADO: No, sir. We're past that stage.

9 THE COURT: Well, not only are you past that
10 stage, if you were going to use that sort of diagnosis,
11 then obviously you'd have to bring somebody in that
12 could, for the benefit of the jury, say this is something
13 that's relevant.

14 MR. DELGADO: Your Honor, if we intend to rely
15 on any of two statutory mitigating circumstances ---

16 THE COURT: No. Unless you're going to rely on
17 a condition.

18 MR. DELGADO: Well, Your Honor, I believe --
19 statutory aggravating circumstances, I believe it's
20 number two and number five -- and Your Honor, I'm not
21 going to quote it specifically.

22 THE COURT: I know you're talking about if ---

23 MR. DELGADO: It's quoted in the statute, I'm
24 sorry.

25 THE COURT: Right. Actually it's two and

1 seven.

2 MR. DELGADO: I was close.

3 THE COURT: Very much closer than I was.

4 Influence of mental or emotional disturbance. I have no
5 problem with him testifying that he -- in his opinion,
6 that he was mentally or emotionally disturbed. I have no
7 problem with him testifying as to the age or mentality of
8 the Defendant at the time of the crime. But what I'm not
9 going to do is to permit a witness -- and I don't think
10 he wants to do that. He doesn't know -- unless you can
11 qualify him.

12 In fact, you speak of -- let's see, the recent case
13 of -- all right, I'm sorry. *State v. Mercer*. There it
14 was a medical doctor, board-certified neurology and
15 psychiatry, who was the source of the testimony. And
16 they used Rule 43 and, as they later said, a reliance on
17 a so-called discovery order which was not in existence.
18 And it was not because the witness was not qualified that
19 they didn't permit his testimony; it was evidentiary.
20 I'm not relying on 403; I'm just talking about the
21 qualification of a witness to testify ---

22 MR. DELGADO: I understand.

23 THE COURT: --- in an area beyond his
24 expertise.

25 MR. DELGADO: I understand. Your Honor, if you

1 look at the specific statutory wording, number two and
2 number seven, statutory mitigating circumstances set out
3 in § 16-320. The murder was committed while the
4 defendant was under the influence of mental or emotional
5 disturbance. How best to have an individual be able to
6 give that information but within the context of his
7 reviewing, seeing the symptomology, and then having the
8 defendant say to him, I have bipolar disorder, and then
9 reviewing the records from the South Carolina Department
10 of Corrections where he has been given that diagnosis and
11 medication as a result?

12 THE COURT: Because we'd have to know what
13 bipolar is. And this -- I trust that this doctor has not
14 had any of the background in ---

15 MR. DELGADO: Why don't -- could we ask him ---

16 THE COURT: Well, sir, I've listened to his
17 qualifications, Ph.D.

18 MR. DELGADO: Yes, sir. He's also licensed,
19 Your Honor, to be able, in the state of South Carolina,
20 to give diagnosis.

21 THE COURT: In the -- in the area of social
22 work and things of that nature.

23 MR. DELGADO: Well, Your Honor, I think if you
24 give this -- this sort of diagnosis ---

25 THE COURT: Sociology, I think it is. His

1 degree is in sociology.

2 MR. DELGADO: No, sir. I think it's
3 psychology, as I recall, but I ---

4 THE COURT: Well, let's ask.

5 Are you a -- is your degree in psychology?

6 THE WITNESS: My Ph.D. is in psychology, but
7 I'm licensed with my Masters in social work.

8 THE COURT: Social work.

9 THE WITNESS: As a licensed, independent social
10 worker, clinical practitioner, supervising others to get
11 licensed.

12 THE COURT: But you do not diagnose either
13 medical or psychiatric conditions?

14 THE WITNESS: Licensed independent social
15 workers, clinical practitioners, are allowed to diagnose
16 emotional disorders.

17 THE COURT: But not psychiatric or medical
18 conditions, physiological conditions?

19 THE WITNESS: No, not medical. And -- no
20 medical at all.

21 THE COURT: That's what I'm saying. And that
22 -- and bipolar -- a bipolar or manic depressive is a
23 diagnosis -- diagnosable medical condition. Is it or do
24 you know?

25 THE WITNESS: It is a diagnosable medical

1 condition if a medical practitioner so diagnoses it. It
2 is also a statement of mental health. And therefore, as
3 a social worker, licensed, one can -- I teach psycho
4 pathology. My students have to know what different
5 diagnoses mean and different -- and how to recognize
6 things so that they can better talk to and work with
7 clients. We do not -- we're not doctors in the sense of
8 medical. And you're correct. But we do have the right
9 to, for instance, an adjustment disorder, 309.28, very
10 common.

11 I've been in private practice almost thirty years
12 and insurance companies require that I provide a
13 diagnosis for those who I treat. I was not asked to give
14 a diagnosis in this case, but I was asked to make use of
15 my training to better understand the client.

16 MR. DELGADO: Doctor, as a background matter,
17 let me ask you this.

18 THE COURT: Let's do that. You go ahead with
19 your voir dire or your proffer.

20 MR. DELGADO: Thank you.

21 IN-CAMERA EXAMINATION

22 BY MR. DELGADO:

23 Q. Have you ever given a diagnosis of bipolar disorder
24 to any client, clinical or otherwise, in the thirty years
25 that you've practiced?

1 A. I never have done that.

2 Q. You teach the ability to be able to do that?

3 A. I teach the ability to do that.

4 Q. As a licensed clinical social worker in the state of
5 South Carolina, you have the ability to give that; do you
6 not, sir?

7 THE COURT: Again, restate your question
8 because I'm not sure if I understood it.

9 Q. You have -- under your licensure, you have the
10 ability to give a diagnosis of bipolar disorder if you
11 saw it and found it in a client?

12 A. Let me answer it this way. Whenever I see someone,
13 I always ask them to see a physician to take care of
14 anything medical and physiological. My license allows
15 me, if I see the symptoms, to say what I believe it is.

16 Q. Did you see the symptoms of bipolar disorder in
17 Raymondeze Rivera?

18 A. I saw the symptoms of what I would tell my students
19 is bipolar disorder of some type.

20 Q. Could you explain a bit more what symptoms -- the
21 symptomology you saw?

22 A. Depression on one day, hyper the next day, thoughts
23 -- when one is hyper where they can't stop thinking
24 certain thoughts. They're agitated. They're unable to
25 focus, sit still, that kind of thing. Within a few days,

1 they're very depressed. They're suicidal, they want to
2 die. You come in the next time and they're back having
3 kind of a stable situation. And then in the space of a
4 few days, they're back doing the same kind of thing where
5 these moods are swinging back and forth. And the person
6 is not able to control them.

7 And that is typically why -- it is why, as a
8 licensed independent clinical social worker, I always
9 rely on medical people to do the medicating. So when I
10 read in a client's folder that they are being medicated,
11 when I'm told that they're being medicated, I consider
12 that a legitimate part of being a good social worker
13 because it determines how I should interact with the
14 person.

15 Q. Did you see medical records from the South Carolina
16 Department of Corrections giving Mr. Rivera a diagnosis
17 of bipolar disorder?

18 A. Yes, sir, I saw that.

19 MR. DELGADO: Your Honor, I'd like to be able
20 to pass this to the witness. And if he can, Your Honor,
21 simply for the -- for our record so that we can move on,
22 I've highlighted these and perhaps he can review those.

23 THE COURT: Please.

24 A. Do you want me to look at the entire document?

25 Q. Yes, sir. You might be able to scan it as a result

1 or our highlighting it for your quick edification.

2 A. Yes, sir. I finished.

3 Q. Thank you. Do you see in that series of papers the
4 diagnosis and reference to the diagnosis of bipolar
5 disorder by the South Carolina Department of Corrections?

6 A. Yes, sir.

7 Q. As a matter of fact, on the very last page, a master
8 in education, a Ms. Pamela Whitney, and a Mr. Pete Carter
9 who's a social worker, do they give a diagnosis under
10 Axis I of Diagnostic and Statistical Manual IV relating
11 to bipolar disorder?

12 A. It says here, Axis I equals bipolar disorder, the
13 last page.

14 MR. DELGADO: We make that offer of proof and
15 place this into evidence.

16 THE COURT: Did I understand that the one who
17 made that diagnosis was a master in education and a ---

18 MR. DELGADO: Yes, sir.

19 THE COURT: That's what you're relying on for
20 the diagnosis?

21 MR. DELGADO: Well, but it's also replete -- at
22 least, Your Honor, in this very last page, the Axis I,
23 which is the -- but it's also -- prior to that time, Dr.
24 Pollickman from the Department of Corrections, who's a
25 psychiatrist, does the same thing as well.

1 THE COURT: Is that it?

2 MR. DELGADO: Exactly.

3 THE COURT: In other words, you have no
4 diagnosis that has been presented in evidence as to
5 bipolar by a qualified ---

6 MR. DELGADO: Your Honor, I ---

7 THE COURT: I mean, this witness has testified
8 that he relies on medical diagnosis and particularly for
9 prescribing medication because he hasn't the authority to
10 do that.

11 MR. DELGADO: Your Honor, I'm going to fold my
12 chair in the face of this wind. I will understand ---

13 THE COURT: Well, I'm not -- I just want the
14 record ---

15 MR. DELGADO: No, I understand.

16 THE COURT: I want the record complete.

17 MR. DELGADO: Exactly, and I appreciate that.
18 Thank you. Your Honor, I would like to be able to make
19 that, if I could, for the record, as a Court exhibit.

20 THE COURT: Exactly.

21 MR. DELGADO: Thank you.

22 THE COURT: All right. Next Court exhibit.

23 (WHEREUPON, Court's Exhibit Number 15 was marked for
24 identification only.)

25 THE COURT: All right. Any voir dire from the

1 State as to this witness?

2 MS. ADAMS: No, sir, Your Honor.

3 THE COURT: All right. I find that any
4 reference to -- and I'll so instruct the jury -- as to
5 bipolar -- a bipolar condition which requires expert --
6 expertise in an area of physiological and medical areas
7 that this witness very candidly says that is beyond his
8 expertise -- would not be something to be relied on as
9 evidence of any mitigation. However, like mind, that the
10 witness obviously can testify as to mental or emotional
11 disturbance as well as the mentality of the Defendant as
12 far as his expertise goes. But that obviously is, you
13 know, within his purview. But as far as a medical,
14 psychological or sociological -- excuse me -- a
15 physiological -- excuse me -- again, a medical or
16 physiological diagnosis that has not been properly
17 presented here, at least by this witness.

18 MR. DELGADO: Your Honor, if the Court would
19 just -- the record would simply note our objection to
20 that ruling, under the Sixth, the Eighth and the
21 Fourteenth amendments to the United States Constitution
22 and Article I, Sections 3, 14, and 15 of the South
23 Carolina Constitution.

24 THE COURT: Very well.

25 MR. DELGADO: Thank you.

1 THE COURT: And as I said, the reason for that,
2 of course, is we don't want to do something by the back
3 door that we weren't willing to do by the front door,
4 which, of course, would have been done pursuant to Rule
5 5, Section F of the Rules of Criminal Procedure.

6 MR. DELGADO: Your Honor, so as not to violate
7 any other ruling of the Court, is the Court -- and I'm
8 asking this for edification. And I believe my friends
9 objected to this. I don't think I asked for a diagnosis
10 of bipolar disorder, but I asked him whether or not, that
11 is Dr. Cooper-Lewter, if he had ever seen mood swings in
12 the Defendant.

13 THE COURT: Well, as I say, this -- that is
14 something that is within his expertise.

15 MR. DELGADO: Thank you.

16 THE COURT: In fact -- what is it -- it's in
17 his own -- why is it -- as an individual who perceives.

18 MR. DELGADO: Thank you.

19 THE COURT: He uses his own senses for that
20 matter, not necessarily his training.

21 MR. DELGADO: Thank you.

22 THE COURT: Very good. As I say, I'm not
23 limiting the testimony in any way to those things that
24 are relevant. And that would be as to the matters of
25 mitigation under the statute § 16-3-20(D)(2) and (7).

1 But I will instruct the jury that they're not to consider
2 a bipolar disorder.

3 MR. DELGADO: All right, sir.

4 THE COURT: Very good. All right. Anything
5 else from the Defense?

6 MR. DELGADO: No, sir.

7 THE COURT: Anything from the State?

8 MS. ADAMS: No, sir, Your Honor.

9 THE COURT: All right. Let me ask. It's 12:15
10 now. Is this going to be a ---

11 MR. DELGADO: Your Honor, I would think another
12 fifteen to twenty minutes with Dr. Cooper-Lewter on
13 direct, I hope. Maybe a half an hour.

14 THE COURT: Well, what I'm thinking of ...
15 What does the State anticipate as far as cross?

16 MS. ADAMS: Your Honor, I can't imagine it
17 being very long.

18 THE COURT: Well, that's just it. Then we can
19 do it before ---

20 MR. DELGADO: Yes, sir.

21 THE COURT: You know, that's -- that was our
22 scheduling altogether.

23 All right. Are we ready?

24 THE WITNESS: Yes, sir.

25 THE COURT: Very good. Thank you, Doctor.

1 Ask the jury to join us please.

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 12:18 p.m.)

4 THE COURT: All right. Let the record reflect
5 that the jury and alternates are in the jury box.

6 Mr. Foreman, ladies and gentlemen of the jury, I'm
7 going to instruct you to disregard the witness' last
8 statement regarding any alleged bipolar disorder. Such
9 testimony regarding any alleged physiological or medical
10 condition requires an expert witness qualified in that
11 particular field. This witness is qualified as an expert
12 in trauma in African-American males and is therefore not
13 qualified to testify as to any alleged physiological or
14 medical condition.

15 Therefore, the last statement by the expert witness
16 is not -- should not considered for any purpose during
17 your deliberations. That does not go to any other
18 testimony that the witness has given us. That, of
19 course, would be for your consideration.

20 Very good. You may proceed.

21 MR. DELGADO: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 CONTINUED BY MR. DELGADO:

24 Q. Doctor, during the period of time that you saw him,
25 would you explain for our jury, sir, what sorts of mood

1 swings you saw with the Defendant, how they showed
2 themselves to you?

3 A. Yes. On some occasions he was very manic, very
4 agitated, had racing thoughts, not able to take his mind
5 off of certain things. And so that impacted our
6 discussion because he found it difficult to focus. On
7 other occasions, he was deeply depressed, suicidal,
8 wanting to die. And this would happen within the space
9 of a week. I typically visited once a week. There were
10 times when I visited twice. And so I would see that
11 change in the course of a few days.

12 Returning, the following week, he might be very
13 stable, very able to focus, no depression, no anxiety, no
14 irritability and in a very good mood.

15 Q. Doctor, let's move to the area, the issue of how he
16 was rejected and how that manifested itself in the
17 individual that you've seen at the Department of
18 Corrections?

19 A. Well, as I stated earlier, going back to the sexual
20 abuse and the beatings where he was stripped naked,
21 humiliated, shamed, told that in the midst of this, he
22 was going to be killed by his father. Held by the arms,
23 sometimes by the legs, sometimes by the throat. It was
24 very traumatizing. The average six-year-old cannot
25 understand that, cannot articulate it. Plus they want

1 love from a father figure. In this case it was his
2 father. And so it's very confusing.

3 The world is large, the world is big. He went to
4 church. The church said fathers protect and provide.
5 That's what a man is. He wasn't experiencing that from
6 his own father. That happened time and time again over a
7 number of years. That impacted him.

8 He cried out to God in the midst of these beatings
9 to stop the beatings. He pled with his father to stop
10 the beatings. His father did not. And he asked his
11 mother to save him and protect him, and instead he was
12 abandoned by her on a number of occasions. And so for
13 him, the world was very frightening, the world was very
14 threatening, the world was very dangerous, and as a small
15 child, say age six to nine, very hard to understand. So
16 he was very hurt.

17 By the time he's thirteen, he is -- he's trying to
18 be sociable, he's trying to be likable. He gets -- his
19 father says he's going to kill him again. He runs away.
20 His mother finds him. But that doesn't work out too
21 well, and he ends up having to go back to his father. He
22 has an incident where he tries to protect his mother from
23 her new husband, and she simply rejects him even though
24 she was being abused herself.

25 And so he basically, from a small child, got the

1 image of a world that was very threatening, very
2 dangerous. And when he would cry for help, there was no
3 answer. Like all children -- and I -- child abuse is one
4 of my areas of child abuse. Like all children, not only
5 did they cling, but they wish, they hope that key people
6 would be loving, caring and stable in that. When it
7 doesn't happen, it further confuses them.

8 One of the things that I think is important for a
9 father figure or a father -- even the mother, but a
10 father figure, and particularly in the case of an
11 African-American male -- you have to learn how to
12 maneuver in society as well as in relationships. I did
13 not find in talking to him that he had positive role
14 models as males who were successful consistently that he
15 was close to that he was able to model himself after.

16 Q. Doctor, let me just stop -- let me just stop you and
17 just ask this. What if I said to you, so what? What if
18 I said to you, that's the reason he killed these women?
19 He didn't have a male role model; so what?

20 A. I think you'd be simplifying what I'm attempting to
21 say. What I'm saying is that if you wish to understand
22 the person, the person is both a part of nature and
23 nurture. And to ignore the experiences and the trauma
24 and the pain is to not understand the person. Also the
25 nature.

1 We just, in recent times have found out -- Dartmouth
2 just did a study, the National Institute of Health just
3 did a study. And it says that the prefrontal lobe is not
4 even fully matured until the age of twenty-five.

5 Q. Stop there just one second. Explain what the
6 prefrontal lobe is. Some of us may not know exactly what
7 you're talking about.

8 A. The prefrontal lobe is that part of the front brain
9 that makes us human.

10 MS. ADAMS: Your Honor, I object. He's not a
11 medical doctor.

12 THE COURT: No. But I think he probably has
13 had anatomy and -- so I'm going to permit that,
14 particularly in a sociological vein.

15 Q. Go ahead, Doctor.

16 A. I teach my students about the brain. The National
17 Institute of Health has said that the prefrontal lobe,
18 the part that does reasoning, decision-making, and those
19 parts -- kinds of activities -- executive functioning we
20 call it. That part doesn't even mature until twenty-
21 five.

22 And they're now calling for why parenting is so
23 crucial, modeling proper behavior is so crucial, and
24 they're also saying that's another reason why we have
25 families, is so that -- since that part of the brain

1 isn't fully mature and fully developed, particularly in
2 males, then they need good role models, good parents,
3 good relationships in those areas as a -- to counteract
4 the fact that that part of the brain is even immature.
5 That's if there's been no trauma, there's been no stress,
6 no toxins of any type.

7 So that's new information. It's the latest
8 information, but it also speaks to the importance of good
9 parenting and good experiences growing up.

10 Q. Doctor, there's been testimony relating to the way
11 that he protects himself and that he appears to the
12 external world as being -- having a tough exterior. Can
13 you expand on that?

14 A. When you're very, very afraid -- let me do it this
15 way. There's something in the African-American community
16 and experience called cool pose.

17 Q. Say that again.

18 A. Cool pose. It's looking as if you are tough,
19 looking as if nothing bothers you, acting as if nothing
20 bothers you. This is to counteract the fact that you
21 don't feel that that's really the case, but it allows you
22 to move through life, survive in life, and not have
23 somebody see your weakness and just attack you because
24 they see a weakness.

25 This is also something you see a great deal of in

1 prison populations. One of the problems in prison is
2 that, in the case of a male, you're locked up with other
3 males who have all kinds of experiences, many of which
4 are not covered in their cases, but they're nevertheless
5 there. And you never know when a male or several males
6 are going to decide to do something, and so you act
7 tough.

8 The other thing is that if his mother's statement,
9 that he's a boy in a man's body, then he is very good at
10 pretending, pretending to be tough. I met a man who is
11 very afraid in prison. I have worked with lots of people
12 who live their entire lives fearfully, acting machismo,
13 acting tough, because they don't want anyone to think
14 they're weak. So I don't see that out of the ordinary
15 for the kind of abuse that was shared with me.

16 Q. Does he have a fear for his own safety?

17 A. Yes, sir.

18 Q. Explain that more for our jury.

19 A. Again, think of the -- like a pyramid. If you build
20 a foundation of how the world is and how you function in
21 that world, and that's a fragile foundation, and then
22 later you have other experiences which kind of a confirm
23 it for you that there is something wrong ...

24 Let me explain briefly. There's a difference
25 between shame and guilt. Guilt means you've done

1 something wrong for which you -- there's a punishment or
2 repentance, depending on how you view it. Shame says
3 that I was created bad. Shame says I'm no good from
4 birth, from -- my existence is no bad -- is bad. So when
5 shame is present, the effort to not let that out and let
6 people see it is greater. And so people try to
7 compensate for that by either high achievement, trying to
8 please people, trying to do what's right, even if inside
9 they find that very confusing and very troubling and hard
10 to do.

11 Q. Does he have that fear to this day?

12 A. Yes, sir.

13 Q. How has he shown that to you?

14 A. In prison, when I go to visit him, not only has he
15 communicated that fear, told me about his experience in
16 another prison, Thunder Dorm -- Dome, they call it, where
17 a young man was raped and killed where he was there at
18 the time and asked to be protected. But he also always
19 would ask me to look in the hallway to make sure no one
20 was there, and to escort him back to the correctional
21 officers who were in another office from where we were.
22 And again, he walked on my left side which put the wall
23 behind him on one side and me on the other side, and I
24 would walk him there. The guards just noted that and
25 accepted that as the way he related to me.

1 Q. Doctor, you have also had an opportunity to meet, I
2 think you said, for several hours, with his mother, a
3 woman by the name of Sheena Scott, from Tampa, Florida;
4 is that correct, sir?

5 A. Yes, sir.

6 Q. Can you tell us basically when that was? Over how
7 long a period of time you met with her and your
8 observations and views as relates then to Raymondeze?

9 A. Yes, sir. Raymondeze showed me a picture of his
10 mother, and she was dressed in a red low-cut top. And he
11 showed me the picture and he said, what do you think of
12 this lady. And I said I don't know who it is. He said,
13 she's a minister. I said well, in the church, we're told
14 that women shouldn't wear red low-cut tops. I -- who is
15 she. He said, my mother. I want you to meet her. He
16 said, I tell people about her, but I want you to meet
17 her. I trust that you will see something if you meet
18 her.

19 So I agreed to meet with her. He gave me her phone
20 number. I called her. I was supposed to meet with her
21 on 11/27/2009 at one o'clock. At five o'clock I left the
22 meeting place, which was at Broad River in the parking
23 lot, and I went home to my family to fix dinner and to
24 take care of my two-year-old. And I got a call. The
25 call said, do you still want to meet. I said well, I was

1 just out there four hours. I didn't hear from you. She
2 said, do you want to meet. So I said yes.

3 So I met her at a restaurant. I met her, her
4 daughter, Clarissa, and Dravan, Raymondeze Rivera's son,
5 was there. In fact, he sat next to me for a period of
6 time. And then the children were excused and went into
7 the car. And I spoke with his mother for a total of
8 about two and a half hours.

9 Q. What did you learn from your conversations with Ms.
10 Scott as relates to the Defendant's relationships, adult
11 relationships, with women?

12 A. She talked about her relationship with him. And she
13 recited a sample of kind of what their relationship was
14 like. She said that when he was around age twenty-nine
15 there was some dispute about \$175. And as a result of
16 that, she told him he had to leave. He was living with
17 her at the time. He was with her at the time. And he
18 begged her, I don't want to go. She indicated to me that
19 she insisted he had to go, screaming at him, got in his
20 face and reached up as if to grab him around the throat.
21 This is what she told me. She said he stood there and
22 simply cried. He never touched her. I said, were you
23 afraid he was going to do something. She said he has
24 never touched me like that. He's never done anything to
25 me like that. At that point she insisted he leave. She

1 said she followed him. He went and started packing. She
2 sat by the computer and made sure he packed and then
3 escorted him to the door, and she said she slammed the
4 door behind him.

5 I thought that was profound in that he just stood
6 there, stared and cried. I know that he cares a great
7 deal for -- wanting -- in other words, he wants his
8 mother's love, but he also feels very betrayed that he
9 hasn't been able to get it and keep it. He doesn't know
10 what to do to make that work or be right.

11 Q. Doctor, in that conversation with Ms. Sheena Scott,
12 did she ever indicate to you, sir, about ever taking a
13 picture with Raymondeze?

14 A. Yes, sir. These are her words. If I had known what
15 I know now, a mother/son connection was needed, I would
16 have taken a picture with him. She then closed out our
17 discussion with, just remember my son is a boy who lives
18 in a man's body and he cannot get out of his childhood.

19 Q. You mean to say she never took a picture where
20 Raymondeze is in the frame with her?

21 A. According to her that night and what she said to me,
22 I would have taken a picture with him, but I did not.

23 Q. Doctor, this is State's Exhibit Number 66 that shows
24 Ms. Kwana Burns and her two children. You're saying to
25 this jury that Sheena Scott never took a picture like

1 this with Raymondeze Rivera?

2 A. According to what she told me, no.

3 Q. Doctor, one last thing. He described to you the
4 occurrences of August [sic] the 10th and August [sic] the
5 14th; did he not, sir?

6 A. Yes, sir.

7 Q. Could you tell our jury who he saw as he did what he
8 did?

9 A. He told me that he flashed on his mother on both of
10 those days and couldn't get her image out of his mind.

11 Q. When you say flashed, you mean what, sir?

12 A. We have five senses. We can see, we can hear, we
13 can smell, we can taste, and we can touch. And through
14 any sense, we can remember. For instance, Thanksgiving,
15 we smell cinnamon pie or something like that and we
16 suddenly salivate. In other words, we respond. And so
17 when he said he flashed. He did not say I saw her. He
18 said, but that's who I envisioned. That's who was before
19 me.

20 Q. And who was that again, sir?

21 A. His mother who had abandoned him and continued to
22 abandon him, around which he felt that a mother should
23 protect and take care of and consistently love a son.

24 Q. Doctor, that's all the questions I have. Please
25 answer anything the Solicitor may have for you.

1 CROSS-EXAMINATION

2 BY MS. ADAMS:

3 Q. Good afternoon, Dr. Lewter. I just have a couple of
4 questions.

5 You met, in preparation for this death penalty trial
6 and your testimony, with the Defendant for, you said,
7 approximately twenty-seven hours; is that right?

8 A. Yes, ma'am.

9 Q. He is the source of the majority of your information
10 here today?

11 A. I received some information from Defense counsel. I
12 received information that I -- just we talked about in
13 terms of the correctional information. I saw it. I
14 received information from his mother as well as his
15 sister who was there when I interviewed his mother. So
16 those are my main sources, yes.

17 Q. But the majority was from the Defendant regarding
18 the specific abuse to him?

19 A. Majority of it, yes.

20 Q. And I believe you said on direct that he was a man
21 who was very good at pretending. Is that not what you
22 said?

23 A. I said that.

24 Q. Thank you.

25 MS. ADAMS: I have no further questions.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. DELGADO:

4 Q. Doctor, when he's talking about flashing on his
5 mother, is he pretending? Is he making that up, sir?

6 A. No, sir.

7 MR. DELGADO: Thank you, Your Honor. That's
8 all.

9 MS. ADAMS: I have nothing else.

10 THE COURT: You may step down. Thank you, sir.

11 THE WITNESS: Thank you, sir.

12 MR. DELGADO: Your Honor, may we have just five
13 seconds?

14 THE COURT: Certainly.

15 (Off record discussion)

16 MR. MCGUIRE: Judge, can we approach in regard
17 to scheduling?

18 THE COURT: Certainly. Let's do it over here.

19 (WHEREUPON, a bench conference was held off the
20 record.).

21 THE COURT: Mr. Foreman, ladies and gentlemen
22 of the jury, this will probably be the best place to take
23 a break for lunch. There are a few things I need to take
24 up, so I'm going to suggest that you come back at two
25 o'clock. By then we should have everything out of the

1 way so that we can go ahead with the trial at that time.

2 Again, please do not undertake a discussion of the
3 case among yourselves or permit anybody to discuss it
4 with you. Just come back to the jury room at two
5 o'clock.

6 Everyone else remain seated while the jury retires
7 from the courtroom.

8 All right. Is there anything from the State before
9 we break?

10 MS. ADAMS: No, sir, Your Honor.

11 THE COURT: From the Defense?

12 MR. DELGADO: No, sir.

13 THE COURT: All right. Very well. We'll stand
14 in recess until two o'clock.

15 (WHEREUPON, court stood at recess for the lunch
16 break.)

17 THE COURT: All right. Is there anything from
18 the State before we begin?

19 MS. ADAMS: Yes, sir, Your Honor. It's our
20 understanding that their next witness, I believe -- I
21 don't know what order -- is a Ms. Sara Geraghty and she
22 was involved in a lawsuit, I believe, for Lee Arrendale
23 Correctional Institute where the Defendant was housed
24 when he was in prison in Georgia. And she is going to
25 testify about violence in that prison. And we don't see

1 the relevance being that, how is it going to affect Mr.
2 Rivera? He's not going to be housed there at all. And
3 it's not any violence that the Defendant witnessed
4 himself or was subject to. And we just don't see the
5 relevance of her testimony being that she was just
6 involved in a lawsuit with the prison.

7 MR. MCGUIRE: Well, Judge, she was involved in
8 more than just a lawsuit. She was also involved with the
9 firsthand investigation which included gathering
10 affidavits from inmates and gathering incident reports
11 compiled by the prison itself. And the lawsuit is
12 actually a very long lawsuit, given the history of Lee
13 Arrendale prison. She's got firsthand knowledge based on
14 her investigation of the violence, the pattern of
15 violence, sort of the general and institutionalized
16 nature of the violence there that our client was exposed
17 to just by his very nature of doing time there.

18 THE COURT: So you're not putting it as
19 evidence of how or where he will serve, but what his
20 experiences have been?

21 MR. MCGUIRE: No, sir. Just that he was
22 exposed to this extreme level of violence.

23 THE COURT: I understand. We've had testimony
24 to that effect. All right. I'm going to permit the
25 witness to testify. And of course, it will be subject to

1 credibility as to the application to this particular
2 case.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: All right. Very good. All right.
5 Anything else?

6 MR. DELGADO: Yes, Your Honor. May it please
7 the Court. Just so the case will flow after Ms.
8 Garegthy's testimony, we have an additional and last
9 expert witness, Dr. Marti Loring, L-O-R-I-N-G. Dr.
10 Loring will qualify as a trauma and developmental expert.
11 I raise the same questions relating to bipolar disorder
12 and the Court's reluctance and ruling not to allow that
13 with Dr. Cooper-Lewter. If the Court is inclined to be
14 able to hear a proffer from Dr. Loring ---

15 THE COURT: Well, let's see. You say doctor.
16 Is it an M.D.?

17 MR. DELGADO: No, sir, it's not an M.D.

18 THE COURT: Is it an -- well, if it's not M.D.,
19 it's not psychiatric. What exactly is it?

20 MR. DELGADO: Doctor of Sociology.

21 THE COURT: Sociology?

22 MR. DELGADO: Yes, sir.

23 THE COURT: And is that in his discipline?

24 MR. DELGADO: Is that what, sir?

25 THE COURT: Is diagnosis and medication for

1 bipolar in his discipline?

2 MR. DELGADO: No. That's the reason why I'd
3 like to be able to make certain that I do ---

4 THE COURT: All right. Well, I mean ---

5 MR. DELGADO: I understand.

6 THE COURT: --- I think the better practice
7 would be -- and you can do this if you like -- is to
8 follow the statute.

9 MR. DELGADO: All right.

10 THE COURT: You can talk about what this means
11 in his field. Not bipolar because, again, apparently
12 those notations were made by a Masters in education and
13 maybe a Bachelor in social work. But what we want to
14 know is what does the effect have -- or not the effect of
15 bipolar, but what does the individual's -- what's the
16 manifestation of it ---

17 MR. DELGADO: Yes, sir.

18 THE COURT: --- that is in his discipline? I
19 can tell you that unless he is competent to diagnos
20 bipolar and to treat it, then I'm not sure it's not
21 anything else but what a notation might be.

22 MR. DELGADO: I understand. Your Honor, first,
23 I just want to make certain ---

24 THE COURT: But you can proffer him if you
25 want.

1 MR. DELGADO: I just didn't want to interrupt
2 the flow of the trial. I hate to take the jury in and
3 then take them out.

4 THE COURT: Well, that's what I'm saying. You
5 can do it if you want to.

6 MR. DELGADO: Could we do that now with the
7 Court?

8 THE COURT: Certainly. They're already late.

9 MR. DELGADO: First, Your Honor, just for your
10 edification, it's a woman. Marti could be either gender,
11 but it's a woman, Dr. Marti Loring.

12 THE COURT: Ernest Borgnine was not a lady.

13 (Laughter)

14 MR. DELGADO: Pardon me, just one second, Your
15 Honor. I may be able to help move this along real quick.

16 THE COURT: Yes, sir.

17 MR. DAY: Excuse me, Your Honor. While we're
18 having this short break, is it okay to have Mr. Rivera
19 take his medication now?

20 THE COURT: Certainly. Certainly.

21 (WHEREUPON, court stood at ease.)

22 MARTI LORING,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 IN-CAMERA EXAMINATION

25 BY MR. DELGADO:

1 Q. You are Dr. Marti Loring, L-O-R-I-N-G; is that
2 correct?

3 A. Yes, sir.

4 Q. Dr. Loring, for the Judge's benefit, can you give us
5 a very, very quick synopsis of your educational
6 background and what you do for a vocation?

7 A. My educational background is I graduated from Vassar
8 College up in Poughkeepsie, New York, with a B.A. degree
9 and a major in psychology. I got my Master's at Brimore
10 Graduate School in Brimore, Pennsylvania in Social Work
11 and Social Research. And I went on to Emory University
12 in Atlanta to get a Ph.D. in Sociology with a major in
13 social psychology.

14 My work is -- let me see how I can be just really
15 brief, Your Honor. In short, I do evaluations of
16 individuals, some of whom it is thought could suffer from
17 some kind of trauma or abuse or developmental issue. As
18 Director of the Center for Mental Health and Human
19 Development in Atlanta, Your Honor, I also am involved in
20 responding to trauma in the community or in the world,
21 wherever we can be helpful.

22 Lastly, in writing I'm honored to be an editor of a
23 national trauma journal and to have written a couple of
24 books and several articles that are published in peer
25 journals.

1 Thank you.

2 THE COURT: Thank you, ma'am.

3 THE WITNESS: My pleasure.

4 Q. Dr. Loring, the purpose of this proffer is to help
5 the Judge determine whether or not you are qualified to
6 be able to discuss the diagnosis of bipolar disorder. I
7 want you to be able to -- and answer any questions the
8 Judge may have to satisfy his exploration of ---

9 A. Sure.

10 THE COURT: Well, let me just ask. And you are
11 licensed in Georgia?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And does it include diagnosis of
14 physiological and psychiatric conditions?

15 THE WITNESS: Yes, Your Honor. I'm qualified
16 to make what's called secro (phonic) social evaluations.

17 THE COURT: I'm talking about physiological.
18 I'm talking about medical.

19 THE WITNESS: Yes, Your Honor. I would use a
20 diagnostic manual called the D.S.M. IV-R to diagnosis ---

21 THE COURT: But anyone can use that. I'm
22 asking you, do you diagnosis bipolar conditions?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: And can you prescribe?

25 THE WITNESS: I don't prescribe medication,

1 Your Honor.

2 THE COURT: Well, can you?

3 THE WITNESS: No, sir. Only an M.D. can do
4 that.

5 THE COURT: Very good. And only an M.D. can
6 diagnosis other than -- what is it -- in other words, if
7 you -- could you have a patient -- or do you call them
8 patients or clients?

9 THE WITNESS: Both, Your Honor.

10 THE COURT: Which do you call them?

11 THE WITNESS: If it's in a hospital, patient.

12 THE COURT: All right. Could you admit a
13 patient for bipolar condition?

14 THE WITNESS: Yes, sir. I can do an emergency
15 admission for a bipolar person who's threatening to harm
16 others or themselves.

17 THE COURT: Well, you can do that because they
18 are a threat.

19 THE WITNESS: Yes, Your Honor, that is true.

20 THE COURT: But not because of a condition that
21 you have diagnosed.

22 All right. Again, go ahead, please. But I think
23 you understand that if you want to get bipolar in, put a
24 physician or a psychiatrist in to do it because that is a
25 medical diagnosis.

1 MR. DELGADO: I understand.

2 THE COURT: I'm sorry.

3 THE WITNESS: Your Honor, you asked such
4 excellent questions. May I add one answer that I should
5 have given you?

6 THE COURT: Okay.

7 THE WITNESS: Your Honor, the other thing that
8 I'm qualified to do is if there is, as you said, a
9 psychiatrist or a doctor who's already prescribed the
10 bipolar disorder, then another part of my qualifications
11 is to take that into account in describing other things
12 in a person's life. Be able to relate that to a larger
13 diagnosis or family history, sir.

14 THE COURT: Very good.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You're quite welcome.

17 MR. DELGADO: Your Honor, that is sufficient
18 for our proffer. I understand the Court's ruling. We
19 will simply rest on the same basis that we made relating
20 to -- an objection relating to this manner as the same as
21 Dr. Cooper-Lewter, the Sixth, Eighth and Fourteenth
22 Amendments as well as the relevant South Carolina
23 Constitutional amendment.

24 THE COURT: Well, now, let me see. A bipolar
25 is a medical -- a bipolar disorder is a medical

1 condition. That is a diagnosis. Is that correct?

2 THE WITNESS: While I'm sure ---

3 THE COURT: Would it be a mental ---

4 THE WITNESS: A mental disorder is what we'd
5 call it.

6 THE COURT: Mental disorder?

7 THE WITNESS: Yes, Your Honor. As part of the
8 D.S.M. IV-R, we call it a mental disorder.

9 THE COURT: Well, would it qualify, depending
10 upon the degree -- you'll have to forgive me. I'm not
11 very good at -- what is it -- finding things.

12 THE WITNESS: Me too, Your Honor.

13 THE COURT: All right. Would it, depending
14 upon the degree of the disorder, either qualify for what
15 might be diagnosed as insanity? Do you know the
16 definition of insanity?

17 THE WITNESS: Yes, Your Honor. I am aware of
18 that, though I would certainly refresh myself to be
19 exactly correct. But depending on what else was going
20 on, certainly bipolar could be a part of that. As Your
21 Honor suggests very wisely -- it depends on the degree
22 and the kind of things that are going on with the person.

23 THE COURT: Would it also -- how about mentally
24 ill?

25 THE WITNESS: As Your Honor suggested,

1 depending on the severity ---

2 THE COURT: Well, it is a mental condition?

3 THE WITNESS: Yes, Your Honor. Frankly, Your
4 Honor, there's so many mental conditions that with many
5 of them, we honestly don't consider the person mentally
6 ill, only that they have this particular mental
7 condition. But not mentally ill, Your Honor.

8 THE COURT: But bipolar would be a mental
9 condition?

10 THE WITNESS: Well, Your Honor, there's some
11 people who are bipolar whose names I won't mention who
12 are very well known, who would never think of themselves
13 as ---

14 THE COURT: Because they're usually medicated?

15 THE WITNESS: Well, Your Honor's quite right.
16 It's under control.

17 THE COURT: But if it's not under control, then
18 it can either, depending on severity, be a condition of
19 insanity or at least a mental illness?

20 THE WITNESS: Well, Your Honor, some of these
21 people -- and when you smile I think you may even know
22 some of the people I'm thinking of -- I think that they
23 would argue, maybe even their doctors, not unless it was
24 very severe would it be a mental illness, you know, or
25 insanity. If it was bipolar but under some degree of

1 control, even without medication -- like the kids we're
2 seeing these days who are diagnosed as bipolar, I don't
3 think that many of us consider these mentally ill, Your
4 Honor.

5 THE COURT: But would you diagnose them?

6 THE WITNESS: Oh, yes, Your Honor.

7 THE COURT: You'd diagnose them as mentally
8 ill?

9 THE WITNESS: Oh, no, Your Honor, as bipolar.

10 THE COURT: All right. So ---

11 THE WITNESS: Thank you for helping me to make
12 that clear.

13 THE COURT: No, I'm not helping you at all.
14 I'm trying to help the jury ---

15 THE WITNESS: I see.

16 THE COURT: --- to understand what they're to
17 consider. And again, I find that bipolar, obviously,
18 whatever the diagnosis was made was not made by a
19 psychologist or social worker, but a person trained in
20 medicine. So therefore the reference to bipolar will be
21 excluded. If you want to breach or broach the question
22 of conditions that affect what bipolar, manic depression,
23 is, then you'd have to do that with someone qualified.
24 But of course, that leaves everything else open, just as
25 we talked about on the last witness, that she can testify

1 to those mitigation elements that the statute provides.

2 MR. DELGADO: I understand.

3 THE COURT: Thank you though. I do appreciate
4 it.

5 THE WITNESS: My pleasure.

6 MR. DELGADO: Your Honor ---

7 THE COURT: But I'm noting your objection and
8 your grounds for the objection. Overruled.

9 MR. DELGADO: You may come down.

10 (WHEREUPON, the witness stepped down from the
11 witness stand.)

12 THE COURT: Oh, by the way, just for the record
13 so we'll know, the witness will not be limited in
14 testifying as to whether or not there was influence of
15 mental or emotional disturbance or age of mentality
16 involved.

17 MR. DELGADO: We understand.

18 THE COURT: All right. Next? Are we ready to
19 proceed?

20 MR. MCGUIRE: I think we need a jury for the
21 next one, Judge.

22 THE COURT: I just wanted to know if we're
23 ready to proceed. I'd rather -- if we've got something
24 else to bring up, I'd rather do it without the jury than
25 -- what is -- wait till the jury gets here.

1 MR. MCGUIRE: Sure.

2 THE COURT: That's why I ask the question.

3 MR. MCGUIRE: Sure, Judge. Just some record
4 keeping. There are three pieces of evidence that we're
5 going to enter without objection. One piece of evidence
6 is a letter. I'll just move it into evidence and just
7 ask permission to publish it. It's our client's offer to
8 plead guilty to a life without parole sentence for the
9 charge at issue. We have two videos, and we have a
10 stipulation.

11 THE COURT: They have been marked?

12 MR. DELGADO: They've not yet been marked.

13 THE COURT: Well, let's go ahead and have them
14 marked so when we discuss them there will be a reference.

15 (WHEREUPON, Defendant's Exhibit Number 8, 9, 9A, 10
16 and 10A were marked for identification only.)

17 THE COURT: Yes, sir?

18 MR. DELGADO: Your Honor, with the Court's
19 permission, entered into evidence without objection
20 Defendant's Exhibit Number 8, which is a letter signed by
21 Mr. McGuire dated April 24th, 2009, and Exhibit 9, which
22 is a videotape without editing of the Defendant's
23 grandmother, Katherine Cousins, Atlanta, Georgia, June
24 the 18th, 2009. 9A is a stipulation that it was done on
25 June the 18th, 2009 and depicts the Defendant's

1 grandmother, Katherine Cousins, and the other voice heard
2 is that of John Delgado. Defendant's Exhibit 10 is a
3 video of the Defendant, Raymond Rivera, taken on July the
4 1st, 2009, showing Mr. Rivera with his son Justice.

5 THE COURT: Raymond -- taken when?

6 MR. DELGADO: July the 1st, 2009, at the
7 Anderson County multipurpose room at the Anderson County
8 Detention Center, July 1st. And it depicts the
9 Defendant, his son Justice Rivera and his son's mother
10 Renee Karls. This video was taped in the multipurpose
11 room at the Anderson County Detention Center. That is
12 10A.

13 THE COURT: That's the stipulation?

14 MR. DELGADO: Yes, sir.

15 THE COURT: What was the date on the letter?

16 MR. DELGADO: April 20 -- this is the Number 8,
17 Your Honor?

18 THE COURT: Yes, sir.

19 MR. DELGADO: April 24th, 2009.

20 THE COURT: Very good. All right. Defense
21 Exhibits 8, 9, 9A, 10, and 10A are admitted without
22 objection?

23 MS. ADAMS: Yes, Your Honor.

24 (WHEREUPON, State's Exhibit Number 8, 9, 9A, 10 and
25 10A were admitted into evidence.)

1 THE COURT: You don't have to -- when you use
2 them, just identify them. You don't need to say more.

3 MR. DELGADO: Fine. Thank you.

4 THE COURT: All right. Anything else?

5 MR. MCGUIRE: No, sir.

6 THE COURT: Very good.

7 Ask the jury to join us, please.

8 All right. Anything from the State?

9 MS. ADAMS: No, sir, Your Honor.

10 THE COURT: All right. Ask the jury to join
11 us.

12 (WHEREUPON, the jury entered the courtroom at
13 approximately 2:48 p.m.)

14 THE COURT: All right. Let the record reflect
15 the jury and alternates are in the jury box.

16 We'll now proceed with the Defense's case.

17 MR. MCGUIRE: Thank you, Your Honor. The
18 Defense call Ms. Sara Geraghty.

19 **SARA GERAGHTY,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. MCGUIRE:

23 Q. Ms. Geraghty, where do you live?

24 A. Atlanta, Georgia.

25 Q. And where are you employed?

1 A. I work at a nonprofit law office called the Southern
2 Center for Human Rights.

3 Q. Are you an attorney there?

4 A. Yes, I am.

5 Q. And if you could, tell the Court and the jury
6 generally what your role is at Southern Center for Human
7 Rights.

8 A. I'm a civil attorney. We represent people in prison
9 or jail, people on probation or parole in a variety of
10 civil and criminal matters.

11 Q. Did you have occasion to investigate and sue a
12 prison call Lee Arrendale Prison?

13 A. Yes, sir. We sued a number of state officials that
14 ran that prison, yes.

15 Q. And why was that?

16 A. It was because we had received a large and troubling
17 number of complaints from people at the prison and
18 parents or family members of people at that prison.

19 Q. And when you say complaints, what were they
20 complaints of?

21 A. Mostly at that particular prison they were
22 complaints of inadequate security, a very high level of
23 violence. And specifically at Alto Prison a very high
24 instance of rape and sexual assault in particular of
25 younger inmates at that facility.

1 Q. And specifically referring to the complaints of
2 rape, are you talking about inmate-on-inmate gang rape?

3 A. Yes, sir. Well, it wasn't always gang rape, as you
4 said, but it sometimes was. Sometimes it was one person
5 sexually assaulting another person.

6 MS. ADAMS: Your Honor, I'm going to object to
7 relevance unless she is speaking about an incident
8 regarding this Defendant. I don't see where we're going.

9 THE COURT: Well, we've had testimony that the
10 Defendant has some concerns about prison. In fact, I
11 think one of his requests that the State honored was that
12 he'd be housed in a separate facility. Apparently from
13 the very first, that has been an issue.

14 Go ahead. So overruled. You may proceed.

15 MR. MCGUIRE: Thank you, sir.

16 BY MR. MCGUIRE:

17 Q. How did you and your office go about investigating
18 and suing Lee Arrendale Prison?

19 A. We did a number of things. First, I personally met
20 with many young men who were incarcerated at the prison.
21 Did interviews with them. I also asked the State, as
22 part of the lawsuit before and during the lawsuit, to
23 produce a number of records to us so that we could
24 examine them and see what was going on at the facility.
25 We reviewed hundreds of incident reports documenting

1 particular incidents at the prison, incidents of
2 violence, sexual assaults and other matters.

3 Q. If you could, tell the jury and the Judge sort of
4 the nature of this lawsuit. How did it originate, and
5 how did it come to a conclusion?

6 A. Sure. Well, the lawsuit -- the prison had a pretty
7 long and troubled history. It had been under consent
8 decrees since the eighties. The prison had been sued in,
9 I think, 1981. And at that time, there were a number of
10 problems at the prison. One of the main ones had been --
11 had always been lack of staffing. The prison was in a
12 part of the state that -- it was a rural area and they
13 always had trouble staffing the prison sufficiently, so
14 there were not a sufficient number of officers to
15 supervise people. So what happened was that over the
16 years -- and this was in 2002, 2003 -- we just kept
17 receiving a number of reports, really troubling reports,
18 about incidences at the prison.

19 In February of 2004, a young man, a teenager, was
20 raped and murdered at the prison. This happened after
21 his parents and grandmother had repeatedly complained to
22 prison officials that he was in danger and would be in
23 danger if he was moved to a particular place.
24 Unfortunately, the warnings were not heeded and he was
25 killed.

1 After that happened, we continued to investigate.

2 And I think if I recall correctly, there were something
3 like fifty-five assaults and I believe ten allegations of
4 rape in the following six months after the murder. So we
5 really knew that we had a serious problem at this
6 facility.

7 Q. Okay. And did you find certain patterns with
8 regards as to why the violence was allowed to exist? Why
9 the guards couldn't get on top of it or did not get on
10 top of it?

11 A. We did. And that was really something we were
12 looking for because, of course, we wanted to try to offer
13 solutions to the Department of Corrections. And we found
14 -- one of the things we found was what I referred to, the
15 lack of an appropriate number of staff. But there were
16 other problems. At this particular prison, they had a
17 problem with locks on their doors working so that people
18 who wanted to harm other prisoners were able to escape
19 from their cells and get into other people's cells and
20 assault or sexually assault them.

21 The grievance process that they had in the
22 Department of Corrections in Georgia wasn't working very
23 well at this prison so that written complaints weren't
24 dealt with appropriately. Another problem was that parts
25 of the prison had a very kind of odd physical

1 configuration where lines of sight for officers
2 supervising the dormitory were very difficult. In
3 particular, there were bathrooms that attached to the
4 dorms where a lot assaults occurred. These were areas
5 that was very hard for officers to see from their
6 stations.

7 Q. Did you find that sometimes the guards were not
8 making rounds when they were suppose to be?

9 A. That was another thing that we heard time and time
10 again from people that we interviewed. The prison
11 officers that worked at the prison were suppose to make
12 rounds every half an hour, and we heard from many people
13 that that didn't happen and that incidents of violence
14 would occur when no officers were present.

15 Q. What about access to weapons at this prison?

16 A. Well, again, in the months proceeding the death of
17 Wayne Boatright that I talked about earlier and in the
18 months after, there were a number of incidents involving
19 prison-made shanks. There was one I recall where a
20 prisoner's throat was cut.

21 It was a very scary place and I think much more so
22 because this was a facility that housed all of the
23 teenagers or children convicted as adults in the State of
24 Georgia. So it housed thirteen- to sixteen-year-olds in
25 one part of the prison, and then on the date of your

1 seventeenth birthday, you would go across the yard and be
2 placed into a population of people in their twenties,
3 thirties, forties and so on. That was part of the
4 problem at this prison.

5 Q. The problem -- the disparity between ages and size
6 of inmates?

7 A. Yes, sir. You point out another thing I should have
8 mentioned which is that people who were younger, on the
9 younger side, slender, on the smaller side, were, in my
10 experience from talking to many, many -- such people were
11 more subject to assault at this prison.

12 Q. And was it commonplace for the more violent inmates
13 to actually tell a potential rape victim that they
14 intended to rape them?

15 A. I remember talking to a number of young men who told
16 me that they were repeatedly threatened with being raped.
17 At the prison there were some classrooms where young
18 people would be, again, in the same kind of class with
19 people who were much, much older than they were. And I
20 remember that, in particular, that during class you would
21 have inmates passing notes that would contain threats of
22 harm, sexual harm.

23 I remember one young man -- I believe he was twenty,
24 twenty-one -- telling me that he slept every night with
25 his belt cinched tight around his waist and his boots on

1 so that he could get up, you know, in a moment's notice
2 if someone tried to come harm him or rape him in the
3 middle of the night.

4 Q. Was part of the -- regarding the time of the day,
5 was the danger zone shortly after lights out at night?

6 A. I don't know that there was -- I can't say for sure.
7 I don't know that there was any particular time of day
8 that was the very most dangerous. I do remember that
9 people told me that just before kind of lights out time
10 was a particularly dangerous time. It was a time when
11 officers tended not to circulate around the living areas,
12 and that tended to be a time when people were in danger.
13 The other time would be the middle of the night if you
14 got up to go to the bathroom. I remember a number of
15 people telling me that they were attacked in the bathroom
16 area or dragged into a cell in the middle of the night.

17 Q. In your investigation, did it reveal that choking or
18 choking out the victim was a common way of getting
19 control of the rape victim?

20 A. Yes. That was the testimony of a number of people
21 who submitted affidavits in our case. That was the way
22 that Wayne Boatright died. Died while he was being raped
23 and strangled. And I recall a number of other people
24 telling me that that's what happened to them, yes.

25 Q. If an inmate was receiving threats of violence,

1 threats of homosexual rape, was one of their ways to try
2 and get protection to be placed in segregation or
3 isolation?

4 A. That was something you could request at this prison,
5 but that was also part of the problem. At Alto at the
6 time we had this lawsuit, the segregation area which was
7 meant to be protective could be equally as dangerous as
8 the population dorms. Had one young man tell me that he
9 was raped by two inmate orderlies who worked in that area
10 of the prison. Contraband was -- people could get access
11 to contraband in that area of the prison. And young
12 people who were in segregation cells, even -- and I'm
13 talking about teenagers were housed right alongside
14 adults, and there was a lot of threats of sexual violence
15 to the younger inmates.

16 Q. Was there any safe place at Alto?

17 A. During the time that we had this lawsuit, I don't
18 know of any, no. No, sir.

19 Q. That's all I have for you. Thank you, ma'am.

20 CROSS-EXAMINATION

21 BY MS. ADAMS:

22 Q. Ms. Geraghty, you never interviewed this Defendant,
23 Mr. Rivera, at the Alto Prison back in that time, did
24 you?

25 A. No, ma'am, I did not.

1 Q. So he was not involved in any way in any of these
2 violent acts that you keep referring to?

3 A. Well, I can't say that. I don't know about that.

4 Q. You never interviewed him -- and you interviewed
5 several inmates, as you said, which is where most of your
6 information came from, the inmates. Correct?

7 A. No, ma'am. It did partially come from the inmates,
8 yes. But it mostly came from records maintained by the
9 Department of Corrections. In particular, incident
10 reports that the Department is required to fill out
11 whenever an incident occurs.

12 Q. But Mr. Rivera was never interviewed by you at that
13 time?

14 A. No, ma'am, he was not.

15 Q. And now, Ms. Geraghty, you stated that you are an
16 attorney for the law office of the Southern Center for
17 Human Rights; is that correct?

18 A. That is correct.

19 Q. Is your mission statement -- if you bear with me,
20 this is what the Internet states that your mission -- The
21 Southern Center for Human Rights is dedicated to ending
22 capital punishment, mass incarceration, and other
23 criminal justice practices that are used to control the
24 lives of poor people, people of color and other
25 marginalized groups in the Southern United States and to

1 build the power of those communities to transform the
2 criminal justice system. Is that correct?

3 A. I believe that that was posted on our website. I
4 believe that that has been changed. But, yes, ma'am,
5 that was posted on our website, yes.

6 Q. We just printed this out January 25th of this year.
7 So thank you very much Ms. Geraghty.

8 THE COURT: Re-examine?

9 MR. MCGUIRE: Just very briefly.

10 REDIRECT EXAMINATION

11 BY MR. MCGUIRE:

12 Q. I just want to make clear one thing. When people
13 refer to Lee Arrendale or Alto, it's the same prison?

14 A. It's the same prison. The town is called Alto. The
15 prison is formally called the Lee Arrendale State Prison.

16 Q. And with regards to your investigation, did your
17 investigation reveal that many assaults and rapes went
18 unreported and undetected?

19 A. Yes. I reviewed one affidavit this morning that
20 reminded me of a conversation I had with one person. And
21 he told me that he thought that the officers knew or the
22 administration knew of about twenty percent of the
23 assaults that occurred at that prison.

24 Q. That's all I have. Thank you, ma'am.

25 A. Thank you.

1 THE COURT: Any recross?

2 MS. ADAMS: Nothing at all, Your Honor.

3 THE COURT: All right. You may step down.

4 Thank you, ma'am.

5 MR. DELGADO: Your Honor, we call Dr. Marti
6 Loring. Your Honor, may I step outside to call her?

7 THE COURT: Certainly.

8 MR. DELGADO: I apologize.

9 MARTI LORING,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. DELGADO:

13 Q. Doctor, I'd like for you to introduce yourself to
14 the ladies and gentlemen of our jury by telling them a
15 bit of who you are, what you do, and then your
16 educational experience as well as your professional
17 background.

18 A. I'm Dr. Marti Loring and I live in Atlanta. In my
19 educational background I went to Vassar College up in
20 Poughkeepsie, New York, where I got my undergraduate
21 degree, my B.A., where I majored in psychology. Then I
22 came down to -- I went to Brimore, over to Brimore,
23 Pennsylvania, which is right outside of Pennsylvania.
24 And I got my Master's in social work and social research.
25 Then I came to Memphis to work, and then over to Atlanta.

1 And after working for a while in Atlanta, I went back to
2 school at Emory University there in Atlanta, and I got my
3 Ph.D. in sociology with a major in social psychology.
4 That's my educational background.

5 In terms of my professional background, I've worked
6 in different kinds of settings. I started out in a
7 setting where I worked with children who had different
8 types of emotional problems, diagnosing and treating the
9 children. And then I went on to different kinds of work
10 such as I worked in the battered women's shelter, and I
11 worked in an agency that helped couples who were having
12 problems. Often there was family violence. And I worked
13 with the children who were often victims of the family
14 violence. So I worked with people who were victims and
15 people who were batterers as well at the Bridge Family
16 Center in Atlanta.

17 Then I became involved in the Center for Mental
18 Health and Human Development in Atlanta where I've worked
19 for many years and where I have the honor of being the
20 director. And there what I do is a couple of things.
21 One is we write. We do research and writing to see, you
22 know, what kinds of things make people behave the way
23 they do, sometimes when they are abusive, sometimes when
24 they're being abused. Also, I've written several books
25 in the area of emotional abuse and trauma, actually two

1 books, and several articles in professional journals.
2 Some of them on the lighter side having to do with
3 leadership and a holiday hotline where depressed folks
4 called up around Christmas and the holidays. You know,
5 people tend to get more depressed. And then some on the
6 heavier side dealing with what happens -- with the
7 research and the articles -- what happens when children
8 are abused developmentally as they grow up or what
9 happens when men or women are battered or do the
10 battering.

11 As part of my work at the Center for Mental Health,
12 we respond to crises across the country. For example,
13 there was a terrible tragedy that I'm sure you know about
14 in Atlanta where there was a shooting in the courthouse
15 and the judge was killed, a wonderful judge, as well as a
16 deputy and a court reporter, and later on a federal agent
17 was killed.

18 At any rate, I went down. I was asked by the
19 assistant chief to go down to the courthouse and work
20 with the deputies. In other words, there were many of
21 the deputies that were very traumatized. Not just
22 deputies, but lieutenants, captains and all.

23 So we gathered them all in one room at the
24 courthouse. And you know, I asked that the doors be
25 locked so that we could deal with the trauma of when you

1 see that kind of thing happen and how to cope with the
2 feelings and the trauma that you experience. I asked
3 them not to go out and drive in their normal work because
4 I was -- I told them, you know, when you're traumatized
5 you can even miss a red light and not even realize you're
6 going through a red light. You can be that upset, that
7 not seeing.

8 At any rate, we deal with actual trauma situations.
9 We helped out when the Olympics were in Atlanta and there
10 was a bombing and a young woman was killed. We worked
11 with her family. Sometimes they call us for advice with
12 other kinds of trauma situations.

13 So at the Center we do research, we write books and
14 articles. I've written books and articles. I've had the
15 honor of responding to these kinds of crisis situations.
16 And then we also do evaluations. Sometimes it's for a
17 situation like this where someone asks us to evaluate
18 someone and be able to share information in a court
19 setting of the types of reasons that we're asked to do
20 evaluations.

21 I don't have as much time for it anymore, but now
22 and then I'm still able to do some treatment, some work
23 with couples or with families with children. Not as much
24 as I used to. But that's -- I hope that's a kind of a
25 thumbnail sketch, a brief sketch, of my professional

1 background.

2 MR. DELGADO: Your Honor, at this time I move
3 under Rule 702 to qualify Dr. Loring as an expert in the
4 area of trauma and development.

5 THE COURT: Any voir dire?

6 MS. BYFORD: No, sir, without objection.

7 THE COURT: Without voir dire, the witness will
8 be qualified as an expert in trauma ...

9 Mr. Delgado?

10 MR. DELGADO: And development. I'm sorry, Your
11 Honor?

12 THE COURT: Trauma and development?

13 MR. DELGADO: Yes, sir.

14 THE COURT: Very good.

15 All right. Madam -- Mr. Foreman, ladies and
16 gentleman of the jury, this witness will be qualified as
17 an expert in the area of trauma and development by reason
18 of her background, training and experience. Of course,
19 the value of her testimony is like all witnesses. It's
20 for your determination.

21 You may proceed.

22 MR. DELGADO: Thank you.

23 Q. Dr. Loring, I want you now, if you would, please, to
24 address what you were called upon to do with Raymondeze
25 Rivera, who asked you that, and what sources, either

1 background or in the way of records and/or individuals
2 that you talked to in being able to come to a fuller
3 understanding of who is Raymondeze Rivera.

4 A. Yes, sir. I was asked to evaluate him in general.
5 I wasn't told what to look for or anything like that. In
6 terms of who asked me, I believe I received the first
7 call from the person who's doing mitigation on the case,
8 and one of the lawyers called -- either one after the
9 other or in some kind of close succession -- asking me if
10 I would be willing to do that, to evaluate him and try to
11 help them to understand him better. And I said I would
12 be willing to do that.

13 Since I'm not there at the time that something
14 happens for which someone is brought to court, a crime,
15 in this case a terrible tragedy, I look to talk with a
16 lot of what I call collateral witnesses as well as family
17 members. Collateral witnesses would be any kind of
18 friend, neighbor, teacher, anyone who could help me
19 understand what a person was like from the youngest time
20 anyone observed them until the time of the crime or the
21 tragedy. That's when typically my work would stop. Not
22 that I don't honor that, but that's usually when my work
23 stops, that period.

24 I asked to see any records that would help me to
25 understand anything about the individual involved or

1 anyone in his or her family, any kind of education
2 records, prison records, hospital records, anything --
3 police records -- anything that would help me to
4 understand the person or anyone in their family that had
5 an influence over them.

6 And then I -- of course, I spend time talking with
7 the person themselves to try to understand them and how
8 they grew up, what kinds of things happened. And not
9 just what kinds of things happened to them, quite
10 honestly, because a lot of things happen to a lot of us
11 growing up, you know, that we have to cope with later on.
12 It's sometimes not very nice things. But more these
13 things that happened, you know, how many things? How
14 severe were they? How did they affect the person?

15 What kind of support or protection did the person
16 have if indeed there was abuse, that kind of thing? So
17 for that I often talk to family members who are sometimes
18 very hesitant to come forth with information because of a
19 variety of reasons. Sometimes they are family secrets
20 that no one is supposed to talk about. Sometimes family
21 members feel guilty that they didn't do more at the time
22 to stop whatever was going on. So that's why a mix of
23 family members and the other kinds of witnesses who may
24 have seen what was going on in school or home or wherever
25 can be very helpful. That's what I normally do and did

1 in this case.

2 Q. Would you outline please for the jury what records
3 you may have reviewed and specifically the individuals
4 that you talked to in evaluation of Raymondeze?

5 A. Yes, sir. Excuse me. I'm going to grab my glasses.
6 In terms of what I reviewed, I reviewed a lot of records
7 in this case. And they included family criminal history,
8 his criminal history, his school records, prison
9 documents from Georgia about him, from South Carolina,
10 Salvation Army documents when he lived there, Job Corp
11 documents from when he was in the Job Corp. I reviewed
12 letters that he wrote to his son Justice, a number of
13 reports including his father's criminal history records,
14 a criminal record regarding his uncle, Arnaldo Rivera,
15 the history of his time -- some of his time at Lee
16 Arrendale Prison.

17 I looked over summaries and listened to a C.D. of
18 various other people's interviews who I didn't interview
19 personally. For example, Elkeeno Williams, his cousin,
20 an interview with him I reviewed, Leroy Helsin, his
21 maternal grandfather, an interview with him and an
22 interview with pastor Larry Hardy. Those are some of the
23 records that I reviewed.

24 In terms of people I interviewed, gee, there are a
25 lot of them. I'll try to go real quickly so I don't take

1 up too much of your time. I'll just say their names real
2 quickly. Dr. Donna Schwartz-Watts, his stepmother --
3 when I say his, of course I mean Raymondeze's --
4 stepmother Elaine, Phoebe Kenney, his brother Juan Antonio,
5 Renee Karls, his sister Teresa, his stepfather Edward
6 Scott, Clarissa Reece, his stepsister, Keisha Jones,
7 Canessa Thomas, his mother Sheena, his other stepfather
8 Kenneth Atkins -- Atkins, excuse me -- his uncle Willie
9 Walker, cousin Gary -- his uncle -- excuse me -- Gary
10 Cousins, Mark Jones, a young man who witnessed things
11 while Raymondeze was in school, Teshara Hooks, Paula
12 Kalin (phonic), Carol Jones. And those are most of the
13 people -- excuse me, Timmy Purdue, the son of the
14 neighbor who had babysat with him, Grandma Cousins, his
15 Grandma Cousins. And that looks like most of the people
16 whom I interviewed.

17 Q. Doctor, in your area of expertise, how do you --
18 what do you use to be able to describe an individual's
19 background so that it is visually significant? By that I
20 mean, how do you display that? How do you testify from a
21 family history so as to make it understood with the jury?

22 A. I usually make charts. The charts help for me --
23 and I hope others -- to be able to see what it is that
24 we've been able to -- that I've been able to find when
25 going through all these records and all these interviews

1 to show the relationships in the family, to show the
2 kinds of things that may have or may not have traumatized
3 a person. And also I hope the charts will help me not to
4 forget anything important. So charts are what I use to
5 help visually.

6 Q. What have you brought with you today that we can
7 show to our jury to be able to explain Raymondeze's
8 history of trauma and his development?

9 A. I brought three charts.

10 Q. If you will please, ma'am.

11 MR. DELGADO: Please, Your Honor, may I ask Dr.
12 Loring to be able to move in front of the jury?

13 THE COURT: Certainly.

14 MR. DELGADO: Thank you.

15 (WHEREUPON, the witness stepped down from the
16 witness stand.)

17 Q. Dr. Loring, inexplicably we don't have a tripod
18 here, so I'll become your living tripod.

19 A. Oh, I don't mind holding them a bit.

20 Q. All right. Fine.

21 A. Thank you so much. Please excuse my sniffing.

22 I brought some notes with me for each chart to help
23 me to remember.

24 Q. Do you want me to hold them?

25 A. I'd love it. Thank you very much.

1 The first chart is called a Trauma Family Genogram.

2 Now, a normal genogram would be bigger and would have all
3 the different generations, a couple generations. So this
4 is sort of an abbreviation on my part to help show some
5 of the really strong relationships, that is, the things
6 that were affecting him very much, Raymondeze Rivera.

7 You know, I think I have it. Thank you. Thank you.
8 I appreciate that.

9 One thing I want to apologize to you for is ---

10 THE COURT: Would you want to use a tripod?

11 MR. DELGADO: Your Honor, I'm going to be kin
12 with you. I don't think we have it anymore.

13 THE WITNESS: I don't mind holding it, Your
14 Honor, if it's okay.

15 MR. DELGADO: I think it just disappeared.

16 A. Please excuse me. I have down here one name
17 incorrectly. It says Teresa Rivera, and it should be
18 Teresa Wellmaker. But anyway, here we have a chart
19 showing people who are in relationship to him. And the
20 circles indicate the women, and the squares indicate men,
21 and the lines try to indicate the relationship which I'm
22 going to tell you about.

23 And then these lines, these lines indicate the kind
24 of treatment that he got at the hands of these people.
25 For example, here is Raymondeze Rivera right here. Can

1 everybody see okay? Okay.

2 Now, first if you look toward his dad which would be
3 Stanley, you see a squiggly blue line going from Stanley
4 to Raymondeze. And that squiggly line, the blue squiggly
5 line, means physical abuse. We're going to look at that
6 a little more closely in a few minutes. But the physical
7 abuse that went from Stanley, that he perpetrated upon
8 Raymondeze, was very severe. It wasn't mild.

9 Then we look at his -- at Raymondeze's mother who
10 was Sheena Scott. And we have a dotted line that goes
11 from Sheena, the mom, to Raymondeze. And that is
12 abandonment. The dotted line means abandonment. And
13 we'll look more closely to that in a few moments. But he
14 was certainly abandoned by her.

15 Now, if you look over on the maternal -- excuse me,
16 paternal side, Stanley's mother Elizabeth Rivera, which
17 is Raymondeze's grandmother, Stanley's mom Elizabeth.
18 Again, the blue squiggly line which involves physical
19 abuse. And we'll be looking more at that. But she would
20 beat him with her fists and slap him around the face.

21 Then if you go over here, what you see is a red
22 squiggly line that goes from his stepmother Elaine to
23 Raymondeze and from his stepsister Teresa to Raymondeze.
24 And that is emotional abuse. Emotional abuse was very
25 remarkable in that Teresa would report that Raymondeze

1 had done this or that or the other, some of which he'd
2 done, some of which he had not done according to family
3 members, and then Elaine would call up and let Stanley
4 know at work or wait until he got home to tell him,
5 either one of the two. But what she would keep telling
6 Raymondeze is when your dad gets home, you're going to be
7 beaten. He's gonna really beat you. So Raymondeze would
8 be waiting for hours for his father Stanley to get home.
9 And when he would hear Stanley come in the house,
10 Raymondeze would sometimes try to hide like under his
11 bed, in his toy box, in the closet. But Stanley would
12 always find him, and indeed he would be beaten.

13 Unfortunately, there really needs to be a blue line
14 here too because Elaine would also beat Raymondeze with a
15 regular type belt. She would beat him to the point that
16 he would get whelps on his back and his bottom. And then
17 she's reported to have put him in a hot tub and scrub the
18 welts that were bleeding to try to stop the bleeding.

19 Thank you. I appreciate that. Excuse me.

20 Now, Edward Scott is -- I should say was -- he was
21 the husband of Raymondeze's mother Sheena. So Edward was
22 married to Sheena, and they lived in Florida. And Edward
23 would not only beat Sheena, Raymondeze's mother, but when
24 Raymondeze would try to put his body between Edward and
25 Sheena to try to protect his mom, then Edward would often

1 pick Raymondeze up, it's reported, and sling him against
2 a car or across the room into a wall. Sometimes he would
3 just hit Raymondeze. And Edward was able to admit that,
4 to discuss that. Most of the people were willing to
5 discuss what they had done.

6 That is the Trauma Family Genogram to try to show
7 that there were a lot a things coming at Raymondeze. And
8 you will notice that there's certainly someone missing.
9 Grandma Cousins is not on this genogram. She was very
10 sweet and kind to Raymondeze. And when he was terribly
11 bruised, he was not allowed to see her. Raymondeze was
12 kept from her. So she didn't see a lot of the aftermath
13 of this, of the abuse.

14 MR. DELGADO: Your Honor, we move Raymondeze
15 Rivera's Trauma Family Genogram into evidence as
16 Defendant's Exhibit Number 11.

17 MS. BYFORD: Without objection.

18 THE COURT: All right. Without objection,
19 Defense Number 11 is admitted.

20 (WHEREUPON, Defendant's Exhibit Number 11 was marked
21 and admitted into evidence.)

22 A. Now, I'm grabbing up the chart that's called a
23 Trauma Chart, and it tries to show the time line. Again,
24 I mean, many of us have had traumas that have happened at
25 some point growing up, you know, one or two that forever

1 affect us. So you know, we look to see, well -- I look
2 to see, well, did this person, you know, just have one or
3 two traumas? How severe were they? Or were there just a
4 huge amount of traumas, and developmentally how did they
5 affect the person? And in this case Raymondeze Rivera
6 had a huge amount of traumas. And I need to tell you
7 that oftentimes I have lots of records like from family
8 services that will show exactly when things happened to
9 someone. It was reported to the police, police reports.
10 And this family kept its secrets really well because I
11 had to get most of this information either from family
12 members or from the collateral witnesses who I mentioned
13 to you who saw it with their own eyes.

14 First, the profound neglect. As an infant,
15 Raymondeze's brother Juan Antonio talks about him having
16 gotten food poisoning from eating out of a garbage can.
17 The mother was, unfortunately, into crack and other kinds
18 of things and so wasn't available to take care of them
19 and eventually took them to a hospital in Atlanta called
20 Grady Hospital, which is a public hospital. When he was
21 two years old, she took him and she left him there. She
22 never came back for him. So the family was called at
23 some point and came to pick him up.

24 And from two years old onward, the mother would have
25 visitation times where she'd be suppose to come on a

1 Sunday afternoon to pick up Juan Antonio and Rivera, her two
2 sons, Sheena, and spend an hour, go to a movie or
3 something. And the brother Juan Antonio talks about how as
4 young as two and a half and three Raymondeze would pack
5 this tiny suitcase and have in it -- you know, his
6 toothbrush and pajamas and stuff and be -- having moved
7 the chair up to the window where he could see the
8 driveway. And he, you know, long after Juan Antonio had
9 given up and left, Raymondeze would still be waiting for
10 the mom who virtually never showed up. Once in a great
11 while, but almost never showed up for these dates. And
12 he was sitting there with his little suitcase, and she
13 would just never come and wouldn't call either.

14 Now, unfortunately from three years old onward, we
15 saw on the other chart that he was beaten by his Grandma
16 Rivera. And I can't stress strongly enough the
17 difference. I'm certainly not talking about Grandma
18 Cousins, that sweet grandmother who tried to help him all
19 she could when she was allowed to see him. This was
20 Stanley's mother, Grandma Rivera, who had even thrown a
21 knife into Stanley's back. I mean, she was a very angry
22 person. She would beat on Raymondeze, and she would beat
23 him around the face with her fists and her hands to where
24 Stanley would have to go pick him up and bring him back
25 home where he was living with, Stanley, with the

1 stepmother Elaine. Stanley and Elaine. And then -- in
2 Georgia. And then back in Florida was the mom Sheena and
3 her current husband at that time, Edward Scott.

4 From about three onward came these reports by the
5 stepsister and the stepmother to the father and this --
6 in my line of work with emotional abuse, we call it
7 ritualistic emotional abuse. It's not just the normal
8 thing where someone says, well, you stupid blank, you
9 stupid fool, or the B word. It isn't like that. There
10 may be anywhere from five or six to ten steps. And you
11 can map them out. First number one, then number two.
12 Battered women often talk about this. And by the time
13 the person gets to step number three, the victim is just
14 a nervous wreck because they know it's only a matter of
15 time before step number seven comes.

16 So there's this sort of ritual where stepsister
17 Teresa -- who feels terrible about it now, but she was
18 just a child. The adults, you know, are the ones who
19 perpetuated all this. At any rate, she would say, oh,
20 Raymondeze did this or that, which sometimes it was true
21 and sometimes wasn't. And then the stepmother Elaine --
22 many of them were false reports. That's why its called
23 false reports. The stepmother Elaine would do one of two
24 things. Usually she'd say, boy, are you gonna get it --
25 And you know, many of us have heard that -- you know,

1 when your dad gets home. But this was very serious. It
2 was, you're going to so beaten when your dad gets home.
3 And over and over.

4 And developmentally speaking I think that's one of
5 the things that's left Raymondeze with such difficulty
6 with waiting for outcomes, for what's going to happen.
7 Because the family and Raymondeze all reported that what
8 he would do during these waits for dad to get home and
9 beat him was that he would crawl into his bed -- we're
10 talking about him three, four, five, six, seven, eight,
11 nine, ten. He would crawl into bed, and he'd be praying
12 to God to please save him from what was going to happen
13 while he waited those couple of hours. And sometimes he
14 would make these useless attempts to hide in his toy box
15 and his closet.

16 And his father would then come in and say,
17 Raymondeze. The family all reports that kind of punitive
18 tone of voice, Raymondeze. And his father -- it seemed
19 to the family that the father would stomp a little harder
20 than just normally coming in. He'd be calling him,
21 almost like a stalking kind of thing. The father would
22 make a play of looking here and looking there. And then
23 when he would grab a hold of Raymondeze, he would start
24 beating him.

25 And Raymondeze didn't seem to be able to cry. The

1 family reports -- no. Juan Antonio, the brother who grew up
2 to be quite a Naval officer, quite an accomplished fellow
3 -- he told me he would just weep and cry, scream ouch,
4 ouch at the top of his voice. It was obvious that the
5 beatings hurt, but he said he made it even louder because
6 that would, he hoped, bring a stop to it. He said it
7 did. He said he got much less severe beatings than
8 Raymondeze. He said sometimes Raymondeze would try to
9 cry, and it was like he couldn't. He just couldn't seem
10 able to. And sometimes he would grab the strap.

11 Q. Doctor, let me interject one thing. Let me model
12 the question that I'd like to be able to ask you. There
13 may be some individuals in this room who'll say, so what.
14 He had an alcoholic father and he was beaten. So what?
15 What difference does that make?

16 A. I think there could well be people that would say so
17 what. I'm working with a lawyer now that says so what.
18 His father beat him with a belt up and down the driveway.
19 So what? And I'm going to skip ahead to this right here.
20 And what it says is beatings by his father with a weight
21 belt. I'm not talking about the kind of belt that Elaine
22 used. I went with his brother, Raymondeze's brother,
23 Juan Antonio, because I didn't know what a weight belt was.
24 Probably some of you know already. I didn't know. And
25 this is a duplicate of the belt Juan Antonio said that

1 Stanley used on Raymondeze. And Juan Antonio said that
2 Stanley would grab a hold of the belt and -- I'm not sure
3 I even know how to do it -- but something about you just
4 (witness demonstrates) oh, slam down.

5 I'm sorry, Your Honor. I think maybe I don't go on
6 doing that. Let me put this belt here.

7 ... with all his might. And the buckle part would
8 hit Raymondeze. So I would say to your so what that
9 Stanley was a big guy, I'm told. I never met him. But
10 Raymondeze, all of the -- Juan Antonio and Elaine all said
11 he was a big guy. So he would take -- he worked out. He
12 would take this with all his might and come down on
13 Raymondeze who had to strip. He had to take off all his
14 clothes before he got these beatings. Excuse me. I
15 don't mean to offend anyone. But he would get this belt
16 not only on his bottom, but on his penis and his genital
17 area. And he'd be bleeding all over, according to the
18 witnesses who were there. Like I told you, I have to
19 ask, you know, because I wasn't there.

20 So with all due respect to your asking so what, it
21 wasn't the kind of belt or reprimand I think that most of
22 us, many of us, perhaps all of us, have received by very
23 loving parents. It was extraordinary that he would be
24 beaten, and it went on and on and on. And it was viewed
25 by all the family, you know, and no one stopped it.

1 Elaine didn't stop it. Of course, Juantonio was too
2 little to stop it. But Raymondeze and Juantonio
3 remembered that he'd be bleeding so much on his bottom
4 from being beaten that he had to stuff Kleenexes and
5 paper towels between his underpants and his pants and his
6 slacks to go to school so the teachers wouldn't see the
7 blood. Though I don't see how people would have missed
8 the bruises.

9 But at any rate -- so in answer to your so what, it
10 seemed extraordinary to me the physical abuse. And the
11 effect it had on him was so -- well, at school the school
12 people said he just couldn't -- he couldn't stay still.
13 He was always up and moving around, couldn't focus on the
14 work. His concentration was poor, which we often see in
15 children who are traumatized. That's real typical for
16 their school behavior.

17 I need to add to this. I told you that one of the
18 reasons for the charts is so -- I mean, what if it's just
19 one or two traumas that someone experienced like most of
20 us? But not like that, I would hope. Sometimes someone
21 has had many more that have had an effect, and the charts
22 help to show that. And one of the others was when
23 Raymondeze was locked up. His hands were tied oftentimes
24 in back of him, sometimes in front of him, with rope by
25 his father Stanley. And the rope would be knotted, lots

1 of knots in the ropes, to where he would try to get out.
2 You know how kids do with their mouths with the knots
3 when they're too tight I'm told. Too numerous. And he
4 was kept down there in the basement for a couple days at
5 a time when Stanley was punishing him without food,
6 without the ability to go to the bathroom properly. So
7 Juan Antonio would try to slip down and bring Raymondeze
8 food.

9 And one of the effects developmentally this had on
10 him is people began to notice that sometimes he would
11 have anger explosions if he was frustrated, which he
12 often was more frustrated with himself than he was with
13 anyone else. He seemed to have developed a life pattern
14 where he would try real hard to do well. And sometimes,
15 according to people's reports, or the Job Corp, he would
16 be doing quite well, and then he would feel like he fell
17 on his face still yet another time in terms of his
18 relationship with a woman or, you know, doing well at the
19 Job Corp or doing well at school.

20 The school records show that he was getting As and
21 Bs in the sixth grade. And then his father threatened to
22 kill him, and he ran away because he thought he might get
23 killed, Raymondeze did. And after that you see him
24 getting back in school and then his grades dropped to Fs
25 and Ds so that all of this trauma was beginning to affect

1 him. He was really beginning to give up even as early as
2 his sixth grade.

3 Also in school after the sixth grade there were
4 reports of school bullying because Raymondeze would
5 sometimes sit at school with his head held down and be
6 very jumpy, and sometimes kids picked on him. At one
7 time it's reported that one of the students chased him
8 with a two by four with nails sticking out of the end of
9 it. Raymondeze ran to avoid being hurt.

10 You know, there are trauma symptoms that were seen.
11 And I'm going to grab my sheet with people's names on it.
12 Excuse me. There were people who saw him with what we
13 call trauma symptoms as young as, for example, as young
14 as five years old. His grandfather, Leroy Helsin,
15 recalled seeing bruises on Raymondeze and Raymondeze
16 saying, my dad just beats me and my stepmom is mean to
17 me. His uncle -- his cousin, Elkeeno Williams, saw
18 bruises on him as well.

19 And someone who feels guilty to this day, his uncle
20 Gary Cousins, saw Raymondeze as a young kid still
21 sleeping. When people have trauma they sometimes have
22 flashbacks and they remember things like they're really
23 happening, or sometimes in their sleep they have
24 nightmares. And Raymondeze is -- Gary Cousins said
25 Raymondeze was going, don't beat me, dad, don't beat me,

1 and had his hands up like this in his sleep. He hadn't
2 really awakened. And he told -- Gary Cousins was told
3 with all respect that Raymondeze was being locked in the
4 basement without any food for a couple three days at a
5 time and tied up real tightly, and then he was being
6 beaten. And Gary said he just thought children lied
7 about that kind of thing. And a couple years later the
8 more bruises he saw, he feels that -- he wished that he
9 had picked up the phone and called for help. I
10 appreciated his sharing that.

11 The dad didn't just beat him at home because -- it
12 was like a vicious circle. Because Raymondeze was so
13 traumatized, he couldn't sit still in school. One of the
14 reasons he may have had trouble sitting very much at
15 school is his bottom was apparently, according to the
16 family, very bruised and blistered from the beatings.
17 But the other part is he was very hyper, the school
18 records said. He couldn't stay still.

19 So the school teachers would send home reports
20 saying he isn't sitting still, he isn't concentrating --
21 which of course they were right, he wasn't. And one day
22 his father went to the school and went into Raymondeze's
23 class and beat him right there in the classroom with his
24 fists against Raymondeze's face, holding Raymondeze by
25 the shoulder or whatever he was wearing, you know,

1. slapped him and beat him.

2. I talked to one of the students, Mark Jones, and his
3. mother, teacher Orelander (phonic). I just -- you know,
4. if you hear a little surprise in my voice -- I'm just
5. going to hold this right here, just hold this like this.
6. If you hear a little surprise in my voice, it's a little
7. surprised that normally that would be in the school
8. record or the police would be called when a dad goes to
9. the school and starts beating someone up, or family
10. services would be called. I can't tell you why that
11. wasn't done. But the school people said, well, maybe
12. there's some attention deficit problems and
13. hyperactivity.

14. Now, by the time he was eleven, one could see the
15. imprints of the punches to his chest and his face. His
16. father would be punching and holding him by the shoulder
17. and punching him.

18. It was when he was about fourteen that the father
19. threatened to kill him and he ran away and he went to
20. live with his mother. He thought, oh, you know, this
21. will be wonderful. I'll be with my mom in Florida. What
22. I've always wanted, to be with my mom. So he went to
23. Florida. And lo and behold there was Edward Scott who
24. was beating his mother both when she was pregnant and
25. afterward and who, when Raymondeze would try to protect

1 her, would beat up Raymondeze. I would add, he received
2 no thanks from his mother for trying to protect her. She
3 said, just stay out of this, this is grownups.

4 At any rate, he got kicked out by his mother and he
5 went back home. And this talks about when he was
6 fourteen or fifteen being emotionally and physically
7 abused by this stepfather, Edward Scott.

8 He was sexually abused at sixteen by a pastor. And
9 he's growing into adulthood now. And I need you to know
10 that as he was going into adulthood he was at a prison --
11 which coming from Georgia we called it Alto, but
12 technically it was Lee Arrendale Prison. And it was very
13 violent. They closed it. You know, you would be reading
14 in the newspaper about different people who were harmed.
15 There was a guy who was raped and killed. Afterwards
16 they did close it. And while there -- he was there while
17 this gentlemen was raped and killed, Raymondeze was, and
18 he was threatened. He reported that he was threatened
19 with sexual assault too, and they put him in isolation to
20 protect him.

21 Also, during his adult life his grandmother
22 Elizabeth had a son Arnaldo who in prison. Arnaldo was
23 raped multiple times and injured so much that they
24 allowed him to leave prison. And Arnaldo went home to
25 live with Elizabeth and there was family violence between

1 the two of them. Arnaldo threatened to kill Elizabeth,
2 and there was a temporary protective order out. And
3 Raymondeze talks about his deep concern and fear that
4 when in prison, you know, you can have happen to you what
5 happened to Arnaldo who was then diagnosed as
6 schizophrenic resulting from what he went through.

7 As an adult, with my having talked with some of the
8 people with whom he was in a relationship, they reported
9 that Raymondeze would try really hard to do well and then
10 he would snap and become very angry, especially if he
11 felt abandoned or rejected. And at one point when a
12 relative went to pick him up from his girlfriend Renee's
13 house, he said that Raymondeze had gotten upset with
14 Renee. And Raymondeze was so confused and disoriented
15 that he said, where am I. You know, he didn't even know
16 who he was or where he was after he had snapped with
17 Renee.

18 I'm just going to take this. Thank you very much.

19 This is my last chart. And it's the Trauma Life
20 Cycle Pattern. Thank you for your patience. This talks
21 about the abandonment and neglect from being dumped at
22 the hospital basically by his mom who reportedly wasn't
23 able to take care of him before that either. And let me
24 just say, the reason it's called the Trauma Life Cycle
25 Pattern is that it keeps going around. It isn't like it

1 just happens once. I mean, this mom abandoned him over
2 and over. She kicked him out of the home, you know, just
3 some short time before these tragedies happened. So it
4 was over and over that this goes around. It's indeed a
5 pattern.

6 Two, this business of being beaten by his dad,
7 starved, locked in the basement, tied up, and his -- you
8 know, it says refusal to cry and feeling very helpless.
9 But I'm not sure that's entirely fair. Juan Antonio, the
10 brother, said he tried to cry, he just couldn't seem to
11 do it. No tears came. Groans came, but no tears.

12 Three, I described to you the ritualistic abuse in
13 that it was step one through eight where the stepmother
14 and sister would tell to Stanley who would beat him.

15 I've been asked to leave this out.

16 Number five, the school says, well, this man has
17 some kind of an attention deficit disorder. His dad
18 comes in and beats him for all to see right in the
19 classroom. He can't concentrate and he's hyperactive.
20 And you know, right around this time he's in school
21 eight, nine, ten, eleven, twelve. I need to tell you
22 that he was exposed to very violent pornography. He was
23 exposed to pornography that his father Stanley got. His
24 father Stanley had porn parties where sometimes he'd
25 invite others to come, and sometimes it was just Stanley.

1 There would be women who were being, according to the
2 porn flick, hurt, raped, tied, tied up, and raping from
3 the front while another man was raping her from the back.
4 I'm sorry to tell you this. But there was sounds of pain
5 and all coming from the women in these porn flicks.

6 There certainly was -- and I need to say that it took me
7 a long time to find out about these. Both Juan Antonio and
8 Raymondeze were embarrassed, some would say ashamed by
9 this though it wasn't their fault. I mean, the father is
10 the one that had it.

11 And a lot of them would come in, sometimes fall
12 asleep with them on, fell asleep naked and the boys would
13 come in and they'd be on. But Raymondeze said he felt
14 shocked and disgusted by that.

15 And you know, there's something that I also forgot
16 to mention that I should have. And that is I told you
17 the beatings weren't just by Stanley, although his belt
18 was so much bigger. Also the step mom Elaine would beat
19 him with a regular belt sometimes in the genital area as
20 well. And she would bathe him and wipe him down. He
21 would be saying how much it hurt on the welts, and she
22 would scrub them to make sure they didn't bleed, perhaps
23 when he went to school.

24 Lack of protection, number six, and lack of support,
25 number seven. You know, I couldn't find anyone who went

1 forth to protect him with the exception of Grandma
2 Cousins when she could get her hands on him. He was kept
3 away from her a lot. But it was very hard, the
4 protection, because once Stanley went and kidnapped him
5 from a babysitter who was babysitting for Grandma
6 Cousins.

7 The sexual abuse, I think the pornography was sexual
8 abuse. I think being hit by that belt buckle around your
9 private parts is certainly sexual abuse as well. He
10 would sink into depressions. People would notice him
11 just sitting there staring straight ahead. They'd have
12 to say, Raymondeze, and he would sort of startle to
13 himself. And a few of the young ladies with whom I spoke
14 talked about he would take things as rejection, with all
15 due respect, that perhaps some of us wouldn't have taken
16 as rejection.

17 There's this term in trauma called hypervigilance.
18 It's people who hear a noise, and it's just a little
19 noise, and they just jump and they look to see what it
20 was. It can be very dangerous too while you're driving.
21 But at any rate, it seemed like he was hypervigilant when
22 it came to rejection or abandonment. He would see
23 rejection or abandonment. Sometimes people meant it,
24 sometimes they didn't mean it, not at all.

25 Just before the terrible tragedy, he was, in fact,

1 told to leave his mom's. His mom kicked him out. And
2 Canessa, his girlfriend in Florida, said I don't love you
3 anymore. You should go. And when he went to Georgia to
4 see Renee, she said -- which she feels badly about this.
5 But she said, I don't want to see you and you're not
6 going to ever see your son Justice again. He calls
7 another man Daddy now. So there were real rejections,
8 but there also could have been just without any meaning
9 of rejection at all that he would have experienced that
10 way.

11 And then number ten is the struggle to self control.
12 The young ladies reported to me that he really would go
13 for -- tried to control himself, tried to be a good
14 boyfriend, father. And then something would happen and
15 he would snap and explode. That he often would, you
16 know, either say he was sorry or get very angry and
17 frustrated with himself. And there was this fake
18 control. They said he would just try so hard to control,
19 but fake in the sense it wouldn't work. He would snap
20 nonetheless. He would try to give reasons for it, but
21 the feeling was he was more confused. He really didn't
22 know why he would snap like that. But sometimes he would
23 act very much with bravado, like say he -- with respect,
24 say he understood why, you know. But they, you know,
25 really felt that he didn't understand why. So some of

1 them were concerned that they might need to end the
2 relationship.

3 Q. Doctor, I'm going to interject again.

4 A. Please.

5 Q. So he had a hard upbringing. He had a hard time
6 with his family environment. So what? That's the
7 excuse, right?

8 A. Well, I've seen people who would like to use this as
9 an excuse. And I spent about seven hours with
10 Raymondeze. And you know, I didn't learn all this from
11 him. He'd rather not talk about it. I'm sure that there
12 are very sensible reasons why a man in prison would need
13 to act very strong to keep -- from his fears of getting
14 hurt or killed in prison. I don't mean to be critical,
15 but it was clearly his preference to appear strong. I
16 mean, he himself didn't really want to talk about any of
17 this and only gave me some of it. I learned the rest
18 from other family members, collateral witnesses, records,
19 records from the South Carolina Prison System and from
20 Georgia. That's the first thing.

21 He -- you know, if he had a choice -- at first, just
22 to be totally honest, he wouldn't see me. I mean, no
23 disrespect intended. But he wouldn't even see me. I
24 could be used as an excuse. He wouldn't see me. I had
25 to write and ask and write again and ask. And finally I

1 got to see him. And then I had to pull what I could out
2 of him. So he's not looking himself for an excuse, would
3 rather I not be sharing this, and so ...

4 The second, this is -- there is mild and moderate
5 abuse and trauma. And I appreciate that a lot of us have
6 experienced some or a great deal of it. That's not what
7 I'm talking about. I'm talking about severe trauma, in
8 one way or another, toward someone who's so angry with
9 himself and then snaps at other people who he loves.

10 Q. Doctor, there's not one bit of evidence that any
11 school teacher ever seen abuse, physical, emotional,
12 psychological. That's an excuse, isn't it? So what?

13 A. I had to find -- with the help of the mitigation
14 specialist, I had to search around to find Mark Jones,
15 who is not a friend of Raymondeze, was never a friend as
16 far as I can see. Didn't want to be involved at all.

17 Q. How was he related -- just for our jury, how was he
18 related to a woman by the name of Olivia Cumberlander?

19 A. That would be Ms. Cumberlander's son, the teacher's
20 son, who told me that he saw the beating in school of
21 Raymondeze by his dad Stanley. He said you could hear
22 the screams all over that -- if Raymondeze could have
23 cried, he could scream and cower while he was being
24 beaten. I had to, you know, with help look all over for
25 that. So it's just amazing that it isn't in the school

1 record or the family services or in a police record.

2 Q. And I mean you no disrespect. But the point is
3 other's would say, so where is it? Where's the proof?
4 Where's the evidence? Why isn't it there? So what?

5 A. I think people were scared of Stanley. I've had a
6 couple of cases where people were so afraid of the
7 violent person that they themselves were afraid, you
8 know, as to how far they wanted to go to do reporting.

9 MS. BYFORD: Your Honor, may we approach for a
10 moment?

11 THE COURT: Certainly.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: All right. You may proceed.

15 MR. DELGADO: Thank you, Your Honor. Thank you
16 very much.

17 Q. Let me ask this. You said that there were several
18 occasions -- I think you said you met with him a total of
19 some seven hours? That is Raymondeze.

20 A. Yes.

21 Q. Where did you meet with him?

22 A. In prison.

23 Q. Broad River Correctional Institution in Columbia.

24 Is that correct?

25 A. That is correct, sir.

1 Q. Ma'am, during the periods of time that you met with
2 him, did you ever see alternating moods and changes of
3 mood either from one time to another or within the same
4 period of time?

5 A. Yes, sir, I certainly did.

6 Q. Explain that to the jury.

7 A. Sometimes I have to push to get what I need, push
8 for information -- tell me more, I need to hear this,
9 what happened after that, where clearly someone doesn't
10 want to talk about it. And the more he revealed about
11 his treatment by his father, the more anxious he became.
12 Sometimes he would stare off into space. I'd have to
13 say, Raymondeze, and he'd say excuse me, and look back at
14 me. And I would ask him what he was thinking about. And
15 he would say, you know, I can feel how bad that hurt when
16 he hit me. I still have scars. He offered to show them
17 to me, but I said no thanks, though there were a couple I
18 saw on his arm. So he would seemingly feel very anxious.

19 Other mood changes, sometimes he'd be very
20 depressed, just stare down at the floor. And I'd wait
21 until he was ready to talk. There were two times he
22 looked very frightened. And I said, I know sometimes
23 people do get frightened. Could you tell me about that?
24 And he'd tell me about when he'd gone to a hospital once
25 when he couldn't breathe and his chest was hurting so

1 badly. I got a hold of that hospital record, and it was
2 negative on the drug screen. He hadn't taken any drugs.
3 They gave him an E.K.G. Nothing wrong with his heart.
4 He just had a panic anxiety attack. So I saw that on at
5 least two occasions. He would just would get so anxious.

6 You know, I asked him to put his hands up on the
7 table so I could see them. You know, he had his hands
8 hidden under the table. His hands were shaking. It was
9 my impression that he was more than just remembering the
10 beatings, those flashbacks when we re-experience things
11 that are really horrible.

12 Q. As a result of everything that you've testified here
13 to today and the information that you've been given and
14 afforded, does Mr. Rivera have a fear of personal safety
15 and protection to this day?

16 A. Absolutely. Yes, sir.

17 Q. Tell us about that, please.

18 A. He's afraid of being in prison, for one thing,
19 because of what happened to his Uncle Arnaldo at Alto,
20 the Arrendale Prison. Afraid of being hurt or harmed in
21 prison. And in general, he has a lot of problems with
22 trust. That's why he's quick to feel rejected and
23 abandoned when sometimes he really is, but other times
24 people may not need to be doing that at all. So part of
25 fear of safety is when it's very difficult to trust

1 someone who might really care about you or be trying to
2 be nice. Yeah, he's real concerned and afraid and
3 panicked about issues of trust and safety.

4 Q. Physical safety?

5 A. Physical safety.

6 Q. Sexual assault and battery?

7 A. Absolutely. That's not the only kind, but that
8 certainly is the big kind.

9 Q. To this day?

10 A. Oh, yes. Absolutely.

11 Q. Doctor, if you'd take your seat and answer anything
12 the Solicitor has for you.

13 A. Thank you.

14 (WHEREUPON, the witness resumed the witness stand.)

15 MR. DELGADO: Your Honor, before I begin may I
16 ask to be allowed just for thirty seconds to be able to
17 introduce some evidentiary evidence with the doctor.

18 THE COURT: Certainly.

19 MR. DELGADO: Thank you.

20 Excuse me, Solicitor, I apologize.

21 MS. BYFORD: No, no. No problem. Go ahead.

22 DIRECT EXAMINATION

23 CONTINUED BY MR. DELGADO:

24 Q. Doctor, do you have in your possession evidence from
25 the Alto State Prison that you've relied on in evaluating

1 Mr. Raymondeze Rivera.

2 A. Yes, sir.

3 Q. Would you produce this for us, if you could, please?

4 A. Certainly.

5 Q. I'm sorry I didn't ask you that before.

6 A. Oh, it's quite all right.

7 THE COURT: Have you seen these, Madam
8 Solicitor?

9 MS. BYFORD: No, sir. I'm on my way.

10 THE COURT: Do you want to sidebar?

11 MS. BYFORD: Your Honor, we have no objection.

12 THE COURT: All right. Very well. Thank you.

13 MR. DELGADO: Your Honor, may we enter these as
14 Defendant's Exhibit Number 13, one composite exhibit --
15 12, I apologize.

16 THE COURT: All right. Defense Exhibit 12
17 admitted without objection containing what, three pages?

18 MR. DELGADO: Yes, sir.

19 THE COURT: Very good.

20 (WHEREUPON, Defendant's Exhibit Number 12 was marked
21 and admitted into evidence.)

22 MR. DELGADO: Your Honor, Defendant's Exhibit
23 12, a composite exhibit of three pieces of paper from the
24 Lee Arrendale State Prison, Alto, Georgia. Thank you.

25 I apologize to the Court. Thank you.

1 (Off record discussion)

2 CROSS-EXAMINATION

3 BY MS. BYFORD:

4 Q. All right. Dr. Loring, I just have a few brief
5 questions for you. First, very quickly, you held up on
6 one of the last few things that Mr. Delgado talked to you
7 about. I believe that was Mark Jones who is Olivia
8 Cumberlander's son.

9 A. Yes, ma'am.

10 Q. Is that correct?

11 A. Yes, ma'am.

12 Q. You said he told you about the abuse that he
13 witnessed?

14 A. Yes, ma'am.

15 Q. And I don't know -- I'm sorry, Dr. Loring, I can't
16 remember if you were here yesterday or not. But his
17 mother testified, did she not? Were you here yesterday?

18 A. I was not. No, ma'am.

19 Q. Okay. But to your knowledge, has Mark Jones taken
20 that witness stand?

21 A. I don't know whether he has testified or not.

22 Q. Okay. I just have one more thing. You said in the
23 beginning that when you're gathering your information,
24 you look for collateral witnesses. Is that correct?

25 A. Yes, ma'am.

1 Q. Okay. And you look for -- the information that you
2 are trying to get from these collateral witnesses, you
3 want to see if they saw evidence of trauma symptoms. Is
4 that a fair statement? Or symptoms of trauma?

5 A. That would be one small part of what I'd be looking
6 for.

7 Q. Okay. But you would be looking for that too. Would
8 you want to talk to anybody -- I think you said you
9 wanted to interview anybody up until the time of the
10 crime that had seen the Defendant and could maybe give
11 you some information about that. Is that correct?

12 A. No, ma'am, I didn't say that. I said I really did
13 want to interview as many people as I could. There's
14 sometimes people who I don't interview for a number of
15 reasons.

16 Q. Can you give us an example?

17 A. Yes, ma'am. If I think I'm missing a piece of the
18 explanation, a piece of the background, I may say to the
19 attorney, you know, I'm missing this and I would need to
20 speak with someone who saw some of this kind of thing, if
21 indeed it even happened. If though I have a case where I
22 feel like the different pieces of what I want to know,
23 people -- I've talked with people who have seen the parts
24 of what I need to hear about, there may be a person or
25 two or three who I don't talk with who may have seen some

1 similar kinds of things.

2 Q. So if it were duplicates, you probably wouldn't
3 interview those people. Is that what you're saying? You
4 thought they had just the same information?

5 A. That would be one possibility. Another possibility
6 is sometimes the individuals would prefer not to talk
7 with me. That's another category of folks I wouldn't
8 talk with.

9 Q. Is there anybody that you contacted in this case
10 that didn't wish to talk to you besides the Defendant?

11 A. Oh, I think a number of the people didn't want to
12 talk with me. I had to ---

13 Q. Who didn't want to -- I'm sorry. Let me rephrase.
14 Maybe I wasn't quite clear. Is there anybody who did not
15 -- that you contacted who did not eventually talk to you
16 in this particular case?

17 A. I believe there's no one who I contacted who I
18 didn't either talk with or have some piece of information
19 documented about what they would have to contribute.

20 What I mean by that is, there were three people I didn't
21 talk with who I was able to see three different

22 interviews with them that was done by, I believe, an
23 investigator, perhaps out of your office, who did a
24 really nice job. So I didn't, you know ---

25 Q. Thank you.

1 A. Certainly.

2 Q. And you said that you -- you like to inter -- over
3 the whole spectrum of his life. Is that correct? That's
4 what you try to -- is this what your chart is supposed to
5 reflect? People who saw symptoms of trauma all the way
6 up until he committed the crimes that we're here for
7 today. Is that what you're suppose to gather and assess?

8 A. Sometimes ---

9 Q. In this case, is that what you were supposed to
10 gather and assess?

11 A. Up to a point. Yes, ma'am. I'm sure that there's a
12 person or two who I didn't talk with. There's one period
13 of time that was sort of after the adult -- beginning of
14 the adulthood and far enough before the tragedy happened
15 I wasn't -- frankly, I wasn't as interested in talking
16 with as the people who were closer to seeing him at the
17 time just before the tragedy happened.

18 Q. Just before the tragedy happened? Okay. Excellent.
19 Did you talk to Kiki Hatten?

20 A. No, I didn't.

21 Q. Okay. And she was, in fact, the very last person
22 besides Kwana Burns and Kamille J. [REDACTED] to see this
23 Defendant before he committed this crime, was she not?

24 A. Let's see. The person who I spoke with, a Teshara
25 Hooks ---

1 Q. No, ma'am. I'm talking about Kiki Hatten who's
2 sitting right there. She's Kwana Burns' cousin. She was
3 the last person to see the Defendant before he murdered
4 her cousin. Okay. Did you speak with Kiki Hatten?

5 A. No, ma'am. May I explain something?

6 Q. Absolutely.

7 A. During the period of time when I spoke with people,
8 it was when he was on his way down from Maryland that I
9 spoke with Teshara Hooks, but I certainly did not speak
10 with Ms. Kiki and would always value the opportunity to
11 do that.

12 Q. Okay. So at the time, Ms. Hatten would have been
13 able -- having observed him just hours before he killed
14 the victim, she probably could have given you information
15 about any trauma symptoms he would have been experiencing
16 at that time. Is that a fair statement?

17 A. I don't know since I didn't have a chance to talk
18 with Ms. Kiki. I would certainly love to at some point.
19 But let me share with you that looking at the pattern
20 that he was involved with -- and thank you so much for
21 pointing that out. I hope I do have the opportunity to
22 speak with Ms. Kiki sometime. But talking with the
23 various women with whom he was in a relationship and
24 interactive, while I'm sure that what Ms. Kiki would have
25 to share would be very valuable indeed, I did feel that I

1 saw the very sad pattern that he would be in with any
2 number of women -- which I hope I described accurately,
3 the effort, the romanticism, the trying to do his best
4 and looking rather good, and then the falling down, the
5 frustration, perhaps trauma symptoms, perhaps just anger
6 at them, the snapping at himself. It seemed to be over
7 and over. You know, perhaps it's what I would learn if I
8 had the opportunity, which I'd love to, to talk with Ms.
9 Kiki.

10 Perhaps not because, you know, with all due respect
11 to the Defendant, as his stepsister said, he put on a
12 very good mask. So I hope I would be as good as you're
13 suggesting I would be and that I would be able from Ms.
14 Kiki who saw him to perhaps get some more information.
15 But unfortunately, with the way he tried to act with
16 bravado and with the mask that he was managing when he
17 really was falling apart, it's very possible that the
18 main people who would see him in these states would not
19 be people who saw him beforehand when he might be trying
20 to appear very charming and together, but rather the
21 women themselves -- like the ones I spoke with, several
22 who actually experienced it when he snapped. With all
23 due respect, I'm not sure how much I would have gotten
24 from an observer who wasn't on the snapping end.
25 Q. And the reason that you wouldn't have been able to

1 get this is because the Defendant is so good at
2 pretending or putting on a mask. Is that what you said?
3 A. You know, I wouldn't even call it pretending. I
4 didn't use that word, but let me explain why. I can see
5 how they could be confusing. Pretending means you're
6 really try to do something. I'm going to pretend such
7 and such, I'm going to pretend to look this -- you know,
8 like you're really aiming to put on a front. But I think
9 what Teresa meant when she talked about the mask is even
10 when he was being beaten with a belt that was as big as
11 he was, you know, that he would try to act brave. I
12 don't think he was pretending. I think he saw that as
13 somehow his way of surviving. If I act strong it will
14 stop. And I think he just took that on in his life.

15 Even when he went into the hospital with what looks
16 like a full blown panic attack, you know, the staff said,
17 you know, he looked pretty together. So yes, you're
18 right, it's a mask. And his sister's right. But I can't
19 give her the credit for thinking that he came up with a
20 pretense, rather that he survived in this way he learned
21 which is, you know, act strong, you know, look like
22 you're okay. That's why I wouldn't have as much
23 confidence in getting information from someone who saw
24 him outside of the realm of the people who I talked with
25 who saw him snap.

1 Q. Just real quick, just to clear this up -- I know
2 that you told this to Mr. Delgado, but I just want to
3 clarify. And I believe -- and I shoved it under the
4 table. I apologize. The box of documents that Dr.
5 Andrews reviewed is the same box that you reviewed? Or
6 is the same box that was given to you by the Defense to
7 review as far as records go? And the list that you gave
8 I think was pretty clear or pretty much the same?

9 A. I'm going to respond to that by saying I don't know.
10 And the reason is I'll tell you what I know, and what I'm
11 not sure of, I want to be real clear about that. My
12 understanding was that I was given the same materials as
13 she was, but I never looked and compared each one.

14 Q. And that's fine.

15 A. Okay.

16 Q. But to the best of your knowledge, you were given
17 the same materials?

18 A. That's what I was advised, and I never compared the
19 two.

20 Q. And there are no police reports about the abuse?
21 About the beating with the belt, no police reports on
22 that?

23 A. I didn't see a one.

24 Q. Okay. No DSS reports?

25 A. I saw narry a one.

1 Q. And no school records?

2 A. The school records talked about his symptoms. You
3 know, hyper, couldn't sit still, couldn't concentrate.

4 Q. But nothing about abuse?

5 A. I saw absolutely nothing in the school records about
6 abuse.

7 Q. That's all I have.

8 A. Thank you.

9 THE COURT: Redirect?

10 MR. DELGADO: We have nothing further, Your
11 Honor.

12 THE COURT: All right. Very good. You may
13 step down.

14 THE WITNESS: Thank you, Your Honor. May I be
15 excused, Your Honor?

16 THE COURT: Well, we'll need to find out.

17 MR. DELGADO: Yes. May we excuse Dr. Loring?

18 THE COURT: All right. Any objection?

19 MS. BYFORD: I'm sorry, Your Honor?

20 THE COURT: Any objection to the witness being
21 excused?

22 MS. BYFORD: No, no, sir.

23 THE COURT: All right. You may be excused and
24 thank you very much.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Yes, ma'am.

2 MR. DELGADO: Your Honor, this may be an
3 opportune time to take a small break.

4 THE COURT: All right. A short break. We've
5 got some technical things we need to do.

6 MR. DELGADO: Yes, sir.

7 THE COURT: Mr. Foreman, ladies and gentlemen
8 of the jury, I'm going to ask you to take a very short
9 break at this time so we can set up. I think we've got
10 some videos. Is that right?

11 MR. DELGADO: That is correct.

12 THE COURT: And then we'll come back and
13 complete the testimony. All right. Again, do not
14 undertake a discussion of the case among yourselves. But
15 when you are ready to come back in, knock on this door.

16 (WHEREUPON, the jury exited the courtroom at
17 approximately 4:33 p.m.)

18 THE COURT: Mr. Delgado, she's asking about the
19 chart.

20 MR. DELGADO: Yes, sir. I'd like to be able
21 after a small bit of editing move into evidence
22 Defendant's Exhibits 13 and 14 after we delete the word
23 bipolar here and possibly up here as well.

24 THE COURT: Very well.

25 MR. DELGADO: And Your Honor, then as Number

1 14, Raymondeze Rivera's Trauma Life Cycle Pattern which
2 also has the deletion referencing anything to bipolar.

3 THE COURT: Very good.

4 All right. We'll stand at ease.

5 (WHEREUPON, court stood at recess for a short break
6 during which Defendant's Exhibits Number 13 through
7 17 and Court's Exhibits Number 16 and 17 were marked
8 for identification only.)

9 THE COURT: How long are these tapes?

10 MR. DELGADO: Your Honor, one is approximately
11 fifty-seven minutes, and the other is twenty minutes.
12 Yeah, I know. I mean, I thought we'd get to them before
13 now. That makes it easily after six o'clock.

14 THE COURT: I'm going to let them go. I'm just
15 going to tell them that it turned out it's more involved
16 than I thought. I will answer the question.

17 All right. Ask the jury to come in, please. But we
18 should be able to complete it the morning as far as the
19 testimony?

20 MR. DELGADO: Yes, sir, absolutely and closing
21 argument.

22 THE COURT: Well, we wouldn't have been able to
23 close this afternoon.

24 MR. DELGADO: No, exactly.

25 (WHEREUPON, the jury entered the courtroom at

1 approximately 4:55 p.m.)

2 THE COURT: Mr. Foreman, ladies and gentlemen
3 -- oh, let the record reflect the jury and alternates
4 are in the jury box.

5 During the break, I have been given two messages
6 from the jury. One of them I don't need to say anything
7 about. It's been taken care of. The other one is, can
8 you please -- that was Court's Exhibit Number 16.

9 And the other is, can you please tell us Defendant's
10 attendance in school. It's my understanding there is
11 testimony in the record as to that matter and that, of
12 course, the attorneys will be able to argue whatever is
13 in the record. So I'm sure they're interested in your
14 interest, so you will probably hear something about that.

15 Now, there's one other thing I need to mention that
16 there's some question about questions being asked. Do
17 remember that attorneys' questions -- it doesn't matter
18 if it's the State or the Defendant. The attorneys'
19 questions are not evidence. It only gives meaning to the
20 answer. So what you wanted to hear was the answer. And
21 so I don't -- any insinuation that might be derived from
22 a question is not evidence, but it's the only effective
23 question to ask.

24 Now, having said all of that, the remaining exhibits
25 are two videos, and they're going to last more than an

1 hour. So what I plan to do -- and I understand from the
2 attorneys that we can conclude the testimony in the
3 morning, and then the case will be given to you for your
4 decision. Now, even if we tried to do it tonight, the --
5 your decision would be late. So I would rather we start
6 fresh in the morning, so that's what we're going to do.
7 But we should be able to conclude it tomorrow.

8 Now, is ten o'clock still a good hour?

9 MR. FOREMAN: Yes.

10 THE COURT: All right. Very good. So if you
11 would, please, at ten o'clock come back to the jury room
12 and we'll conclude the trial at that time barring any
13 unforeseen events. With that, I excuse you for the day.
14 And I do want to thank you for your patience with the
15 Court, and I'll see you in the morning at ten o'clock.

16 Again, do not undertake a discussion of the case
17 among yourselves or permit anyone discuss it with you.

18 Everyone else remain seated while the jury retires
19 from the courtroom.

20 (WHEREUPON, the jury exited the courtroom at
21 approximately 4:58 p.m.)

22 THE COURT: All right. We'll stand at ease,
23 but, of course, let's let the jury retire from the
24 courthouse. Oh, I didn't need to put that Court's
25 Exhibit Number 16 on the record. That was the first one.

1 It's on record, but I mean, I just didn't need to recite
2 it.

3 All right. As I say, we'll see -- let's see, is
4 there anything from the State?

5 MS. ADAMS: No, sir, Your Honor.

6 THE COURT: From the Defense?

7 MR. DELGADO: No, Your Honor.

8 THE COURT: Two videos and a ---

9 MR. MCGUIRE: Letter.

10 THE COURT: --- letter. All right, sir. And
11 they've all been admitted without objection, okay.

12 MS. ADAMS: Yes, sir.

13 THE COURT: All right. As I say, we'll just
14 stand at ease until the jury leaves the courthouse.

15 (WHEREUPON, court stood at recess for the day at
16 approximately 5:00 p.m.)

17 **FEBRUARY 18, 2010**

18 (WHEREUPON, court convened with all parties present
19 and the following proceedings were had commencing at
20 approximately 10:08 a.m.)

21 THE COURT: Let's see. Anything from the State
22 before we bring the Defendant in?

23 MS. ADAMS: No, sir, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. MCGUIRE: No, Your Honor.

1 THE COURT: All right. Ask the jury -- I mean
2 the Defendant to join us.

3 (WHEREUPON, the Defendant entered the courtroom.)

4 THE COURT: Mr. McGuire, would you and the
5 Solicitor approach?

6 (WHEREUPON, a bench conference was held off the
7 record.)

8 THE COURT: All right, is there anything from
9 the State before we bring the jury in?

10 MS. ADAMS: No, sir, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. MCGUIRE: No, Your Honor.

13 THE COURT: All right, ask the jury to join us,
14 please.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 10:20 a.m.)

17 THE COURT: All right, let the record reflect
18 the jury and alternates are in the jury box.

19 Ladies and gentlemen of the jury, does anyone need
20 to report any breaches or violations of this Court's
21 order as to exposure to outside information or media
22 coverage or have any other concern to bring to the
23 Court's attention at this time? If so, indicate so by
24 raising your right hand.

25 (No response)

1 THE COURT: Let the record reflect that no one
2 responded.

3 Mr. Foreman and ladies and gentlemen of the jury, we
4 will now continue with the Defense.

5 MR. MCGUIRE: Your Honor, at this time we're
6 going to move into evidence Defense Exhibit Number 8
7 without objection from the prosecutor and publish it at
8 this time.

9 THE COURT: All right. Very good. Defendant's
10 Exhibit Number 8 is admitted into evidence.

11 MR. MCGUIRE: But this is a letter from me to
12 Ms. Adams. Dear Ms. Adams, please accept this letter as
13 official notice of Mr. Raymondeze Rivera's desire to take
14 responsibility for his actions and plead guilty to all
15 the pending charges for a consecutive sentence of life in
16 prison with no possibility of parole.

17 Thank you, Judge.

18 THE COURT: Very well.

19 MR. DELGADO: Your Honor, we now move to
20 publish the stipulation in the Defendant's Exhibit Number
21 9 to the jury.

22 THE COURT: Very well.

23 MR. DELGADO: Ladies and Gentlemen, the
24 Prosecution and the Defense stipulate that the attached
25 video filmed on June 18th, 2009 and depicts Defendant's

1 grandmother, Katherine Cousins. The other voice heard is
2 that of John Delgado.

3 THE COURT: All right, that was -- that's
4 Exhibit 9A?

5 MR. DELGADO: 9A, Your Honor. It's a
6 stipulation.

7 THE COURT: All right. Defense Exhibit's 9 and
8 9A are entered.

9 (WHEREUPON, Defendant's Exhibit Number 9 was
10 attempted to be played for the jury.)

11 MR. DELGADO: If we could just take a short
12 break. We could turn it on this -- on this monitor. I
13 think that it helps the audio portion.

14 THE COURT: Certainly. All right.

15 (WHEREUPON, court stood at ease.)

16 THE COURT: Do you want to start?

17 MR. MCGUIRE: Yes, yes, Your Honor. I think we
18 need to. Just one second. I apologize.

19 THE COURT: No problem. I just want to be sure
20 that ...

21 MR. DELGADO: Your Honor, excuse us for one
22 second.

23 THE COURT: All right. That's what I was --
24 well, very good.

25 Mr. Foreman, ladies and gentlemen of the jury, we

1 have a technical problem here. So I'm going to ask you
2 to step back to the jury room while we correct it.

3 Again, do not undertake discussion of the case among
4 yourselves in any way.

5 (WHEREUPON, the jury exited the courtroom at
6 approximately 11:53.)

7 THE COURT: All right, we'll stand at ease
8 awaiting ---

9 MR. DELGADO: I apologize, Your Honor.

10 THE COURT: No problem. These things happened.
11 That's why ---

12 MR. DELGADO: We're going to do it perfectly
13 this time.

14 MS. ADAMS: We thought we had it.

15 (WHEREUPON, court stood at ease.)

16 THE COURT: All right. Anything from the State
17 before we bring the jury back?

18 MS. ADAMS: No, sir, Your Honor.

19 THE COURT: From the Defense?

20 MR. DELGADO: Nothing, Your Honor.

21 THE COURT: Very well.

22 Ask the jury to join us, please.

23 (WHEREUPON, the jury entered the courtroom at
24 approximately 10:55 a.m.)

25 THE COURT: All right. Let the record reflect

1 that the jury and alternates are in the jury box.

2 Mr. Foreman, ladies and gentlemen of the jury, we'll
3 now proceed with Defense Exhibit 9.

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

5 THE COURT: Very well.

6 Mr. Delgado?

7 MR. DELGADO: Thank you.

8 THE COURT: All right. Can everybody see and
9 hear? If you can't, please raise your hand.

10 (No response)

11 (WHEREUPON, Defendant's Exhibit Number 9 was played
12 in open court before the jury.)

13 THE COURT: Does that complete the video?

14 MR. DELGADO: That one, Your Honor. This ---

15 THE COURT: Well, let's take a short break
16 before we do the next one.

17 Mr. Foreman, ladies and gentlemen of the jury, we do
18 have another video after this one. So I'm going to
19 suggest you take a very short break. And when you're
20 ready to come back, we'll come back and see that one.

21 Again, do not undertake a discussion of the case
22 among yourselves at this time. You may retire.

23 Everyone else remain seated while the jury retires
24 from the courtroom.

25 (WHEREUPON, the jury exited the courtroom at

1 approximately 11:53)

2 THE COURT: All right. Anything from the State
3 before we take a break?

4 MS. ADAMS: No, sir.

5 THE COURT: From Defense?

6 MR. DELGADO: Nothing.

7 THE COURT: A little scheduling thing. Could I
8 see Counsel in chambers, please?

9 We'll stand at ease.

10 (WHEREUPON, court stood at recess for a short
11 break.)

12 THE COURT: All right. Is there anything from
13 the State before we ---

14 MS. ADAMS: No, sir.

15 THE COURT: --- bring the jury in? Anything
16 from the Defense?

17 MR. DELGADO: Nothing, Your Honor.

18 THE COURT: All right. Ask the jury to join
19 us.

20 (WHEREUPON, the jury entered the courtroom at
21 approximately 12:10 p.m.)

22 THE COURT: All right. Let the record reflect
23 the jury and alternates are in the jury box.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 we'll now continue with the Defense.

1 Mr. Delgado?

2 MR. DELGADO: Thank you.

3 Ladies and gentlemen, one last piece of evidence and
4 much shorter than the first one. The Defense and
5 Prosecution stipulate that the attached video was filmed
6 on July 1st, 2009 and depicts the Defendant, his son
7 Justice Rivera, and his son's mother, Renee Karls. The
8 video was filmed in the multipurpose room at the Anderson
9 County Detention Center.

10 (WHEREUPON, a video was shown to the jury.)

11 MR. DELGADO: Your Honor, the Defense rests.

12 THE COURT: Very well.

13 Any reply?

14 MS. ADAMS: No, sir, Your Honor.

15 THE COURT: Mr. Foreman, ladies and gentlemen
16 of the jury, the law does not compel a Defendant in a
17 criminal case to take the witness stand and testify in
18 either the guilt or the sentence phase of the trial. No
19 inference of any kind may be drawn from the Defendant's
20 exercise of his constitutional right not to testify. The
21 law never imposes upon a defendant in a criminal case,
22 the burden or duty of testifying.

23 Now, Mr. Foreman, ladies and gentlemen of the jury,
24 that concludes the testimony and evidence in this case.
25 We now have the argument by Counsel and then charge on

1 the law. And that's going to take some time. I would
2 suggest that you take whatever lunch break you would like
3 at this time. And then when we come back, then we'll
4 conclude the trial at that point. Now, you can consult
5 with your jury, and just tell me what time you think
6 you'd like to come back.

7 MR. FOREMEN: One-thirty, Your Honor.

8 THE COURT: One-thirty, very good. Come back
9 to the jury room where you are. Now, again, you have not
10 heard the entire case which, as I said, will include the
11 argument by Counsel and then the charge on the law
12 applicable. So do not undertake the discussion of the
13 case among yourselves or permit anybody to discuss it
14 with you.

15 If you'll just come back to the jury room at one-
16 thirty, we'll conclude the trial at that time.

17 Everyone else remain seated while the jury retires
18 from the courtroom.

19 (WHEREUPON, the jury exited the courtroom at
20 approximately 12:25 p.m.)

21 THE COURT: All right. Let the record reflect
22 the jury has retired from the courtroom.

23 All right. Mr. Rivera, under our code of law in
24 South Carolina, code section § 16-3-28 states, not
25 withstanding any other provision of law, in a criminal

1 trial where the maximum penalty is death or in a separate
2 sentencing proceedings following such trial, the
3 defendant and his counsel shall have the right to make
4 the last argument. Now, have you discussed with your
5 lawyers, your right to make your last argument to the
6 jury.

7 THE DEFENDANT: (Shook head side to side in the
8 negative.)

9 THE COURT: Well, I'm going to give you that
10 opportunity over lunch to talk to your lawyers about
11 whether or not you wish to exercise your right to make
12 the last argument or if you wish to waive your right to
13 make the last argument. I might note that it will not be
14 under oath. It will be your statement. Do you
15 understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about
18 what you're to consider?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Very good. Thank you, sir.

21 All right, anything further from the State?

22 MS. ADAMS: No, sir, Your Honor.

23 THE COURT: All right. We're coming back at
24 one thirty for final arguments. The State goes first?

25 MS. ADAMS: Yes, sir.

1 THE COURT: Defense?

2 MR. DELGADO: Your Honor, yes. And simply
3 because of the number of exhibits that I imagine the
4 State will use and then the necessity for me to kind of,
5 not change the stage, but to have mine, would the Court
6 entertain literally a two-minute break in between?

7 THE COURT: Certainly.

8 MR. MCGUIRE: Thank you.

9 THE COURT: Certainly.

10 MS. ADAMS: Judge, I'm not using that many, so
11 he can probably -- he can probably do it before ---

12 THE COURT: Well, I think, to be honest with
13 you, it depends how the argument goes. The jury might
14 need a break. I just thought, I don't want to
15 inconvenience them. But it would be a short break just
16 to reorganize.

17 All right. Anything else from the State?

18 MS. ADAMS: No, sir.

19 THE COURT: From the Defense?

20 MR. MCGUIRE: No, Your Honor.

21 THE COURT: All right. Now, I have no charge
22 or requests for charges. So I'm going to just charge the
23 statute and the -- what I consider the standard on
24 charges in a sentencing phase.

25 All right. Very good. I'll see you at one thirty.

1 (WHEREUPON, court stood at recess for the lunch
2 break.)

3 THE COURT: All right. Anything from the State
4 before we proceed?

5 MS. ADAMS: No, sir, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. DELGADO: No, Your Honor.

8 THE COURT: Mr. Rivera, if you remember before
9 the lunch break I asked you or explained to you your
10 rights under Section § 16-3-28, the right to make the
11 last argument along with your attorneys. Have you
12 discussed with your lawyers your right to make a last
13 argument to the jury?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you wish to talk to your lawyers
16 any more about this?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Do you wish to exercise your right
19 to make your last argument to the jury?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Very well. All right.
22 Now, you do understand it's not under oath. And we're
23 going to ask you to stand here where there's a microphone
24 -- you have a very soft voice -- at the front of the
25 courtroom where the Court usually deals with the

1 attorneys. And then you'll face the jury during your
2 argument. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Very good. All right.
5 Anything further from the State?

6 MS. ADAMS: No, sir, Your Honor.

7 THE COURT: From the Defense?

8 MR. DELGADO: No, Your Honor.

9 THE COURT: Okay. Well, what do you think? Do
10 you want to put the lapel mike on?

11 MADAM CLERK: It works very well.

12 THE COURT: All right. Go ahead.

13 All right. Is the Defense ready to proceed?

14 MR. DELGADO: Yes, Your Honor.

15 THE COURT: All right. Ask the jury to join
16 us, please.

17 (WHEREUPON, the jury entered the courtroom at
18 approximately 1:49 p.m.)

19 THE COURT: All right. Let the record reflect
20 the jury and alternates are in the jury box.

21 Mr. Foreman, ladies and gentlemen of the jury, as I
22 mentioned earlier, this will be the final part of the
23 trial of this case, the final arguments by Counsel and
24 then the charge on the law. The State, having the burden
25 of proof, will go first and then the Defense lawyer.

1 I recognize the Solicitor for her closing argument.

2 MS. ADAMS: Thank you, Your Honor. May it
3 please the Court.

4 THE COURT: Madam Solicitor?

5 CLOSING ARGUMENT

6 BY MS. ADAMS:

7 Ladies and gentlemen, this will be the last time
8 that anyone from the State of South Carolina comes before
9 you. And again, I want to thank you for your service and
10 for your attention in this case.

11 A little over two weeks ago you began this process
12 to be qualified as jurors. It is not easy to sit in
13 judgment of a fellow human being. It is not easy to pass
14 judgment on matters affecting life and death. We know
15 that.

16 Each and every one of you got on that witness stand.
17 You told this Court and you told both sides that you were
18 capable of giving life in the appropriate circumstances
19 and you were capable of giving death in the appropriate
20 circumstances. It is now time for you to decide what is
21 appropriate for this case, for these crimes and for this
22 Defendant.

23 Now, your first step is to find that the State has
24 proven to you beyond a reasonable doubt that an
25 aggravating circumstance exists. We're going with one

1 statutory aggravating circumstance, and that is that 'this
2 Defendant has a prior conviction for murder. We brought
3 you the certified conviction, when back in February of
4 2008 another jury found this Defendant guilty of the
5 murder of Asha Wiley. We brought you the facts and
6 circumstances. We have proven to you beyond all doubt
7 that not only he murdered Asha Wiley, but that he does in
8 fact have that prior conviction.

9 Now, the next step. The law says that you can
10 consider three things in deciding what punishment is
11 appropriate for this Defendant. The circumstances of the
12 crime, the impact that Kwana Burns' death has had on her
13 family, her loved ones and her friends and the character
14 of this Defendant.

15 Ladies and gentlemen, the circumstances of these
16 crimes are none other than horrific. You heard the
17 descriptions and you have seen the pictures. A stranger
18 came to Anderson Mall. He preyed on two women and he
19 planned to kill Asha and Kwana as soon as he met them.

20 He was cunning. He was manipulative and he was
21 controlling, and he was who he wanted to be when he
22 needed to be it. He charmed these women and he won their
23 affection. He charmed them. He got into their homes.
24 He was bold. He was arrogant, and he had no fear of
25 being caught. He met Asha's friends. He met Kwana's

1 family. He, ladies and gentlemen, is your worst
2 nightmare. He's your sister's worst nightmare. He's
3 your mother's worst nightmare.

4 MR. DELGADO: Your Honor, may we object,
5 please?

6 THE COURT: Let's stay within the facts. We
7 don't need to have personal addresses to the jurors.

8 MR. DELGADO: Your Honor?

9 THE COURT: Mr. Delgado?

10 MR. DELGADO: May we be heard on this matter at
11 the conclusion of this case?

12 THE COURT: Certainly.

13 MR. DELGADO: With the appropriate motions that
14 would be made at that time.

15 THE COURT: Exactly.

16 MS. ADAMS: He preyed upon these women, ladies
17 and gentleman. He's a man I would marry next week if he
18 asked me. Little did Asha know as she was planning the
19 rest of her life, he was planning the end of hers. Call
20 me. You're on my mind. Little did Kwana know that her
21 first night in her new home would be her last.

22 He gave no warning. There was no time to escape.
23 There was only death for Asha and Kwana. And the manner
24 in which he killed them was so personal. It was so
25 brutal. Face to face, inches away with his bare hands,

1 he watched them die. He felt them die.

2 Think about the time frame between these murders,
3 three days. Three days he relished in the kill of Asha
4 as he planned to come back and kill Kwana. He made a
5 choice. He made a choice to come back from Atlanta to
6 Anderson, South Carolina and kill Kwana Burns. Nothing
7 made him do that.

8 The coldness and cruelty of calling Kwana on the
9 phone as he left Asha's lifeless body in her apartment.
10 His callous disregard for Asha's pleas for survival. He
11 would strangle her to the point of unconsciousness and
12 then bring her back so she could beg for more.

13 Ladies and gentlemen, all the evidence supports
14 every single word that is in this statement. The
15 pictures of the crime scene. The autopsy reports. The
16 DNA. Dr. Woodard's statement. Everything supports
17 everything he says in that statement.

18 And there is no doubt that he knew what he was doing
19 was wrong. He's a cold-blooded killer and he deserves
20 the ultimate punishment that this State allows. He's
21 smart. He's cunning, and he had it all planned out.

22 He methodically and meticulously cleaned and Asha
23 and Kwana's bodies to destroy all evidence. He went
24 through each apartment and each home, and he wiped down
25 everything that he thought he had touched in an attempt

1 to erase all evidence of his existence in Anderson, South
2 Carolina. He erased his number from Asha's cell phone
3 before he killed her because he planned to kill her.

4 Ladies and gentlemen, he didn't want to leave any
5 evidence behind. He even doused Asha Wiley's dead body
6 in an attempt to get rid of all DNA evidence, but it
7 didn't work. And the absolute horror of strangling Kwana
8 Burns as her two-year-old daughter Kamille watched. The
9 unimaginable fear that Kwana Burns had when she died.
10 The struggle, the bruises, ladies and gentlemen. She
11 fought and she fought hard, oh, yeah, because Kamille was
12 there. She wasn't just fighting for her life. Kwana
13 Burns was fighting for Kamille.

14 Kwana Burns died knowing that her daughter witnessed
15 her murder. Kwana Burns died hearing the screams and
16 cries of her two-year-old little girl. Kwana Burns died
17 with the fear of knowing that Kamille was left in her
18 home with her killer. And she died not knowing if
19 Kamille would face the same horrific death that she did.

20 Ladies and gentlemen, evil does exist in this world,
21 and it's sitting at that table. And he so enjoys
22 reliving the deaths. He relishes in it. His statement,
23 it's so specific. He just doesn't want to tell you about
24 it. He wants you to see it. He wants you to know every
25 horrible, graphic detail of what he did to these two

1 innocent women. And then he calls them. He calls them
2 when they're dead, using star-67, because he knows what
3 he's done wrong. He's hiding his number. He calls them
4 after they're dead to hear their voices. To relive the
5 murder over and over in his head because he enjoyed it so
6 much?

7 And he wants to take pain -- he wants to take
8 pleasure in the pain that he's inflicted on these
9 families when he asked John Zamberlin to bring him their
10 obituaries. He wants to read their obituaries?

11 Ladies and gentlemen, the circumstances of these
12 crimes speak for themselves. This is truly a cold and
13 depraved and wicked heart, and it does not get any worse
14 than this. But what I don't want to get lost in all this
15 evil is Kwana.

16 Kwana Burns was a mother. She was a friend. She
17 was a sister. You heard Kiki Hatten testify. Kwana was
18 starting a new life. She loved her children. Her kids
19 were everything to her. Her death has affected so many.
20 She was so loved and so respected in this community. She
21 was trying to make a better life for herself.

22 Kameron was her little man. She loved to see him
23 play basketball. She wanted him to go to the NBA. And
24 Kamille, her little princess, she wanted to see her
25 dance. She will never get to see them grow up. She will

1 never get to see them get married. She will never get to
2 go try on wedding dresses with her daughter. She will
3 not get to do anything because of that man. Kwana Burns
4 did not deserve to die the way she did just two weeks
5 before Christmas.

6 Kameron and Kamille have been separated because of
7 her death. Kwana wouldn't want that. Kameron loves his
8 little sister. They will not get to grow up together
9 because of her murder. This community has lost a kind
10 and compassionate and wonderful woman and for no reason
11 at all.

12 And ladies and gentlemen, that's where we get into
13 the character of this Defendant, because that is the last
14 thing that you are able to consider when you are to
15 decide the appropriate punishment for this Defendant and
16 this crime. And his character should be abundantly clear
17 to you by now from this evidence.

18 He has a long track record in the criminal justice
19 system. You heard Phoebe Kenney's emotional testimony.
20 It started in 1999. He was charming and cunning and
21 manipulative to Phoebe in 1999 when he approached her at
22 that MARTA station. Dressed the part. Messenger bag and
23 all like he was a college student. He wasn't in college,
24 but he was dressed the part to win her over. And he did
25 because he is very charming and cunning and manipulative,

1 because he is who he wants to be when he wants to be it.

2 He manipulated and lied to Phoebe from the moment
3 that he met her. And then he thought about what he
4 wanted to do to Phoebe for two days. After their
5 argument, she goes to her family reunion. And for two
6 days he planned that attack. And he came dressed for the
7 part for that too, in his sweat pants. He planned it for
8 two days while she was gone out of town. He knew what he
9 was going to do when he stepped foot in that house, and
10 he told her.

11 You have not only Phoebe's emotional testimony, but
12 you have Phoebe's statement from 1999. And in that
13 statement he tells her, I came here to kill you. He was
14 planning it because that's who he is. He planned to kill
15 her just like he planned to kill Asha and Kwana. She
16 described on that stand, just like she does in her
17 statement, how after the assault he puts her in the tub.
18 He cleans her. Just like he cleaned Asha and Kwana. He
19 douched her, just like he did Asha. How brave Phoebe
20 Kenney was to come in this courtroom all these years
21 later and tell you her tragic story. Phoebe Kenney is
22 lucky to be alive.

23 And then there's Renee Karls. He was banned from
24 the State of Georgia for assaulting Renee Karls and for
25 cruelty to children. Cruelty to the child, Justice, that

1 you saw in that video. You have those certified
2 convictions. Read them. Read what he did to Renee.
3 Read what he did to Justice in 2003 to get banned from
4 the state of Georgia.

5 And ladies and gentlemen, let's talk about that
6 video for just a minute. That video proves to you that
7 truly Raymondeze Rivera can be who he wants to be when he
8 needs to be it. That's what that video shows you. He is
9 truly a master at manipulation. Do not be fooled.

10 Their own expert told you he was great at
11 pretending. He's great at wearing masks. Their own
12 experts. That video was taken in June of 2009, just a
13 few months before those horrific letters that he sent
14 Kwana's family. That's who Raymondeze Rivera is.

15 And ladies and gentlemen, when you think about that
16 video, I want you to think about this. I want you to
17 think about what Kameron and Kamille would give right now
18 to make a video with their mom to show you how much they
19 love her, to hug her and to kiss her. What would they
20 give to make a video to play for you?

21 Ladies and gentlemen, Raymondeze Rivera was banned
22 from the State of Georgia in 2003 for choking Renee Karls
23 and cruelty to poor Justice. And he continued his life
24 of terror right here in Anderson, South Carolina when he
25 strangled two innocent women to death in a matter of

1 three days.

2 And that's not all. He claims to have killed six
3 other women in three states from the year 2000 to 2006.
4 The evidence in this case speaks loud and clear as to the
5 character of this Defendant. But the Defense brought you
6 witnesses that told you about his background, told you
7 about his upbringing, told you about his abuse. Did you
8 realize that not one witness, not one witness that took
9 that stand ever saw any abuse? Never saw it. Never saw
10 a bruise on the Defendant. Never saw a bruise. And
11 every witness was inconsistent in their tale of abuse.

12 Poor Katherine, Ms. Katherine Cousins, you saw her
13 video. Did you hear what she said? She said so much.
14 She said that both boys were loving kids, lots of
15 hugging. She actually spoke to the minister that
16 supposedly sexually abused the Defendant. Raymondeze
17 told her that the abuse was he tried to grab his face and
18 kiss him on the lips. That's a far cry from the other
19 sexual abuse tale that you heard from the witness stand.
20 And then poor Katherine called that reverend. And what
21 did Reverend Hewlett say? Raymondeze is a liar. He is a
22 liar -- and make sure I get it right -- just a time bomb
23 waiting to go off. That's what the reverend said.

24 Ladies and gentlemen, the source of that sexual
25 abuse is the Defendant and he gave that in preparation

1 for this death penalty trial. He is a master at
2 manipulation. He is who he needs to be when he needs to
3 be it.

4 Remember, you and you alone are the judges of the
5 credibility of each and every witness that took that
6 stand. There is not one police report. There is not one
7 DSS report. There is not one school record of any type
8 of abuse. Dr. Lewter told you how great he was at
9 pretending and Dr. Loring told you she just couldn't
10 believe that there was not one documented proof of abuse
11 if it was that bad. Their experts.

12 And ladies and gentlemen, I want you to know this.
13 Physical abuse, child abuse, it is real and it happens,
14 unfortunately, to kids to every day. And it is very,
15 very serious. But I will not stand before you or any
16 other jury and let the Defense, if it exists, justify or
17 excuse what this man has done. You can walk a mile in
18 any direction from this courthouse and you will truly
19 find a child who has been abused, who is hungry, who was
20 abandoned by his mother, and he will never do what this
21 Defendant has done, ever.

22 Six-year-old Raymondeze Rivera is not on trial in
23 this case. We have shown you from 1999 up until this
24 trial, he has never wavered in his character or in his
25 actions. And he is cold and he is heartless. He chose

1 to kill. He planned it and he must suffer the ultimate
2 consequence that this State allows.

3 There should have been tomorrow for Asha. There
4 should have been tomorrow for Kwana. But there wasn't
5 and, it was not his right to decide that. Nothing in
6 one's past can justify or excuse what he has done,
7 nothing. He knew what he did was wrong.

8 And then poor Katherine -- he writes her a letter in
9 June of 2009. She has that letter when she made that
10 video. And she said, he writes, I am not going to hurt
11 anyone else. And then he writes those letters in
12 December of 2009 to the family. Six weeks before trial,
13 he writes those letters. He's not going to hurt anybody
14 else? This is what he says. I'm celebrating the death
15 of Kwana. What a glorious day. Every time I think about
16 Kwana, I get so excited. All of you are weak
17 individuals. I laugh at you all. Ha, ha, ha. What do
18 you think about that. You and your family can kiss my
19 ass. He's not going to hurt anyone else.

20 And then Kwana's mother. Are you aware of what
21 today is? What it signifies? It's our anniversary.
22 It's the day I put Kwana away for good. How do you like
23 that, my Eleanor. I took something precious of yours.
24 That's one of my highlights.

25 And still, though, that's not enough. Another

1 letter. I just finished celebrating the death of 'ol
2 Kwana. Yes, Kwana is no more. Oh, make a joyful noise.
3 I can't even tell you how happy I am. She is gone
4 forever and ever.

5 But he's not going to hurt anybody else. Ladies and
6 gentlemen, there are no words to describe what these
7 letters are. There's nothing in one's past that can
8 justify those letters. That is evil, that is meanness
9 and that is hatred. And if this gets a life sentence, he
10 will continue to inflict as much pain to as many people
11 as he possibly can, and he has proven that his entire
12 life.

13 He's enjoying this. He's not scared. Read the
14 records that the Defense entered into evidence. It will
15 show you, the inmate seems to be in good spirits, right
16 after he's so scared that he's going to be molested,
17 homosexual threats. Inmate appears to be in good
18 spirits. He manipulated the system back then, and he's
19 trying to manipulate the system again. He is who he
20 needs to be when he needs to be it.

21 Ladies and gentlemen, the circumstances of this
22 crime, the character of this Defendant and the loss this
23 community has suffered, the loss of Kwana, speaks for
24 itself.

25 You all know that when I sit down, someone from the

1 Defense is going to come up here and they're going to beg
2 you for mercy. They planted that seed from day one.
3 Mercy's all they got. What they have shown you, ladies
4 and gentlemen, through the witnesses, through their own
5 family, through Canessa, through Sonja, through Sonja's
6 mother, he got a lot of love and support, a lot. There's
7 no reason for him to have done what he did to these two
8 innocent beautiful women.

9 He got help through the system with anger management
10 classes. He got help through the church. He has had
11 chance after chance after chance to rehabilitate himself
12 and he chooses not to over and over and over again. He
13 doesn't deserve any more chances, ladies and gentlemen.
14 He has chosen to turn his back on everyone. His choice.
15 Nobody else's. Enough is enough.

16 I want you to ask yourselves what Kwana Burns would
17 give right now to have you all sitting in her bedroom
18 that fateful December night to determine her fate,
19 whether she should live or die. She deserved mercy.
20 Raymondeze wants mercy, and he has never once shown it to
21 anyone in his entire life.

22 Ladies and gentleman, Bill McGuire said something in
23 his opening statements that I want you to remember. He
24 said, vengeance is never justice. And it is not. I am
25 not asking you to act out of vengeance or hatred and do

1 to this Defendant what he did to Kwana Burns. That is
2 not what I am asking. I am asking you for the ultimate
3 punishment that this State allows because it is what is
4 just. It is what is right. And it is what the facts and
5 circumstances of this crime and the character of that
6 Defendant demand. That is what I am asking you to do.

7 Life, ladies and gentlemen, is the minimum sentence.
8 Of course he offered to plead to life. He's already
9 serving a life sentence for the murder of Asha Wiley.
10 He's serving a life sentence. Life is the minimum
11 sentence that you can give in this case. Is the minimum
12 sentence appropriate for someone who brutally strangled
13 two innocent women and then writes six weeks before trial
14 to the family, I even made Kamille watch, yeah. I wanted
15 her to see. Do you think she remembers? I really hope
16 so.

17 Ladies and gentlemen, my fear is when I sit down
18 that I'm going to have not told you something that you
19 need to hear. Because when I sit down, my job is done
20 and you must finish yours. But I want to leave you with
21 some thoughts. He said to Detective Zamberlin, it began
22 with Phoebe. It all started with Phoebe. Well, it's
23 going to end right here, right now with you. He wants
24 Kamille to remember. What I want you to remember is that
25 you are the collective conscience of this community. You

1 are the judges.

2 MR. DELGADO: Your Honor, I object to that. In
3 the same fashion.

4 MS. ADAMS: And ladies and gentlemen ----

5 THE COURT: All-right. Noted. Again, there
6 shouldn't be any personal address to the jury. Disregard
7 anything that reflects such an address.

8 MS. ADAMS: Thank you, Your Honor.

9 You, ladies and gentlemen, are the collective
10 conscience of this community. And I want you, when you
11 are deciding the appropriate punishment, I am asking you
12 to render the State's ultimate punishment, the death
13 penalty. Because if not this, then what? And if not
14 him, then who?

15 Thank you.

16 MR. DELGADO: May it please the Court?

17 THE COURT: Mr. Delgado?

18 CLOSING ARGUMENT

19 BY MR. DELGADO:

20 In the Jewish faith the moment that night turns to
21 day is important. For that moment controls the prayers
22 that are said at various times during the day. And so
23 the story is told about an old Rabbi with his group of
24 Rabbinical or students in training. And he asks the
25 question to them, when does night turn to day? And one

1 of the students said, Rabbi, is it when we can see in the
2 distance an animal and determine whether it is a sheep or
3 it is a dog? And the Rabbi said, no. And another
4 student said, Rabbi, is it when we can see in the horizon
5 and we can see a tree and determine whether it is a fig
6 tree or a palm tree? And the Rabbi said, no. And so
7 they asked him, when then, Rabbi, does night turn to day?
8 And he said, when you can look into the face of any man
9 and see a fellow human being, then night has ended and
10 day has begun.

11 You're so tired, as are we. But your work has
12 already accomplished what needs to be done for the Burns
13 and Caldwell and Wiley families, because as he sits there
14 now, Raymondeze Rivera, he is a twice now convicted
15 murderer. And I take exception with my friend, the
16 Solicitor, saying this is the minimum sentence. What it
17 is is the sentence that's provided for by law. They'll
18 talk about it in the phraseology, the ultimate
19 punishment. She asked some of you, she asked some of you
20 if you could put your name on a piece of paper allowing
21 the State to kill him. Remember that? Remember when you
22 were right here. She said that. And now it's the
23 ultimate punishment. See, how -- oh, we don't want to
24 have to talk -- they wish to have him killed through you,
25 that misshapened child of God, that fellow human being.

1 Let's get this out right now, and hear me very well.

2 The issue for you to decide now is whether -- one of two

3 decisions. You don't have any other choice. You have

4 one of two decisions to make. And may I say to some of

5 you, it may very well be -- and I hope I don't overstate

6 this for you -- it may be the most important decision

7 that you ever make in your life. For through your hand

8 to that piece of paper, the State will take a life. You

9 were called upon to decide whether or not the ultimate

10 punishment, as they will say, which is the death penalty

11 -- let's be very clear about that. The death penalty

12 versus life in prison -- listen to the statute. Life in

13 prison without the possibility of parole, until the death

14 of the offender. That's it. Be very clear about this

15 now. I don't want anybody back -- oh, they get out in

16 seven years. Not so. Until the death of the offender,

17 Raymondeze Rivera, without the possibility of parole.

18 Until the death of the offender, Raymondeze Rivera.

19 Let's take it another step. They wish for you to

20 decide the death penalty, the ultimate punishment, versus

21 life in prison without parole until the death of the

22 offender, and fearing every day in prison that he'll be

23 raped and assaulted penalty. Don't you see, if they ask

24 you for choices -- you see his choice? His choice has

25 always been a single cell. And that's what he got her to

1 agree to back in Douglasville, Georgia. And I'll show
2 you that piece of paper in a second. That's always been
3 his choice. Why? Why? His fear of physical safety
4 going back until he was in his dinosaur PJs, hiding
5 behind his toy box as his father stalked him through the
6 house in Douglasville. Ultimate punishment? Life in
7 prison without parole until the death of the offender and
8 every day, every day he'll be in fear. That's your
9 decision.

10 Be very careful too when saying this to you -- you
11 don't have to weigh, well, was this, what we call
12 mitigating circumstance, or was statutory aggravated.
13 That's just lawyer talk. They have proven to you that
14 he's been convicted before. We said that to you a week
15 ago Tuesday. We admitted that. Absolutely, he has. He
16 killed that Ms. Wiley three days before. Absolutely.
17 And you've done your job and you've found him guilty.
18 And now the sentence.

19 The law never requires -- the law never requires the
20 death penalty, never, never. I'll say that to you again.
21 None of you can go into that presuming, well, this is
22 what the law wants us to do. No. The Judge will
23 specifically tell you the law does not require this. You
24 can find for life in prison without the possibility of
25 parole until the death of the offender -- and every day

1 he's in fear -- for no reason or for any reason at all.

2 I'll say that to you again, please. You can find
3 life in prison without possibility of parole until the
4 death of the offender for any reason that any of you have
5 or for no reason at all. Zero. Because you say, I don't
6 know. I don't know. I can't forget. I can't forget
7 that. I can't forget that. The reason for life in
8 prison without the possibility of parole until the death
9 of the offender, so that he, you know, whatever fashion
10 he can be, for that little boy. Kamille and Kameron, can
11 we allow what has happened to them to happen to this
12 child? Can we do that? For any reason. For no reason.
13 Simply as an act of mercy.

14 My dear ladies and gentlemen, it's so easy before we
15 come here, isn't it? Oh, yes, I could find the death
16 penalty. Oh, it's so easy, isn't it, in the abstract?
17 But when we're confronted with it, when we have to deal
18 with it, it's so much more difficult, isn't it? Of
19 course. And here you have it. And here you have it.
20 But then, you see, you also have this. You also have
21 this. And none of us can forget that. None of us can
22 forget that. None of us will. Except as Dr. Cooper-
23 Lewter said, his mother never took a picture with him
24 ever. For those of us that are parents, can we ever
25 conceive of a time when we wouldn't hold our child and

1 love that child and memorialize that moment forever?

2 Forever. Not Sheena Scott.

3 And so you decide whether or not we have presented
4 evidence to you for any reason or no reason at all for
5 which you can find life in prison without the possibility
6 of parole until the death of the offender and punish him.
7 That's his choice and I agree with my friend the
8 Solicitor absolutely. He has had choices, long before he
9 came to South Carolina. He didn't have choices to grow
10 up in Douglasville, Georgia in that home. Oh,
11 absolutely. He didn't have the choice about being bound
12 up. He didn't have a choice about not being able to eat,
13 being locked up in the basement. He didn't have a choice
14 about this.

15 Folks, let's just answer the Solicitor right now.
16 Do you remember where all of this information came from?
17 Do you remember the pornography that Dr. Loring talked
18 about? Do you remember that? Extraordinarily graphic
19 violent depictions of sexual abuse directed to women?
20 And where did they get that? From his brother Juan Antonio.
21 He's the United States Naval Academy Graduate. A man of
22 honor. A man of code who told Dr. Loring, this is what
23 Raymondeze used to be beat with, this weight belt. Not
24 this one. One just like this. And so Dr. Loring and
25 Juan Antonio went and bought one so we could bring it to

1 you. That's right. That's right. Captain Juan Antonio
2 Rivera is lying. That's right. Of course he is.

3 Then of course, you remember the binding? You
4 remember the binding. You know exactly what I'm talking
5 about. You know what pictures I'm talking about. And
6 I'm not going to go into that. You'll have them back
7 there. You saw them knotted up. Have you heard that
8 before from Dr. Loring? And who also suffered that as a
9 five- and six- and eight-year-old boy in the basement of
10 Douglasville, Georgia? He did. And being placed in a
11 bathtub and having his bruises washed down. Have we
12 heard of that before? For any reason. For no reason.

13 Judge Macaulay is going to tell you that under the
14 law that you can find for life in prison without the
15 possibility of parole until the death of the offender. I
16 know I'm saying that so many times. You have to hear
17 that. It's just not life in prison. It's not three hots
18 and a cot. It's not, oh, life is easy in the South
19 Carolina Department of Corrections. Did you all hear
20 what we were talking about, about the Alto State Prison?
21 Did you hear that? The orderly will rape you. Let's
22 don't mince words. This is not a tea party. This is
23 violent, institutionalized in every institution in the
24 South Carolina Department of Corrections, every one. And
25 you know it. Don't, don't, don't play with that. It's

1 happened. It happens all the time and you know it.

2 Have we shown to you what we call a mitigating
3 circumstance? A circumstance that the law allows under
4 these circumstances in a capital case, in a death penalty
5 case. The murder was committed while the Defendant was
6 under the influence of mental or emotional disturbance.

7 Who's the gentleman, I think his first name was
8 Thomas Lowndes, the fellow from the P.C.S., micro P.C.S.
9 or something. The gentleman came from Texas. I think it
10 was their exhibit number 68 or 69. There were six
11 telephone calls made back-to-back, back-to-back, to a
12 woman that he had to know was dead. Emotional or mental
13 disturbance. He didn't want to talk to them. He
14 couldn't believe what had happened. He's saying to
15 himself, has that occurred. And yet he's on his way back
16 here.

17 And then he calls Kwana Burns, what, eighteen times
18 in eight hours. This frenzied, manic activity, eighteen
19 times in eight hours after the killing. So as Dr. Loring
20 says, you go up and down with his mental illness. You go
21 up and down. You have different poles that you vary
22 between. You have depression and then you have racing
23 thoughts. You're down and then you're up. And that's
24 the reason he take the medicine. And that's what Warden
25 Stevenson told you through Dr. Cooper-Lewter. When he

1 takes his medicine, he's okay.

2 And every day at three o'clock we stop -- or close
3 to it. And he's taking medicine right in this room. He
4 signs a little piece of paper and Sam gives it to him.
5 And he takes it right there. Emotional and mental
6 disturbance, Ms. Solicitor, a reason to find for life in
7 prison without the possibility of parole until the death
8 of the offender.

9 And another mitigating circumstance, a reason to
10 find for something other than death. The mentality of
11 the Defendant at the time of the crime. Ladies and
12 gentlemen, there's no question. This is exactly correct.
13 Do you see this? How could he be this -- just one
14 second. How could he be this in July 2009, and how could
15 he be this in December of 2009? How? Emotional or
16 mental disturbance, of course.

17 How could he have said through my friend and
18 colleague, Mr. McGuire, on April the 24th -- this is
19 Defendant's Exhibit Number 8. You'll have these -- all
20 of these back there except for this belt. You'll have
21 that back. Dear Ms. Adams, Please accept this letter as
22 official notice of Mr. Rivera's desire to take
23 responsibility and plead guilty to all the pending
24 charges to a consecutive sentence of life imprisonment
25 with no possibility of parole. Let me tell you what

1 consecutive means in my world and in her world, our world
2 here in this courthouse. Consecutive means after you do
3 one life sentence, which you'll never do, because you die
4 in prison without possibility of parole, you do then a
5 second life sentence. So what Bill says to your
6 Solicitor, he takes responsibility. He'll do for Ms.
7 Wiley and then he'll do for Kwana Burns. Now in April.

8 And then, of course, in December, this occurs, three
9 of them. And we take no pleasure in this. This is
10 horrific, horrific, horrific. Who would not be so
11 impacted and horribly traumatized? Can you imagine? Can
12 you imagine? These poor folks have not suffered enough
13 and they have to have this. And the difference, the
14 polar opposites.

15 I think I read something once and it came to me last
16 night. I was thinking about what I was going to say to
17 you. When I err, may I err on the side of mercy. When I
18 err, may I err on the side of peace. And when I err, may
19 I err on the side of love. You see, there may be some of
20 us -- and I'm going to say this because there's a part of
21 me that feels this too -- this is such an innocent,
22 innocent, innocent, innocent -- and taking these other
23 two and hurt them so irreparable. Forever they are gone,
24 forever they are gone. Pray for them that they're able
25 to receive the counseling that they will have to have.

1 They will have to have it. They need to have, they must
2 have and we have to keep that for them. And yet there
3 may be some of us that say, my heart is so hardened that
4 no prescription can cure that. And I can understand
5 that. We understand that. Who could not? Who would not
6 feel that? And yet your role now is to decide which of
7 two.

8 You see, his issue, Raymondeze Rivera's issue is
9 always control so that he can make certain that no more
10 pain ensues for him. It's just like -- I guess it was
11 Dr. Cooper-Lewter said, his mother said, you know, he's a
12 child in a man's body. Oh, he looks nice, doesn't he.
13 And he very well may address you from across the Court
14 later, after I get through. I want to tell you that now.

15 And some of us may not be able to forgive him. We
16 understand that. That's very human. Very natural. And
17 I understand. But it's the pain he goes through. Oh, I
18 know. So what? So his father was an alcoholic and beat
19 him. So what? I know people like that. They haven't
20 killed anybody. But we have to recognize that's what
21 Al-anon is for, to -- do y'all know that organization?
22 That's for families of alcoholics to make certain that we
23 don't continue that pattern because children shouldn't be
24 exposed to that. You don't want that. We can't
25 countenance that. That is not acceptable. Children are

1 our treasured gift, these two. All of our children. And
2 even that child. So what? So he wasn't given a snack
3 after school. No, that's not what we're talking about,
4 folks. So another juror may answer and say, look, we're
5 not talking about whether or not he had some orange juice
6 after his class. We're talking about withholding
7 nutrition from a child. That's not what a loving,
8 nurturing home is to be for our children. And another
9 juror may say, well, look, just because, you know, his
10 uncle had some sort of schizophrenia and his father or
11 his mother, grandmother was violent and had some
12 characteristics passed down, that's no excuse. He chose
13 to do what he did. And another juror may answer and say,
14 yes, but we know now that these things are handed down.
15 Cholesterol runs in my family. Heart attack may run
16 in others. And we have to know where these things
17 biologically come from. We don't choose those things.
18 Some things are given to us at the moment of conception.
19 You revoke them, but we can't escape that. One juror may
20 say, well, look here. Look, so he was disciplined in
21 school. We need more discipline in school. We've got to
22 have that. And another juror may answer and say, look, I
23 have never heard of a parent coming to school and
24 assaulting their child in the bathroom. Children in
25 schools are protected. That's a place of safety where we

1 can learn in an environment that helps project the very
2 best of us. And to have to be beaten in a bathroom and
3 then go back into your fourth- or fifth-grade class, can
4 you imagine that? That's not an excuse. And another
5 juror may say, no, we're not saying it's an excuse. But
6 it gives us the context to decide.

7 Death penalty? They wish to have him killed. Life
8 in prison without the possibility of parole until Raymond
9 Rivera dies. That is -- mental disturbance, mental
10 illness. Did you hear what Dr. Cooper-Lewter said? He
11 flashed on his mother. Extraordinary. Extraordinary.
12 But they discount that. And some juror may say, oh,
13 that's not so. That's what the expert said. That's what
14 the expert is saying to you in honesty and as a result of
15 his evaluation. But that's just an excuse. It's not an
16 excuse.

17 You have the responsibility now in this most
18 important decision possibly of your life to say, we have
19 to consider everything. His mother, as an adult, choked
20 him and he stood there and cried. Before he comes back
21 from Florida, she choked him again. The one individual
22 who never cared for him, never protected him, who didn't
23 come while he's waiting. He and Juantiano are in the
24 kitchen with their little bags, waiting for mother to
25 come to pick them up. She didn't come and she kept on

1 not coming. And she's not here today. Hasn't been here
2 at all.

3 One or more of you sent a note out saying, well, how
4 far did he go in school? What was his, I think it was
5 attendance. It's unclear from the records. He -- when
6 he came back to live with Ms. Cousins, I think he
7 completed the tenth grade -- it might have been the
8 eleventh -- and dropped out. He went to Job Corp and
9 that didn't work, and he dropped out. I don't think he's
10 gotten his GED or high school.

11 But what you have the responsibility now to say is
12 in deciding whether it's life in prison without
13 possibility of parole until he dies or the death penalty.
14 You can agree to disagree. Each of you -- bless your
15 hearts. Each of you went through this endurance contest
16 where Bill asked you -- you would protect others' rights
17 in your deliberations. You would protect those who may
18 favor one side or may favor the other side because it's
19 an individual moral decision by each of the twelve of
20 you. That's hard, folks.

21 Y'all have been an extraordinarily, extraordinarily
22 attentive jury not just to us on both sides, to each
23 other. I know y'all have taken care of each other. I've
24 seen the looks, making certain everybody can see and
25 everybody can hear. And we see on your faces how you've

1 reacted to the things that you've been exposed to. What
2 you have to do now is decide that ultimate decision.

3 Oh, I missed something. Emotional disturbance, Ms.
4 Solicitor. The murder was committed while the Defendant
5 was under the influence of mental or emotional
6 disturbance and/or the mentality of the Defendant at the
7 time of the crime.

8 Phoebe Kenney is an extraordinary human being, not
9 just the work she's done, but the work she has set out
10 for herself, aiding others that need her in her capacity.
11 But do you remember the story? The poles that she
12 testified to you. He turned -- after he threatened her
13 with the knife, he gave her the knife and started to cry
14 and said, kill me for what I've done for you. Kill me
15 for what has just happened. Kill me. And yet after that
16 was over, he wanted them to take a bath or a shower and
17 let's go out to have dinner. Can you imagine? Can you
18 imagine?

19 And so one juror may say, look, I'm a taxpayer in
20 this State. I don't want any of my tax dollars going ---

21 MS. ADAMS: Objection, Your Honor. That's
22 outside the scope.

23 THE COURT: No personal appeal should be made
24 to any of the -- not to the jury or any members of the
25 jury. Much more, it's appropriate to stay within the

1 record.

2 MR. DELGADO: Thank you.

3 THE COURT: Now, Mr. Foreman, ladies and
4 gentlemen, these instructions apply to both the State and
5 the Defendant,

6 So you may proceed.

7 MR. DELGADO: If there are concerns about the
8 costs of life in ---

9 MS. ADAMS: Objection, Your Honor. It's
10 outside the scope.

11 THE COURT: Mr. Delgado?

12 MR. DELGADO: All right, sir. I'll withdraw
13 it.

14 THE COURT: Please.

15 MR. DELGADO: Thank you. God doesn't ---

16 THE COURT: I'll direct you to disregard that
17 comment. Thank you.

18 MR. DELGADO: God doesn't value us on what we
19 cost. I'll say that to you again. God's mercy doesn't
20 have anything to do with what we cost.

21 Object to that, Solicitor.

22 I have a responsibility. Bill and I, Danny and I
23 have a responsibility to you to give you all the
24 information. We work for you. And we want to be of
25 service to you in this most important decision very

1 possibly you'll ever make. I'll conclude. I'll
2 conclude.

3 Bill and Danny and Laura and I have worked for
4 Raymond Rivera for almost two years now. Through our
5 professional oath and our responsibility to the Court and
6 then to you all, unbeknownst to you two years ago. Our
7 time in his life is just about over. We've done
8 everything we can do. So we hand him to you and ask that
9 you show the love and peace and the mercy that only you
10 can give.

11 And in doing so, let me say that our prayers extend
12 to Kameron and Kamille, these innocent, innocent
13 children, who, hopefully through God's grace, will be
14 able to share their mother's love forever and to know her
15 presence in their lives.

16 And to the Burns and the Caldwells and the Wileys,
17 we hope that in some small way there is some small
18 measure of solace that they can find in time. And we
19 pray for ourselves. And we pray that we can continue to
20 look into the face of any human being and see a fellow
21 human.

22 Godspeed.

23 THE COURT: Mr. Foreman, ladies and gentlemen
24 of the jury, Section § 16-3-28 states that
25 notwithstanding any other provision of law in any

1 criminal trial where the maximum penalty is death, or in
2 a separate sentencing proceeding following such trial,
3 the defendant and his counsel shall have the right to
4 make the last argument.

5 I recognize Mr. Rivera for his argument.

6 CLOSING ARGUMENT

7 BY THE DEFENDANT:

8 I'd like start by saying thank you for giving me
9 this opportunity to speak to you. I know this has been a
10 very trying and hard time for you, as it was for me. But
11 as the Solicitor said, I wanted to show you the cold and
12 calculated killer that I've become. But there's a reason
13 behind my madness.

14 I'd like to start by -- I'm sorry -- I'd like to
15 start by sharing with you just a few things. I won't
16 take up -- I won't take very long of your time. But I
17 just want to go back to my childhood years. My
18 definition -- and I don't know what your definition is.
19 But my definition of a mother and father was somebody
20 that's supposed to love you and nurture you and protect
21 you and care for you. I never had that. Never
22 experienced.

23 As you heard testimony from a few people, my mother
24 and father got married at a young age, and they had me
25 and Juan Antonio. And they stayed in a -- well, we call it

1 the projects -- but apartments. And they separated when
2 I was young. And so my mom was -- my dad had left and
3 went to his mom's. And my mom was on drugs. And so like
4 you heard testimony, sometimes you reach the -- not eat
5 and have dirty diapers.

6 And so it got so bad that she took me and my brother
7 to Grady Memorial in December and called my Dad's mom to
8 come pick us up. She said she couldn't take care of us
9 no more. So my dad's mom took us in.

10 And that's when the abuse starts. It got so bad
11 that my dad had to leave because my grandmother had tried
12 to kill him. So he got married to Elaine. And Elaine
13 had a daughter, Teresa Wellmaker, as you all know. And
14 we moved over to Six Flags Over Georgia, probably about
15 twenty minutes outside of Atlanta.

16 And so we stayed at an apartment. And eventually we
17 -- or excuse me. Eventually my dad and Elaine had bought
18 a house with my dad's mom's help. So we moved to
19 Douglasville. And I remember growing up in that house in
20 Douglasville on Woodbridge Road. It was so cold and
21 there was no love in there at all.

22 And yes, my dad used to drink. He's been an
23 alcoholic six times. Almost lost his life. Got in a car
24 accident. They said that he wasn't going to walk again.
25 And I remember hearing my dad -- and Elaine used to help

1 him try to walk, and he used to cry and scream. And
2 that's when I lost my father. And that's when the
3 beatings started.

4 No one didn't have no recollection from the State or
5 from my Defense about the abuse at school because in my
6 elementary days, when I was growing up, they condoned it.
7 My dad was called many a times to come and whip me buck
8 naked in the bathroom. And even the principal used to
9 beat me. It was acceptable.

10 So I went to the middle school. And whenever I got
11 in a fight, somebody said something about my mom and I
12 got in a fight, and my dad found out -- obviously, you
13 know how when you get into trouble, they call your home.
14 So I remember going home and my dad asking me, what
15 happened? What did you do? And I said, the guy said
16 something about my mom, so I hit him. And so my dad
17 punched me down the stairs. Not four stairs. This was
18 ten stairs.

19 And it didn't stop there. You've got to imagine
20 that Stanley, my father, was bigger than me. And
21 everybody was scared of him. And so I had to bring
22 progress reports home when I was a kid. My dad went
23 through all of my grades. I was an average student in
24 middle school, was likeable by everybody. Always been
25 popular when I grew up in school.

1 And so one day I forgot to bring my progress report
2 home, and I wanted to go to this field trip to Emory
3 University. All my friends was going. And so my dad
4 said, I need to speak to your teacher. I want to know
5 why you didn't turn your progress report in. So I had my
6 teacher to call. So my dad spoke to her and she said,
7 well, he probably forgot. So he said put Raymondeze on
8 the phone. And the one thing he told me when I got on
9 the phone, he said, I'm going to kill you. You can't
10 imagine. This is my father. The person I loved. I
11 always loved hearing that.

12 And so I decided to stick up for myself finally
13 because I'd had enough. And so I decided to run away.
14 And yes, I planned it. And I told my friends what I was
15 going to do. And I made them pledge that they wouldn't
16 tell anybody, no teachers. And I had to watch out. And
17 so we went to Emory University.

18 And I remember, I didn't even know how to ride the
19 MARTA back then. I knew what it was. And so I snuck
20 out. Had my friends to watch. And there was a MARTA bus
21 stop right across the street. And I remember, I just had
22 just enough lunch money to catch the MARTA train. Back
23 then I think it was like eighty-five cents.

24 And so I rode the MARTA. And I'm thinking, where
25 you gonna go? Where you gonna stay? I didn't want to go

1 to my grandma's house because I was afraid she was going
2 to send me back. And I was scared.

3 So I decided to ride the train to Lennox. I knew
4 what Lennox was. My mom used to take me and my brother
5 there to watch the movies. And back then Lennox Mall had
6 the arcade system. So I'm playing arcade and everything.
7 And so the guy told me, well, time to leave. He said,
8 where's your parents? I said, I'm just here by myself.
9 He said, well, you have to go.

10 So I went out of Lennox through the food court and I
11 went where the busses come in. And so I hopped on the
12 MARTA train and was going southbound. And then I noticed
13 my mom. Well, I just seen her from behind and I decided
14 to tap her on the shoulder and see if she was my mom.
15 And that was her. She came all the way from Florida. My
16 mom, she moved away because she wanted to be closer to
17 the water.

18 And so I was happy to see my mom and I hugged her
19 and everything. And do you know my mom never asked me
20 what happened. She never inquired to the abuse. She
21 never even said anything. So she asked me, where do you
22 want to go? Do you want to stay with me or go back to
23 your dad? Do you want to go stay with your Grandma
24 Cousins. I said, Mom, I always wanted to stay with you.
25 And so she said, well, we'll go and get your stuff.

1 So I went back. So I went to Florida, Tampa. And
2 that's when I started having people call me Ray. And I
3 started seeing my mom getting abused. She was married
4 then to Edward Scott. And I used to try to protect her.
5 I used to try to stand in front of her. And she would
6 tell me, no, this is not your business. You have nothing
7 to do with this. Leave me and Edward alone. So I told
8 my mom, I said -- I started getting in trouble. I said,
9 mom, I miss my friends. I said, I want to go back to
10 Chapel Hill Middle School and be with my friends. So she
11 packed me up and sent me back to Douglasville, Georgia to
12 stay with my dad.

13 And so at that time, my dad had just completed A.A.,
14 and there was no more beatings. So because of my
15 stepmother, we never got along because I always stood up
16 for myself. One day she told my dad I couldn't stay
17 there no more. She said, you have to send him to a boot
18 camp or he's got to leave. My dad never stood up for me.
19 He loved Elaine and Teresa more than he loved me and
20 Juan Antonio.

21 And so my dad called my Grandmother Cousin and
22 explained to my Grandmother Cousin that he didn't want me
23 anymore. So my aunt came back up, my uncle, and they
24 said Raymondeze, what's wrong? What's going on. I said,
25 I don't know. So they went up to my school principal and

1 talked to her. And they said, well, what's happening?
2 Has he given you any more trouble? She said, no, he's
3 doing fine. Acceptable. And so they finally told me,
4 said, your dad don't want you anymore. So they said
5 where do you want to stay at? And I said, well, I'll go
6 back to my mom's.

7 So I went back to my mom. And at this point in
8 time, my grades was falling. I couldn't somehow fit in.
9 I had to go to school in the projects. It was real
10 different for me. A big change. And then the abuse with
11 Edward and her kept going until one day my mom was
12 picking me up, had threw a -- that's when my sister was
13 born. Edward had throwed a shoe, a baby shoe with the
14 little wooden soles, at my mom when she was feeding my
15 sister. My mom said, well, get your things. We're going
16 to go. I said, where we going? She said, we're going to
17 a friends house. So we stayed there for a few weeks.

18 So the next thing I know my mom said, we're going
19 back, going back home. I said, well, is Edward going to
20 be there? And she said, yeah. I said, well, I can't do
21 it, mom. I can't go back and see you be abused again. I
22 can't stay there and take it. And I said mom, you've got
23 to choose today between me and Edward. My mom said,
24 well, it's Edward. She said, well, you've got to go back
25 to Georgia. So that's when my Grandma Cousins decided to

1 take me in.

2 And so I went to high school. And again, I was
3 popular. But education-wise I was failing. I didn't
4 want to go to class. And then I started dealing with
5 depression. I just stopped going to school. I didn't
6 want to go nowhere. I stayed in my room. The only time
7 I came out was to eat and use the bathroom. And that was
8 it.

9 I wanted to kill myself. I gave up. I knew I
10 needed help, but I didn't get it. And so I started
11 smoking weed, hanging out, partying. And so my
12 grandmother, you know, she's a Christian person. She
13 said, well, I can't have this. Not in my house. She
14 said, why don't you go to Job Corp. I said, I done went
15 through Job Corp.

16 And it's funny about Job Corp because the one I went
17 to in Kentucky, to me it was almost like prison. It was
18 built like a prison. It operated like a prison. And so
19 I didn't fit in. I was homesick. So I sabotaged my stay
20 at Job Corp, broke into somebody's room, told them I did
21 it. So they said, well, what do you want to do? I said,
22 I want to go back home.

23 So I ended up going back home, back to my
24 grandmother's. Did well, had a good job but couldn't
25 keep them. Sometimes it was me. Sometimes other things.

1 And then in 1999 that's when I met Phoebe Kenney, as
2 you heard her up here. And so I started that
3 relationship with Phoebe Kenney. I was really feeling
4 it. I started to care about her. Then we got into an
5 argument about something stupid, and so she hit me in the
6 head and I left. So two days later she calls me back at
7 my grandma's house. And she said, I'm on my way back to
8 Atlanta. She said, I want to see you. So I had a card
9 and flowers. She said, why don't you come over. I said,
10 fine. I'll come over.

11 And I ended up being over there, finding a letter
12 she'd written somebody else. And while she was
13 downstairs cooking, I ended up reading the letter. So I
14 got jealous. I got mad. So I confronted Phoebe with
15 this. And she played it off like nothing was wrong. She
16 got mad because I read the letter. So I started to cry
17 and we got into an argument. Yeah, I wanted to kill
18 myself. I got a knife, told Phoebe to kill me. So she
19 started crying. She called her mom. Her mom talked to
20 me and everything. So Phoebe wanted to go out. So I
21 said, no, I don't want to go out. So I left.

22 But it's funny because the State won't show it, nor
23 did my Defense get any evidence, proof that they could
24 have obtained is that because in Phoebe's statement she
25 said that -- she forgot to tell the police that she had

1 been raped. I don't know about you, but if I'd been
2 raped -- if I had been raped, that would have been the
3 first thing I would have said. And then she said, well,
4 he lives down the street. His grandmother lives down the
5 street. And so what the Defense also failed to show you,
6 my attorneys also failed to obtain evidence, is that
7 Phoebe refused a rape kit.

8 The only reason why she said I raped her was because
9 she seen me in -- what do you call it? It was in a
10 dormitory, a rooming house. And I was seeing somebody
11 from Morris Brown (phonic), another college. And it just
12 so happened that Phoebe's friend stayed at the same
13 rooming house. It was a girl in the house. And so
14 Phoebe said -- she told the girl -- she said -- now, this
15 is supposed to be like four days later. I was over there
16 and she showed the girl that I was with, she seen me.
17 And she said, well, who is -- who are you? She said, I'm
18 Raymondeze's friend. She said, well, he raped me.

19 So my friend comes back. She said, do you know a
20 girl named Phoebe Kenney. And I said, yeah. She said,
21 well, she said that you raped her. And I said, where is
22 she? She said, she just left. My friend said, well, I
23 don't want no problems here. Why don't you leave. So I
24 said, fine, I'll call you when I get home. So I called
25 her and explained to her what happened.

1 And so the next day I get a call from Phoebe. And
2 she said, who is this bitch that you was with at the
3 rooming house. So I said, that's my friend. Well, who
4 is she? I didn't know in the background that my grandma
5 was listening too because we were arguing and I was loud.
6 So I'm arguing with Phoebe.

7 So I get a call a week later saying that I have a
8 warrant out and that I needed to turn myself in. So I
9 went downtown to turn myself in. And they said, you've
10 been charged with rape and other charges. I had three
11 charges.

12 So I proceeded down to Fulton County, what we call
13 Rice Street (phonic) in Atlanta. And it's way worse than
14 the county jail here. Way bigger. Many times bigger.
15 And so they sent me to the murder floor. This is the
16 first time that I had a high profile case period, charge
17 period. And so I was sitting there with murderers. And
18 so I seen rape, gang violence. I seen inmates jump on
19 officers, female officers, with shanks this long. You
20 got to understand that I'm just a young teenager. I
21 never had to deal with this. It was violence all around
22 me.

23 And so I stayed there eight months, and I cried
24 almost every day. And that's when I started to change.
25 And that's when I started to hate because I knew this

1 person had lied on me. I couldn't understand it. Why
2 would somebody say I raped her? That's when -- I'll get
3 to that part.

4 And so I got a bond. They dropped my charges, only
5 two of them. And so I got out. And so I didn't know
6 anything about the law at that time, only that I could
7 obtain -- it was my right to have discovery. And so I
8 got that. And so when I was in jail, I went through my
9 discovery and highlighted it. So when I got out, I got a
10 new public defender. And so I went to the public
11 defender and I said, hey, check this out. Check her
12 statement out. I said, did you read her statement? He
13 said, no. I said, in the statement she said she refused
14 -- she said that she forgot to say that she was raped. I
15 said, in the police report it shows that she refused the
16 rape kit.

17 So anyway, I went back to my grandma's house after I
18 got bonded out. And Phoebe starts calling me. And so my
19 grandma says, well, don't answer the phone. Because had
20 caller I.D. Let caller I.D. pick it up. So I called the
21 detective, the head detective. She was a black female.
22 And I said, well, Phoebe is calling me. And she said,
23 what's her number. And I gave her the number. And she
24 said, well, how did you get this number. This is her new
25 number. I said, well, we got it off the caller I.D. She

1 said, well, call her on three-way, but don't say
2 anything. I'm going to talk to her.

3 And so I called her on three-way. She said, well,
4 who am I speaking with. She said, this is Phoebe Kenney.
5 She said, why did you call Raymondeze Rivera at his
6 grandma's house. She said, oh, I have a friend that has
7 the same phone number as his grandma. She said, well,
8 you called him more than two times. She said, don't call
9 him again.

10 So I stayed out and I went back to court every
11 month. So then, I think it's about eleven months later,
12 I went to court. And they said, well, Phoebe doesn't
13 want to come. I said, I want a trial. They said, she's
14 in Virginia and she refused to come to court. They said,
15 well, the D.A. -- she said, the D.A. has made an offer.
16 They said, well, they'll drop the charge if you take -- I
17 forget what they call it. Well, they said they'll drop
18 the charge. And so I said, well, fine. But they didn't
19 tell me that it would always be on my record because I
20 didn't know about the law. My public defender explained
21 it to me.

22 So that's when I met Renee. And that's when the
23 violence started. And so I used to get mad about little
24 things. She wasn't taking care of Justice. She wasn't
25 bringing the baby milk. She wasn't dressing him right.

1 She wasn't paying the babysitter. And so, yes, I went to
2 jail several times for assault and battery.

3 And finally I decided to plead guilty. I wasn't
4 going to deny it. And so my grandma was there in court,
5 I remember, that day. She said, well, go ahead and plead
6 guilty. And so they offered me two years banned from
7 Georgia, banned from Georgia where I was from. And so I
8 took the agreement.

9 That's when I went to Alto, but they call it Lee
10 Arrendale. Which at the time, it was the worst prison in
11 Georgia.

12 So I'm on the yard with life sentences, people that
13 had twenty years. And I only had two years. And, yes, I
14 seen a lot of violence. Again, rape, sadness, the
15 inmates. So I said to myself, I know I got to get out of
16 this. I said, I might catch another charge. And this
17 time I know it will be for something like a murder. So
18 yes, I checked in. I stayed there for a while. And one
19 of the inmates next to me said something about a halfway
20 house. So I went to the halfway house. My grandma
21 helped me get to the halfway house. And I went to the
22 halfway house in Atlanta. And I did pretty good there.
23 I kept -- as the State showed you, I was in anger
24 management. I completed the course.

25 And eventually I left and I moved to Florida, and I

1 met Sonja McDowell. And so we had a long-term
2 relationship. She stayed in Ohio and I used to go back
3 and visit her and her family. And I had showed her the
4 other side of me.

5 And then I ended up meeting a long-time friend
6 Canessa. And soon I found out she was pregnant with my
7 son, Dravan.

8 And so I had to stay with my mom because that was
9 part of my sentence. And so my mom never wanted me
10 there, which is fine. So I decided to go to Sarasota.
11 So I went to Sarasota and went to see Canessa which is
12 Dravan's mother and tried to meet with her. We got into
13 it, so I left. I stayed at the Salvation Army two days.
14 Got a place, got another job, a better job, doing lawn
15 maintenance. I had to lose my truck, then I ended up
16 losing my job.

17 And then my grandma came down for Thanksgiving like
18 you seen on the video. But I was so angry and bitter, I
19 didn't really say anything to her. Because my
20 grandmother, she already knew anyway. She could see
21 anything. So I stayed away from her. And so I asked
22 Canessa, can I see my son for Thanksgiving. And she
23 said, no. So I said, you know what? I'm tired of
24 Florida. I'm tired of everything. So I decided to go to
25 Atlanta. And so I wanted to go see all of my family, my

1 dad, my auntie and my grandma. I gave up and I didn't
2 want to live anymore.

3 So a friend invited me, I told one of my friends,
4 she had moved to Maryland. And I told her what was going
5 on. She said, why don't you come up here. So I went up
6 to Maryland and stayed in Maryland for a couple of days.
7 And we decided to go to New York and visit her mom. Went
8 to New York, went to New York City, seen the World Trade,
9 where it was, and stuff like that. So I went back to
10 Maryland and stayed in Maryland for a couple more days.

11 Then I decided to come to Anderson. That's when I
12 met Kwana Burns. I'm not going into the Kwana Burns and
13 Asha Wiley because you already have that. You already
14 know what I done. And I make no excuses for what I did.
15 I couldn't see -- excuse me. I couldn't stand here like
16 my attorneys and ask you for mercy. I couldn't look you
17 in the face and ask you for mercy. I don't deserve
18 mercy. I never gave mercy to Asha Wiley or Kwana Burns,
19 not one time. I made them suffer. Wrapped them up.
20 Hog-tied them. Is that somebody that deserves mercy?
21 You tell me. Because I think it's not.

22 I have kids. I couldn't begin to tell you what this
23 family is going through. I couldn't imagine all the hurt
24 and pain that I caused. It's not about me. It's not
25 about Raymondeze. No, it's not about me. It's about

1 them. It's about Kwana Burns and Asha Wiley. It's about
2 the victims' family and their friends and loved ones who
3 cared about them. So don't get it twisted.

4 Yes, I would love a life sentence. I would love a
5 life sentence to have an opportunity to be with my son
6 and daughter. But do I deserve it? Have I done anything
7 to deserve that? Do you feel like I deserve something to
8 deserve mercy? And I say no. Because I didn't give
9 Kwana Burns and Asha Wiley an ounce of mercy.

10 I took my pain and my anger out on them. Innocent
11 people who have kids and loved ones. Made Kwana -- made
12 Kwana watch her daughter [sic] while I strangle her.
13 Does that sound like someone who's human to you? Does
14 that sound like somebody who has malice, cold-hearted?
15 Because that's what the charge of the State has given you
16 already.

17 But I already gave myself judgment. You people
18 can't save me. Can't -- nobody can. My fate is already
19 destined. I've already decided when I asked Lieutenant
20 John Zamberlin for the death penalty, that was what I
21 wanted all along. This is why you were here. Because I
22 planned this. Since 2006, this is what I wanted all
23 along. And yes, I fought my defense -- they can tell you
24 -- because I didn't want no help. I knew I didn't
25 deserve any.

1 I wasn't happy with myself. You see, this is the
2 Raymondeze I want you to see, not the Raymondeze that
3 killed Asha Wiley and Kwana Burns because I hate that
4 person.

5 Yes, I wrote letters to the family. And I don't
6 know the family. All I know is what Kwana Burns told me.
7 She had a well-respected mama, somebody that loved her
8 and a grandmother that loved her. And as you met Kiki
9 Hatten, she loved her. I have no ill feelings against
10 them. Not at all. I knew that once I wrote that letter,
11 it would sign my death penalty. That was it for me.
12 That's what I wanted.

13 I knew what I was doing from the beginning. It's
14 not somebody that's mentally ill. No, I'm not mentally
15 ill. I asked to be on medication because I couldn't
16 sleep. I'm just an insane person bent on evil, cold-
17 hearted, calculated killer.

18 Again, like I said, there's nothing I can say to
19 this family, to the people that loved Kwana Burns and
20 Asha Wiley. The Judge will charge you and it's for you
21 to enforce the law. Don't think about me. Think about
22 them because, again, you can't save me. Think about
23 Kwana Burns and Asha Wiley. Think about Kamille and
24 Kameron. That's who I want you to think about. Don't
25 think about my kids. Because their mothers didn't ask to

1 die. I don't deserve to be here. They do. They're a
2 more better person than me.

3 So the reason why I'm here today and the reason why
4 I decided to talk to you is because I wanted to share my
5 life story with you. I just don't want you to look at
6 the killer, but I want you to look at the child abuse.
7 Because maybe you can help somebody, a young person,
8 whether it's male or female, black or white. If you see
9 that, then you know what to do. And God, just like me,
10 he will hold you accountable. Because one day, I have to
11 face Him, and I have to give an account to what I done to
12 these people and ask for forgiveness. And hopefully,
13 hopefully, if I turn my life around in time before I get
14 executed, hopefully, I will go to heaven. Hopefully, if
15 I get my life together, if I change my ways, change my
16 way of thinking, change my heart. That's what I pray.

17 And I pray for these families, too, every day. The
18 real Raymondeze, not the killer. Because, yes, I think
19 about them every day, just like I think about Kwana Burns
20 and Asha Wiley. I have to deal with that every day. I
21 have to remember that every day for what I've done, for
22 the sins that I've committed.

23 And so I ask you to do the right thing for them, for
24 these people that's here. Not for me. Not for them, and
25 not for them. For them. Because again, it's not about

1 Raymondeze. It's about Kwana Burns and Asha Wiley,
2 Kameron and Kamille, Asha's daughter, their family, their
3 mother, their father, their grandmother. I took that.

4 And in the beginning, I was proud of it, but I'm not
5 no more. In the beginning I wanted retribution. I
6 wanted them to suffer because Kwana Burns had something
7 that I didn't have. She had a mother that cared about
8 her, that loved her. I knew Eleanor was coming to see
9 Kwana Burns that morning. I knew this. She was supposed
10 to help her clean the house and help her pack up.

11 I knew this, but I wanted you to know this. And
12 it's hard for me to stand here and tell you these things.
13 But I want you to see for yourself who I've become and
14 the things that I've got to deal with inside. So again,
15 as the State already said, proof is already -- they've
16 already proved their proof. I've committed two murders.
17 That's the aggravation right there. And so that's for
18 you to decide what to do, to give me my final judgment.
19 And I pray that you will do the right thing.

20 And I also pray that you will pray for me and this
21 family and those kids that you see in the pictures.
22 Because it doesn't stop. The hurting doesn't stop. It
23 always continues. They'll hurt for the rest of their
24 lives because of me.

25 I don't want to live no more. I don't want them to

1 suffer. This is what they want. This is what I want,
2 the death penalty. This is what I asked for. And again,
3 it may not be enough for them because they will never be
4 able to get Kwana Burns and Asha Wiley back. I will
5 never be able to heal their pain.

6 And so I hope I was honest with you as I could be,
7 and I pray that you do the right thing.

8 Thank you.

9 THE COURT: Mr. Foreman, ladies and gentlemen
10 of the jury, there was some argument in the closing by
11 the parties making a personal appeal to you as members of
12 the jury. Now, let me let you know that that was not
13 proper under our rules which apply to both the State and
14 the Defendant. Therefore, this type of personal appeal
15 is not for your consideration and would not be
16 appropriate for you to even consider such arguments in
17 your deliberations.

18 With that, I'm going to ask you to take a very short
19 break, and then we'll come back and I'll give you the
20 law. And then the case will be turned over to you for
21 your deliberations. But when you're ready to come back,
22 just knock on the door.

23 Again though, do not undertake the discussion of the
24 case until it is given to you.

25 Everyone else remain seated until the jury retires

1 from the courtroom.

2 (WHEREUPON, the jury exited the courtroom at
3 approximately 3:47 p.m.)

4 THE COURT: All right. Anything from the State
5 before we take a short break?

6 MS. ADAMS: No, sir, Your Honor.

7 THE COURT: From the Defense?

8 MR. DELGADO: Yes, Your Honor, we do. The
9 objections of the Solicitor -- excuse me, in the closing
10 argument relating to, in effect, the Golden Rule argument
11 relating to if this happened to your sister, if this
12 happened to your family member, is language and argument
13 outside the bounds allowable.

14 THE COURT: I understand. I know the Golden
15 Rule. I mean, as it applies to argument. I agree. But
16 also, I think that the Defendant appealed personally to
17 the jury. Both of those, as I instructed the jury in my
18 curative instruction, that those are not matters to be
19 considered. I don't find the prejudice there that would
20 require further than the curative instructions I have
21 given. So I note your motion and objection and I
22 decline.

23 MR. DELGADO: Your Honor, would the ---

24 THE COURT: Are you moving for a mistrial?

25 MR. DELGADO: I do, yes.

1 THE COURT: All right. Denied.

2 MR. DELGADO: Your Honor, may I also then base
3 the objection on the Eighth and Fourteenth Amendments to
4 the United States Constitution and the South Carolina
5 Code § 16-3-25(C) in that the argument was inflammatory,
6 calculated to rouse passion and prejudice and is
7 inherently prejudicial and that it injects an arbitrary
8 factor into the proceedings. Thank you.

9 THE COURT: Very well. I have found that such
10 argument, although maybe not appropriate, was yet -- what
11 is it -- not such prejudicial type that it would appeal
12 solely to the passion and prejudice, caprice and other
13 considerations outside of the record and be offensive to
14 our code of laws as well as the rules of evidence and
15 procedure. Motion denied.

16 All right. Let's do take a short break. Oh, by the
17 way, during the break if you would be good enough, let's
18 marshal all of the exhibits and give them to the court
19 reporter.

20 (WHEREUPON, court stood at recess for a short
21 break.)

22 THE COURT: All right. Once I start the
23 charge, no one will enter or leave.

24 (Off record discussion)

25 MR. DELGADO: Your Honor, the Solicitor and I

1 have agreed that Defendant's Exhibits 13 through 17 ---

2 THE COURT: 23.

3 MR. DELGADO: 13, 14, 15, 16, and 17 will be
4 admitted into evidence.

5 THE COURT: All right. Very good.

6 MR. DELGADO: We never placed those on the
7 record. I just want to make sure they're admitted.

8 THE COURT: All right. Defendant's Exhibits
9 13, 14, 15, 16 and 17 are admitted into evidence without
10 objection.

11 (WHEREUPON, Defendant's Exhibits Number 13, 14, 15,
12 16, and 17 were admitted into evidence.)

13 THE COURT: Also, as far as statutory
14 instructions to the jury, this will be the statutory
15 instruction to be given to the jury. In determining
16 whether to recommend that the Defendant, Raymondeze Lamon
17 Rivera, be sentenced by the Court to life imprisonment or
18 to death, you may consider the following statutory
19 aggravating circumstance. The murder was committed by a
20 person with a prior conviction for murder. You may also
21 consider the following statutory mitigating
22 circumstances. The murder was committed while the
23 Defendant was under the influence of mental or emotional
24 disturbance. Two, the age or mentality of the Defendant
25 at the time of the crime. You may also consider any non-

1 statutory mitigating circumstances.

2 MR. DELGADO: Yes, sir.

3 THE COURT: All right. Any objection from the
4 State?

5 MS. BYFORD: No, sir, Your Honor.

6 THE COURT: All right. From the Defense?

7 MR. DELGADO: No, Your Honor.

8 THE COURT: Very good. The jury will be so
9 instructed.

10 All right. I understand the jury is ready.
11 Anything from the State before we bring the jury in and I
12 charge them?

13 MS. ADAMS: No, sir, Your Honor. We're ready
14 with the evidence.

15 THE COURT: All right. Anything from the
16 Defense?

17 MR. DELGADO: Nothing, Your Honor.

18 THE COURT: All right. Ask the jury to join
19 us, please.

20 (WHEREUPON, the jury entered the courtroom at
21 approximately 4:06 p.m.)

22 THE COURT: All right. Let the record reflect
23 the jury and the alternates are in the jury box.

24 CHARGE

25 BY THE COURT:

1 Mr. Foreman, ladies and gentlemen of the jury, you
2 have heard the testimony and the evidence and arguments
3 of the State and the Defendant. I will now explain to
4 you the law that applies to this case.

5 Under the Constitution and the laws of South
6 Carolina, you are the finders of the facts in this case.
7 I do not have the right to pass upon the facts or even to
8 express any opinion I may have as to them.

9 Now, there has been admitted into the record in this
10 case statements allegedly to have been made by the
11 Defendant to law enforcement officers. Before you may
12 consider these statements as evidence for any purpose,
13 you must determine four questions. Did the Defendant
14 make the statement? Was the Defendant warned of his
15 constitutional rights? Did the Defendant knowingly and
16 intelligently waive his constitutional rights, and were
17 the statements given voluntarily?

18 The fact that the Court has admitted his statement
19 into evidence should not be considered by you as any
20 evidence whatsoever that the Defendant made such a
21 statement or that the required constitutional safeguards
22 were in fact provided and waived by the Defendant or that
23 the Defendant -- excuse me -- or that the statement was
24 voluntarily given because these issues are for you, the
25 jury, to determine.

1 The State must prove beyond a reasonable doubt each
2 of the four requirements that I just stated to you before
3 you may consider the statement as evidence for any
4 purpose whatsoever. As to the first requirement, did the
5 Defendant make the statement, if you conclude that the
6 Defendant did not make the statement, you must then
7 completely and totally disregard the statement. As to
8 the second requirement, was the Defendant warned of his
9 constitutional rights? When an individual is taken into
10 custody or otherwise deprived of his freedom or of action
11 in any significant way by a law enforcement officer, he
12 must be warned of certain constitutional rights prior to
13 and before any custodial interrogation or custodial
14 questioning. These rights are the right to remain
15 silent, that any statement made by the Defendant can and
16 will be used against the Defendant in a court of law, the
17 right to select a lawyer of his choice, but if the
18 Defendant is without the money or resources to employ a
19 lawyer, the Court will appoint and provide a lawyer to
20 represent him without cost or expense if he so desires,
21 the right to consult the lawyer before answering any
22 questions or making any statement, the right to have a
23 lawyer present at all times during all interviews and
24 interrogations. If you determine these constitutional
25 warnings were not given to the Defendant prior to

1 interrogation in the taking of a statement or that the
2 Defendant was not afforded the opportunity to exercise
3 these rights, you must completely disregard the
4 statement. And in that event, you cannot consider the
5 statement as evidence in any manner whatsoever.

6 As to the third requirement, that this Defendant
7 knowingly and intelligently waived his constitutional
8 rights, if you find that the Defendant did not knowingly
9 and intelligently waive his constitutional rights, then
10 any answer given by him or any statement made by him
11 cannot be used against him and you must completely
12 disregard all of the testimony concerning any such
13 answers or alleged statements.

14 As to the fourth requirement, was the statement
15 given voluntarily, a statement is not voluntary and may
16 not be used against a defendant unless it is the product
17 of an essentially free and unconstrained choice by its
18 maker. The true test to be applied is whether a
19 statement is freely, voluntarily and understandably made
20 without proportional inducement.

21 In determining whether or not the alleged statements
22 of the Defendant were voluntary, you may consider all of
23 the facts and circumstances surrounding the making or
24 taking of the statement. With regard to the alleged
25 statements of the Defendant, the State must prove by

1 evidence each and every requirement about which I've
2 instructed you beyond a reasonable doubt before you can
3 consider the alleged statements as evidence in this case.
4 Absent one of these requirements about which I have
5 instructed you, alleged statements must be disregarded
6 completely. And in that event you will accord no
7 evidentiary weight whatsoever to them or any part of
8 them.

9 As I say, you are also the judges and the sole
10 judges of the credibility, the believability of the
11 witnesses who have testified in this case. In passing
12 upon their credibility you may take into consideration
13 many things such as the demeanor or manner of the
14 witnesses testifying, whether the witness had reason to
15 be biased or prejudiced, whether a witness' testimony was
16 contradicted on one hand or supported and corroborated on
17 the other hand.

18 You certainly do not determine the credibility or
19 believability by counting up the number of witnesses for
20 either side. You may believe a small portion of a
21 witness' testimony and disregard the larger or vice
22 versa. You may believe one witness against many or many
23 against one. All of these things you will consider,
24 bearing in mind that you should give the Defendant the
25 benefit of all reasonable doubt.

1 Now, there are two types of evidence which are
2 generally presented during a trial, direct evidence and
3 circumstantial evidence. Direct evidence is the
4 testimony of a person that asserts or claims to have
5 actual knowledge of a fact such as an eyewitness.
6 Circumstantial evidence is proof of a chain of facts and
7 circumstances indicating the fact.

8 The law makes absolutely no distinction between the
9 weight or value to be given to either direct or
10 circumstantial evidence. Nor is a greater weight or
11 greater degree of certainty required of circumstantial
12 evidence than of direct evidence. You should weigh all
13 of the evidence in the case.

14 I instruct you and emphasize that whether the
15 Defendant exercised his absolute constitutional right not
16 to take the witness stand and testify is not a factor to
17 be considered by you in any way in your deliberations
18 regarding the appropriate penalty in this case. That is,
19 in your consideration of whether the State has proven
20 beyond a reasonable doubt the existence of a statutory
21 aggravating circumstance and also in considering any
22 extenuating, aggravating or mitigating circumstances in
23 this case. It must not be considered by you in any
24 manner whatsoever.

25 The Defendant has an absolute constitutional right

1 to remain silent, and this assertion of his right must
2 not be considered by you in your deliberations. I
3 repeat, under your oath, you're to draw no conclusion
4 whatsoever from the fact the Defendant in this case
5 exercised his constitutional right not to testify as a
6 witness. The fact that the Defendant exercised this
7 right should not even be considered in the jury room.
8 The burden of proof to prove the existence of at least
9 one statutory aggravating circumstances beyond a
10 reasonable doubt is always upon the State.

11 Now, the rules of evidence ordinarily do not permit
12 witnesses to testify to opinions or conclusions. An
13 exception to the rule exists with witnesses we call
14 expert witnesses. A witness who by education and
15 experience has become expert in some art, science, or
16 professional calling may state an opinion as to relevant
17 and material matter in which the witness claims to be an
18 expert and may also state the reason for the opinion.

19 You should consider any expert opinion received in
20 evidence in this case and, like all other evidence, give
21 it the weight you feel that it deserves. If you decide
22 that the opinion of an expert witness is not based on
23 sufficient education and experience or if you conclude
24 that the reasons given in support of the opinion are not
25 sound or that the opinions are outweighed by other

1 evidence, you may disregard the opinion entirely. An
2 expert testimony -- an expert witness' testimony is to be
3 given no greater weight than any other witness simply
4 because the witness is an expert. Further, you are not
5 required to accept an expert's opinion even though it's
6 not contradicted.

7 Now, by the same constitution and law that makes you
8 the finders of the facts and the evidence, as I've
9 discussed with you, I am, as the Judge, made the sole and
10 only instructor in the law. And you must accept as
11 correct the law I charge and apply to it the evidence as
12 you find it and reach your verdict.

13 And finally, I charge you in this regard that you,
14 or for that matter I, should not be concerned about what
15 we think the law ought to be, but rather what I charge
16 the law to be.

17 Now, I further charge you that the evidence of prior
18 crimes not related to this charge or misconduct by the
19 Defendant should not be considered and may not be used as
20 proof of any other statutory aggravating circumstances
21 about which I will instruct you shortly. However, you
22 may consider such evidence only as to the Defendant's
23 character, his characteristics, but not as proof of the
24 alleged statutory aggravating circumstance not involved
25 in this case.

1 Now, Mr. Foreman, ladies and gentlemen of the jury,
2 it now becomes my duty to decide -- excuse me. It now
3 becomes your duty to decide what sentence you will
4 recommend that this Court impose upon the Defendant,
5 Raymondeze Lamon Rivera, for the conviction of the murder
6 of Kwana Burns. You must decide the sentence on the
7 evidence and the law applicable to the conviction.

8 There are two verdicts that you are to consider in
9 this case. One is the death penalty and the other is
10 life imprisonment. The death penalty in this state is
11 either by electrocution or lethal injection. Life
12 imprisonment means until death of the offender without
13 the possibility of parole. And no person sentenced to
14 life imprisonment is eligible for parole, community
15 supervision or any early release program, nor is the
16 person eligible to receive any work credits, education
17 credits, good conduct credits or any other credits that
18 would reduce the mandatory life sentence of life
19 imprisonment.

20 Please understand that your sentencing
21 recommendation will be followed by this Court. The order
22 in which I explained these two potential sentences is in
23 no way a recommendation by this Court as to which
24 sentence you should choose to recommend. It is simply
25 that one must be stated first.

1 Now, the first we have -- and I say, it's no
2 significance at all about the order that I do this. But
3 the first sentence that you'll be considering will be the
4 recommendation of sentence of the death penalty. By this
5 recommendation of sentence form, which I hold in my hand,
6 you the jury may recommend that this Court sentence the
7 Defendant to death. Please observe that immediately
8 below the recommendation, there are twelve lines. The
9 top one is identified foreperson. The others are jurors.
10 So each of you -- there are the twelve lines. This is
11 where, should you decide to recommend the death penalty,
12 each of you would sign your name.

13 It is the law of this State, Mr. Foreman and ladies
14 and gentlemen of the jury, that a recommendation for an
15 imposition of the death sentence must be a unanimous
16 recommendation and that each and every juror sign his or
17 her name to the recommendation. Also, please remember
18 that your sentencing recommendation will be followed by
19 this Court.

20 I will now read the context of the form. We, the
21 jury in the above case, having found beyond a reasonable
22 doubt the existence of the statutory circumstance -- in
23 which I'll instruct you later as to the statutory
24 aggravating circumstance -- in this case be that the
25 murder was committed by a person with a prior conviction

1 for murder. And you would fill out on the lines and
2 you'll be given the statutory language, if that be your
3 sentence -- now recommend to the Court that the
4 Defendant, Raymondeze Lamon Rivera, be sentenced to
5 death. And as I say, there's twelve lines for each of
6 you to sign on those lines.

7 Now, for the recommendation be made, that is, that
8 the Defendant be sentenced to death, you must find that a
9 statutory aggravating circumstances existed beyond a
10 reasonable doubt. What is a statutory circumstances?
11 That is a fact, an incident, a detail or occurrence which
12 the South Carolina General Assembly has declared by
13 statute would make the -- make worse, that is aggravate
14 the offense of murder when the two occur together. In
15 other words, it's something which increases the enormity
16 or adds to the injurious consequences of the offense.

17 Now, upon this paper, which I hold in my hand, are
18 written the words statutory instructions. You'll have
19 this paper with you in your jury room during
20 deliberations. The body of the form states, and I quote,
21 In determining whether to recommend that the Defendant,
22 Raymondeze Lamon Rivera, be sentenced by the Court to
23 life imprisonment or to death, you may consider the
24 following statutory aggravating circumstances. The
25 murder was committed by a person with a prior conviction

1 for murder. Let me emphasize to you that this is the
2 only circumstances you may consider as aggravating
3 circumstances. You shall find, and it must be a
4 unanimous finding, that this is a finding by each and
5 every one of you. Should you find that the State has
6 proven beyond a reasonable doubt that the existence of
7 the one aggravating circumstances listed on this sheet of
8 paper, then you would be authorized, which is to say
9 permitted, to consider a recommendation to this Court
10 that the Defendant be sentenced to death.

11 What do I mean by this term, proven beyond a
12 reasonable doubt? As I have previously instructed you, a
13 reasonable doubt is the kind of doubt that would cause a
14 reasonable person to hesitate to act. And please pay
15 particular attention to this. You're never required to
16 recommend the death sentence, even if you find a
17 statutory aggravating circumstance which existed at the
18 time the offense occurred. However, if you do find the
19 existence of a statutory aggravating circumstance, please
20 list the circumstances on the list entitled, aggravating
21 circumstances, and all twelve of you will sign that.
22 That is this form. As you will notice it says, we the
23 jury in the above entitled case, find beyond a reasonable
24 doubt the following statutory circumstance. And you
25 would write it out and, again, sign your names on the

1 lines provided. And all twelve, as I say, would sign
2 that form.

3 I instruct you further that should you find the
4 State has not proven that an aggravating circumstance
5 exists, that is to say you find you still have a
6 reasonable doubt as to the existence of such
7 circumstances, then you would not be authorized to
8 recommend the death sentence or life imprisonment. If
9 you unanimously find that no aggravating circumstance has
10 been proven beyond a reasonable doubt, then all twelve
11 members of the jury -- and you agree, then all twelve
12 members would find the unanimous finding of no
13 aggravation, which is this form. It says unanimous
14 finding of no aggravating circumstances. We, the jury in
15 the above entitled case, find that there are no
16 aggravating circumstances. In other words, you agree --
17 all twelve would have to agree that there were none. In
18 other words, if one says there is and the other eleven
19 say not, that's not unanimous. And so you wouldn't sign
20 this one. But it's only if all twelve do agree that
21 there are no aggravating circumstances. If the jury does
22 not unanimously find the existence of statutory
23 aggravating circumstances beyond a reasonable doubt, it
24 shall not make a sentencing recommendation. You would
25 sign the form that I have provided you, would simply

1 state that the jury has been unable to unanimously agree
2 upon the existence of any aggravating circumstance. And
3 only the Foreman would sign that.

4 Now, as I say, if you cannot agree, all twelve on
5 the one aggravating circumstances, then you would sign --
6 Mr. Foreman, you would be the one that would sign this
7 form, recommendation of a sentence of life imprisonment.
8 We, the jury -- excuse me. That's the wrong -- this one,
9 no finding of aggravating circumstances. In other words,
10 you haven't found any aggravating circumstances. Then
11 you would sign just for the jury. We, the jury, in the
12 above referenced case are unable to unanimously agree
13 upon the existence of any aggravating circumstance. And
14 you alone would sign that form.

15 Once the Foreman has signed this form, your
16 deliberations would end. Then you would knock on the
17 door and we'll return and receive your verdict. And at
18 that point, that would be the time we talked about
19 earlier, then I would have to sentence the Defendant.

20 Now, should you find beyond a reasonable doubt that
21 one of the aggravating circumstances listed on the sheet
22 -- and on the instruction sheet, of course, it is the one
23 aggravating circumstance, the murder was committed by a
24 person with a prior conviction of murder -- existed at
25 the time of the murder and should you then decide after

1 considering the elements in favor of a recommendation of
2 life imprisonment, which I will instruct you later, that
3 the recommendation is to be that the Defendant be
4 sentenced to death, then it would be your duty, Mr.
5 Foreman, to write on the recommendation sentence form
6 that I showed you earlier where the death sentence is
7 recommended, listing the aggravating circumstances, as I
8 said. We've talked about that earlier. And then you
9 would sign the recommendation of sentence of death
10 penalty. And Mr. Foreman, each of you would sign that
11 form.

12 Is there any question at this point? Now, these
13 forms will be given you and they do have the instructions
14 on it.

15 Now, as far as life imprisonment, this
16 recommendation of sentence form, which I hold in my hand,
17 you, the jury, can recommend to the Court the Defendant
18 be sentenced to life imprisonment, but please observe
19 that immediately below the body of the recommendation
20 that there are twelve lines. This is where you should
21 decide -- if you should decide to recommend life
22 imprisonment. It says, we, the jury, in the above-
23 entitled case, after finding the statutory aggravating
24 circumstances beyond a reasonable doubt, recommend to the
25 Court the Defendant, Raymondeze Lamon Rivera, be

1 sentenced to life imprisonment. Each of you then would
2 sign that sheet. And, also, you would sign, Mr. Foreman,
3 the sheet that says, we, the jury in the above entitled
4 case, recommend to the Court that the Defendant,
5 Raymondeze Lamon Rivera, be sentenced to life
6 imprisonment, which follows the one that says that the
7 entire jury signs. But, again, you'll have that with
8 you.

9 By this form you, the jury, can recommend to the
10 Court that the Defendant be sentenced to life
11 imprisonment. Now I'll read the text of the form. We,
12 the jury, in the above entitled case, unanimously
13 recommend to the Court that the Defendant, Raymondeze
14 Lamon Rivera, be sentenced to life imprisonment. In
15 other words, that's a unanimous verdict just as the death
16 sentence would have been if that was your verdict. Both
17 recommendations for life imprisonment by the jury has to
18 be unanimous with all twelve agreeing to it and signing
19 the form

20 Now, please note that although you must unanimously
21 agree to recommend the life sentence, only the Foreman is
22 required to sign the recommendation form, which is the
23 second part.

24 I will now instruct you that you may consider, in
25 making your decision as to which sentence to recommend,

1 as I previously instructed you, if you find beyond a
2 reasonable doubt the existence of a statutory aggravating
3 circumstances, then you're permitted but not required to
4 recommend the death sentence.

5 There are several conditions which you should
6 consider in reaching your decision. First, whether the
7 existence of a statutory mitigating circumstance was
8 supported by the evidence. Second, whether the existence
9 of any other non-statutory mitigating circumstance was
10 supported by the evidence.

11 Now, statutory mitigating circumstance is a fact, an
12 incident or a detail or an occurrence, which the South
13 Carolina General Assembly has declared by statute to
14 reduce the severity of the offense of murder. In other
15 words, it is a circumstance recognized by a statute as
16 one which in fairness and mercy may be considered as
17 extenuating or reducing the degree of moral culpability
18 for the commission of the act of murder. A mitigating
19 circumstances is neither justification nor excuse for the
20 murder. It simply lessens the degree of one's guilt.
21 That is, makes him less blameworthy or less culpable.
22 What statutory mitigating circumstances you are to
23 consider in this case -- again, I hold up the statutory
24 instructions and refer you to this sheet entitled
25 statutory instructions. Immediately before the listing

.1 of statutory aggravating circumstances, which I read to
2 you earlier, the text continues, you may also consider
3 statutory mitigating circumstances. And the two that you
4 consider in this case is the murder was committed while
5 the Defendant was under the influence of mental or
6 emotional disturbance, the age or -- and/or -- the age or
7 mentality of the Defendant at the time of the crime. You
8 may also consider in any non-statutory mitigating
9 circumstances to include mercy. You may also consider
10 other non-statutory mitigating circumstances including
11 the Defendant's adaptability to prison life as well as
12 any other non-statutory mitigating or extenuating
13 circumstances that you find should be considered.

14 A non-statutory mitigating circumstance is one which
15 is not provided by statute, but is one which the
16 Defendant claims serves the same purpose. That is,
17 reduces the degree of his guilt in the offense. There
18 must be some evidence which supports a finding by you
19 that a statutory or non-statutory mitigating circumstance
20 exists. It is not necessary for you to find the
21 existence of such circumstances unanimously, nor beyond a
22 reasonable doubt.

23 In reaching your decision as to which sentence to
24 recommend, you will consider the aggravating and
25 mitigating circumstances. While an aggravating

1 circumstance may be found before you can even consider
2 recommending the death penalty or life imprisonment, once
3 such a finding is made beyond a reasonable doubt, you may
4 recommend the death sentence even though you find the
5 existence of a statutory mitigating circumstance or non-
6 statutory mitigating circumstance. In other words, the
7 existence of an alleged statutory mitigating circumstance
8 and alleged non-statutory mitigating circumstance or both
9 is not a bar to the imposition of the death penalty once
10 you determine there was an aggravating statutory
11 circumstance.

12 In any instance, when you choose to recommend life
13 imprisonment, you still find the existence of a statutory
14 aggravating circumstance, your decision must be a
15 unanimous one and each and every juror will be required
16 to sign the recommendation form. You may also consider
17 any other factor in mitigation and you may recommend a
18 sentence of life imprisonment for any or no reason at
19 all, for no other reason for the act of mercy.

20 Now, life imprisonment, as I've mentioned, means
21 until the death of the defendant without the possibility
22 of parole. Should you find beyond a reasonable doubt the
23 existence of an aggravating circumstance, you would then
24 be authorized to discharge your duty as jurors. You're
25 to decide this case according to the testimony that you

1 have heard from the lips of the sworn witnesses, along
2 with the other evidence introduced.

3 I charge you that as jurors you must decide the
4 issues in this proceeding without bias and without
5 prejudice to any party. You cannot allow yourself to be
6 governed by sympathy or prejudice, by passion, by public
7 opinion, or any other arbitrary factor. Both the State
8 and the Defendant have the right to expect that each of
9 you will carefully and impartially consider all of the
10 evidence in the case and that you will follow the law as
11 I've explained it to you.

12 In the event that you have questions as we've done
13 before, I charge you that, while you may ask the Court
14 anything you feel is necessary to assist in your
15 deliberations, you should not tell me the nature or
16 extent of any division you may have among the jurors. I
17 will not at any time ask you to reveal to me the
18 numerical division of your votes, if any, nor should you
19 volunteer this information to me at any time during the
20 course of your deliberations.

21 I will now summarize what I've just told you. You
22 will have in the jury room during your deliberations,
23 one, the recommendation of the sentence of life
24 imprisonment, two, the recommendation of the sentence of
25 death form, three, the statutory instructions form, four,

1 the aggravation circumstances form, five, no finding as
2 to the existence of an aggravating circumstance form,
3 six, unanimous finding of no aggravation circumstance
4 form. The statutory instructions state and include the
5 only aggravating circumstance you shall consider in this
6 case. Should you fail to find beyond a reasonable doubt
7 that the aggravating circumstance existed at the time the
8 murder was committed, then you would go no further and
9 the Foreman will execute the form indicating the
10 inability of the jury to unanimously agree upon the
11 existence of the aggravating circumstances.

12 At this time, ladies and gentlemen, I'll ask you --
13 well, first of all, I'll ask the alternate jurors if
14 you'll remain seated. The rest of the jury, I will ask
15 you to retire to the jury room. However, do not begin
16 your deliberations until I send word to you with your
17 instructions as well as all the exhibits.

18 I need to talk to the lawyers for just a moment. It
19 will be just a minute or so. So if you would, please,
20 retire to the jury room.

21 Do not begin your deliberations until I send in the
22 instructions together with the exhibits.

23 And alternates, if you'll stay with us.

24 (WHEREUPON, the jury exited the courtroom at
25 approximately 4:34 p.m.)

1 THE COURT: All right. Do we have a place for
2 the alternates to -- maybe the Grand Jury room?

3 MADAM CLERK: Yes, Your Honor.

4 THE COURT: If you'd go with the bailiff to the
5 Grand Jury room, I'll be with you in a bit.

6 (WHEREUPON, the alternate jurors exited the
7 courtroom at approximately 4:34 p.m.)

8 THE COURT: All right. Are there any
9 exceptions or requests from the State?

10 MS. BYFORD: No, sir, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. DELGADO: No, Your Honor.

13 THE COURT: Very well. Do look at the exhibits
14 and be sure all are there that are supposed to be there
15 and none that are not supposed to be there go back.

16 All right. We'll stand at ease until ...

17 (Off record discussions)

18 THE COURT: All right. Look at the statutory
19 forms.

20 MS. ADAMS: We've got the exhibits ready,
21 Judge.

22 THE COURT: Let Mr. Delgado ---

23 MS. ADAMS: I didn't look at them either.

24 THE COURT: Well, I mean, I want both of you
25 to, if it's something that's not supposed to go back.

1 That's the order that they're given to me in my
2 instructions, so don't get them out of order.

3 MS. ADAMS: No, I'm turning them over, yes,
4 sir.

5 All right.

6 THE COURT: All right. Is there anything from
7 the State?

8 MS. ADAMS: No, sir, Your Honor.

9 MS. BYFORD: No, sir, Your Honor..

10 THE COURT: All right. Anything from the
11 Defense?

12 MR. DELGADO: No, Your Honor.

13 THE COURT: All right. Send the exhibits and
14 the forms back.

15 (WHEREUPON, the exhibits and verdict documents were
16 delivered to the jury to begin deliberations at
17 approximately 4:38 p.m.)

18 THE COURT: Ladies and gentlemen, I want to
19 thank you for a most professionally tried case. These
20 cases are never easy, but I do want to thank you for the
21 manner in which you tried it, for the -- well, I also
22 should thank you for patience with the Court because
23 there were novel issues raised that I had to address.
24 But there, again, I do thank you for the manner and the
25 professionalism that you did try this case and I feel

1 that it's in the hands of the jury and they will give us
2 a verdict.

3 I might note that if we do -- or when we get a
4 verdict, that if you're going to stay in the courtroom, I
5 will suffer no outburst. And so if you have --
6 regardless of what the verdict might be, if you have any
7 thoughts that you might -- what is it -- not be able to
8 restrain yourself or contain your emotions, please go
9 outside until you can and come back.

10 Very good. We'll stand at ease awaiting the jury's
11 verdict.

12 (WHEREUPON, the court stood at recess awaiting the
13 verdict of the jury during which Court's Exhibit
14 Number 18 was marked for identification only.)

15 THE COURT: All right. We've gotten a series
16 of questions from the jury. Can you answer these
17 questions? Was the death penalty sought in the Asha
18 Wiley case? The answer, no. I'll just leave it at that.
19 If Mr. Rivera is sentenced to life imprisonment -- in
20 prison, will he be granted a single cell? Do not know.
21 Does a death sentence automatically generate an appeal?
22 Section § 16-3-25(A) provides in pertinent part, whenever
23 the death penalty is imposed and upon judgment becoming
24 final in the trial court, the sentence shall be reviewed
25 on the record by the Supreme Court for South Carolina.

1 Any exceptions or objections to my responding to the
2 questions in that fashion?

3 MR. MCGUIRE: None from the Defense.

4 MS. ADAMS: Your Honor, my only concern is on
5 the last question, is this the instruction that they get
6 is they are to assume that whatever sentence it is, it is
7 carried out.

8 THE COURT: That's not the question. The
9 question is, does a death sentence automatically generate
10 an appeal.

11 MS. ADAMS: Right. But sometimes we can't
12 answer questions.

13 THE COURT: Well, no, I find that that is a
14 part of the scheme of the death penalty scheme and it's a
15 statute that -- what is it -- the Legislature has seen
16 fit to provide in such cases. And I think it's relevant
17 to this particular case, particularly since it's being
18 asked. All right. And meaning that it would help the
19 jury resolve an issue. I think that's 401.

20 All right. Anything else?

21 All right. Ask the jury to join us, please.

22 THE COURT: I tell you what. Do you want to
23 bring the alternates out?

24 MS. ADAMS: I don't think that's necessary,
25 Judge.

1 THE COURT: From the Defense?

2 MS. ADAMS: Or should we?

3 MR. DELGADO: Whatever you decide, Your Honor.

4 THE COURT: At this time, since this is the
5 question of this jury and they haven't been -- they
6 haven't participated in the discussion, I'm going to
7 suggest that we not release them from sequestration.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 7:13 p.m.)

10 THE COURT: Mr. Foreman, ladies and gentlemen
11 of the jury, I have been posed three questions. Can you
12 answer these questions? Was the death penalty sought in
13 the Asha Wiley case? No. Two, if Mr. Rivera is
14 sentenced to life imprisonment, will he be granted a
15 single cell? I do not know. Three, does a death
16 sentence automatically generate an appeal? Section § 16-
17 3-25(A) of our Code of Laws in pertinent part provides,
18 whenever the death penalty is imposed and upon the
19 judgment becoming final in the trial court, the sentence
20 will be reviewed on the record by the Supreme Court of
21 South Carolina.

22 Now, do you have any other questions?

23 (No response)

24 THE COURT: Very good. Thank you very much.
25 If you would, please, return and continue your

1 deliberations.

2 (WHEREUPON, the jury exited the courtroom at
3 approximately 7:16 p.m.)

4 THE COURT: All right. Let me make one
5 observation, though, about the alternates. In the event
6 one of the members of the jury would have to be -- would
7 not be available and an alternate would have to be
8 seated, the instruction at that time would be for the
9 jury redo their deliberations.

10 MR. DELGADO: Yes, sir.

11 THE COURT: In other words, they would have to
12 start all over from the beginning. And so that would be
13 -- would almost constitute a new jury. So that's the
14 reason I'm not -- what is it -- if they want to raise
15 that question in the new jury, then they could.

16 All right. Any exceptions to the charge other than
17 those noted for the record? From the State?

18 MS. ADAMS: No, sir, Your Honor.

19 THE COURT: From the Defense?

20 MR. DELGADO: No, Your Honor.

21 THE COURT: Very good. All right. Thank you
22 very much.

23 (WHEREUPON, court stood at recess awaiting the
24 verdict of the jury.)

25 THE COURT: All right. It's my understanding

1 that the jury has reached a verdict. Now, as I've
2 advised the public on more than one occasion, regardless
3 of what the verdict is, there will be no demonstration or
4 outburst. If you feel that you cannot control your
5 emotions, then I'll ask you respectfully to vacate the
6 courtroom. Because if there is any emotional outburst,
7 I'll treat that as an act of contempt for this Court.

8 Very good. Ask the jury to join us, please. And,
9 after the jury is seated, if you'd bring the alternates
10 out too.

11 THE BAILIFF: Alternates go over here too?

12 THE COURT: Sir?

13 THE BAILIFF: You want the alternates over
14 here?

15 THE COURT: Yes, sir. In the same place as
16 they've been, right?

17 (WHEREUPON, the jury entered the courtroom at
18 approximately 8:14 p.m.)

19 THE COURT: We're waiting for the alternates.

20 (WHEREUPON, the alternate jurors entered the
21 courtroom at approximately 8:14 p.m.)

22 THE COURT: Mr. Foreman, I understand that the
23 jury has reached a verdict?

24 MR. FOREMAN: We have, Your Honor.

25 THE COURT: If you would, please, pass it up to

1 the bailiff.

2 In the case of the State of South Carolina versus
3 Raymondeze Lamon Rivera, indictment number 2007-GS-04-
4 649, we, the jury, in the above entitled case, find
5 beyond a reasonable doubt the following statutory
6 aggravating circumstance. The murder was committed by a
7 person with a prior conviction for murder. Signed by the
8 Foreman and all twelve members of the jury.

9 We, the jury, in the above entitled case, having
10 found beyond a reasonable doubt the existence of the
11 following statutory aggravating circumstance, to wit, the
12 murder was committed by a person with a prior conviction
13 for murder, now recommend to the Court that the
14 Defendant, Raymondeze Lamon Rivera, be sentenced to
15 death. Signed by the Foreperson and all twelve members
16 of the jury.

17 Mr. Foreman, ladies and gentlemen of the jury, I'm
18 going to call you by number. So when the number is
19 called, if you would, respond.

20 Indictment number 2007-GS-04-649, the murder of
21 Kwana Burns, is the recommendation of a sentence of death
22 your sentence recommendation, and is it still your
23 sentencing recommendation for the murder of Kwana Burns,
24 number 266?

25 JUROR NUMBER 266: Aye.

1 THE COURT: Number 104?
2 JUROR NUMBER 104: Aye.
3 THE COURT: Number 222?
4 JUROR NUMBER 222: Aye.
5 THE COURT: Number 33?
6 JUROR NUMBER 33: Aye.
7 THE COURT: Number 125?
8 JUROR NUMBER 125: Aye.
9 THE COURT: Number 135?
10 JUROR NUMBER 135: Aye.
11 THE COURT: Number 141?
12 JUROR NUMBER 141: Aye.
13 THE COURT: Number 247?
14 JUROR NUMBER 247: Aye.
15 THE COURT: Number 248?
16 JUROR NUMBER 248: Aye.
17 THE COURT: Number 278?
18 JUROR NUMBER 278: Aye.
19 THE COURT: Number 56?
20 JUROR NUMBER 56: Aye.
21 THE COURT: Number 29?
22 JUROR NUMBER 29: Aye.
23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen of the jury -- and this also includes the
25 alternate jurors -- the Court is never interested in a

1 verdict, only how that verdict is reached. And I can
2 assure you, although it looks like I'm doing everything
3 else in the world except paying attention here, I noticed
4 throughout the trial that all of you -- that means all
5 sixteen of you -- paid very careful and close attention
6 to the attorneys, to the witnesses, to the evidence that
7 was presented, and, of course, the argument of Counsel
8 and the Defendant as well as the charge on the law.

9 You have reached a verdict that's in conformity with
10 your conscience and I can assure you that I feel you have
11 given both the State and the Defendant a fair and
12 impartial trial. Now, one of the things about this type
13 of case is that -- and I'm going to read to you from
14 Section § 16-3-21. In all cases in which an individual
15 is sentenced to death, the trial judge shall, before the
16 dismissal of the jury, verbally instruct the jury
17 concerning the discussion of the verdict. And I will
18 also provide you with a written copy of the instructions.

19 First, the right of the juror to refuse -- or the
20 verbal instruction shall include the right of the juror
21 to refuse to discuss the verdict, the right of the juror
22 to discuss the verdict to the extent that the juror so
23 chooses, the right of the juror to terminate any
24 discussion pertaining to the verdict at any time the
25 juror so chooses, the right of the juror to report any

1 person who continues to pursue a discussion of the
2 verdict or who continues to harass the juror after the
3 juror has refused to discuss the verdict or communicate
4 the desire to terminate discussion of the verdict. And
5 the name -- and you'll also provide the name, address and
6 phone number of the person or persons to contact should
7 the juror feel the need to report any harassment
8 concerning the refusal to discuss the verdict or the
9 juror's decision to terminate discussions.

10 As I say, you will be provided ...

11 Madam Clerk, if you would, please.

12 Each of you will be given a form that provides, Mr.
13 Foreman and ladies and gentlemen of the jury, I hereby
14 charge you that after your service in this trial has
15 concluded, you have the right to either refuse to discuss
16 the verdict you have rendered or to discuss the verdict
17 to the extent you so desire. If you choose to discuss
18 the verdict, you're free to terminate any such discussion
19 at any point. If the person with whom you are speaking
20 continues to pursue a discussion of the verdict after
21 you've communicated a desire to terminate the discussion
22 or if a person continues to harass you after you have
23 refused to discuss the verdict, you should report that
24 person to Ms. Cathy M. Phillips, Anderson County Clerk of
25 Court, telephone number 864-260-4053, at 100 South Main

1 Street, Anderson, South Carolina, 29624. And each of you
2 have been given a written copy of these instructions.

3 Now, is there anything else from the State before I
4 discharge the jury?

5 MS. ADAMS: Your Honor, the family would like
6 to address the Court.

7 THE COURT: Well, I'm talking about the jury,
8 before I discharge the jury.

9 MS. ADAMS: No, sir.

10 THE COURT: Anything from the Defendant?

11 MR. DELGADO: No, Your Honor. Thank you.

12 THE COURT: Very good. Mr. Foreman, ladies and
13 gentlemen of the jury, your service now is completed. I
14 want to thank you again for your service to not only
15 Anderson County, but the Judicial System here in South
16 Carolina. We could not function without citizen
17 participation, and y'all have been absolutely, remarkably
18 patient with the Court and all the inconveniences that
19 occurred. And I want to thank you for it. I wish there
20 was something I could do for you individually.

21 But if the only thing I can say, well -- what has it
22 been, three weeks ago that you were qualified as jurors
23 -- I asked how many had served on a jury in the last
24 three years. At least you will not have to serve for
25 another three years. At least another three years.

1 But I do hope that your service has not been without
2 benefit because our system would not function. And it
3 definitely would not be the remarkable system that it is
4 without citizen participation. I might note that Winston
5 Churchill, who was the Prime Minister of Great Britain
6 during the second world war, once observed that no
7 citizen can perform a greater duty in peacetime than that
8 as a juror. And I thank you for your service to not
9 only, as I say, to Anderson County but to our system of
10 justice.

11 You are excused now. If you'd like to remain, you
12 may do so. But you do not have to do so. You all are
13 excused. Anyone who would like to leave may do so.

14 (WHEREUPON, the jury was excused.)

15 THE COURT: All right. As the trial judge
16 within the action, State of South Carolina versus
17 Raymondeze Lamon Rivera, and prior to the imposition of
18 the death sentence upon the Defendant, Raymondeze Lamon
19 Rivera, I find as an affirmative fact that the evidence
20 of the case warrants the imposition of the death penalty,
21 and its imposition is not a result of prejudice, passion
22 or any other arbitrary factor.

23 All right. Before sentencing, does the State have
24 anything further to offer?

25 MS. ADAMS: Your Honor, just whenever you're

1 ready for the family. I have a letter from Kameron that
2 he wants me to read.

3 THE COURT: This is what I'm asking for.

4 MS. ADAMS: Yes, sir.

5 THE COURT: Is there anything before
6 sentencing? Does anyone have anything to offer from the
7 State?

8 MS. ADAMS: Yes, sir.

9 MR. DONALD: My name is Pastor Johnny Donald,
10 Kwana Burns' pastor and Jeano Caldwell's Pastor. D-O-N-
11 A-L-D. I would like to read this letter I've structured
12 with Eleanor Jeano Caldwell. Mr. Rivera, Kwana was a
13 Christian mother, daughter, granddaughter, sister, niece,
14 cousin, friend, co-worker and confidant. There were many
15 people who loved Kwana and to this day will always miss
16 her zest for life and fun-loving personality. She was
17 giving and compassionate. She was a children's Sunday
18 School teacher and a trusted confidant of several young
19 women.

20 Kwana experienced a lot in her young life. She,
21 too, had to overcome pain, disappointments and
22 frustration. Kwana decided that she wanted more out of
23 life and began to make changes in her life for the
24 betterment of herself and her two children. She wanted
25 the best for them. Now she won't be able to embrace that

1 with them. They were her life and on Earth -- excuse me.
2 They were her life and the reason for her twinkle in her
3 eyes.

4 Her journey on earth was cut short due to you making
5 the decision to strangle her and end her life. This was
6 a needless, pointless, and senseless premeditated
7 homicide that shouldn't have occurred. Kwana was
8 beautiful, intelligent, energetic, vibrant and
9 articulate. She is now in the presence of God and more
10 beautiful and radiant than ever. For her to be absent
11 from her earthly body is to in the presence of her Lord.
12 She gave her life to Jesus Christ and, therefore, death
13 has lost its effect and has been consumed in victory by
14 the resurrection of her Lord.

15 Yes, you have taken the joy of our daughter being
16 with us from us, but because of the joy, confidence and
17 hope we have in Jesus, we can't and won't allow you to
18 strangle us by this tragic act. We will move on by the
19 grace of God with her continuing in our thoughts. You
20 are forgiven, but justice must be served.

21 May God have mercy on you if you ask him for
22 forgiveness. Eleanor Jeano Caldwell.

23 THE COURT: Thank you very much, Reverend.

24 Yes, sir?

25 MR. CALDWELL: My name is Kenneth Caldwell,

1 Kwana Burns' father. And I'd just like to say first of
2 all, thank you to the jury, not for the sentence, but
3 just for doing what you had to do. We talked several
4 times about how hard it had to be for this to be placed
5 in your hands. We sat and talked about how difficult it
6 must be to make a decision so serious. Thank you.
7 Whatever decision you made or would have made and did
8 make, we would have been satisfied with it because we
9 felt like you did what you knew was right to do.

10 I'd like to say thank you to the Tenth Circuit
11 Solicitor's Office for everything they've done over the
12 last three years working with us, praying for us, helping
13 us to go through. Getting us ready for this time. All
14 we wanted was justice. That's all we wanted.

15 Nothing that anybody does can bring Kwana back,
16 nothing. But knowing that the system that we have works
17 and that people that do heinous, terrible crimes can be
18 punished. I think the death sentence is designed to be a
19 deterrent to these kind of things, to tell people that if
20 you do this kind of stuff, you will be punished severely.

21 We've been punished. Our heart's are broken, grief.
22 My wife has suffered. My niece, Jackie, Chris, my
23 grandson, Lord have mercy, his pain. My granddaughter
24 taken. Yet we're here. By the grace of God, we've been
25 able to make three years, and we'll make it the rest of

1 the way.

2 I'd like to say thank you to our Pastor and first
3 lady who's always been there for us prior to Kana's death
4 and after. Polly, Kiki, Sister Angela, the time you've
5 spent with us has been tremendous. Deacon Grady and
6 sister Angela, my brother-in-law, David, sister-in-law,
7 Cathy. Without that unity in the family we would have
8 crashed and burned. But we stuck together and we made
9 it.

10 Thank you to our church for what they've done, all
11 the prayers and all that they've done. Thank you to my
12 co-workers who supported me when I had to be at work.

13 Most of all, I'd like to thank our Lord and Savior
14 Jesus Christ for giving me the strength to be where I am
15 today. I could not have done this alone. A lot has been
16 said about mercy in this courtroom, what I would say
17 about that today is the kind of mercy that's needed for
18 Mr. Rivera can only come from our Lord and Savior Jesus
19 Christ because the kind of crime that's been committed
20 deserves a serious punishment. And he has received that.
21 May God have mercy on his soul.

22 Thank you to the Wiley family who came from wherever
23 they live all over the State to come back to Anderson and
24 support us. Thank you to them. We love them and they've
25 become great friends of ours and we will continue to be

1 in touch with them.

2 I think the Judge said it when he said this is a
3 great judicial system that we have and that the evidence
4 can be shared with everyone and the decision can be made
5 and we all can live with it. We will have to live with
6 this one. You will have to live with this one. We all
7 will have to live with this one. But most of all, Mr.
8 Rivera's going to have to live with this one because he
9 chose to do and commit the crimes that he did.

10 There is no hate in our hearts. There's a young
11 lady that was, I think, a pastor who said that she knew
12 that the family wanted revenge. There's no revenge in
13 us. There's no hate. All we wanted was justice, and we
14 received that. We can go back to our lives, continue to
15 heal, but nothing will ever change the love that we have
16 in our heart for our daughter, Kwana Burns. She will
17 forever be with us and her children as long as the Lord
18 allow breath in our bodies.

19 Grandson, you will be taken care of, and so will
20 your sister until I have nothing else to give. You will
21 never ever be without love. I promised your mother that
22 when she was in the morgue. And as long as I'm alive,
23 I'll solemnly swear to that promise.

24 To my wife, I love you, honey, for sticking by me,
25 standing there for me, lifting me up when I was down. I

1 love you.

2 Thank you, Your Honor.

3 THE COURT: Thank you, sir.

4 MS. ADAMS: Your Honor, I just have a letter
5 that Kameron wrote. It's very short.

6 THE COURT: Please.

7 MS. ADAMS: He wanted me to read it. To whom
8 this may concern, It's hard because sometimes I wake up
9 in the middle of the night and have bad dreams of Rivera
10 coming to get me and I have to take medicine to help me
11 sleep. It's hard for my grandma because she cries every
12 day because it gets harder to deal with my mama's death
13 and the trial.

14 Sometimes in school I can't concentrate because I
15 think about the night I saw Rivera and seeing my mother
16 dead on the floor. That picture stays in my mind and I
17 think and say, he did not have to do this to my mother.
18 She never did anything wrong to anybody, so why did he do
19 this?

20 But he does not know that when he killed my mother
21 he turned my whole world upside down. Some people do not
22 know what it is like at night and you can't say
23 goodnight, mama. It's just so hard and he does not know
24 what he did to my heart. Sincerely, Kameron [REDACTED].

25 THE COURT: Thank you very much, Madam

1 Solicitor.

2 Are there any matters that the Defense would like to
3 bring to the Court's attention?

4 MR. DELGADO: No, Your Honor. None, sir. I'm
5 sorry.

6 THE COURT: Mr. Rivera, anything you'd like to
7 say?

8 THE DEFENDANT: Your Honor, there's nothing I
9 can really do to take the pain from this family of Kwana
10 Burns and Asha Wiley. I know that I destroyed a lot of
11 lives here today. This is been hard for me as I'm pretty
12 sure it's been hard for everybody. All the pain and
13 suffering. I'm sure that everybody has felt it. There's
14 not a single person here that hasn't been touched by what
15 I did and by the victims' family, including me, believe
16 it or not.

17 I pray for this family, for the kids, for the lives
18 that I destroyed. And I also pray for myself because I
19 know I need help. It takes an evil and cruel person to
20 commit these murders. But I don't make any excuses, Your
21 Honor. I know what I did and I accept the recommendation
22 of the jury. And I thank them. Because as Mr. Caldwell
23 said, they done justice, Your Honor. And that's all that
24 we asked for. Like I said to the jury, there's nothing I
25 can say to this family or to the jury for mercy. I never

1 gave Asha Wiley or Kwana Burns that benefit. Even when
2 they begged me, I still denied them that. And I don't
3 deserve it. Not one ounce of it.

4 And I'd like to say to Kameron, I hope you can have
5 closure in your life and I pray that you will never
6 become like me, with bitterness and cold-hearted. But I
7 pray that one day you and your sister will be back
8 together. I never really knew how much I hurt so many
9 people, including my own family and kids. And as you saw
10 my grandmother, my best friend. And Kameron, I want to
11 say forgive me for taking your mama away and for what I
12 did.

13 That's all, Your Honor.

14 THE COURT: All right. I might note that post-
15 trial motions will be due in ten days, which will be
16 March the 1st, 2010.

17 MR. DELGADO: Thank you, Your Honor.

18 THE COURT: Once the trial court has completed
19 its work in this case, of course, then there will be an
20 appeal to the South Carolina State Supreme Court.

21 I might note that as many here today, particularly
22 the jury and alternates as well as all of the
23 participants in this trial, know that it's been a long
24 process. As I mentioned one time after the close of the
25 case and it was given to the jury, this case was very

1 professionally tried, not only by Solicitor Adams and her
2 office, but also Mr. McGuire, Mr. Delgado and Mr. Day. I
3 am completely satisfied that Counsel gave and represented
4 the interest of their particular positions as well as any
5 I have ever seen. And I not only congratulate them for
6 being credits to their profession, but ones who met the
7 obligation of our system of justice under law. And I
8 thank them for it.

9 Mr. Rivera, if you would, please, stand.

10 (WHEREUPON, the Defendant stood.)

11 The Defendant, Raymondeze Lamon Rivera, has been
12 found by the jury to be guilty of the offense of murder.
13 The jury has recommended that the Defendant should be
14 sentenced to death. It is, therefore, the judgment of
15 the law and the sentence of this Court that the
16 Defendant, Raymondeze Lamon Rivera, be taken to the
17 Anderson County Detention Center and thence to the South
18 Carolina State Department of Corrections henceforth to be
19 kept in close and safe confinement until the 19th day of
20 April 2010, upon which day between the hours of six
21 o'clock p.m. and six o'clock a.m., or upon an order of
22 execution issued, death by electrocution or by lethal
23 injection in the manner provided by law. Anderson, South
24 Carolina, February the 18th, 2010.

25 Very well. This court stands adjourned.

1 (WHEREUPON, court stood in recess in this case at
2 approximately 8:42 p.m.)

3 *** END OF VOLUME X ***

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 1st through 18th days of February 2010.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 31, 2010

Renee H. Tollison

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,
vs.
RAYMONDEZE L. RIVERA,
DEFENDANT.

TRANSCRIPT OF RECORD
2007-GS-04-649

DECEMBER 8, 2008
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR., JUDGE.

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

CHRISSY ADAMS, SOLICITOR
Attorney for the State

JOHN D. DELGADO, ESQUIRE
WILLIAM S. MCGUIRE, ESQUIRE
R. DANIEL DAY, ESQUIRE
Attorneys for the Defendant

Donna Brady
Official Court Reporter

1 December 8, 2008

2 (Whereupon, court convened with all parties present,
3 when the following proceedings were had:)

4 THE COURT: This is a report from Dr. Schwartz-Watts;
5 is that correct? Give me a chance to just look it.

6 (Pause.)

7 THE COURT: All right, Solicitor. I believe you have
8 a motion scheduled today on Raymondeze Rivera?

9 THE SOLICITOR: Yes, sir, Your Honor.

10 We're here on indictment 2007-GS-04-649. Mr. Rivera
11 has filed a motion requesting his counsel be relieved so
12 he can proceed pro se. He has actually filed a letter
13 with the Clerk of Court that's dated October 8, 2008, that
14 was filed October 13th of this year. And then his actual
15 motion, Your Honor, was filed October 30th of this year.

16 THE COURT: He filed the motion; is that right?

17 THE SOLICITOR: Yes, sir. He filed the motion, Your
18 Honor, and he has been indicted for murder and, as you are
19 well aware, we are seeking the death penalty.

20 THE COURT: Thank you very much. Mr. Rivera, let me
21 -- do you want to sit there or do you want to stand up
22 here in front? Where would you like to stay?

23 THE DEFENDANT: I'll sit right here.

24 THE COURT: Put that microphone in front of you so
25 everybody can hear you.

1 MR. DAY: Mr. Rivera tells me he wants to use some
2 paperwork in front of him. The way he's shackled down, he
3 can't get to the paperwork, pick it up. I'd ask the Court
4 to unshackle his arms, hands, so he can at least make use
5 of the documents.

6 THE COURT: Stand up. Let me see how you're
7 shackled.

8 (The defendant complies.)

9 THE COURT: Your hands shackled to your waist?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What documents do you have to use?

12 THE DEFENDANT: I have several documents.

13 THE COURT: You can stand up and shuffle the papers.
14 Okay? If you need to, you can stand up and reach the
15 papers with your hand in shackles. Okay?

16 Give me a chance to read your motion and your letter,
17 then I'll be glad to hear from you shortly.

18 (Pause.)

19 THE COURT: All right. Mr. Rivera, I've read your
20 letter dated October 8, 2008, which was filed by the Clerk
21 on October 13th. And I've read your motion where you made
22 a motion to relieve counsel which was filed, it looks like
23 on August 30th of this year. And having read your letter,
24 let me tell you a couple of things, okay, before I listen
25 to your motion.

1 As far as being housed here in Anderson, you were
2 here in Anderson and you stayed in Anderson primarily
3 because we originally scheduled the trial date to be in
4 December. The trial could not be held in December. I
5 postponed the trial until July 7, I believe. And it was
6 postponed by me. And when it was postponed, I had you
7 transferred to prison because you're presently serving a
8 life term for murder. So I had you transferred. Your
9 attorneys didn't have anything to do with it. As a matter
10 of fact, the attorneys did not even know you had been
11 moved until I called them and told them. Okay?

12 So I just wanted to clarify that with you. Okay. I
13 signed the order ordering the sheriff's department
14 transfer you to -- where are you, Broad River?

15 THE DEFENDANT: That's correct.

16 THE COURT: That's my doing. Your attorneys didn't
17 have anything to do with it. Now, I did transfer you to
18 Broad River so you'll be close to your attorneys. Both of
19 them are actually residing in Columbia. Okay. I just
20 wanted to clarify that with you.

21 Now, let me hear from you. Why do you want to let
22 your attorneys be relieved?

23 THE DEFENDANT: Well, Your Honor.

24 THE COURT: I have read your motion about your
25 constitutional rights, et cetera, et cetera, et cetera. I

1 am going to have to make a determination number one,
2 whether you're competent to represent yourself. And what
3 I want to hear, why do you want to relieve your attorneys?

4 THE DEFENDANT: Well, Your Honor, first of all,
5 basically when I first---

6 THE COURT: Let me say one more thing. You got Mr.
7 Gamble down here. Mr. Gamble has never been appointed to
8 represent you. So Mr. Gamble does not represent you.
9 These three gentlemen here have been appointed to
10 represent you, Mr. Delgado, Mr. McGuire, and Mr. Day.

11 THE DEFENDANT: It's my understanding, Mr. Day has
12 already withdrew from my case.

13 THE COURT: Do what now?

14 THE DEFENDANT: Mr. Day has already withdrew from my
15 case.

16 THE COURT: He hasn't withdrawn from anything. He's
17 still your attorney. Let me hear you, why do you---

18 THE DEFENDANT: I have a letter dated October 21 here
19 from Mr. Day that says he has withdrawn from my case.

20 THE COURT: Okay.

21 THE DEFENDANT: First of all, with Mr. Delgado and
22 Mr. McGuire, I'd asked them to file some motions for me:
23 Motion for discovery, motion for change of venue, and
24 motion for Batson. And they both refused to file that for
25 me. They said I have to renew it.

1 I'm also, because things that was going on in the
2 jail, I was being harassed. My visits was being harassed.
3 I brought it to Mr. Delgado's attention. He explained to
4 me that he had you in his corner, that he could go to you
5 and report to you and you would deal with it. I asked him
6 plenty of times---

7 THE COURT: You were being harassed, is that what you
8 said?

9 THE DEFENDANT: Correct.

10 THE COURT: By who?

11 THE DEFENDANT: Some of the jail officers.

12 THE COURT: Was that Anderson or Broad River?

13 THE DEFENDANT: No. Anderson County.

14 THE COURT: You've been moved to Broad Rover since
15 October.

16 THE DEFENDANT: Since September 26th.

17 THE COURT: You been out of Anderson since September?

18 THE DEFENDANT: Right.

19 THE COURT: Okay.

20 THE DEFENDANT: Basically I had some of the officers
21 at the jail, Anderson County, read my motion to discovery
22 and read other stuff, pictures and stuff like that, my
23 motion for discovery. I brought it to Mr. Delgado's
24 attention, nothing happened. Also they was bringing me
25 out of my cell handcuffed while other inmates was out. I

1 brought that to Mr. Delgado's attention. He explained to
2 me, basically he said -- well, it's -- what was it he
3 said? It was some kind of pride. And I said, no, it has
4 nothing to do with pride, it has something to do with
5 safety.

6 Another thing, it's my understanding, like you said,
7 you are correct that you did file the order to send me to
8 Broad River. I'm not disputing that, Your Honor. My
9 thing is in Rule 407, Professional Conduct of South
10 Carolina, it states that promptly notify the client of any
11 decision or circumstance with respect to which client's
12 informed consent as defined in Rule 1.0(f).

13 Also says, Number 2, reasonably consult with the
14 client about the means by which the client's objectivity
15 are to be accomplished.

16 Number 3, says keep the client reasonably informed
17 about the status of the matter. That hasn't happened with
18 Mr. Day or Mr. McGuire.

19 Number 4, promptly comply with the reasonable request
20 for information.

21 Number 5, a lawyer shall explain a matter to the
22 extent necessary to permit the client to make informed
23 decisions regarding the representation.

24 While Mr. McGuire he came to visit me four times,
25 basically on two occasions, he apparently, he was falling

1 asleep, another time he came to visit me, the last time --
2 excuse me, the third time he came to visit me he only
3 wanted to talk about football. I'm preparing for trial as
4 you understand, Your Honor, for a murder trial, which is
5 the death penalty. I explained to him that I'd need to
6 strategize. I am not here to speak about sports or
7 anything else.

8 Another thing is, Your Honor, I tried to make amends
9 with Mr. Delgado. I called him on September -- excuse me,
10 November -- excuse me, not November, December 3rd. And I
11 asked him to come and schedule a visit. Before I could
12 say anything to Mr. Delgado, he cussed me out, used
13 several profane words. He told me that he was going to
14 jump on my MF'ing ass and that I can die. Exactly his
15 words. He hung up in my face.

16 So that right there, Your Honor, that was the straw
17 that broke the camel's back. Your Honor, to me that was a
18 slap in the face because I was wanting to reconcile with
19 him and come to a common ground.

20 THE COURT: What kind of common ground are you
21 looking for?

22 THE DEFENDANT: Basically, what I'm looking for,
23 preparing for my trial, Your Honor. I'm not here to
24 discuss about football, NFL, or any other activities. I'm
25 here to prepare for trial. That's what I explained to

1 them several times, several times explained to them. Also
2 explained to them I wanted them to leave my family alone.
3 See what I'm saying? Mr. Delgado lied to me, said he was
4 going to visit his mother. I found out, when they came to
5 visit me, she went down---

6 THE COURT: Mr. Rivera, I would assume that's all
7 part of preparation for trial.

8 THE DEFENDANT: Like I explained, to them, I want
9 them to leave my family out. They didn't consult with me.
10 Okay. It wasn't -- they didn't have my consent to.

11 THE COURT: They don't have to consult with you every
12 time they make a decision on how to prepare for trial.
13 Talking to your family would be important in preparing for
14 the trial.

15 THE DEFENDANT: I understand that, Your Honor. But
16 preparing for the trial is -- where is my motion for
17 discovery? I asked them to file motion to compel
18 discovery, and they tell me they're going to get it from
19 Mr. Day. And they -- I tell them well, Mr. Day got it
20 from Mr. Gamble.

21 They said, "We'll get it from Mr. Gamble."

22 I said, "Mr. Gamble had the same motion for discovery
23 that Mr. Day had."

24 See, he hasn't filed for my own motion, and I had to
25 file for everything else. Your Honor, then I might as

1 well proceed pro se.

2 THE COURT: So your first objection is they haven't
3 filed for discovery; is that correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. What other objections do you
6 have?

7 THE DEFENDANT: They haven't filed for a motion to
8 compel my discovery. Your Honor, I believe back in July I
9 asked them several times had they---

10 THE COURT: Your objection is they haven't filed a
11 motion to compel, is that your---

12 THE DEFENDANT: Right.

13 THE COURT: Okay.

14 THE DEFENDANT: Another thing, I asked them to file
15 for motion for change of venue. Neither have they done
16 that. I also asked them to file for a motion for Batson.

17 THE COURT: Motion for what?

18 THE DEFENDANT: Batson.

19 THE COURT: A Batson hearing?

20 THE DEFENDANT: Right.

21 THE COURT: What does that have to do with anything?
22 Do you even know what a Batson hearing is?

23 THE DEFENDANT: I have some information not with me,
24 Your Honor.

25 THE COURT: That don't have anything to do with

1 preparing for trial. That's at the time the jury is
2 drawn. Part of the problem with proceeding pro se is the
3 mistake you just made, little bits of knowledge. A little
4 knowledge can be very dangerous. You don't even know what
5 Batson information is. Why don't you tell me what it is.

6 THE DEFENDANT: I don't have that information, Your
7 Honor.

8 THE COURT: Let me hear your interpretation of what a
9 Batson Motion is.

10 THE DEFENDANT: From what I've read, is asking
11 questions to the jury about their ethics, education, and
12 stuff like that.

13 THE COURT: So the objection, they haven't made a
14 Batson motion. All right. What other objections do you
15 have?

16 THE DEFENDANT: Basically, Your Honor, like I said
17 the last time, the call that I made with Mr. Delgado, Your
18 Honor.

19 THE COURT: What?

20 THE DEFENDANT: The call I made with Mr. Delgado,
21 Your Honor. That was it, Your Honor. That was the straw
22 that broke the camel's back right there, when he told me I
23 could die.

24 THE COURT: You already filed your motion a long
25 time -- filed your motion back in October.

1 THE DEFENDANT: Like I said, Your Honor, I tried to
2 make amends with Mr. Delgado. I asked him. I called him
3 from the prison and asked him to come out and schedule an
4 appointment, appointment on Thursday, the 4th of December.
5 Before I could say anything else about the reason I wanted
6 him to come by the prison, he yells and cuts me off, Your
7 Honor. He uses several profane words and then said he
8 don't give a damn, I could die. To me that right there, I
9 can't work with that type of environment.

10 THE COURT: Any other reasons?

11 THE DEFENDANT: No, sir.

12 THE COURT: So, your motion, haven't filed a motion
13 to compel, haven't filed a Batson motion, and Mr. Delgado
14 cussed you on the phone. Is that---

15 THE DEFENDANT: Didn't cuss me on the phone. He
16 threatened me and I take that highly personal.

17 THE COURT: Any other reasons?

18 THE DEFENDANT: No, sir.

19 THE COURT: That's it? Anything else you want to
20 tell the Court?

21 THE DEFENDANT: Basically, Your Honor, read to my
22 understanding the Fourth -- excuse me, the Sixth and
23 Fourteenth Amendment basically says I have the right to
24 dispose of my counsel and that counsel is not master over
25 me, Your Honor. That it is my right to proceed pro se

1 under the laws and constitution and the amendment, Your
2 Honor. And that amendment is guaranteed to me. And I
3 accept that with full knowledge what I'm doing and that
4 I'm proceeding pro se, Your Honor.

5 THE COURT: Anything else?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Mr. McGuire, Mr. Delgado, anything
8 you would like to add?

9 MR. DELGADO: Your Honor, Mr. Rivera is delusional
10 and paranoid. He has a mental illness. Let me say that
11 to you again. He is delusional. He says and hears and
12 believes things that in truth are not accurate. He is
13 paranoid about every aspect of the defense team's
14 relationship with him. He looks for ways to, as a result
15 of his mental illness, looks for ways to be able to
16 manipulate and control and aggravate the situation.

17 First, Your Honor, we have received all the
18 discovery, received that from the solicitor a month or so
19 ago. I spent one entire weekend going through 1300 pages
20 and CD's and photographs. And we have discovery, number
21 one.

22 The reason Mr. Rivera does not know that he --
23 because of his mental illness, he cut off contact with us
24 in September. He refused my visit the day I came to Broad
25 River Correctional Institution. I went out to see him.

1 He refused to see me, again, as a result of his problems.

2 THE COURT: Have you seen him since he was moved to
3 Broad River?

4 MR. DELGADO: Yes, sir.

5 THE DEFENDANT: You have not.

6 MR. DELGADO: Oh, that's not true, Your Honor. I did
7 try to see him on Thursday this week. When, to say the
8 least -- I'm not going to honor what he said. I can just
9 tell you that's not true.

10 When I did see him, changed my schedule around to see
11 him, it was a plethora of profanity directed at me, my
12 family, the legal system, and what I could do as a result
13 of that. This, again, as a result of paranoia and
14 delusions that he suffers from, Your Honor.

15 He presently is taking the right medication but not,
16 he certainly is not on the right dose. Over the past
17 months he's taking an antipsychotic medicine, unbeknownst
18 to us, unrequested by us. The doctors have given to him
19 Seroquel, an antipsychotic medicine that treats both
20 schizophrenia and bipolar disease. He has over time, Your
21 Honor, accused Mr. McGuire and I of moving him to the
22 Anderson Detention Center to be able to get information
23 about these alleged other rapes and/or murders in three
24 other states, as opposed to having him moved to the Broad
25 River Correctional Institution so he could be nearer the

1 electric chair. That was part of his delusion. He has
2 cut off contact with us.

3 Your Honor is correct, we could not -- if we were --
4 we could not make a motion for a change of venue until
5 sometime probably in the future or the day of trial. A
6 Batson motion is a trial motion. That could not be made
7 before trial.

8 Your Honor, Mr. Rivera is, as a result of his
9 psychological profile that he presents, we believe he not
10 only is not competent at present to go to trial, he is
11 certainly not incompetent under Indiana vs. Edwards to
12 represent himself. The right to represent yourself is not
13 an Edwards decision. It's not unlimited, has some very
14 defined requirements. Mr. Rivera, as I think he's just
15 revealed to you, he has a little bit of knowledge of the
16 system that he's read through books, what he just read to
17 you about the slave mentality or the slavery that the
18 quote he just gave you was a result of Mr. McGuire sending
19 a copy of Faretta vs. California, the 2nd full paragraph
20 in his motion or the letter you just read comes verbatim
21 from Faretta. Those are not his words.

22 The U. S. Supreme Court rules -- but because he
23 wanted the letter, we let him have that. That's where
24 he's getting the basis, his basis for terminating our
25 relationship. In addition, Your Honor, justice Scalia in

1 his dissent Edwards vs. Indiana talked about an individual
2 not being able to use the Court process to make a mockery
3 of the system.

4 Your Honor, I say to you as an officer of the Court,
5 may very well Mr. Rivera will, should he be allowed to
6 represent himself, engage in some not just undignified,
7 but some reprehensible conduct should he be allowed to
8 represent himself. For all those reasons, Your Honor, we
9 ask the Court to deny his motion to represent himself, to
10 allow Mr. McGuire and I and our team continue to be able
11 to work on his case.

12 And, thirdly, Your Honor, to ask the Court to direct
13 him to cooperate with us as best he can; and during this
14 time we are going to attempt to get experts and medication
15 to be able to allow him the psychiatric ability to be able
16 to cooperate with us. He does all these things out of his
17 own guilt and own remorse. That's the reason he says
18 these things. He is not unremorseful. He is very
19 remorseful. But that's the reason he, he -- he sparks his
20 anger at us so we will draw away from him. He can't
21 control that. That's, again, part of his profile.

22 We think if the Court will deny him this motion,
23 require us to continue to represent him as we have in good
24 faith. I can't tell you the number of times Mr. McGuire
25 and I met and talked and studied this matter and we will

1 continue between now and the time of trial. But
2 additionally, Mr. Rivera to comply with what we believe to
3 be a regime of experts which may be required to make him
4 competent and allow us to assist him.

5 Thank you, sir.

6 THE COURT: Okay. Mr. McGuire, anything you would
7 like to add?

8 MR. MCGUIRE: Judge, the only thing I would like to
9 add. In addition to our legal training, since we handle
10 cases like this, both Mr. Delgado and I have a pretty
11 strong background with regard to the mental health issues.
12 We consulted both together with experts in this field and
13 I've consulted separately with experts in this field
14 regarding Mr. Rivera, and obviously he has mental health
15 issues.

16 We think today manifestations of that. I would make
17 sure there's no misunderstanding that the Court does
18 understand we both want to be on the case, recognize these
19 issues, our experience in dealing with them, and we will
20 do everything to protect Mr. Rivera despite his mental
21 illness.

22 THE COURT: Solicitor, anything you want to add?

23 THE SOLICITOR: Your Honor, first, I think I do need
24 to add for the record, to clear things up, we do not take
25 a position one way or the other today. I just want to

1 make sure you are fully informed. He has been evaluated
2 with the Department of Mental Health before the first
3 trial and obviously you were the trial judge at that time
4 so you are well aware and, Your Honor, you are familiar
5 with Mr. Rivera and how well he handled himself in that
6 trial and exactly what he did. Obviously, against the
7 wishes of his counsel at that point, which was Mr. Gamble,
8 which is why he was no longer on the case.

9 I have a copy for you of his evaluation if you would
10 like to look at that. They have found him competent.

11 THE COURT: I think I looked at it at the last trial.
12 But I'll take a look at it again. Anything else?

13 THE SOLICITOR: Just, Your Honor, the history that we
14 have shows no mental illness whatsoever with Mr. Rivera.
15 It has basically when he has been asked -- has been asked
16 about prior mental issues, he basically stated---

17 THE COURT: Solicitor, just because -- whether he has
18 mental illness or not is really not the point. You can
19 have mental illness and still be competent to go to trial.

20 THE SOLICITOR: Absolutely.

21 THE COURT: So the issue, that's not the issue.
22 Issues of mental illness can be helped with medication.

23 THE SOLICITOR: No, sir. Just the bottom line, does
24 he understand the dangers of representing himself, pro se.

25 THE COURT: All right. Mr. Rivera, how long you been

1 taking Seroquel?

2 THE DEFENDANT: Your Honor, speaking about the
3 Seroquel, since Mister---

4 THE COURT: How long you been taking it?

5 THE DEFENDANT: I been taking Seroquel for a month
6 now.

7 THE COURT: What dosage are you taking?

8 THE DEFENDANT: I'm taking 300, sir.

9 THE COURT: Three hundred milligrams?

10 THE DEFENDANT: Right. They're helping me sleep.

11 That's the only reason I'm taking Seroquel.

12 THE COURT: Who prescribed it?

13 THE DEFENDANT: Dr. Polite. (Phonetic)

14 THE COURT: Doctor who?

15 THE DEFENDANT: Dr. Polite.

16 THE COURT: Is he the physician at the correction---

17 THE DEFENDANT: Right, at the correctional---

18 THE COURT: Let me ask you this. Would you be
19 willing to examine -- be examined by an evaluator to make
20 a determination whether this is proper medication or
21 whether the medication needs to be adjusted? Would you be
22 willing to cooperate with the evaluation --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- if I do that?

25 THE DEFENDANT: Yes, sir. Your Honor, can I explain

1 why, the reason why I'm taking Seroquel first?

2 THE COURT: Yes, sir.

3 THE DEFENDANT: Basically, like Mr. Delgado said, I
4 did ask to be put on Seroquel, number one, for the reason
5 was because I found out when I came to Broad River that
6 electrocution was right down the hall from my dorm. So I
7 was having problems sleeping. So I asked to be put, I
8 asked -- excuse me, I asked Dr. Polite---

9 THE COURT: That was years ago. They don't use that
10 anymore.

11 THE DEFENDANT: They still do. They had an execution
12 Friday.

13 THE COURT: I don't think they use it there, do they,
14 Mr. Delgado?

15 MR. DELGADO: Yeah, they do, Broad River.

16 THE COURT: Do they do it at Broad River or is that
17 the lower part of the state?

18 MR. MCGUIRE: It's obviously lethal injection. They
19 had an execution on Friday. Part of Mr. Delgado's
20 difficulty in getting able to see Mr. Rivera Friday was
21 the fact that it was locked down for execution.

22 THE COURT: I misquoted, I'm sorry.

23 THE DEFENDANT: No, problem, Your Honor. Basically,
24 like I said, I was having problems sleeping. I found that
25 the execution was right down the hall. Officers really

1 even showed me where the execution was. So at that point
2 after that, Your Honor, I was having problems sleeping.
3 So that's when I spoke to Dr. Polite. Actually he was
4 recommended to me because I explained to captain, Captain
5 Jones I was having problems sleeping, and so they put me
6 on Seroquel. Seroquel is not only helping with mental
7 health, helps with sleeping, Your Honor.

8 THE COURT: Okay. Is it helping you?

9 THE DEFENDANT: Basically not. It's not.

10 THE COURT: Why not?

11 THE DEFENDANT: I'm still having problems sleeping.
12 Like Mr. McGuire just stated, Your Honor, they just had an
13 execution on Friday. So that right there, Your Honor, it
14 kind of plays with your psyche, mental, knowing you're
15 right down the hall from the execution.

16 THE COURT: Anything else you'd like to tell me?

17 THE DEFENDANT: No, Your Honor. That's the only
18 reason why they prescribed me Seroquel, for sleeping
19 problems.

20 THE COURT: All right. Mr. Rivera, what I'm going to
21 do, I'm going to order you to be evaluated by a private
22 physician for purposes of determining any medication you
23 may need, any delusions you're suffering, possibly help
24 you sleep; and to make an evaluation whether mentally they
25 feel like you're competent to represent yourself. I'm

1 going to take your motion under advisement until I can get
2 that evaluation completed.

3 Do you understand? I already asked would you be
4 willing to cooperate and you said you will. Do you
5 understand what I'm doing?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. And I'd like to state for the
8 record that I was the trial judge in the first case, the
9 murder case against Mr. Rivera, which he was convicted.
10 So I've sat through a trial with you that time. So I'm
11 very familiar with you and familiar with the case. At
12 least the old case. I'm not that familiar with the new
13 case. Okay?

14 THE DEFENDANT: Can I say something?

15 THE COURT: Yes, sir.

16 THE DEFENDANT: I have no problem reconciling with my
17 attorneys, Your Honor. Like I said, I tried to make an
18 attempt on Thursday. It's not a problem with mental
19 health, Your Honor. The problem, it's a control issue
20 with me and Mr. Delgado. That's what I tried to get
21 resolved on Thursday. What I explained to my social
22 worker, I guess.

23 THE COURT: Social worker there at the Department of
24 Corrections?

25 THE DEFENDANT: No. Social worker, mitigation

1 specialist.

2 THE COURT: Mitigation specialist?

3 THE DEFENDANT: Right.

4 THE COURT: You still talking with her?

5 THE DEFENDANT: Yes, Your Honor. And I want -- I
6 explained to her that I tried to cooperate with my
7 attorneys. It's not the fact I'm not trying to cooperate
8 with them. It's the fact, Your Honor, I have certain
9 rights that I would like to be exercised. Like I
10 explained to her, the reason why I asked Mr. Delgado to
11 come up there because Broad River now is, it has no
12 contact visits, so now it's hard for me to talk to my
13 mitigation specialist and to my attorneys. So, I've
14 recommended that with her, through you, to sign an order
15 to send me to Kirkland so I could be statewide. So that
16 makes them -- it's the same thing that I'm at Broad River,
17 but it makes them, makes for me to have contact with my
18 social worker, mitigation specialist, and my attorneys.

19 THE COURT: Kirkland's just right across the street,
20 isn't it?

21 THE DEFENDANT: That's right.

22 THE COURT: I mean just right across the street.

23 THE DEFENDANT: Right.

24 THE COURT: I'll take that under advisement after I
25 have you evaluated.

1 THE DEFENDANT: That's right.

2 THE COURT: Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I don't know what the evaluation is going
5 to show, Mr. Rivera. I would suggest that you -- I think
6 your attorneys have your best interest at heart and I
7 think they would like to represent you but they need your
8 cooperation to do that and you need their cooperation. I
9 would suggest that you cooperate with your attorneys.
10 Apparently you get along with your mitigation specialist.

11 THE DEFENDANT: That's correct, Your Honor.

12 THE COURT: Where is she from? Do you know?

13 THE DEFENDANT: She's from Atlanta.

14 THE COURT: And she comes over from Atlanta; is that
15 correct?

16 THE DEFENDANT: That's correct.

17 THE COURT: How do you think she came to visit with
18 you?

19 THE DEFENDANT: She was recommended through Mr.
20 McGuire.

21 THE COURT: So your attorneys are the ones that got
22 her to come see you? You understand that, don't you?

23 THE DEFENDANT: I understand.

24 THE COURT: I just want to make sure you understand
25 that.

1 THE DEFENDANT: Like I said, Your Honor, it goes both
2 ways, not just me not cooperating. It goes both ways.

3 THE COURT: I understand. All right. Mr. Delgado --
4 Mr. Rivera, excuse me, I'm going to, as I said, take it
5 under advisement, order an evaluation. As soon as I get
6 the evaluation I will make a decision. Okay.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Anything else you want to tell me or say?

9 THE DEFENDANT: No, sir. No, Your Honor. Like you
10 to just take in mind in your decision the recommendation
11 to move me back to Kirkland. Like I said, it makes it
12 easier for all of us. Like I said, less stressful, change
13 all the rules.

14 Now, mail flags, I find out the solicitor been
15 keeping my mail.

16 THE COURT: The realistic problem, Mr. Rivera, is a
17 bed at the state department of corrections.

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: I don't know if they have any bed space
20 at Kirkland or not. Quite frankly when I had you moved,
21 we had several conversations with the doctors, trying to
22 find you a bed.

23 THE DEFENDANT: I understand that, Your Honor.

24 THE COURT: They found a bed, said if I didn't get
25 you moved within 48 hours, you were going to lose that

1 bed. So I don't know that that's a practical problem. Do
2 you understand?

3 THE DEFENDANT: I understand that, Your Honor.
4 Basically I was told by the warden himself that he doesn't
5 want me at Kirkland. I mean, excuse me, at Broad River.
6 So that's why I said I made that recommendation, Your
7 Honor.

8 THE COURT: Okay. The only thing I can say, Mr.
9 Rivera, is just please cooperate with the doctor. Okay?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Thank you very much. Here is the
12 indictment, Solicitor.

13 THE SOLICITOR: Is there someone specific you want?

14 THE COURT: Let me -- I'm going to think about it.
15 You all want to go ahead? Mr. Rivera, have a safe trip
16 back to Columbia.

17 Mr. Day -- Mr. Rivera, you got any objection if I let
18 Mr. Day off the case if he wants off?

19 THE DEFENDANT: Yes, I have an objection.

20 THE COURT: You want me to keep him?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You want me to keep him on?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. I'll keep him on. Thank you very
25 much, Mr. Rivera. Can I see the attorneys up here just a

1 second?

2 (Bench conference held.)

3 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

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1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF ANDERSON)
6
7

8 I, Donna M. Brady, Official Court Reporter for the
9 Tenth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete Transcript of Record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to relative appeal, in the Circuit Court for
14 Anderson County, South Carolina, on the 8th day of
15 December, 2008.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 July 25, 2010
20

21
22 Donna M. Brady
23 Donna M. Brady, RPR
24 Circuit Court Reporter
25

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

-vs-

Raymondeze Lamon Rivera,

Defendant.

2007-GS-04-649

May 27, 2009

Transcript of Record

B E F O R E:

The Honorable J.C. "Buddy" Nicholson, Jr., Judge

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

Christina Adams, Esquire
Solicitor for the Tenth Judicial Circuit

Jennings Byford, Esquire
Rame Campbell, Esquire
Assistant Solicitors for the Tenth Judicial Circuit

Attorneys for the State

William S. McGuire, Esquire
John Delgado, Esquire
Attorneys for the Defendant

R. Daniel Day, Esquire
Guardian ad Litem for the Defendant

Renee H. Tollison
Circuit Court Reporter

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No	DESCRIPTION	ID	EV

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 12:28 p.m.)

4 THE COURT: We are here today on the State
5 versus Rivera concerning motions to file. There were two
6 motions, one motion that had been filed asking for self-
7 representation.

8 Mr. Delgado, do you have anything for the Court on
9 your client's motion to represent himself?

10 MR. DELGADO: Yes, we have. Thank you, Your
11 Honor. Your Honor, after a lengthy conversation with Mr.
12 Rivera and with Mr. Day and Mr. McGuire, Mr. Rivera has
13 said to us that he wishes to withdraw that motion, that
14 he is satisfied with our services, that he wishes to
15 proceed to trial with us as his counsel.

16 THE COURT: Okay. You're going to withdraw
17 that motion?

18 MR. DELGADO: Yes, sir, he does withdraw that
19 motion. I'm sorry, Your Honor. Yes, sir.

20 THE COURT: Mr. Rivera, is that correct? Do
21 you agree with your attorney's statement that you want to
22 withdraw that motion?

23 THE DEFENDANT: That's correct, Your Honor.

24 THE COURT: Do you have any questions about it?

25 THE DEFENDANT: No, sir.

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1 THE COURT: Thank you so very much.

2 Then the Court will dismiss that motion or withdraw
3 it. The motion is withdrawn. That leaves the issue of
4 the *Blair* hearing for the competency of the defendant; is
5 that correct, Solicitor?

6 MS. ADAMS: Yes, sir, Your Honor. I didn't
7 know if you wanted to discuss ---

8 THE COURT: I'm going to call Dr. Donna
9 Schwartz-Watts as a Court's witness as far as that issue
10 is concerned.

11 MS. ADAMS: Okay.

12 THE COURT: Okay?

13 Dr. Schwartz-Watts, if you'll come around, please,
14 ma'am.

15 And I'll allow both of you to ask her questions.
16 I'm just calling her as a Court's witness.

17 MADAM CLERK: If you'll come around so you can
18 be sworn. If you'll place your left hand on the Bible
19 and raise your right.

20 (WHEREUPON, the witness was duly sworn.)

21 MADAM CLERK: If you will please state your
22 full name and spell your last name for the record.

23 THE WITNESS: Donna Marie Schwartz-Watts. S-C-
24 H-W-A-R-T-Z hyphen W-A-T-T-S.

25 DONNA SCHWARTZ-WATTS,

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1 Being first duly sworn, testified as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q. Dr. Schwartz-Watts, you had an opportunity to
5 examine Mr. Rivera; is that correct?

6 A. Yes, Your Honor. I saw him on April 28th for a few
7 hours, May 21st for a few hours and then again this
8 morning.

9 Q. Okay. And you're prepared to answer questions
10 concerning his competency; is that correct?

11 A. Yes.

12 Q. And I think you have actually been retained by
13 defense counsel to evaluate Mr. Rivera; is that correct?

14 A. That's correct.

15 Q. And that was done through the appointment by the
16 Court; is that correct?

17 A. Yes, sir.

18 Q. Would you very briefly put on the record your
19 qualifications and your speciality, please, ma'am?

20 A. Yes, Your Honor. I graduated from Furman University
21 in 1985 with a Bachelor of Arts Degree in Psychology. I
22 graduated from medical school at the University of South
23 Carolina School of Medicine in 1989 with a Doctorate of
24 Medicine. I completed a residency in general psychiatry
25 at the Department of Mental Health at the William S. Hall

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1 Psychiatric Institute and finished that in 1993. Then I
2 completed another year of training in forensic
3 psychiatry. I completed a fellowship and finished that
4 in 1994.

5 I worked at the Department of Mental Health for
6 three years in the court ordered unit, performing
7 competency to stand trial and criminal responsibility
8 evaluations. And I also worked in the insanity acquittal
9 unit there. And then I went full time to the University
10 of South Carolina in 1997.

11 I am licensed to practice medicine in South
12 Carolina. I'm board certified in psychiatry and have
13 added qualifications in forensic psychiatry.

14 Q. In the last year, how many times have you been
15 qualified in courts in the state of South Carolina as an
16 expert in forensic psychiatry?

17 A. In the last year, probably about fifty or so.

18 Q. Okay.

19 THE COURT: Does the State have any questions
20 concerning Dr. Schwartz-Watts' qualifications as a
21 forensic psychiatrist?

22 MS. ADAMS: No, sir, Your Honor.

23 THE COURT: Mr. Delgado?

24 MR. DELGADO: None at all.

25 THE COURT: All right. The Court would find

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1 that she's qualified to testify as a forensic
2 psychiatrist. Who would like to go first?

3 MR. DELGADO: I'll be glad to, Your Honor.

4 THE COURT: Okay. Mr. Delgado?

5 CROSS EXAMINATION

6 BY MR. DELGADO

7 Q. Dr. Watts, do you feel that you've had a sufficient
8 time to be able to spend with Mr. Rivera to come to an
9 evaluation as to whether or not he is competent to
10 proceed to trial on this matter?

11 A. Yes.

12 Q. Doctor, what do you -- what did you look for during
13 the time that you were with him? What questions did you
14 ask of him? What questions did he ask of you? What
15 opinion do you have as result of that relating to his
16 competency to be able to stand trial in this matter?

17 A. During both my quite lengthy meetings with him at
18 the South Carolina Department of Corrections, I observed
19 a number of things about him. The first part of my
20 evaluation was assessing his cognitive capacity. And
21 that's just the way his brain works. Can he follow
22 testimony? Does he understand the court proceedings?
23 Does he understand the situation he's in? That sort of
24 thing. And his memory, ability to concentrate. And he
25 clearly has the cognitive capacity to stand trial.

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1 The other aspects of what I did in the evaluation, I
2 looked at his capacity to assist you all in his defense.
3 And there was a period of time that I know that your
4 relationship had been tumultuous. During the periods of
5 time that I have evaluated Mr. Rivera, I've been able to
6 monitor his relationship with you all, his capacity to
7 assist you. And it's clear he has had a marked
8 improvement in his relationship with his attorneys. He
9 clearly trusts you all. He's shown that he's working
10 with you all now. And it's my opinion that he has a
11 capacity to understand these proceedings, and he clearly
12 has a capacity to assist you at this time.

13 Q. Doctor, that opinion, is that given with any
14 qualification as a result of medication that he may be on
15 now and/or what medication is he taking, and how does
16 that affect his ability to act in his own defense and
17 assist us in his own defense?

18 A. Well, it's very clear in looking at -- and I've
19 reviewed many, many records in addition to evaluating Mr.
20 Rivera. And he actually did begin treatment at the
21 Department of Corrections in November of 2008. There is
22 a staff psychiatrist there, Dr. Poiletman, P-O-I-L-E-T-M-
23 A-N, who began prescribing medications for Mr. Rivera.
24 He prescribed a mood stabilizer which is called
25 Neurontin, and he takes twelve hundred milligrams of that

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1 a day. And he's also on an antipsychotic medication
2 Seraquel.

3 Now, prior to his hearing in December, he was on
4 only three hundred milligrams of the Seraquel. On
5 December 9th, after his last hearing, his medications were
6 increased. And in my opinion, that has a lot to do with
7 his present mental state. It's improved his mental
8 state. It does not impair his capacity to assist you at
9 all. But in fact, it has the opposite effect. It's
10 helped him be less impulsive. It's helped him calm down.
11 It's helped him be more rational.

12 Q. Doctor, does he understand the relative functions of
13 both prosecution, the defense, the Court and the jury in
14 this upcoming trial?

15 A. He clearly does.

16 Q. Is there any manifestation of any impairment to be
17 able to understand cognitively, emotionally,
18 psychologically what his role is, what will transpire
19 during the trial in July and anything relating to this
20 capital proceeding?

21 A. Not at this time.

22 MR. DELGADO: Your Honor, I don't think I have
23 any further questions.

24 THE COURT: Okay.

25 Solicitor?

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1 MS. ADAMS: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. ADAMS:

4 Q. Dr. Schwartz-Watts, just a few questions. In your
5 meetings with him, were you able or have you had enough
6 time with him to be able to actually diagnose him with
7 anything? I know you said because he was on a couple of
8 medications.

9 A. Yes. What I've done that at this time if you -- I've
10 prepared a report for y'all. I have provisionally
11 diagnosed him with post-traumatic stress disorder. Now,
12 what provisional means is that I have to have more
13 evidence. But it is my opinion that he meets the
14 criteria for an anxiety disorder, and that is post-
15 traumatic stress disorder. He's -- I'm going to have to
16 get more evidence to be able to make that diagnosis
17 definitively. And that's going to depend a lot on his
18 background, obtaining information from family members and
19 that sort of thing.

20 The other diagnosis -- he's received many. He's
21 been seen by Dr. Dalal at Hall. He received a diagnosis
22 there of impulse control disorder. Then he was seen by
23 Dr. Cross who diagnosed him with malingering. Then he
24 was seen by Dr. Poiletman who has diagnosed him with
25 bipolar disorder. So I included all those diagnoses by

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1 history, and they're going to warrant only more
2 investigation and more time to be able to figure out
3 definitively which of those diagnoses are ruled in or
4 ruled out. But based on my own evaluation, I
5 provisionally diagnosed him with post-traumatic stress
6 disorder and alcohol abuse, which I don't think he has
7 been diagnosed with before.

8 Q. Right. So do you feel that he is bipolar at this
9 point, or do you agree at this point with any of the
10 other prior diagnoses?

11 A. I can't say. That's why I put my history. If you
12 see how we code, when somebody's had that diagnosis and
13 you're considering it, you'll just code it as by history.
14 He certainly has some symptoms of mood disorder. And
15 they will warrant further investigation. I've been able
16 to find in the records that he had prior histories where
17 he has complained of depression as early as eleventh
18 grade. There is a family history of mental illness on
19 his father's side. So at this point I would need more
20 time, more investigation, more evidence.

21 Q. Okay. Have you been able to -- so you've looked
22 through all of the discovery that we have sent to the
23 defense? Have you had a chance to look through pretty
24 much everything ---

25 A. Most of it. Most of it. I actually went -- in

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1 preparing this report, I had the discovery list. And
2 there is actually a few items on that list that you have
3 provided them that I have not seen. So also as before
4 his trial, I will need to look at some more of that
5 evidence as well.

6 Q. Okay. And you had mentioned something about a
7 substance abuse history and alcohol abuse?

8 A. Yes.

9 Q. Where -- is that self-reported from Mr. Rivera,
10 because in here it says, Mr. Rivera reports he used
11 alcohol heavily around the time of his offenses. When
12 you say offenses, what are you referring to?

13 A. His present charges. So again, that will -- if you
14 will look in my report, that's going to have to be
15 corroborated as well. That was based on his report.

16 Q. Okay. So you're not saying he has a substance abuse
17 history yet?

18 A. That's correct.

19 Q. You're -- okay. All right. And one other question.
20 I wanted -- in your report, Dr. Schwartz-Watts, you talk
21 about sexual history. And he says he was the victim of
22 homosexual advances by a minister. Is that coming from
23 him as well or from a minister?

24 A. Yes. No, that's his report.

25 Q. Okay. Do you have any idea what age, who the

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1 minister is?

2 A. Yes.

3 Q. Okay. And at what age and who was the minister?

4 A. Well, I -- that's not been corroborated yet, so
5 that's why I'm -- that's some of the work that we're
6 going to do. So if it's okay, I'd rather not give that
7 information just ---

8 Q. Okay.

9 A. Unless the Court wants me to. I know who the person
10 is, but I don't think that's been investigated or
11 corroborated at this point.

12 MR. DAY: Your Honor

13 With all due respect, my friend.

14 ... I believe we are here for the competency to be
15 able to stand trial, not to ---

16 THE COURT: Well, do you have a legal objection
17 to the question?

18 MR. DELGADO: Yes, sir. Relevance at to
19 whether or not ---

20 THE COURT: What's your legal objection?

21 MR. DELGADO: Yes, sir. Thank you.

22 THE COURT: At this point in time I'll overrule
23 it, but let's stick to the issues that we're here for
24 today. Okay? Go ahead. Ask your question and I'll ...

25 MS. ADAMS: So in other words she can answer

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1 the question?

2 THE COURT: I overruled the objection.

3 MS. ADAMS: Okay.

4 THE COURT: But if she doesn't want to answer
5 at this point in time, that's fine.

6 MS. ADAMS: Okay.

7 THE COURT: I'm not going to ask her to do
8 that.

9 MS. ADAMS: Okay. That's fine.

10 THE COURT: She's answered the question. Just
11 ask her another one.

12 MS. ADAMS: Okay. That's fine, Judge.

13 Q. Doctor, then just probably just one more question or
14 a few more questions actually. Based on your meetings
15 with him, you feel that obviously he knows right from
16 wrong at this point and ---

17 MR. DELGADO: Your Honor, I object to that. I
18 think what the focus of -- the order signed by the Court
19 went to the issue of competency to understand the trial
20 proceeding, our various functions. I believe that has
21 not been determined yet, and I don't think that the
22 doctor has said -- and I believe we've reported to the
23 Court -- that she is going to wish to spend several more
24 sessions with Mr. Rivera before that question may or may
25 not be appropriate to ask.

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1 THE COURT: Solicitor, what's the relevancy of
2 that question as far as the competency issue that's
3 before the Court? That goes more towards the possible
4 insanity defense or not insanity defense.

5 MS. ADAMS: Your Honor ---

6 THE COURT: To my knowledge that issue has not
7 been raised.

8 MS. ADAMS: Your Honor, that's fine at this
9 point if Dr. Schwartz-Watts feels like she needs more
10 time. We're just going to have to deal with it at some
11 point.

12 THE COURT: I'm going sustain the objection,
13 okay?

14 MS. ADAMS: Okay.

15 THE COURT: Go ahead and ask your next
16 question.

17 MS. ADAMS: Okay. We're just going to have to
18 deal with it, and we would just need notice obviously if
19 she feels at some point that he would be guilty but
20 mentally ill at any point. We would just need to be
21 noticed of that.

22 THE COURT: Okay.

23 MS. ADAMS: That's it, Your Honor.

24 THE COURT: Anything else?

25 MS. ADAMS: No, sir.

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1 MR. DELGADO: Yes, sir.

2 RECROSS EXAMINATION

3 BY MR. DELGADO:

4 Q. Doctor, at this stage, in your medical professional
5 use of the term provisional, you cannot rule out any
6 diagnosis at least at this stage; would that be fair?

7 A. Oh, that's correct. We'll have to get a lot more
8 history. What I did was just pursuant to this order and
9 for these proceedings, I've tried to get an
10 understanding. I mean, he's had multiple diagnoses.

11 There's not a lot of records on him in the community.

12 And normally when someone has a mental illness, we'll
13 have the luxury of some records of people that had seen
14 him before ---

15 Q. Yes, ma'am.

16 A. --- his charges and that sort of thing. So to make
17 these diagnoses definitively, there's going to -- we're
18 going to have to do a lot more investigation. There's
19 going to have to be people interviewed, collateral people
20 interviewed. So it will be just a little bit more work.

21 A. Thank you, ma'am.

22 MR. DELGADO: Thank you.

23 MS. ADAMS: Nothing, Your Honor.

24 THE COURT: Okay. All right. Thank you very
25 much.

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1 Doctor, let me ask you just one question. Do you
2 think it would benefit Mr. Rivera to have a guardian
3 appointed?

4 THE WITNESS: Absolutely, Your Honor. Given
5 the past, he's had a difficult time in my opinion based
6 on his mental state dealing with his attorneys. He's
7 clearly better now, but I think it would be very prudent
8 in the future because the proceedings are going to be
9 stressful. He's -- in the past he's had some issues
10 dealing with them. So it's actually in my opinion a very
11 good idea.

12 THE COURT: Okay. Thank you very much.

13 Mr. Day ...

14 MR. DAY: Yes, sir?

15 THE COURT: ... would you be willing to serve
16 as Mr. Rivera's guardian ---

17 MR. DAY: I have -- Your Honor, I've discussed
18 it ---

19 THE COURT: --- during these proceedings? Have
20 you discussed it with him?

21 MR. DAY: I have, Your Honor. I explained to
22 him what role I would play in that regard. He has asked
23 me if I would be willing to do that. I told him yes, and
24 I tell the Court, yes, I'm willing to do that.

25 THE COURT: All right. I'm going to appoint

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1 you as his guardian. And have you explained to Mr.
2 Rivera the difference between a guardian and an attorney
3 representing him?

4 MR. DAY: I have, Your Honor.

5 THE COURT: And did he appear to understand?

6 MR. DAY: I believe he does.

7 THE COURT: Mr. Rivera, do you have any
8 questions of the Court concerning the guardianship of Mr.
9 Day?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Thank you very much.

12 Mr. Day, I'm going to appoint you as guardian for
13 Mr. Rivera for the purpose of this lawsuit and undo your
14 appointment as counsel.

15 MR. DAY: As long as my order of protection
16 stays in place.

17 THE COURT: The order of protection will stay
18 in place, okay?

19 MR. DAY: Thank you, sir.

20 THE COURT: All right. Thank you so very much.
21 I believe we had a portion of this hearing when? Was it
22 January, February or December?

23 MS. BYFORD: December 8th, Your Honor.

24 THE COURT: December the 8th?

25 MS. BYFORD: Yes, sir.

State v. Raymondeze Rivera 2007-GS-04-0649
Pretrial Motions May 27, 2009

19

1 THE COURT: And what did we cover at that
2 hearing? Do you remember? It was about his competency.
3 And at that point in time is when I said I was going to
4 appoint Dr. Schwartz-Watts to have him examined. And
5 continued -- I believe I continued that hearing till this
6 point if I remember correctly. Is that correct?

7 MR. DELGADO: Your Honor, I believe the
8 December 8th hearing was as a result of the defendant's
9 previously filed motions relating to self-representation.
10 And I believe the Court held that open until such time as
11 he was evaluated by Dr. Watts. And it's taken, I'm sorry
12 to say, until this time that we've had that done. But I
13 believe she has conclusively answered that question, and
14 Mr. Rivera has withdraw his right to self-representation
15 in any event.

16 THE COURT: Okay. All right. Thank you so
17 very much.

18 Doctor, you may step down. Thank you very much.

19 THE WITNESS: Thank you, Your Honor. Your
20 Honor, may I be excused?

21 THE COURT: Yes, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Have a safe trip back to Columbia.

24 All right. Does anybody have anything else?

25 MR. DELGADO: Nothing from the defense, Your

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20

1 Honor.

2 THE COURT: All right. Have -- first of all,
3 having tried the first case with Mr. Rivera and having
4 observed him during that trial and listening to his
5 testimony during that trial and based upon the testimony
6 of Dr. Schwartz-Watts here this morning, I find the
7 defendant is competent to assist counsel. There's no
8 issue as to competency concerning counsel. And the
9 motion to self-representation has been withdrawn, so the
10 Court will not go into that at this time.

11 I want to thank the parties for being here. Is
12 there anything else that we can cover this morning?

13 MR. DELGADO: Nothing from the defense, Your
14 Honor.

15 THE COURT: Okay. All right. Mr. Rivera, I
16 know you didn't come voluntarily, but thank you for being
17 here.

18 All right. Off the record.

19 (WHEREUPON, the hearing ended at approximately 12:46
20 p.m.)

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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21

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 27th day of May 2009.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 July 31, 2010

15

16

Renee Tollison

17

Circuit Court Reporter

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

2007-GS-04-649

-vs-

June 4, 2009

Raymondeze Lamon Rivera,

Defendant.

Transcript of Record

BEFORE:

The Honorable J.C. "Buddy" Nicholson, Jr., Judge

APPEARANCES:

Christina Adams, Esquire
Solicitor for the Tenth Judicial Circuit

Jennings Byford, Esquire
Rame Campbell, Esquire
Assistant Solicitors for the Tenth Judicial Circuit

Attorneys for the State

William S. McGuire, Esquire
John Delgado, Esquire
Attorneys for the Defendant

R. Daniel Day, Esquire
Guardian ad Litem for the Defendant

Renee H. Tollison
Circuit Court Reporter

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1 (WHEREUPON, Court's Exhibits Number 1 through 8 were
2 marked for identification only.)

3 (WHEREUPON, court convened with all parties present
4 and the following proceedings were had commencing at
5 approximately 11:28 a.m.)

6 MR. DELGADO: Your Honor, if I could approach?

7 THE COURT: Yes, sir.

8 MR. DELGADO: This is some of the case law that
9 supports the motion that we filed earlier.

10 (WHEREUPON, Mr. Delgado handed up documents to the
11 Court.)

12 THE COURT: Which one is this in reference to?

13 MR. DELGADO: Regarding other acts.

14 THE COURT: Okay. That goes with your motion
15 for the bad acts?

16 MR. DELGADO: Yes, sir.

17 THE COURT: All right. Mr. McGuire and Mr.
18 Delgado, are y'all ready to proceed?

19 MR. MCGUIRE: Yes, Your Honor.

20 MR. DELGADO: Yes, sir.

21 THE COURT: Is the Solicitor -- are you ready
22 to proceed?

23 MS. ADAMS: Yes, sir, Your Honor.

24 THE COURT: All right. Who wants to go first?
25 I believe the Solicitor has some things to be heard, and

State v. Raymondeze Lamon Rivera 2007-GS-04-649
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4

1 I believe the Defendant has several motions. Who wants
2 to go first?

3 MS. ADAMS: Your Honor, we can. We can start
4 with the *Jackson v. Denno* if that's okay.

5 THE COURT: That's fine. However you want to
6 proceed.

7 MS. ADAMS: Okay. Your Honor, we call John
8 Zamberlin to the stand.

9 **John Anthony Zamberlin,**

10 Being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ADAMS:

13 Q. John, where are you employed?

14 A. I'm employed with the Anderson City Police
15 Department.

16 Q. In what capacity?

17 A. I'm employed at the rank of lieutenant currently in
18 the criminal investigations division. I manage the
19 investigations side, forensics and victims' services.

20 Q. And how long have you been in law enforcement?

21 A. Approximately 24 years.

22 Q. Now, are you the lead investigator in this case?

23 A. Yes.

24 Q. Now, the Defendant has been charged with, and
25 actually convicted on, one murder. But he's been charged

1 with two. And we're here on the murder of Kwana Burns,
2 correct?

3 A. Yes.

4 Q. Okay. And these murders occurred approximately
5 three days apart; is that right?

6 A. That's correct.

7 Q. Now, through your investigation of the murder of
8 Kwana Burns, were you able to track this Defendant in
9 Douglasville, Georgia, by use of his cell phone?

10 A. Yes.

11 Q. Okay. And is that basically how you arrested him?

12 A. Yes.

13 Q. This Defendant was arrested and detained by Deputy
14 Adams of the Douglas County Sheriff's office, right?

15 A. That's correct.

16 Q. Okay. And that occurred on Friday, December 15th of
17 2006; is that right?

18 A. That's correct.

19 Q. Okay. And do you recall about what time that was
20 approximately?

21 A. Approximately 7:30, I believe.

22 Q. And as a result of that arrest, did you and
23 Lieutenant Mike Walters leave Anderson and go to
24 Douglasville?

25 A. Yes, we did.

State v. Raymondeze Lamon Rivera 2007-GS-04-649
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6

- 1 Q. Were you able to speak to that Defendant that night
2 or basically early the next morning?
- 3 A. Yes, early the next morning.
- 4 Q. And do you recall what time that was?
- 5 A. 2:44, I believe, is what was written on top of the
6 *Miranda* form.
- 7 Q. Okay. So that would be the morning of December
8 16th, 2006?
- 9 A. Yes.
- 10 Q. Okay. And it was just you and Mike Walters?
- 11 A. That's correct.
- 12 Q. Who is also with the City Police Department?
- 13 A. Yes, he is.
- 14 Q. All right. Please describe the room you were in
15 when you spoke to the Defendant?
- 16 A. This room is a room utilized predominantly, it
17 seemed to me, for interview purposes. It's located
18 within the actual jail facility which is really not part
19 of the Sheriff's office. It's a separate building. And
20 it's a room that's located within the interior confines
21 of the actual Douglas County Jail which is a rather large
22 facility.
- 23 Q. How big was the room?
- 24 A. While I didn't measure the room, to approximate it I
25 would estimate maybe ten by ten, maybe twelve by twelve.

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7

1 Q. So it was kind of a small room?

2 A. Yes, ma'am.

3 Q. What's in that room?

4 A. There was a table, a square table, and three chairs,
5 and the table sat up against the far wall.

6 Q. Who brought the Defendant into the room?

7 A. We were outside of the room as the Defendant was
8 brought in. It would have been the jail staff. It would
9 have been the individual that went and retrieved him from
10 wherever the holding area was and brought him to the
11 room.

12 Q. So did the three of you basically, meaning you, the
13 Defendant and Mike Walters, kind of walk into the room
14 together?

15 A. Yes.

16 Q. What did you say to the Defendant at this time?
17 Tell us what happened.

18 A. Well, I told him I was tired, and I asked him if he
19 was tired. And I introduced myself by name, John
20 Zamberlin. Mike Walters had also introduced himself by
21 name. And we sat down at the table.

22 Q. What kind of questions did you start asking him?
23 What was your purpose at this point? What was the first
24 thing you did?

25 A. The first thing that I asked was the spelling of his

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8

1 first name because on the top of the form I have to write
2 his name. And so I wanted to make sure that was correct.
3 So I asked him his name and wrote that on the top of the
4 form.

5 Q. Okay. And when you say form, what kind of form are
6 you talking about?

7 A. It's a form, an advice of rights form, if you will.
8 It's utilized by our department for the purposes of
9 mirandizing an individual prior to any questioning.

10 Q. So you brought this form with you? It's an Anderson
11 Police Department form?

12 A. Yes. Yes, it is.

13 Q. Okay. I want to show you what's been marked as
14 Court's Exhibit Number 3. Is that the form that you used
15 the morning of the 16th, December 16th, '06?

16 A. Yes, it is.

17 Q. Did you read this form to him?

18 A. Yes.

19 Q. Explain to the Court exactly -- and I'll let you
20 look at it -- exactly how you go about reading someone
21 their *Miranda* rights?

22 A. Once I was able to get the initial information
23 regarding his name and label the place that the interview
24 was taking place and put the date and time on it, I read
25 the form verbatim from this form.

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9

1 Q. And how long did it take you to go through that form
2 with him that day or that morning?

3 A. It was signed on the bottom at 2:53, so that would
4 have been approximately nine minutes, I believe.

5 Q. Okay. Now, Lieutenant Zamberlin, in your experience
6 as a law enforcement officer, I'm sure you've come across
7 people who have been under the influence of alcohol and
8 drugs?

9 A. Yes.

10 Q. Okay. Did the Defendant appear to be under the
11 influence of drugs or alcohol at all that day?

12 A. No.

13 Q. Did you tell the Defendant where you were from?

14 A. Yes.

15 Q. All right. Now, tell us about that conversation.

16 A. We had advised him that we were from Anderson, South
17 Carolina.

18 Q. And what was his reaction when you said that?

19 A. He -- he just kind of smiled.

20 Q. Did he say anything at that point?

21 A. Not at that point.

22 Q. What was his demeanor that morning?

23 A. I found him to be -- he appeared to be likable,
24 polite, well mannered.

25 Q. Did he sign that waiver form?

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10

1 A. No.

2 Q. Okay. Did he give a statement at that time?

3 A. No.

4 Q. What did he do? I mean, tell us about that
5 conversation.

6 A. After I read the form to him, he had made a
7 statement that he basically needed the services of a
8 lawyer.

9 Q. Did you tell him what you wanted to talk about?

10 A. Yes.

11 Q. What did you say?

12 A. I advised him that we wanted to talk about two
13 homicides that had occurred in Anderson, South Carolina.

14 Q. And is that when he kind of smiled and ---

15 A. Yes.

16 Q. --- didn't say anything?

17 A. Yes.

18 Q. Okay. So he knew why you were there?

19 A. Yes.

20 Q. And then at that point he did not want to talk to
21 you?

22 A. That's correct.

23 Q. So what did you do when he basically said he wanted
24 to talk to a lawyer first?

25 A. I explained to Mr. Rivera that I'd leave him my

1 first name. And if for some reason he had changed his
2 mind, we'd be around for a short time later there in
3 Douglasville. And at that time, we left.

4 Q. Okay.

5 A. We didn't leave Douglasville; we just left the
6 interview room.

7 Q. Okay. And what happened with the Defendant? Do you
8 know?

9 A. He was eventually taken back by the jail staff to
10 the -- to wherever it was in the jail that they were
11 housing him.

12 Q. So did you basically place a hold on him with
13 Douglasville?

14 A. Yes.

15 Q. Okay. Were you already planning on charging him
16 with the murder of Kwana Burns?

17 A. Yeah. I had planned on upon my return to Anderson
18 to present probable cause to our Municipal Court to seek
19 a warrant for his arrest.

20 Q. Okay.

21 A. For the murder of Kwana Burns.

22 Q. Okay. Now, in order -- basically, since you were
23 planning on charging him with the murder -- he's in
24 Georgia and we're in South Carolina -- what is the
25 procedure that you have to go through to get him from

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12

1 Georgia to South Carolina? What's that called?

2 A. Well, he would either be taken in front of a judge
3 in Georgia and have an opportunity to waive extradition,
4 or there would be an extradition process.

5 Q. Okay. So that was your next step basically ---

6 A. Yes.

7 Q. --- is to start the extradition proceedings?

8 A. Yes.

9 Q. All right. Now, as part of extradition, do you have
10 to get fingerprints from the Defendant?

11 A. Yes.

12 Q. Okay. Tell us about that. What do you have to do
13 with that?

14 A. The Attorney General's office requires among other
15 things four individual print cards to be sent up with a
16 packet through law enforcement to the Prosecutor's office
17 and on to the Attorney General's office. So I made -- I
18 couldn't go back right away. And so I made arrangements
19 with a narcotics detective that works with the Anderson
20 Police Department to go down for me and obtain these four
21 sets of prints from the Defendant and then return them to
22 me so I could make it part of the extradition packet.

23 Q. Okay. Now, who took those first four set of prints
24 that you're talking about?

25 A. Well, I don't know because he didn't sign ---

1 Q. Was he from Douglas?

2 A. It's apparently an evidence tech that works for
3 Douglasville.

4 Q. Okay. So you received four sets of prints or asked
5 for Douglasville to send you four sets of prints ---

6 A. Right.

7 Q. --- that you could use for the South Carolina
8 extradition?

9 A. Yes.

10 Q. Okay. Now, tell us about the condition of those
11 prints.

12 A. When I received the print cards back, they weren't
13 dated. They weren't signed by the individual that rolled
14 the prints. And the prints on the cards, while they
15 technically may have been legible, it certainly wasn't
16 something that I wanted to send to the Attorney General's
17 office in fear that they may send them back, and then we
18 would have to go through this process again. They didn't
19 appear to me to be -- there was some smudging. There
20 were some prints that weren't -- the ridge detail was not
21 totally on the block.

22 Q. Okay. So basically it was more straight on instead
23 of a roll ---

24 A. Yes.

25 Q. --- that your department always does?

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14

- 1 A. Yes.
- 2 Q. Okay. Now -- so in order to get these four
3 fingerprint cards, did you go back to Douglasville?
- 4 A. I did.
- 5 Q. Okay. Do you remember when that was? What day?
- 6 A. On December the 20th I returned to Douglasville.
- 7 Q. Okay. And who went with you?
- 8 A. I contacted at that time our forensics officer, Mike
9 Baskin, who I happen to have years of experience with and
10 know that he has rolled thousands of prints and knew that
11 he would do an adequate job for us during the extradition
12 process. And I asked him to go with me.
- 13 Q. Okay. So you and Mike went back to Douglasville on
14 the 20th?
- 15 A. Yes.
- 16 Q. Were you planning on speaking to the Defendant at
17 all at this time?
- 18 A. No.
- 19 Q. And why not?
- 20 A. Well, he had asked for an attorney.
- 21 Q. Okay. Now, did you take anything with you this day
22 when you and Mike went back besides obviously Mike's
23 fingerprint kit?
- 24 A. Just a portable fingerprint kit that he has and my
25 automobile that I drive.

1 Q. Now, were you present when Mike Baskin took those
2 fingerprints?

3 A. Yes, I was.

4 Q. All right. Now, where were you when he took those
5 prints? Was it the same room?

6 A. It was the same room. And Mike had sat his
7 temporary fingerprint kit on the table, and I had stepped
8 outside of the room.

9 Q. Okay. And when you say outside, what do you mean?
10 Like could you see and hear what was going on?

11 A. I could see in the room through the doorway, but
12 there was some other jail employees outside. And so I
13 was just probably outside the door there.

14 Q. Okay. Were you really even paying attention to what
15 was going on ...

16 A. No.

17 Q. ... with the Defendant and Mike?

18 A. No.

19 Q. Okay. So did the Defendant cooperate with these
20 fingerprints?

21 A. Yes.

22 Q. Did you have any problems getting the prints that
23 day from him?

24 A. No.

25 Q. Did you initiate any contact with the Defendant at

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16

1 all?

2 A. No.

3 Q. What happened after the prints were taken or right
4 at the end of Mike finishing up taking the prints?

5 A. I heard my first name, John, called. And I turned
6 around, and it was Rivera. And he asked if I could talk
7 with him for a minute.

8 Q. Okay. And what did you say?

9 A. I said I would.

10 Q. Okay. Now, did you intimidate him at all or
11 initiate any contact with him whatsoever?

12 A. No.

13 Q. Did you threaten or coerce him in any way to talk to
14 you?

15 A. No.

16 Q. What was his demeanor that day?

17 A. His demeanor was the same as my previous encounter.
18 He was polite, courteous, seemed to be well mannered.

19 Q. All right. Now, did he appear to be under the
20 influence of drugs or alcohol that day?

21 A. No.

22 Q. Now, what did Mike Baskin do after Mr. Rivera
23 called, John, and you walked in?

24 A. Well, he packed up his fingerprint kit and he left
25 the room.

1 Q. Okay. So it's just you and the Defendant in the
2 room?

3 A. It is.

4 Q. All right. And what did y'all do?

5 A. I explained to Mr. Rivera that I needed to read him
6 his rights again. And so I -- well, I didn't have a form
7 with me.

8 Q. Okay. And why not?

9 A. So I had ---

10 Q. Why didn't you have any forms?

11 A. Well, I wasn't prepared for an interview in any way
12 at that time. So I noticed that on the table there of
13 the -- that they -- in their interview room there were
14 some forms that were used by Douglasville authorities.
15 So I read through that form to make sure it contained
16 elements like our form.

17 Q. Okay.

18 A. And then after deciding that it appeared that it
19 did, I used that form to read Mr. Rivera his rights
20 again.

21 Q. All right. In fact, Lieutenant, I want to show you
22 what has been marked as a Court's exhibit. It is number
23 4. Is that a copy of the form that you read to the
24 Defendant that day on the 20th, the Georgia form?

25 A. Yes, it is.

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18

1 Q. Okay. And it covers all the elements obviously that
2 our *Miranda* does as well?

3 A. Yes.

4 Q. Was his demeanor at all different this day than it
5 was a few days prior?

6 A. No.

7 Q. Did he sign that waiver form?

8 A. Yes.

9 Q. Did he seem to understand those rights?

10 A. Yes.

11 Q. After you read him those rights, what happened?

12 A. He had -- he said that he had three requests that he
13 wanted to make from the DA's office. And so I turned the
14 form over on the back. And I wrote, three requests from
15 Raymondeze Rivera to prosecutors. And he told me those
16 three requests, and I wrote them down.

17 Q. And you wrote them. And then what did he do at the
18 bottom of those requests?

19 A. He -- well, I wrote them down. I read them over to
20 him to make sure that was correct. And he drew a line,
21 put an 'X' and he signed his name.

22 Q. And what did you do as a result of that?

23 A. Well, after that I left, and we traveled back to
24 Anderson, South Carolina. And I presented this to you.

25 Q. All right. But you went over those, and obviously

1 you told him that you would bring it back to me?

2 A. Yes.

3 Q. To look at?

4 A. Yes.

5 Q. Okay. Did you make any comments whatsoever
6 regarding those requests that he wanted?

7 A. No.

8 Q. All right. How much time do you think you spent
9 with him that day?

10 A. Just a few minutes as far as I'm concerned. Now, it
11 took Mike Baskin probably longer to roll the prints than
12 it did for me to do this.

13 Q. Okay.

14 A. It was just a few minutes.

15 Q. Did you promise him anything that day regarding ---

16 A. No.

17 Q. --- what he asked for?

18 A. No.

19 Q. Did you threaten him in any way that day?

20 A. No.

21 Q. And did you really -- did you even ask him any
22 questions about what he wrote down?

23 A. No.

24 Q. Or what you wrote down at his request?

25 A. No.

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20

- 1 Q. So you came back to Anderson obviously the next day,
2 and we talked. And did I give you a letter in response
3 obviously to his requests?
- 4 A. Yes.
- 5 Q. All right. I show you what's been marked as Court's
6 Exhibit Number 5. Is that the letter that I gave you to
7 give to Mr. Rivera?
- 8 A. Yes.
- 9 Q. Okay. And what's the date of that letter?
- 10 A. Well, the date was December 20th.
- 11 Q. Okay. So I actually gave it to you the day you came
12 back?
- 13 A. The same day.
- 14 Q. Okay. And on the bottom of that actually you signed
15 it. You gave that letter to the Defendant when?
- 16 A. On the 21st of December at 10:58.
- 17 Q. Obviously you went back to Douglasville on the 21st
18 ---
- 19 A. Yes.
- 20 Q. --- to see ---
- 21 A. Yes.
- 22 Q. --- the Defendant?
- 23 A. Yes.
- 24 Q. Okay. Who was with you that day?
- 25 A. Layton Creamer.

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21

1 Q. And where did you meet with the Defendant?

2 A. The same, the very same room that we met with him
3 before.

4 Q. Okay. And did the room look the same?

5 A. It did.

6 Q. Okay. Same table, three chairs?

7 A. Yes.

8 Q. Okay. What was -- what time did you meet with him
9 that morning on the -- because we are now on the 21st of
10 December of 2006. Do you recall?

11 A. (No verbal response)

12 Q. Would it help if I showed you the *Miranda*?

13 (WHEREUPON, Ms. Adams presented document to the
14 witness.)

15 A. It was 10:47 a.m.

16 Q. That's when you met with him, right?

17 A. Yes.

18 Q. Okay. And you said his demeanor again was pretty
19 much the same?

20 A. Yes, it was.

21 Q. Okay. Can you describe that again?

22 A. Raymondeze was -- he was calm, polite and he was
23 personable.

24 Q. And did you read him his *Miranda* again that day?

25 A. Yes.

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22

- 1 Q. I want to show you ...
- 2 (WHEREUPON, Court's Exhibit Number 9 was marked for
- 3 identification only.)
- 4 Q. ... what's been marked as Court's Exhibit Number 9.
- 5 Is that the *Miranda* that you showed him or read to him?
- 6 A. Yes, it is.
- 7 Q. Okay. That was actually your *Miranda* form that you
- 8 took, not a Georgia form, right?
- 9 A. Yes.
- 10 Q. All right. Did you go over that *Miranda* with him
- 11 line-by-line like you normally do?
- 12 A. Yes.
- 13 Q. And what time did you say you started?
- 14 A. 10:47 a.m.
- 15 Q. So this was almost basically twenty-four hours after
- 16 he had made the requests from the day before?
- 17 A. Correct.
- 18 Q. How long did it take you to go over his rights this
- 19 time?
- 20 A. Approximately three minutes.
- 21 Q. Did he seem to understand his rights again on this
- 22 day?
- 23 A. Yes.
- 24 Q. Did you present him my letter?
- 25 A. Yes.

1 Q. All right. And did he read it? What happened with
2 that?

3 A. Yes, he read it. I read it.

4 Q. Did you read it to him out loud?

5 A. Yes.

6 Q. Okay.

7 A. And he had a -- was provided a copy of this letter
8 as well.

9 Q. Now, did he spend time looking over that letter and
10 reading it himself as well?

11 A. We just kind of did that together.

12 Q. Okay. What was his response after he read my
13 letter?

14 A. He asked me if I was ready to write.

15 Q. All right. So beside those requests that the
16 Defendant made, did you ever promise him anything in
17 exchange for his statement?

18 A. No.

19 Q. At any point when you are taking this statement, did
20 he ever stop and ask to speak to a lawyer?

21 A. No.

22 Q. Did you coerce him or threaten him in any way?

23 A. No.

24 Q. About how long were you with him this morning of the
25 ...

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- 1 A. Approximately four hours. Approximately four hours.
- 2 Q. Who did most of the talking?
- 3 A. He did.
- 4 Q. Did he ever get upset?
- 5 A. No.
- 6 Q. Did his demeanor change at all ---
- 7 A. No.
- 8 Q. --- during these four hours?
- 9 A. No.
- 10 Q. Did he ever take any breaks?
- 11 A. No.
- 12 Q. Did you ask him if he wanted to?
- 13 A. Yes.
- 14 Q. Did you offer him anything to eat or drink?
- 15 A. Yes.
- 16 Q. Did he wanted anything?
- 17 A. He didn't.
- 18 Q. Who wrote this statement?
- 19 A. I did.
- 20 Q. Okay. Why?
- 21 A. He asked me to write the statement for him.
- 22 Q. Okay. How long is that statement?
- 23 A. Ten pages.
- 24 Q. Did you have enough of your forms to finish that
- 25 statement?

1 A. No, I didn't.

2 Q. Okay. So what did you do?

3 A. We ran out of statement forms and had to use some
4 forms, some statement forms, that was provided for us by
5 Douglasville.

6 Q. And obviously that ten-page statement goes into
7 detail about the deaths?

8 A. Yes, it does.

9 Q. Now, after you wrote that statement out, what did
10 you do? Did you go back over it with him? What
11 happened?

12 A. Uh-huh (affirmative), went back over the statement
13 with him by reading it back to him. And at that time he
14 initialed any changes that had been made in the statement
15 while it was being taken.

16 Q. All right. Now, explain to me, Lieutenant, in a
17 little more detail when you are -- when he's telling you
18 what happened, you're writing the statement?

19 A. Right.

20 Q. How close are y'all? Describe for me exactly what's
21 transpiring.

22 A. I mean, we're close. I mean, he's right across the
23 table. This table is not wide. I'm left-handed, so I
24 have to put the paper -- I don't -- when I write, I don't
25 turn my hand. I turn my paper. So it's turned -- you

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- 1 know, if this was the table, it's turned this way. And
2 he's right there, and he's got his elbows up on the desk,
3 and he's watching me as I write.
- 4 Q. So he's leaning over the table?
- 5 A. Uh-huh (affirmative).
- 6 Q. That's not that big?
- 7 A. That's correct, right.
- 8 Q. All right. So as you're writing what he's saying,
9 are you making changes as you go along?
- 10 A. Yes. If he sees me misspell a word or put a word in
11 that he's not satisfied with, then I would put a line
12 through that word and put the correct word up above it.
- 13 Q. So in other words, was he very specific about the
14 words that he wanted you to use in that statement?
- 15 A. Very, very much so.
- 16 Q. Okay. Did his demeanor change at all during this
17 four-hour time period?
- 18 A. No, ma'am.
- 19 Q. Now, Lieutenant, after that process took place and
20 you got this written statement, did you and the Defendant
21 also have a conversation?
- 22 A. Yes.
- 23 Q. All right. So there were oral statements that were
24 made as well, right?
- 25 A. That's correct.

1 Q. Okay. And he was obviously willing to still talk to
2 you, he's seemed the same polite person that he had
3 previously?

4 A. Right.

5 Q. Okay. I want to show you what has been marked as
6 Court's Exhibit Number 8. And it is actually a letter
7 dated February 6, 2008, to his lawyer at the time of the
8 first trial, Mr. Gamble. If you can review that for me.
9 And does that accurately represent those oral statements
10 and the conversations that the two of you had after the
11 written statement?

12 A. That's correct.

13 Q. Did he ever refuse to answer any of your questions
14 during that four-hour period?

15 A. No.

16 Q. Did he ever ask you to stop?

17 A. No.

18 Q. Ever ask for a lawyer?

19 A. No.

20 Q. Did he in fact later waive extradition to South
21 Carolina?

22 A. Yes.

23 Q. And he also consented to give samples for DNA
24 purposes?

25 A. Yes.

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1 Q. And in fact were not some of those requests
2 fulfilled upon his return as well?

3 A. Yes.

4 MS. ADAMS: Your Honor, at this point we have
5 marked, that Mr. Delgado has seen, a Court's Exhibit
6 Number 6 which is the full statement, and then number 7
7 which is a redacted version.

8 THE COURT: Court's number what now? Six?

9 MS. ADAMS: Six is the full ten-page statement.

10 THE COURT: Full statement. And number what?

11 MS. ADAMS: Number 7.

12 THE COURT: Is the redacted?

13 MS. ADAMS: Yes, sir.

14 THE COURT: Okay.

15 MS. ADAMS: Just dealing with Kwana.

16 THE COURT: Okay. All right. I believe you
17 mentioned 3, 4, 5, 6, 7, 8 and 9; is that correct? Are
18 all these Court's exhibits?

19 MS. ADAMS: Yes sir, they're all Court's
20 exhibits.

21 THE COURT: All right. Any objection to those
22 being marked as Court's exhibits?

23 MR. DELGADO: None at all.

24 THE COURT: All right, 3, 4, 5, 6, 7, 8 and 9
25 are marked as Court's exhibits. Solicitor, would you

1 mind handing them to me, please?

2 (WHEREUPON, exhibits were handed up to the Court.)

3 THE COURT: Thank you, ma'am.

4 MS. ADAMS: And Your Honor, obviously we would
5 just ask that the statements be admitted into evidence.

6 THE COURT: Okay. Any further questions?

7 MS. ADAMS: No, sir.

8 THE COURT: Cross examination?

9 MR. DELGADO: Yes, Your Honor. Thank you.

10 CROSS EXAMINATION

11 BY MR. DELGADO:

12 Q. Lieutenant, as I understand it, there were some
13 three occasions that you traveled from Anderson County to
14 Douglas County to either see, discuss or communicate with
15 Mr. Rivera. Would that be fair? Was there three or was
16 there four? That would be the 15th, the 20th and then
17 the 21st; is that correct?

18 A. Right, the 15th, the 20th and the 21st.

19 Q. Exactly.

20 A. Pretrial, yes.

21 Q. All right, sir. You did not see him again until
22 sometime after -- possibly even after Christmas or after
23 the first of the year when he was extradited back from
24 Georgia back to South Carolina?

25 A. Yes, that's correct. I didn't see him anymore.

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1 Q. All right, sir. Now, sir, between the 15th to the
2 20th, Lieutenant, my recollection of your notes -- and
3 please correct me if I'm wrong about that -- you saw him
4 very early on the morning of the 15th or the 16th of --
5 you left here on the 15th and got to Douglasville in the
6 early morning of the 16th?

7 A. Right.

8 Q. When did you return, sir -- and you said that you
9 told him that you would be in the area, that is the
10 Douglasville or Douglas County area?

11 A. Uh-huh (affirmative).

12 Q. When did you in truth return to South Carolina or to
13 Anderson?

14 A. We returned to South Carolina Monday morning.

15 Q. And that would have been -- which day would that
16 have been, sir?

17 A. Well, if the 16th was Saturday ...

18 Q. All right, sir.

19 A. ... then that would have been the 18th.

20 Q. The 18th. All right, sir. Sir, between the ...

21 MR. DELGADO: Excuse me, ma'am. I'm not trying
22 to knock that off. I apologize.

23 Q. Between Monday the 18th and your return to
24 Douglasville on the 20th, that is to obtain legible
25 prints, correct, sir?

1 A. Uh-huh (affirmative).

2 Q. It was your intent to obtain a warrant without his
3 statement, with his statement. You were intending to get
4 a warrant to then use to extradite him with legible
5 prints or illegible prints?

6 A. Getting the warrant had been delegated by me to one
7 of my employees that was back here in Anderson before we
8 left Douglasville. It was actually on that Saturday
9 night early morning hours.

10 Q. All right, sir. And you had done that
11 telephonically or digitally?

12 A. Yes.

13 Q. You had set -- you wanted to set in motion the
14 procurement of an arrest warrant?

15 A. Yes.

16 Q. All right, sir. What was done, sir, either between
17 the time you communicated that to one of your employees
18 or one of your colleagues and the time that you returned
19 on the 20th to get the prints?

20 A. We were processing the vehicle that Raymondeze was
21 stopped in. We also had some follow-up interviews that
22 we needed to do with some individuals that Raymondeze had
23 been staying with there in Douglasville. There was the
24 creation of the original photo display which we got
25 assistance from from an investigator that worked for

1 Douglasville. And then there was the down time when we
2 needed to get some sleep because we hadn't been asleep
3 for about 72 hours. And that occurred on Sunday morning
4 when we got a motel and we were able to get about four
5 hours sleep.

6 Q. I understand that.

7 A. Yes, sir.

8 Q. What I'm saying to you, Lieutenant, is with or
9 without new prints, Mr. Rivera was going to be arrested?

10 A. Yes. We were seeking the warrant through our
11 Municipal Court as of the night that the interview with
12 Mr. Rivera and I took place, yes.

13 Q. It may be that I'm unclear, sir. When you returned
14 on the 20th which is Monday the 20th of December, 2006,
15 you physically returned to South Carolina; is that
16 correct?

17 A. Yes.

18 Q. All right, sir. I guess between the 18th and the
19 20th you got the necessary sleep that you should have
20 had, you returned here. And during that whole time you
21 or your colleagues in law enforcement were either
22 processing the vehicle, following up on interviews -- I
23 guess that would be with the Numas ...

24 A. Correct.

25 Q. ... in Douglasville?

1 A. Correct.

2 Q. And the creation of the photo display to identify
3 Mr. -- to show to eyewitnesses in or around the scene?

4 A. Correct.

5 Q. I guess what I'm saying, sir, is all that being
6 done, you didn't really need the prints to have somebody
7 extradited, did you? I mean, you were going to get an
8 arrest warrant no matter what?

9 A. Right.

10 Q. All right, sir. Lieutenant, I guess what I'm saying
11 to you is, sir, the second time you go back wherein the
12 Defendant initiates conversation with you ...

13 A. Uh-huh (affirmative).

14 Q. ... that was something that absolutely had to be
15 done. Is that your evaluation?

16 A. Yes. To my knowledge, we got a packet from the
17 Attorney General's office.

18 Q. Yes, sir?

19 A. An extradition packet. And in big bold letters on
20 that packet, they advised that they will only receive
21 legible fingerprints in an extradition process.

22 Q. Yes, sir. My point to you, sir, is you didn't --
23 you don't know whether they were legible or not. You
24 hadn't really submitted them to the Attorney General for
25 the Attorney General's office, the extradition division,

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- 1 to say, Lieutenant, these aren't legible. These aren't
2 sufficient for our purposes to be able to ask the
3 governor of the State of Georgia to extradite?
- 4 A. There was no need to do that. I have been involved
5 in several extraditions. And I can say that these prints
6 were not good. And even had they been good, they
7 wouldn't have accepted them because the officer didn't
8 date them nor did he sign his name on them as the person
9 that took the prints.
- 10 Q. All right, sir. You go back on the 20th. He calls
11 out your name, John. And because you weren't prepared to
12 take any statements at that time, you communicated some
13 of his three desires back to the Solicitor on the 20th;
14 is that correct?
- 15 A. Yes, sir.
- 16 Q. She responded in the way of a written submission
17 back to Mr. Rivera that you hand-delivered the next day,
18 the 21st?
- 19 A. Yes.
- 20 Q. That on the 21st is when Mr. Layton was there with
21 you?
- 22 A. Yes.
- 23 Q. And when the conversation that is Court's Exhibit
24 Number 6 is obtained? That is the full statement from
25 Mr. Rivera?

1 A. Yes.

2 Q. Lieutenant, let me ask you this, sir. In that
3 interview room -- let me back up and say this to you,
4 sir. You understand that as you're speaking right now,
5 every word that you're saying is being taken down?

6 A. Absolutely.

7 Q. And is memorialized contemporaneously with how
8 you're saying it?

9 A. Right.

10 Q. Same thing we'd do with the State Highway Patrol,
11 the United States Congress?

12 A. Sure.

13 Q. Memorialization is contemporaneous in all segments
14 of our society?

15 A. Yes.

16 Q. Except we didn't do that in this conversation on the
17 20th of December; would that be fair?

18 A. That's correct.

19 Q. So he says to use certain things, A, B, D, C, D, E
20 and F; and you put down A, B, C, D, E and F exactly as he
21 says it, correct, sir?

22 A. Yes.

23 Q. Sir, can you tell us the tone, the hesitation, the
24 pausing, the thought process of Mr. Rivera in taking that
25 down? By that I mean there's no other way to be able to

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1 evaluate that except your version of what was said, how
2 it was said, when it was said in the chronology in which
3 it was said; would that be fair?

4 A. I'm not sure that that would be fair. And let me
5 explain why. This was a four-hour process. And I
6 explained to Mr. Rivera that there would be no way
7 humanly possible that I can write as fast as he can talk.

8 Q. Yes, sir.

9 A. It's just not possible for me to write that fast.

10 Q. Sure.

11 A. And it appeared as though this was going to be a
12 lengthy conversation.

13 Q. Sure.

14 A. So I explained to him, as I had many times in the
15 past with written statements, that we're just going to
16 kind of take this line by line. Okay. And you'll be
17 able to see what I'm writing as you give me information.

18 Q. Upside down from the other side of the table?

19 A. Well, yes, sir.

20 Q. I mean, I'm not ---

21 A. I understand. I understand.

22 Q. I'm talking the physiological aspect of that is he
23 has to see that upside down?

24 A. If he saw it upside down, he could read it as well
25 as I could because he actually made several corrections,

1 numerous corrections, as we were going through the
2 statement.

3 Q. Yes, sir.

4 A. And I would, upon his advice, make the corrections
5 then.

6 Q. Sir -- again, sir, with all due respect to your
7 position and as being the chief agent involved in this,
8 we have your word during that four hours that you said to
9 him, Mr. Rivera or Raymondeze, this is going to be a long
10 process. I can't write as fast as you say it, but I'm
11 going to take this down as you tell it to me.

12 A. Right.

13 Q. And additionally, we don't have -- again, sir,
14 without any independent corroboration, we don't have
15 anything to be able to say he told you to write it down.
16 Would that be fair?

17 A. Well, no, that wouldn't really be a fair statement
18 at all, Mr. Delgado, because I would have never went into
19 an interview like this by myself. And that's the reason
20 why Lieutenant Creamer was there as well.

21 Q. Sure. Yes, sir, I understand. Both of whom are
22 there to obtain an incriminating, inculpatory statement
23 of Mr. Rivera, correct?

24 A. Right.

25 Q. I guess what I'm saying, sir, is there is no other

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1 independent means to be able to show the pacing, that is
2 the tonal quality, and the pacing of what he told you,
3 what he said was not exactly correct, what he wanted to
4 change except for what you and Mr. Creamer say and the
5 written portion that you wrote out, correct?

6 A. That's right.

7 Q. All right, sir.

8 A. That's correct.

9 Q. Sir, the Government -- excuse me. The Solicitor has
10 said that Court's Exhibit Number 8 relate to some oral
11 statements that Mr. Rivera gave to you after the written
12 statement was taken down, correct, sir?

13 A. Right.

14 Q. All right, sir. In the same fashion, Lieutenant,
15 those could not have been added in the way of after the
16 initial completion of the written statement Mr. Rivera
17 also said A, B, and C? That wasn't part of the written
18 statement?

19 A. No.

20 Q. This is your verbal recount -- your recounting of
21 his verbal statements to you?

22 A. Right.

23 Q. Some month and a half, two months after they were
24 taken down?

25 A. No. I recount those statements very well as of even

1 today.

2 Q. All right, sir. I guess what I'm saying, sir, is
3 from February [sic] the 20th ...

4 A. Yes.

5 Q. ... to February the 6th, 2007 ...

6 A. Yes.

7 Q. --- those oral statements were physically where?

8 A. Not written down.

9 Q. That's right.

10 A. Right.

11 Q. They were in your memory bank?

12 A. Right.

13 Q. In your recollection of what was said and how they
14 were said?

15 A. That's correct.

16 Q. And you took it upon yourself in an attempt to be
17 accurate and thorough and complete to reduce that to a
18 letter that either the Solicitor sent or that law
19 enforcement sent to Mr. Gamble, his previous lawyer?

20 A. Yes.

21 Q. All right, sir. Those written -- those oral
22 statements, had they been -- a tape recorder been present
23 would have been verbally noted, would have been shown in
24 their context in the same fashion as anything else he
25 said during those four hours that you were in his

1 presence?

2 A. That would be correct.

3 Q. Sir, outside of yourself, Mr. Rivera and Mr.

4 Creamer, was there anybody else that was in the room to

5 overhear, take part in or observe that conversation?

6 A. No, sir.

7 Q. All right, sir. Just one second, please.

8 (Pause)

9 Q. Lieutenant, let me follow up with some of the things

10 my colleague has asked me to inquire. I think they're

11 necessary. The probable cause for the murder, if there

12 was no statement from Mr. Rivera, consisted of what, sir?

13 A. At that time our in-house fingerprint examiner had

14 located a fingerprint on a dinner plate that a witness

15 stated that Mr. Rivera had eaten from while he was at the

16 house. Well, they didn't say Mr. Rivera. They said

17 whoever it was. They were eating dinner. And thus we

18 have this plate.

19 Q. Or someone in that apartment eating?

20 A. Right. So he had preliminarily identified a

21 fingerprint from that plate that was actually confirmed

22 later the next day. Okay?

23 Also, we had a composite sketch that had been

24 completed by a witness that saw Mr. Rivera. And we had a

25 video from a service station here with Mr. Rivera's

1 automobile there, him outside of the automobile. The
2 image of Mr. Rivera was clearly identifiable. And the
3 victim's car was in that same video as well.

4 Q. Sir, besides a fingerprint of an, as of that time,
5 unknown individual and a sketch, a composite sketch, that
6 had not been identified by any individual and the video
7 from -- I'm going to call it -- it's not a 7-11. But I
8 know what you mean, a gas station?

9 A. Yes, sir.

10 Q. A fast food place?

11 A. Yes, sir.

12 Q. The most important aspect of the probable cause
13 would have necessarily been a confession or an admission
14 by Mr. Rivera? Wouldn't that have been fair?

15 A. I mean, probable cause -- I mean, the confession, to
16 me, would have been almost beyond reasonable doubt. But
17 that's not for me to decide, sir. We were going to take
18 the information that I just related to you and approach
19 the court and let the court determined whether there was
20 probable cause to issue an arrest warrant in the case.

21 Q. All right, sir.

22 A. I can't say as a lieutenant or a police officer that
23 I can get a warrant.

24 Q. Sure.

25 A. That depends obviously on the process and me being

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1 able to relate enough justifiable facts to a judge to
2 issue the warrant.

3 Q. Sir, the -- I'm not going to call it a bad print
4 card. But the print card that was submitted to you from
5 your colleagues in law enforcement in Douglas County,
6 where is that existent now, if you know?

7 A. Are you talking about the print cards that we went
8 and ---

9 Q. Not the ---

10 A. --- the extradition process?

11 Q. No, sir. The very first set that you decided were
12 not sufficient for the purposes of the Attorney General.

13 A. Here.

14 Q. I mean, do you physically have those?

15 A. They're in ---

16 Q. No, sir. If those have been given to us in
17 discovery, then I beg your pardon.

18 A. Yes, sir.

19 Q. I'll review those again as well.

20 A. Yes, sir.

21 Q. Sir, would it be fair to say, sir, that the -- in
22 the same fashion that you identified an African American
23 male between the ages of twenty and thirty in the parking
24 lot of, I think it's an Exxon -- it may be another
25 gasoline chain -- that constitutes your probable cause,

1 the Anderson County -- excuse me -- the City of Anderson
2 Police Department has and uses on a regular basis video
3 or digital recording equipment for all sorts of matters?
4 Would that be fair?

5 A. We do have some digital and video recording
6 equipment ---

7 Q. Yes, sir.

8 A. --- now, yes.

9 Q. In truth, sir, it depends on law enforcement's
10 desire to memorialize -- that is to use the video -- as
11 to whether it's used or not. In other words, that comes
12 down to a call either by you or someone in your capacity
13 in law enforcement deciding whether or not to tape record
14 or to video certain aspects of what you're doing in your
15 investigation. Would that be fair?

16 A. Well, I'm -- could I ask you to be a little bit more
17 specific ---

18 Q. Sure.

19 A. --- with your question because I may have
20 misunderstood.

21 Q. Sure.

22 A. Sir, I don't want to misunderstand your question.

23 Q. No, no. That was an inartfully phrased question.

24 What I'm saying to you, sir, is that videos are used by
25 the City of Anderson Police Department and Anderson

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1 County Sheriff's Department in a whole variety of
2 different ways in investigations. Would that be fair?

3 A. Yeah, with the exception of interrogation.

4 Q. Yes, sir, exactly.

5 A. We don't have the ability ---

6 Q. Exactly the point, Lieutenant. And that is
7 something that both -- well, at least the Anderson Police
8 Department -- the City of Anderson Police Department has
9 chosen not to do. Would that be fair?

10 A. No, sir, that wouldn't be fair. We actually -- I
11 actually control a \$556,000 budget that the money would
12 be allotted from to come for purchasing those type of
13 equipment. As it stands right now, budgetarily we would
14 like to have the equipment. But we do not have the
15 financial means to achieve it.

16 Q. Lieutenant, with all due respect, sir, I can go down
17 to Best Buy and obtain something for thirty dollars that
18 a tape recorder on a crime -- an investigation of this
19 ---

20 A. Oh, we have tape recorders. Yes, sir.

21 Q. Yes, sir. Tape recorders then.

22 A. Sure.

23 Q. Tape recorders?

24 A. Sure. Right.

25 Q. You have those in the City of Anderson Police

1 Department?

2 A. Sure, yes.

3 Q. Available for your use?

4 A. Uh-huh (affirmative).

5 Q. And you chose not to use one on the 20th of
6 December. Would that be fair?

7 A. Right.

8 Q. Sir, the request that Mr. Rivera made to you on the,
9 I want to call it, the back side of a waiver form that
10 was used either by the Douglasville P.D. or the Douglas
11 County Sheriff's Department is very -- it was clear to
12 you that those requests would have to be met before he
13 would -- that is Mr. Rivera -- would discuss any of the
14 facts of the case as he saw it or knew it?

15 A. That's what he said, yes.

16 Q. Yes, sir. Lieutenant, I don't think I have anything
17 further. Thank you, sir.

18 A. Yes, sir. Thank you.

19 THE COURT: Any redirect?

20 MS. ADAMS: Your Honor, just a couple of
21 things.

22 REDIRECT EXAMINATION

23 BY MS. ADAMS:

24 Q. John, when you and Mr. Rivera are writing the
25 statement literally and he's looking at you, changing

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1 things word-for-word to make sure the right word is being
2 used, is Layton Creamer writing notes?

3 A. Yes.

4 Q. What's he doing?

5 A. Yes.

6 Q. He's making notes?

7 A. Notes.

8 Q. Okay. And actually, he even typed up his notes and
9 summarizes basically the oral statements that Mr. Rivera
10 made ---

11 A. He did.

12 Q. --- at that time?

13 A. He did.

14 Q. Okay.

15 MS. ADAMS: And, Your Honor, I can get for you
16 -- we have copies of the Georgia prints and obviously the
17 prints that Mr. Baskin took for the Court. The original
18 prints were admitted into evidence as a Court's exhibit
19 when we did this in Asha Wiley's trial. So -- but we can
20 do a copy, but the originals have already been entered
21 into court. But we can -- I'm getting copies right now
22 to make Court's exhibits, if that's okay with Mr.
23 Delgado.

24 MR. DELGADO: That's fine.

25 THE COURT: Okay. That's fine.

1 MS. ADAMS: So we do have those. And that's
2 all, Your Honor.

3 THE COURT: That's it?

4 MR. DELGADO: I have nothing further.

5 THE COURT: You may step down. Thank you very
6 much.

7 Any more witnesses?

8 MS. ADAMS: No, sir.

9 THE COURT: Any arguments? Any arguments from
10 the State?

11 MS. ADAMS: Your Honor, obviously we feel that
12 the statement was freely and voluntarily given and should
13 be admitted.

14 THE COURT: Any arguments from the Defense?

15 MR. DELGADO: Your Honor, would the Court
16 consider the Defense in -- if this were an auto theft
17 charge, I don't know if I would be asking this. But
18 because of the extraordinary nature of these proceedings,
19 would the Court consider allowing the Defense to keep the
20 record open on this matter? And since the Court has
21 heard at least the State's testimony relating to the
22 voluntariness of this, to allow the Defense to address
23 this again? And I don't think that we would do this in a
24 very extenuating sense. But I would like to be able to
25 review and possibly add to the record for the fullest

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1 presentation to the Court as to why this may not be
2 voluntary; and therefore ---

3 THE COURT: In what fashion do you want to add?

4 MR. DELGADO: I want to see the prints and may
5 have to ask someone to look at the prints as a basis for
6 having the Court determine whether or not -- with all due
7 respect to Mr. Zamberlin, whether or not the second visit
8 wherein a conversation was reinitiated supposedly,
9 whether or not that was a pretext and a fraud.

10 THE COURT: Well, how are you going to do that
11 if you decide to do that without cross examination from
12 the State?

13 MR. DELGADO: No, sir. I want us to.

14 THE COURT: I don't have any problem leaving it
15 open. Tell me how you want to proceed ---

16 MR. DELGADO: I would like ---

17 THE COURT: --- is what I'm trying to get you
18 to tell me.

19 MR. DELGADO: Sure. I'd like to be able to
20 look more closely now with the aid of an expert at the
21 first print cards to juxtapose that against the testimony
22 given by Mr. Zamberlin. Then the prints that were taken
23 that are in evidence in another matter and then to pose
24 those to the Court as evidence showing why the
25 voluntariness of the initiation of his conversation may

1 not have been exactly as proposed.

2 THE COURT: Are you going to do it by affidavit
3 from an expert?

4 MR. DELGADO: No, sir. If I can -- probably
5 we'll have another hearing shortly -- or perhaps if an
6 affidavit will not suffice for the Court, let the State
7 ---

8 THE COURT: Why don't you do it by affidavit?

9 MR. DELGADO: All right, sir.

10 THE COURT: And then the State can look at the
11 affidavit, and the State can either give a counter
12 affidavit or bring the witness in for cross examination
13 before I rule. But I'll let the State make that decision
14 on whether ---

15 MR. DELGADO: Sure.

16 THE COURT: --- they want to cross examine the
17 witness. If they do, we'll reconvene the hearing, bring
18 the witness in and they can cross examine.

19 MR. DELGADO: That would be perfect. Thank
20 you.

21 THE COURT: Okay.

22 MR. DELGADO: Thank you.

23 THE COURT: If the State doesn't, then that's
24 fine. I'll look at the affidavits and make a decision.

25 MR. DELGADO: Thank you, sir.

1 THE COURT: Let me ask you a question before
2 you finish. What is your objection to the admissibility
3 of the statement from a standpoint of voluntariness or
4 the absence of *Miranda*, or do you have any other
5 objections to admissibility of the statement other than
6 what you just put on the record concerning the
7 fingerprints?

8 MR. DELGADO: Yes, sir. And possibly I could
9 do this in a written memoranda to the Court that might
10 amplify a bit where I was going with my cross examination
11 of Lieutenant Zamberlin.

12 THE COURT: All right. If you want to do it by
13 memoranda, that's fine. If you want to do it orally
14 today, that's fine too.

15 MR. DELGADO: Maybe if the Court will allow me
16 to beg your indulgence for thirty seconds, I'll just put
17 this on the record and I'll see if I can amplify it.

18 Your Honor, I believe that long after I've stop
19 practicing law, the state of criminal procedure will
20 require as a process or a function of due process that
21 all felony defendants, possibly even only murder
22 defendants, that are interrogated by law enforcement,
23 that their statements are memorialized either with audio
24 or video or some neutral memorialization component.

25 There are seven states in the country now that

1 require that before a statement is admitted into
2 evidence. That is not of course the State of South
3 Carolina. But as I said, long after I stop practicing
4 law, but possibly as a result of a motion made now, that
5 this will allow continued review of any adverse decision
6 as against Mr. Rivera because that statement is so
7 inculpatory and is not just the sum and substance of the
8 State's case, but in fact, may very well be all they need
9 to have to introduce.

10 But if there is no contemporaneous objection -- I
11 mean no contemporaneous recording of that, there's no way
12 for this Court, for a jury, for anybody else to review
13 that and say, this is what was said, this is how it was
14 said. There was a hesitation before this was answered.
15 The manner in which it was given. All of those aspects
16 that judge and that in our common-day evaluations go to
17 voluntariness. There's no way, with all due respect to
18 Mr. Zamberlin and to the other -- Mr. Creamer who was
19 with him, except what they say happened. And I'm not
20 saying that they have anything hidden or they have an
21 agenda here. But this was an extraordinary case and
22 should have required that sort of neutral recording that
23 we'll do for a DUI but we won't do because it's a murder
24 case.

25 It just seems that the state of law will change, and

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1 I simply want to be able to preserve that for any
2 appellate review that may be necessary.

3 THE COURT: Well, it's required for DUIs right
4 now by state statute.

5 MR. DELGADO: Exactly, exactly. And as we're
6 speaking here today, the court reporter is taking down
7 what I'm saying word-for-word. And yet we can't -- with
8 the Anderson Police Department, we can't record a
9 conversation that is so absolutely essential to either
10 the Prosecution's case or the Defense's defense. It
11 seems improper and illogical, I believe, that due process
12 one day will require that.

13 Thank you.

14 THE COURT: Okay.

15 Anything else from the State?

16 MS. ADAMS: Your Honor, I do have the
17 fingerprint cards that Georgia took. We introduced
18 actually copies in Asha Wiley's trial. I will make
19 copies of this and add them ---

20 THE COURT: What number is it going to be?

21 MS. ADAMS: --- to the Court's exhibit.

22 THE COURT: Exhibit what?

23 MS. ADAMS: And along with ---

24 THE COURT: Court's what? What number?

25 MS. ADAMS: I don't know what number we're on,

1 Judge. Let me check. We'll have numbers 10 and 11
2 because I will add the Georgia prints and the prints that
3 we took, Mike Baskin took.

4 THE COURT: Okay. All right. I'll leave the
5 record open to receive the affidavits or whatever the
6 Defense would like to submit. And Solicitor, as I said,
7 you can review it and decide whether you want to do a
8 counter affidavit or you want to reconvene the hearing
9 and bring in the appropriate parties for cross
10 examination.

11 MS. ADAMS: Yes, sir. Thank you.

12 THE COURT: And that's strictly up to you.

13 MS. ADAMS: Okay.

14 THE COURT: I'm not going to rule on that or
15 force you one way or the other. If you want to reconvene
16 and cross examine, that's fine. If you want to go as it
17 stands, that's fine too.

18 MS. ADAMS: Okay.

19 MR. MCGUIRE: And Judge, for the Court's
20 benefit and the Solicitor's benefit, subject that you're
21 going to start looking at this before we add to the
22 record, one additional grounds for declaring the
23 statement not voluntarily is the free request that the
24 Defendant made. In essence that was a contract, offer,
25 promise, meeting of the minds, contract, and those

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1 promises were made to him with the express purpose of the
2 procurement of the statement. And without those
3 promises, no statement.

4 THE COURT: Okay.

5 MS. ADAMS: Your Honor, would you like me to
6 comment on that now or ...

7 THE COURT: That's fine. Are you going to ---

8 MS. ADAMS: Your Honor, we actually do have ---

9 THE COURT: Are you going to address that in
10 your memo?

11 MS. ADAMS: Well, we actually already have.

12 THE COURT: He said he's going to submit a
13 memo. Do you want to address it?

14 MR. MCGUIRE: Sure.

15 THE COURT: Pardon?

16 MR. MCGUIRE: Yes, Judge.

17 THE COURT: I mean, if you want to. If you
18 don't, that's fine too. I don't care. I'm not trying to
19 tell you ---

20 MR. MCGUIRE: If we need to ---

21 THE COURT: --- to. If you want to ---

22 MR. MCGUIRE: Sure.

23 THE COURT: --- that's fine. If you don't,
24 that's fine too.

25 Yes, ma'am, you may address it.

1 MS. ADAMS: We had a memorandum we can address,
2 or -- and I can briefly just put on the record. Your
3 Honor, he initiated the contact with police ---

4 THE COURT: Well, you want to hand me the
5 memorandum? It's not doing any good sitting on your
6 desk.

7 MS. ADAMS: I haven't filed it yet.

8 THE COURT: Pardon?

9 MS. ADAMS: I haven't filed it yet.

10 THE COURT: I don't care. Give it to me.

11 MS. ADAMS: How about if I sign it for you?

12 THE COURT: I don't care if it's filed. It's
13 not going to do any good sitting on your desk or in the
14 Clerk's file.

15 (WHEREUPON, Ms. Adams handed up document to the
16 Court.)

17 THE COURT: Thank you, ma'am.

18 MS. ADAMS: You're welcome.

19 THE COURT: Have you given the other side a
20 copy of it?

21 MS. ADAMS: No, sir. I just signed it.

22 THE COURT: All right. I'll give it to you.
23 You can run a copy and give it to the other side, okay?

24 MS. ADAMS: Okay. I will do it.

25 THE COURT: Anything else?

1 MS. ADAMS: No, sir, unless you just want me to
2 briefly put on the record why -- what's in that memo.

3 THE COURT: Yeah.

4 MS. ADAMS: Okay. Your Honor, basically the
5 Defendant made the three requests before he was willing
6 to give that statement. He initiated the contact. He
7 had plenty of time to think about those requests before
8 he made them. He solicited the deal. He did it freely
9 and voluntarily. He did not ask for leniency. He was
10 told that if evidence and the investigation supported the
11 penalty that he was asking for that we would do it.

12 When you look at the totality of the circumstances,
13 he negotiated the deal, and he's intelligent enough to do
14 so. And in order to render a confession inadmissible
15 based on this, the coercion, promise or inducement must
16 be so connected with the confession that the confession
17 is a consequence of the coercion, promise or inducement.
18 And Your Honor, we just -- we don't have it here at all.

19 THE COURT: Did he -- did the chaplain meet
20 him?

21 MS. ADAMS: Yes, sir.

22 THE COURT: Did he have a cell by himself?

23 MS. ADAMS: He did.

24 THE COURT: Okay. Thank you very much.

25 Anything else on this issue?

1 MR. MCGUIRE: Not at this time, Your Honor.

2 THE COURT: Okay.

3 What's next?

4 MS. ADAMS: Your Honor, we have the *Neil v.*

5 *Biggars* hearing.

6 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 4th day of June 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14

January 26, 2010

15

16



17

Circuit Court Reporter

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

Plaintiff,

-vs-

Raymondeze Lamon Rivera,

Defendant.

2007-GS-04-649

November 10, 2009

Transcript of Record

B E F O R E:

The Honorable J.C. "Buddy" Nicholson, Jr., Judge

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

Christina Adams, Esquire
Solicitor for the Tenth Judicial Circuit

Jennings Byford, Esquire
Rame Campbell, Esquire
Assistant Solicitors for the Tenth Judicial Circuit

Attorneys for the State

William S. McGuire, Esquire
John Delgado, Esquire
Attorneys for the Defendant

R. Daniel Day, Esquire
Guardian ad Litem for the Defendant

Renee H. Tollison
Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV

Note - No exhibits were presented during the hearing

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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 3:16 p.m.)

4 THE COURT: Mr. Rivera, how are you doing
5 today?

6 THE DEFENDANT: I'm fine, Your Honor.

7 THE COURT: Are you doing okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. You have filed a motion
10 for a change of venue; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. On your motion for your
13 change of venue, I will take that under advisement.
14 Okay? I'm not going to rule on any motion for a change
15 of venue until we get into the voir dire with the jurors
16 at the time of trial. And the trial is set for February
17 the 1st. So sometime during that week of February 1st,
18 I'll rule on the motion for a change of venue. Do you
19 understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Because I have no evidence right
22 now one way or the other as to whether we're going to be
23 able to draw a jury because of publicity or not draw a
24 jury. But we'll find all that out when we go through the
25 voir dire February the 1st. We'll probably go through the

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1 voir dire February the 1st, 2nd, 3rd, 4th and maybe the 5th.

2 Do you understand? So sometime during the time frame,

3 I'll rule on your motion to change venue.

4 THE DEFENDANT: I appreciate it, Your Honor.

5 THE COURT: Okay. So I will take that under
6 advisement.

7 Yes, sir, Mr. Day?

8 MR. DAY: I'm sorry, Your Honor. The other
9 motion that he's filed, I explained to him, is mostly
10 procedural which will be done either before the trial or
11 as the trial is beginning to determine how the trial will
12 be done. Those have been filed with the Court. And as
13 you've just said, Mr. Rivera understands now, that those
14 will be heard. He wants to make sure they're on the
15 record. They have been filed. Counsel and the Solicitor
16 agree that these matters are going to be heard prior to
17 trial. He wanted to be sure of that. And that's why
18 they're filed. And he is not waiving any of those by any
19 means and wishes for those to be heard, and that will be
20 done at the proper time.

21 THE COURT: All right. Mr. Rivera, what I'm
22 going to do either sometime in December or sometime in
23 January I will set up either one or two days to hear
24 nothing but motions that are pending prior to the trial
25 on February the 1st. And the parties will get together

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1 and pick two dates either in December or January. Do you
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And at that time we'll hear all the
5 motions that are pending.

6 MS. ADAMS: Yes, sir.

7 THE COURT: Do you understand, Mr. Rivera?

8 THE DEFENDANT: Even the motion to relieve
9 counsel?

10 THE COURT: I'm hearing that today.

11 THE DEFENDANT: Oh.

12 THE COURT: We'll get to that next, okay?

13 All right. You wrote a letter to Ms. Phillips on
14 September the 21st, 2009, where you said your current
15 counsel have a conflict of interest. Now, do you want to
16 proceed with this or do you not want to proceed with this
17 today?

18 THE DEFENDANT: No. I want to proceed with it
19 today.

20 THE COURT: You want to proceed with it today?

21 THE DEFENDANT: Right..

22 THE COURT: All right. Then please tell me why
23 you think your attorneys have a conflict of interest.

24 THE DEFENDANT: Basically, Your Honor, I filed
25 three motions under *Strickland v. Washington*.

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1 THE COURT: You filed what?

2 THE DEFENDANT: Three motions.

3 THE COURT: All right. What are the motions?

4 THE DEFENDANT: I filed three motions under

5 *Strickland v. Washington*. I don't know if you've got a

6 copy of it or not. But anyway, I spoke to you back in

7 December of last year about the telephone conversation

8 that me and John Delgado had. One of the things that got

9 my attention was that he had threatened me over the

10 phone. Not just that. I asked him not to file stuff on

11 my behalf like the continuance we did last time, and he

12 did anyway.

13 THE COURT: What did he file that you were

14 concerned about?

15 THE DEFENDANT: Well, to my understanding was

16 back in July, when I was here in 2009, I was under the

17 assumption that we was going to pick a jury. But on that

18 arrangement day, my understanding was the trial was

19 continued until November. Okay? So when I went back to

20 the prison at Broad River, I met with John and Mr.

21 McGuire. And they explained to me that it had been set

22 for October because the Solicitor had filed a notice with

23 you without their consent. Okay? So I was fine with

24 that. I said, we'll go in December -- excuse me -- we'll

25 go in October.

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1 I think back in August 28th, I get a visit from Mr.
2 Delgado and Ms. Schwartz -- Swizer (phonic). And
3 basically what they said was, well, we have some more bad
4 news. I said, well, what is it. They said, well, I had
5 to file a continuance because Mr. McGuire was -- he was
6 in trial. I said, well, to my understanding was he was
7 going to be in trial for two weeks and still would give
8 us enough time to prepare for our -- prepare for my trial
9 and try it. I said, well, I asked you not to file the
10 continuance anyway. I said, you know, we spoke to that
11 the last time that you was here. I asked you do not file
12 any more motions on my behalf unless it gets set with me
13 first. Okay? He did it anyway.

14 Therefore, I filed -- then I asked him -- I said,
15 well, when was the court date? I said -- he said it was
16 in February. I said, well, can we get it for December?
17 He said, no, we don't trial cases in December. I said,
18 well -- I was thinking about it -- I said, well -- to
19 myself when I go back to my cell, the first time I met
20 Mr. Delgado was at Perry. And he explained to me that I
21 had a trial date back in December of 2008. He said we
22 had three months to prepare for it. So that was a lie.
23 Okay? Anyway, so I asked him -- I said, well, do you
24 have any notice of anything in writing that says we're
25 going to go to trial in February? They said no. Okay?

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1 And that's when I filed another motion ---

2 THE COURT: That's your complaint against your
3 attorneys?

4 THE DEFENDANT: Like I said again, Your Honor,
5 is that a threat, the lies, not filing stuff?

6 THE COURT: Let me say this to you, Mr. Rivera,
7 and you listen very carefully. Okay?

8 THE DEFENDANT: Go ahead.

9 THE COURT: A lot of what you're talking about,
10 your attorneys didn't have anything to do with it. Okay?
11 I did. The case was originally set to be tried in July.
12 Dr. Donna Schwartz-Watts got ill at the last minute, a
13 week or ten days before trial. I continued it. We
14 tentatively set it in November, and that's what you were
15 told. I arbitrarily moved it to October. Your attorney
16 didn't have anything to do with it. I did that.

17 THE DEFENDANT: I understand that.

18 THE COURT: Unbeknownst to me, Mr. McGuire was
19 in a death penalty case in Charleston. Unbeknownst to
20 me, I wound up trying that death penalty case in Berkeley
21 County for Mr. McGuire back in September, okay ...

22 THE DEFENDANT: Right.

23 THE COURT: ... at that time. So there was not
24 enough time frame between the case in Berkeley County and
25 the case we had set for October. So I got all the

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1 parties together, and everybody agreed on October the 1st
2 -- excuse me -- February the 1st. It is set for February
3 the 1st, 2010, and that's when it's going to be tried.
4 The only thing that's going to prevent it from being
5 tried is somebody is in the hospital and cannot attend.

6 THE DEFENDANT: I didn't get no notice about
7 that, Your Honor.

8 THE COURT: Well, I'm notifying right now.
9 Solicitor, did you get me the order?

10 MR. CAMPBELL: It's coming, Your Honor.

11 THE COURT: I will sign the order today
12 ordering this case to be tried on February the 1st, 2010.
13 So what I'm telling you is your attorneys had very little
14 to do with what transpired after we got the case
15 continued in July. That was my doings, not your
16 attorneys. Do you understand?

17 THE DEFENDANT: I understand that, Your Honor.

18 THE COURT: So if you're irritated with
19 somebody, get irritated with me, not your attorneys.
20 They didn't have any choice in the matter. Do you
21 understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Because I arbitrarily did that, and
24 I was in error when I arbitrarily moved it from November
25 to October. That was my error. And I corrected it and

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1 continued it for Mr. McGuire. Not for Mr. Delgado but
2 because of Mr. McGuire. And that case in Berkeley County
3 lasted two and a half weeks. And it probably would have
4 lasted three and a half weeks except there was some
5 technical problems and it ended early. But it probably
6 would have lasted actually three and a half weeks. I
7 don't know if that answered your question or clears it up
8 at all.

9 THE DEFENDANT: Well, Your Honor, anyway, like
10 I said again, under the Sixth Amendment, I have a right
11 to proceed pro se. Okay. That's my right.

12 THE COURT: Let me back up. We're still
13 talking about this -- your letter says to a conflict of
14 interest and asks that two competent attorneys be
15 appointed. You know, you can't have it both ways.

16 THE DEFENDANT: The letter says either pro se
17 or -- the letter says right here, Your Honor, either pro
18 se or ---

19 THE COURT: Two competent attorneys.

20 THE DEFENDANT: Right. Those are the two
21 options. Now, if you don't want to appoint me two
22 competent attorneys, then I'll proceed pro se then.

23 THE COURT: All right. You have two competent
24 attorneys representing you. Okay? I'm not going to
25 appoint any more attorneys. You've got two very

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1 competent attorneys representing you. They're probably
2 as competent as anybody in the state of South Carolina in
3 death penalty cases. Okay. So I'm not going to appoint
4 anyone else. Do you understand?

5 THE DEFENDANT: That's fine.

6 THE COURT: Now ---

7 THE DEFENDANT: Then I'll proceed pro se.

8 THE COURT: Okay. You want to proceed pro se?

9 THE DEFENDANT: Right.

10 THE COURT: Is that what you want to do?

11 THE DEFENDANT: Right.

12 THE COURT: Okay. I'll be glad to hear you on
13 that.

14 THE DEFENDANT: Your Honor, it says right here
15 under the Sixth Amendment that this Court cannot thrust
16 counsel upon me. It violates the logic of the amendment.
17 It also says that under appropriate circumstances, the
18 constitution requires that counsel be tendered. It does
19 not require that in all circumstances counsel be forced
20 upon a defendant. That's *Ferrott v. California* (phonic),
21 Your Honor. It says when the administration of a
22 criminal law ---

23 THE COURT: Mr. Rivera, let me ask you this.
24 The law does say you can proceed pro se. Do you know
25 what the qualifications or the criteria for the Court

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1 allowing you to proceed pro se? Do you know that?

2 THE DEFENDANT: My understanding, Your Honor,
3 reading *Ferrott* ---

4 THE COURT: What?

5 THE DEFENDANT: To my understanding reading the
6 case of *Ferrott*, Your Honor, you don't have to have per
7 se court knowledge or be a lawyer to proceed with trial.
8 I've been through a trial one time.

9 THE COURT: But do you know the criteria for
10 you to proceed pro se?

11 THE DEFENDANT: I filed the motion.

12 THE COURT: Tell me what it is. You've got
13 certain criteria. Are you aware of that?

14 THE DEFENDANT: Right, to knowingly,
15 intelligently and voluntarily waive my rights.

16 THE COURT: Okay. All right.

17 THE DEFENDANT: And I've done that.

18 THE COURT: Why -- how have you done that and
19 why -- how have you done that?

20 THE DEFENDANT: Your Honor, I've just told you
21 today with my opening argument that I would like to
22 proceed pro se.

23 THE COURT: Well, that doesn't mean that it's
24 intelligently and knowingly waived. Let me ask you some
25 questions if that's your position if you want to proceed

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1 pro se. Okay? I'm going to ask you some questions.

2 Okay? Do you have a copy of the rules of court?

3 THE DEFENDANT: Not on me.

4 THE COURT: Pardon?

5 THE DEFENDANT: Not on me.

6 THE COURT: Do you have them in your cell room?

7 THE DEFENDANT: No, I don't have them in my
8 cell room, but I believe there is a copy in the rules of
9 court in the law library.

10 THE COURT: Do you have a copy of the rules of
11 evidence?

12 THE DEFENDANT: Do I have a copy -- no, sir.

13 THE COURT: Have you ever read the rules of
14 court?

15 THE DEFENDANT: I briefly read the rules of
16 court and rules of evidence.

17 THE COURT: Have you ever read the rules of
18 evidence?

19 THE DEFENDANT: I think I just said I've
20 briefly read the rules of court and rules of evidence.

21 THE COURT: Have you ever heard of the word
22 hearsay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What does hearsay mean to you?

25 THE DEFENDANT: Basically anything that's not

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1 said -- anything that's said through somebody through
2 somebody else is hearsay.

3 THE COURT: Are you familiar with the
4 exceptions to the hearsay rule?

5 THE DEFENDANT: I'm briefly familiar with them,
6 Your Honor.

7 THE COURT: Tell me how familiar you are?

8 THE DEFENDANT: Like I'll say again, I read all
9 this -- a lot of the stuff briefly. But to my knowledge,
10 I don't have anything right now to explain to you right
11 now.

12 THE COURT: Okay. Do you know what the word
13 relevance means?

14 THE DEFENDANT: Irrelevant?

15 THE COURT: Yeah.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you know what that means?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What's it mean?

20 THE DEFENDANT: Irrelevant?

21 THE COURT: Relevance.

22 THE DEFENDANT: Oh, I thought you said
23 irrelevant. No, I don't, sir.

24 THE COURT: You've never heard of that word?

25 THE DEFENDANT: No, sir.

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1 THE COURT: Have you ever -- do you know what
2 the law about prior bad acts are? Do you know anything
3 about that?

4 THE DEFENDANT: I read something. But I say
5 again, I don't have that -- I don't have it with me, Your
6 Honor.

7 THE COURT: Okay. Have you read anything about
8 the difference between cross examination and direct
9 examination?

10 THE DEFENDANT: Yes, sir, Your Honor. I read
11 some of that.

12 THE COURT: Okay. What do you think is the
13 difference between cross and direct?

14 THE DEFENDANT: To my understanding, cross
15 examination is they can ask anything to lead into the
16 question. Am I right?

17 THE COURT: What's your understanding ---

18 THE DEFENDANT: You can ask leading questions.

19 THE COURT: --- of direct examination?

20 THE DEFENDANT: Excuse me?

21 THE COURT: What's your understanding of direct
22 examination?

23 THE DEFENDANT: That I can't ask any leading
24 questions.

25 THE COURT: Okay. All right. Anything else

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1 you want to tell me or say to me about whether or not you
2 intelligently waive your right to an attorney?

3 THE DEFENDANT: Not at this time, Your Honor.

4 THE COURT: Pardon?

5 THE DEFENDANT: Not at this time. Basically
6 like I say again, this Court cannot force me against my
7 will to proceed with these two attorneys.

8 THE COURT: This Court can if the Court finds
9 you haven't voluntarily and intelligently waived your
10 right to counsel. Yes, it can, sir.

11 THE DEFENDANT: And I'll say it again, Your
12 Honor. I have already voluntarily and intelligently
13 waived my rights.

14 THE COURT: Well, tell me why.

15 THE DEFENDANT: I just told you why, Your
16 Honor.

17 THE COURT: All you're telling me is you made
18 the motion and that's sufficient. That's all you got to
19 do.

20 THE DEFENDANT: Your Honor, all I'm saying is

21 ---

22 THE COURT: Well, how far did you go in school?

23 THE DEFENDANT: Excuse me?

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: Eleventh grade.

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1 THE COURT: Did you complete the eleventh or
2 the tenth?

3 THE DEFENDANT: I completed the eleventh grade,
4 Your Honor.

5 THE COURT: Did you ever get your GED?

6 THE DEFENDANT: No.

7 THE COURT: Ever been to any other schools?

8 THE DEFENDANT: Job Corp.

9 THE COURT: Job Corp? How long were you in Job
10 Corp?

11 THE DEFENDANT: Seven months.

12 THE COURT: Seven months. Have you ever worked
13 anywhere?

14 THE DEFENDANT: Of course, yes, sir.

15 THE COURT: Where? What type of work?

16 THE DEFENDANT: Merchandising for Coca Cola.
17 Same thing for Pepsi.

18 THE COURT: What did you do at Coca Cola?

19 THE DEFENDANT: Merchandising, Your Honor.

20 THE COURT: What did you merchandise?

21 THE DEFENDANT: It was Coca Cola products.

22 THE COURT: Okay. I mean, you're talking about
23 -- were you selling Coca Colas or what?

24 THE DEFENDANT: No, Your Honor, I wasn't
25 selling them. I was in merchandising. I was setting up

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1 the shelves and stuff like that in stores.

2 THE COURT: All right. What other work have
3 you done?

4 THE DEFENDANT: I worked for Ernst and Young.

5 THE COURT: All right. And what did you do for
6 them?

7 THE DEFENDANT: Preparing the conference and
8 doing like catering and stuff like that. Basically
9 maintenance.

10 THE COURT: Are you married?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Do you have any children?

13 THE DEFENDANT: I have three.

14 THE COURT: What are their names and ages?

15 THE DEFENDANT: I'm not going to discuss that,
16 Your Honor.

17 THE COURT: Pardon?

18 THE DEFENDANT: I'm not going to discuss that.

19 THE COURT: Well, what are their names and
20 ages? Do you know or do you just don't want to tell us?

21 THE DEFENDANT: I know the ages, but I'm not
22 going to discuss my kids names in the courtroom.

23 THE COURT: Well, what are their ages?

24 THE DEFENDANT: Eight, seven and five.

25 THE COURT: Eight, seven and five?

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1 THE DEFENDANT: Right.

2 THE COURT: Do you know their date of birth?

3 THE DEFENDANT: Of course.

4 THE COURT: Who do they live with?

5 THE DEFENDANT: Their mothers.

6 THE COURT: Okay. Have you ever lived with the
7 mother of the children?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How long?

10 THE DEFENDANT: I'm not going to discuss that,
11 Your Honor.

12 THE COURT: Okay. Why not?

13 THE DEFENDANT: It's too personal, Your Honor.
14 I'm not going to discuss any of my personal life with
15 you.

16 THE COURT: Well, do you think -- you don't
17 think your personal life has anything to do with the
18 trial or any part of the trial?

19 THE DEFENDANT: It doesn't have anything to do
20 with proceeding prose, Your Honor.

21 THE COURT: Okay. All right.

22 Mr. Day, I believe you were previously appointed as
23 his guardian?

24 MR. DAY: Yes.

25 THE COURT: Is there any questions that you

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1 would like or anything you would like to say to the Court
2 concerning his request to proceed pro se?

3 MR. DAY: Your Honor, I'm not going to argue
4 with Mr. Rivera. I think I would allow him to make his
5 own presentation in this regard, Your Honor.

6 THE COURT: Okay. I just wanted to make that
7 offer.

8 All right. Mr. Rivera, anything else?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Pardon?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. I'm going to deny your
13 request to proceed pro se. I don't think you
14 voluntarily, intelligently, willingly made a decision to
15 proceed pro se, and that motion is denied.

16 All right. Is there anything else that we can hear
17 today that needs to be heard today?

18 MR. CAMPBELL: Your Honor, I'll hand up this
19 order.

20 THE COURT: You got an order? Okay.
21 We're going to trial February the 1st, Mr. Rivera.

22 MS. ADAMS: Your Honor, may we approach?

23 THE DEFENDANT: Your Honor, can I ask you a
24 question? Your Honor, is there any way I could receive a
25 notice for the death penalty? I never received that

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1 notice yet.

2 THE COURT: Pardon?

3 THE DEFENDANT: I never received a notice.

4 THE COURT: Of what?

5 THE DEFENDANT: Of the State's intention of
6 seeking the death penalty, Your Honor. I never received
7 notice of that.

8 MR. CAMPBELL: Your Honor, he was actually
9 served or given a copy on February 13th, 2008, but we will
10 give him another copy.

11 THE COURT: Will you give this to the ---

12 MS. ADAMS: And his attorneys have a copy as
13 well ---

14 THE COURT: Come give this to the clerk and run
15 a copy of it, please.

16 MS. ADAMS: --- as was he. Yes, sir.

17 THE COURT: And give him a copy of it. Get her
18 to run a copy and give him a copy. Run a copy for
19 everybody and give Mr. Rivera a copy.

20 Will you give him a copy of the notice of the death
21 penalty?

22 MR. CAMPBELL: We're getting a copy right now,
23 Your Honor.

24 THE COURT: Okay. Anything else, Mr. Rivera,
25 that we can tend to today?

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1 THE DEFENDANT: Unless you want to do the
2 motion to dismiss to try the case I requested, but that's
3 up to you, Your Honor.

4 THE COURT: Do what now?

5 THE DEFENDANT: I filed a motion to dismiss and
6 try the case and requested ---

7 THE COURT: Why do you want to dismiss the
8 case?

9 THE DEFENDANT: Your Honor, like I said again
10 in this motion, Your Honor ---

11 THE COURT: I haven't seen that motion filed,
12 but I'll take your word for it that you filed it.

13 THE DEFENDANT: Here you go. It's right here.

14 THE COURT: Thank you, sir. All right. This
15 motion that you -- that was just handed to me is a motion
16 that you filed where you do not want the jury
17 sequestered. Is that what you're talking about?

18 THE DEFENDANT: That's correct.

19 THE COURT: Is that what you're talking about?

20 THE DEFENDANT: That's correct.

21 THE COURT: You do not want to sequester the
22 jury; is that correct?

23 THE DEFENDANT: I do not want to unsequester
24 the jury, sir.

25 THE COURT: I understand. You don't want them

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1 sequestered, right?

2 THE DEFENDANT: I want them sequestered.

3 That's what I'm saying.

4 THE COURT: You want them sequestered?

5 THE DEFENDANT: Yeah.

6 THE COURT: Well, that's not what this motion
7 says.

8 THE DEFENDANT: It says motion ---

9 THE COURT: It says motion to dismiss to try
10 case before an un-sequestered jury.

11 THE DEFENDANT: Right.

12 THE COURT: That means they're not sequestered.
13 Do you understand that?

14 THE DEFENDANT: And I just said I want them
15 sequestered.

16 THE COURT: Pardon?

17 THE DEFENDANT: I just told you I wanted them
18 sequestered.

19 THE COURT: Well, which is it? The motion says
20 different.

21 THE DEFENDANT: The motion says to not
22 sequester them. I mean, to un-sequester the jury. That
23 means my attorneys filed a motion so they could be -- so
24 they wouldn't be segregated. I want the jurors to be
25 segregated, Your Honor. I mean, they want the jurors to

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1 go home, stuff like that. I didn't want that.

2 THE COURT: Well, that's not what your motion
3 says. I think I've already granted the motion to
4 sequester the jury. I'll take that under advisement.

5 THE DEFENDANT: You didn't grant any motion,
6 Your Honor. The last time we -- they filed a motion to
7 un-sequester. That was back in -- I believe that was ...

8 THE COURT: So you want the jury sequestered;
9 is that correct?

10 THE DEFENDANT: That's correct.

11 THE COURT: I thought we had already ruled that
12 it was going to be sequestered.

13 MR. MCGUIRE: That is the Court's ruling that
14 the jury will be sequestered in this case.

15 THE COURT: I've already ruled that it's going
16 to be sequestered, Mr. Rivera. I did that a long time
17 ago because we had motel rooms and everything for them in
18 July.

19 THE DEFENDANT: From my understanding, Your
20 Honor, they had submitted the motion.

21 THE COURT: Mr. Rivera, I think part of your
22 problem is you don't listen. The jury will be
23 sequestered. Do you understand?

24 THE DEFENDANT: I hear that.

25 THE COURT: Now, your motion to un-sequester

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1 the jury is denied because that's what the motion says.
2 And this is also the reason for the Court refusing to let
3 you proceed pro se because you're not knowingly doing it.
4 You're sitting there serving a motion to un-sequester and
5 sitting there arguing to sequester which has already been
6 done.

7 THE DEFENDANT: When was it done, Your Honor?

8 THE COURT: A long time ago.

9 All right. Anything else? Yes, ma'am.

10 MS. ADAMS: Before we're done, Judge, we need
11 to approach the bench.

12 THE COURT: You want to do what?

13 MS. ADAMS: Can we approach the bench?

14 THE COURT: Yeah.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: All right. Did you get a copy of
18 the order ordering it for trial on February the 1st?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. Who ---

21 MR. CAMPBELL: You just signed it. I don't
22 know where it went after that.

23 THE COURT: I gave it to somebody for the clerk
24 to run a copy.

25 MR. CAMPBELL: She probably went to file it,

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1 Your Honor.

2 MS. BYFORD: I think Jennifer went to run a
3 copy.

4 THE COURT: All right. As soon as we get a
5 copy, I'll give it to you, Mr. Rivera.

6 MR. CAMPBELL: Judge, I will hand him this ---

7 THE COURT: Did you give him the notice to seek
8 the death penalty?

9 MR. CAMPBELL: --- notice to seek the death
10 penalty and his affidavit of service where he was served.

11 THE COURT: Give him a copy of that.

12 Mr. Rivera, just as soon as I get that order back
13 from the clerk, I'll give you a copy of it. Okay?

14 All right. Other than that, the hearing is adjourned.

15 Just keep him here, Jim, if you would for a minute
16 so I can give him that order setting the trial for
17 February the 1st.

18 (WHEREUPON, the hearing ended at approximately 3:37
19 p.m. and then reconvened at approximately 4:00 p.m.)

20 THE COURT: All right. Mr. Rivera, on your
21 motion to represent yourself, I think I was maybe a
22 little bit premature in making that ruling. And I want
23 to ask you a few more questions, if I could, Mr. Rivera.
24 Is that okay?

25 THE DEFENDANT: No.

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1 THE COURT: You do not want to answer any more
2 questions?

3 THE DEFENDANT: (Shook head side to side in the
4 negative.)

5 THE COURT: Well, I'm going to answer them
6 anyhow, okay? I'm going to ask them anyhow.

7 Do you understand what you're charged with? Mr.
8 Rivera, do you understand what you're charged with? Are
9 you just going to refuse to answer?

10 THE DEFENDANT: I'm not going to answer any
11 more questions, Your Honor.

12 THE COURT: All right. You're not going to
13 answer any more questions. Well, I'm going to propose
14 the questions to you, and if you refuse to answer that's
15 fine. Do you understand the charge against you?

16 THE DEFENDANT: (No verbal response)

17 THE COURT: Do you understand the penalty
18 against you?

19 THE DEFENDANT: (No verbal response)

20 THE COURT: Now, you were previously involved
21 in a criminal trial that we tried, what, about a year
22 ago; is that correct?

23 THE DEFENDANT: I don't know. You tell me.

24 THE COURT: Okay. Has anybody coerced you or
25 mistreated you, making you ask to terminate your

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1 attorneys and proceed pro se?

2 THE DEFENDANT: (No verbal response)

3 THE COURT: All right. We had a hearing, I
4 believe, in December of last year concerning this similar
5 issue concerning -- I believe Dr. Donna Schwartz-Watts
6 testified. And I'm going to incorporate that medical
7 testimony, the testimony from that hearing, in this
8 hearing. And I'm going to make some observations.

9 This Court tried the first murder case with Mr.
10 Rivera. And from those observations and Mr. Rivera's
11 conduct during that trial towards his attorneys and his
12 conduct during the trial, actually confessing to the
13 murder for which he was on trial for and confessing to
14 the murder which he is now charged with in this
15 particular case plus an attempt to talk about some other
16 killings and his overall demeanor in court that this
17 Court observed plus his demeanor here today in refusing
18 to answer questions and not answering questions earlier
19 because he thought they were personal -- obviously he
20 does not want to answer questions. And I believe it's an
21 attempt to delay and manipulate the proceedings and
22 basically make a mockery out of the whole judicial
23 system. And based on those observations previously at
24 trial, I find that he is not competent to represent
25 himself. And the motion to proceed pro se is denied.

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1 Thank you very much.

2 MS. ADAMS: Thank you, Your Honor.

3 (WHEREUPON, the hearing ended at approximately 4:04

4 p.m.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 10th day of November 2009.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 July 30, 2010

15

16

Renee Tollison

17

Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) 10TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 07-GS-04-649
RAYMONDEZE LAMON RIVERA,)
DEFENDANT.)

DECEMBER 1 & 2, 2009

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. BUDDY NICHOLSON, JR., JUDGE

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

CHRISSY T. ADAMS, SOLICITOR

JENNINGS BYFORD, ASSISTANT SOLICITOR

JOHN DELGADO, ESQUIRE

WILLIAM MCGUIRE, ESQUIRE

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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COURT REPORTER'S NOTE: ALL EXHIBITS REFERRED TO IN THIS
TRANSCRIPT WERE MARKED AT A PREVIOUS HEARING.

DR. DONNA SCHWARTZ-WATTS - DIRECT BY MR. DELGADO

1 Tuesday, December 1, 2009

2 THE COURT: I believe we got several issues to take
3 up this morning; is that correct?

4 MR. DELGADO: Yes, Your Honor, I believe so.

5 THE COURT: I believe the first issue was a
6 continuation of the competency issue; is that correct?

7 MR. DELGADO: Yes, sir. In an attempt to use our
8 resources as effectively as possible we'd like to be able to
9 call Dr. Donna Schwartz-Watts, who is a consulting forensic
10 psychiatrist in this matter, and ask Dr. Watts some questions
11 about the continued competency of Mr. Rivera to stand trial
12 before this Court.

13 THE COURT: Okay. Fine.

14 DR. DONNA SCHWARTZ-WATTS, after having been
15 duly sworn, testified as follows:

16 THE CLERK: Have a seat right in the witness chair.

17 (The witness was seated in the witness stand.)

18 DIRECT EXAMINATION

19 BY MR. DELGADO:

20 Q. You are Dr. Donna Schwartz-Watts; is that correct?

21 A. Yes.

22 Q. Dr. Watts, you are a forensic psychiatrist; is that
23 correct?

24 A. Yes.

25 Q. As a result of the defense, and the prosecution, and

DR. DONNA SCHWARTZ-WATTS - DIRECT BY MR. DELGADO

1 the Court appointing you in this matter how have you
2 interacted with the defendant, Raymondeze Rivera?

3 A. Since March of this year I've seen him a number of
4 times, and provided prior testimony to this Court. And since
5 the last court hearing I've seen him twice and then also
6 interviewed him today.

7 Q. Doctor, would you give us an update since your last
8 testimony before this Court relating to his competency to
9 stand trial that is set now for February the 1st of the year
10 2010?

11 A. Yes. I spent 2 hours with him last Wednesday on the
12 24th. Well, about an hour, hour and a half, and I spent about
13 an hour with him today. And it's my opinion he clearly has a
14 rational and factual understanding of the proceedings and he
15 remains able to assist you in his defense; although, he's had
16 some symptoms of his mental illness.

17 Q. Doctor, can you discuss a bit of the medicine that
18 he is taking and a problem that occurred within the department
19 of corrections that prevents him at least at this moment from
20 testifying adequately relating to an issue of a supposed
21 confession and what we propose to do about that, please,
22 ma'am.

23 A. Sure. I have previously diagnosed Mr. Rivera with
24 Posttraumatic Stress Disorder, which is an anxiety disorder,
25 but also the department of corrections records also indicate

DR. DONNA SCHWARTZ-WATTS - DIRECT BY MR. DELGADO

1 that he has a history of bipolar disorder, which is a mood
2 disorder, and so he has been prescribed two medications by the
3 corrections' psychiatrist.

4 Neurontin is a mood stabilizer, and then he's also
5 on a medicine called Seroquel, at night. Seroquel is a
6 medication for psychosis. It can also be used for
7 Posttraumatic Stress Disorder. So it has indications for the
8 management of psychosis or anxiety.

9 And I saw him on Wednesday in the department of
10 corrections, and his medications ran out and so he has not
11 been on his Seroquel since Wednesday of last week, which he's
12 not been sleeping well because of that and he's a little more
13 anxious than his baseline.

14 Q. What do you propose to do to be able to restore him
15 to at least as full competence as is possible related to his
16 medicines? How do you propose we address that?

17 A. Well, we've done two things. I already called the
18 department of corrections this morning when we found out that
19 he had not been on his medications, and sure enough, the
20 director of the psychiatric services there noted that his
21 medications had expired, and it was simply someone had not
22 renewed them. So they've already taken care of that matter.
23 And then tonight he'll be housed locally and we'll make
24 arrangements for him to receive his medication.

25 Q. So he will receive the medicines today and that

DR. DONNA SCHWARTZ-WATTS - CROSS BY MS. ADAMS

1 should restore him at least as much as possible for any
2 testimony he may be able to give tomorrow; is that correct?

3 A. Yes. It's a quick acting medication. It's given at
4 night to help with sleep, and so after some rest and decrease
5 in anxiety he should be back at his normal baseline.

6 Q. Doctor, at the last hearing in this matter
7 Mr. Rivera had made a motion to be able -- while he is
8 competent to stand trial there may be a different issue as to
9 whether or not he is competent to represent himself in this
10 capital proceeding. Do you have an opinion as to that matter,
11 ma'am?

12 A. Yes, and we've discussed that briefly. Of course,
13 that's not Mr. Rivera's opinion at this point. He has shown
14 that he's able to work with you all and chooses to do that,
15 but it's my opinion that it is not a good idea for him to
16 represent himself. These are very serious proceedings. He
17 does have a mental illness and has symptoms at times, and in
18 my opinion it's not a good idea and I would have concerns
19 about him being competent to do so.

20 MR. DELGADO: Would you answer any questions the
21 solicitor may have for you, Donna.

22 CROSS-EXAMINATION

23 BY MS. ADAMS:

24 Q. Doctor, just a few questions, and mainly related to
25 his ability to represent himself. I know you stated that in

DR. DONNA SCHWARTZ-WATTS - CROSS BY MS. ADAMS

1 your opinion it's not a good idea but in your dealings with
2 Mr. Rivera do you feel that he even really wants to represent
3 himself, or that he wants to have an attorney represent
4 himself?

5 A. He wishes to have an attorney represent him.

6 Q. Okay. And at this point, once he's on his
7 medication he is happy with his representation right now?

8 A. Yes. And I've watched him. I've actually observed
9 him working with his attorneys and he has a capacity to do
10 that.

11 Q. Because when he discusses even in his motions to
12 relieve his attorneys he still wants an attorney, it's just
13 not these two at that particular time, right?

14 A. I think that's fair to say.

15 MS. ADAMS: Nothing else, Your Honor.

16 MR. DELGADO: Your Honor, does the Court have any
17 questions for her?

18 THE COURT: Yeah.

19 EXAMINATION

20 BY THE COURT:

21 Q. Dr. Schwartz-Watts, what medication do you recommend
22 that the department of corrections continues to give him?

23 A. He's on Seroquel 400 milligrams.

24 Q. Four hundred milligrams of Seroquel?

25 A. Yes, sir. And it's called X. R. for extended

DR. DONNA SCHWARTZ-WATTS - EXAMINATION BY THE COURT

1 release. So you can put Seroquel X. R. 400 milligrams. And
2 then he's on Neurontin 300 milligrams, I believe, or 400
3 milligrams of Neurontin.

4 Q. And he needs to continue on those medications?

5 A. Yes, sir.

6 Q. Okay.

7 A. And I would also recommend that during his upcoming
8 trial that he be provided what's known as a P. R. N., which
9 means as needed. That I would be glad to assist the Court
10 that he can have lower doses of the Seroquel during the
11 proceedings if he develops severe anxiety, and I would also
12 recommend that that's perhaps something the Court consider
13 once his trial begins.

14 THE COURT: Okay. All right. Any questions based
15 upon the Court's questions, from the State?

16 MS. ADAMS: No, sir, Your Honor.

17 THE COURT: Any from the defendant?

18 MR. DELGADO: No, Your Honor.

19 THE COURT: All right. Thank you very much.

20 DR. SCHWARTZ-WATTS: You're welcome, Your Honor.

21 MR. DELGADO: Your Honor, may Dr. Watts be excused
22 so she can return to Columbia?

23 THE COURT: Shortly, but I need to talk to her about
24 something else before she leaves, okay?

25 MR. DELGADO: Your Honor, there is one other matter

1 that I think we can address in a very short fashion. Your
2 Honor, I am going to propose to the Court in a written motion,
3 and I would like to be able to have the Court's largess to be
4 able to have this done within the next 10 days to 2 weeks, a
5 motion to declare as unconstitutional the South Carolina
6 statute relating to the picking of our juries, vis-a-vis the
7 employment of public school employees.

8 By that I mean the Court has pointed out to me in
9 another context how does public school employees differ from
10 those other exemptions from juror service; that is over the
11 age of 65, caring for a child under the age of 6 or 8, or
12 otherwise not speaking or understanding the English language.

13 Your Honor, what I propose to ask the Court to do --
14 and there is some research that Mr. McGuire and I have engaged
15 in that shows that the defendant would be prohibited from the
16 whitest cross-section of jurors if public school educators,
17 that is employees of public education, are precluded from
18 service, possible service on this jury as a result of the
19 school year.

20 My recollection of the statute is that public school
21 employees at their request are precluded from serving 9 months
22 of the year, through the basic school year, through the fall
23 to late spring, that they usually are transferred to a summer
24 term. Back when this matter was to be tried in a summer term
25 in 2009, I guess it was, Mr. McGuire and I were looking

1 forward to being able to place as many educators as possible
2 on the jury.

3 Because now this case will go before a jury in
4 February 2010 the statute precludes them from service. We
5 believe that that is an unconstitutional deprivation of his
6 rights for the whitest cross-section of jurors to be able to
7 serve. The rest of those exemptions are 12 month a year
8 exemptions. This is a 9-month exemption or a 3-month
9 exemption, as you see it. I'd like to be able to propose that
10 to the Court in a way of a written memorandum and of course --

11 THE COURT: If you want to make that orally then
12 follow up with a written memorandum, that's fine.

13 MR. DELGADO: Yes, sir, Your Honor.

14 THE COURT: That motion orally and follow it up with
15 a written motion, a written memorandum and submit it to the
16 State. The State can reply to that. Do you think you can get
17 that done by when, what time frame?

18 MR. DELGADO: Your Honor, if you give me 2 weeks
19 I'll have that done.

20 And then the State needs how long after that,
21 considering the holidays?

22 MS. BYFORD: I can do it in 2 weeks, Your Honor. I
23 can get that done, the motion from him. We'll have it ready
24 in 2 weeks.

25 THE COURT: What I'll do is I'll take that issue

1 under advisement and wait on the memorandums. Upon receiving
2 the memorandums I will issue an order of some sort, either
3 issue an order granting the motion or denying the motion.

4 Only thing I would take issue with what you said,
5 Mr. Delgado, orally is the teachers under the exemption are
6 not excluded. The teachers can serve. It's a personal
7 exemption that they can exercise. So the law is not excluding
8 them from it. And I've had an awful lot of teachers that are
9 willing to serve instead of, I guess working, okay?

10 MR. DELGADO: I can understand that.

11 THE COURT: So the statute doesn't exclude them. It
12 gives them the right to exercise their exception, and I just
13 wanted to correct that for the record.

14 MR. DELGADO: Your Honor, you are correct. I stand
15 corrected by that. You're right. Yes, sir.

16 THE COURT: Okay?

17 MR. DELGADO: Thank you.

18 THE COURT: All right. Thank you very much.

19 All right. I understand arrangements have been made
20 for Mr. Rivera to get his medication today and we'll continue
21 the hearing in the morning. At what time do the parties want
22 to continue it in the morning? Is 9:30 okay? I mean --

23 MS. ADAMS: He suggested 10:00, Judge.

24 THE COURT: -- it doesn't matter to me.

25 Nine-thirty, 10 o'clock? Ten o'clock?

1 MS. ADAMS: Ten o'clock is fine.

2 THE COURT: All right, 10 o'clock. We'll continue
3 the issue of the competency until 10 o'clock in the morning.

4 Dr. Schwartz-Watts, can I see you just a second on a
5 separate case and separate issue.

6 MS. ADAMS: Your Honor, the only other motion that I
7 believe we have not put on the record, but the defense has
8 agreed to, is our motion to compel reports from their experts.

9 THE COURT: And they said they will provide those
10 reports.

11 MS. ADAMS: If we can have a time frame. Before it
12 was --

13 THE COURT: Mr. McGuire, what kind of time frame for
14 the report from the expert? Can you get it by July 1 -- I
15 mean, excuse me, January 1?

16 MR. MCGUIRE: July 1, yes, sir, absolutely.

17 THE COURT: January 1?

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: July 1 wouldn't do much good, would it?
20 January 1?

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: Time frame January 1.

23 MS. ADAMS: Of all experts.

24 THE COURT: And 2010 not 2011.

25 MS. ADAMS: Yes. January 1 of the all the experts.

1 Thank you.

2 THE COURT: Okay. Anything else?

3 Now, the motions on suppressing certain evidence,
4 we'll reserve those until the time of trial and I'll issue an
5 order to that effect, okay?

6 MR. DELGADO: Thank you.

7 MS. BYFORD: Yes, sir.

8 THE COURT: Mr. Delgado, can you prepare that order
9 for me?

10 MR. DELGADO: I've just made a note, Your Honor.
11 And I'll see if I can get that to you directly. Absolutely.

12 THE COURT: Thank you very much. I'll see you in
13 the morning at 10 o'clock.

14 MR. DELGADO: Thank you, Judge.

15 (WHEREUPON, the hearing was concluded for the day.)

16 Tuesday, December 2, 2009.

17 THE COURT: I believe this is a continuation of a
18 Jackson V. Denno hearing that we held -- when was the date
19 last time? Does anybody remember?

20 MS. ADAMS: June the 14th, Your Honor.

21 THE COURT: June the 4th?

22 MR. DELGADO: Yes, sir.

23 THE COURT: Of this year. And would you please put
24 on the record which statement is in question, Mr. Delgado.

25 MR. DELGADO: Yes, sir, Your Honor. This relates to

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 the hearing on June the 4th relating to a statement Mr. Rivera
2 made to Officer John Zamberlin of the Anderson City Police
3 Department made on and in the period of December 16th through
4 December the 20th of the year 2006 in Douglasville, Georgia.

5 THE COURT: Okay. And we've previously taken the
6 testimony from the State's witnesses. I believe you wanted to
7 offer some testimony on the issue --

8 MR. DELGADO: That's correct, Your Honor.

9 THE COURT: -- of the voluntariness of the
10 statement; is that correct?

11 MR. DELGADO: That's correct, Your Honor.

12 THE COURT: And the technical requirements of
13 Miranda is not in question; is that also correct?

14 MR. DELGADO: That is correct, Your Honor.

15 THE COURT: Okay. I'll be glad to hear you.

16 MR. MCGUIRE: Your Honor, I call the defendant,
17 Raymondeze Rivera.

18 THE CLERK: Come around, please, sir, and be sworn.

19 RAYMONDEZE LAMON RIVERA, after having been duly
20 sworn, testified as follows:

21 THE CLERK: Please have a seat in the witness chair.

22 (The witness was seated in the witness stand.)

23 DIRECT EXAMINATION

24 BY MR. DELGADO:

25 Q. Raymondeze, you know what this hearing this morning

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 is about?

2 A. Yes, sir.

3 Q. This is about statements you made to Mr. Zamberlin
4 of the Anderson Police Department in Douglasville, Georgia mid
5 December of the year 2006. Do you remember that, sir?

6 A. I guess so.

7 Q. All right. Well, guess so or you remember?

8 A. Yes, sir.

9 Q. All right. Yes, sir. I'm sorry.

10 When were you arrested by law enforcement in
11 Douglasville or Douglas County, Georgia for the charges now
12 pending against you?

13 A. I believe that was December the 18th.

14 Q. All right. If I said it was on or about the 15th
15 and into the morning of the 16th of the December of 2006 would
16 that be fair?

17 A. That's correct, on Friday.

18 Q. Do you know this gentleman, Mr. Zamberlin?

19 A. Yes, sir.

20 Q. The first time that you ever met him was at the
21 Douglas County Sheriff's Department, correct?

22 A. That's correct.

23 Q. All right, sir. When you were there he wished to
24 talk to you, did he not, sir?

25 A. That's correct.

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 Q. About the events and occurrences here in Anderson
2 County, correct?

3 A. Yes, sir.

4 Q. Do you recall, sir, what your position was about
5 talking to him at that time?

6 A. The first occasion I told him that I needed a
7 lawyer.

8 Q. All right, sir. You would not talk to him without
9 an attorney being present, correct?

10 A. That's correct.

11 Q. Mr. Rivera, I want to hand to you now something
12 that's been marked as exhibit number 3 from the hearing in
13 June. Have you ever seen that before? And if you can, tell
14 us about that, please.

15 A. This is called a waiver of your rights --

16 THE COURT: Has that been marked?

17 MR. DELGADO: Yes, sir, it has been.

18 THE COURT: What's the exhibit number?

19 MR. DELGADO: Number 3 from the June 4th hearing of
20 2009.

21 THE COURT: June 4th, 2009?

22 MR. DELGADO: Yes, sir.

23 THE COURT: Defendant's exhibit number 3?

24 MR. DELGADO: Your Honor, I believe it's a court
25 exhibit number 3, and this is part of a composite exhibit,

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 Your Honor. There are 9 different subparts to this, what was
2 placed as 1 court exhibit. This is number 3.

3 THE COURT: Okay. Go ahead.

4 BY MR. DELGADO:

5 Q. Raymondeze, have you ever seen that before, before I
6 just handed that to you today?

7 A. Yes, sir.

8 Q. What is that?

9 A. It's a waiver of your rights.

10 Q. When did you first see that?

11 A. December the 16th.

12 Q. Say that again.

13 A. December the 16th.

14 Q. Of the year 2006?

15 A. Yes, sir.

16 Q. Who gave that to you?

17 A. Sergeant Zamberlin.

18 Q. You said that you would not at that time of December
19 the 16th at 2:44 in the morning, you would not talk to him,
20 correct, sir?

21 A. That's correct.

22 Q. And that's the reason it has down here where you
23 would have signed it, says subject has asked for a lawyer,
24 correct?

25 A. That's correct.

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 Q. That would be you being the subject, right?

2 A. That's correct.

3 Q. Was there ever a time when Mr. Zamberlin came back
4 to you at the Douglasville County Sheriff's Department? Were
5 you ever in his presence again?

6 A. Yes, sir, for a fingerprint.

7 Q. What happened then?

8 A. I requested for 3 things, specifically.

9 Q. You said to whom that you wanted 3 things?

10 A. To Sergeant Zamberlin at the time.

11 Q. I want to hand to you the reverse side --

12 Your Honor, of the court exhibit, of the same court
13 exhibit, exhibit number 4 --

14 And see if you can identify that handwriting.

15 A. It's Lieutenant Zamberlin's handwriting.

16 Q. That's his handwriting signed by whom?

17 A. Signed by me.

18 Q. What was placed on the back of that piece of paper,
19 the thing that you're looking at now? What was placed there?

20 A. Three requests.

21 Q. All right. Read those requests very quickly.

22 A. Request number 1 is asking for the D. A. to seek the
23 death penalty. Number 2 was to have a single cell in jail,
24 and number 3 was to see the chaplain as soon as possible.

25 Q. Mr. Zamberlin wrote that out and you signed it?

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 A. Right.

2 Q. That's your signature right here at the bottom?

3 A. That's correct.

4 Q. Why did you ask for those 3 things?

5 A. Number 1 is to secure my safety.

6 Q. Speak up a little bit now. To secure your safety?

7 A. Right.

8 Q. Before I go any further, why couldn't Mr. Zamberlin
9 just tell you I'll arrange for that? What did you require be
10 done?

11 A. I had to have the solicitor's signature and a copy
12 of it signed by the solicitor.

13 Q. Sir, if I showed to you the -- I've just showed you
14 the reverse of court's exhibit number 4, was at the Douglas
15 County Jail December the 20th at 11:45 in the morning. Is
16 that, to your recollection, of when you asked for those 3
17 things?

18 A. That's correct.

19 Q. If you didn't get those 3 things what were you going
20 to do?

21 A. Refuse to speak to John.

22 Q. John would be John Zamberlin?

23 A. Excuse me, yeah. Sergeant Zamberlin.

24 Q. Why couldn't he just write it out?

25 A. Because he couldn't guarantee me.

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 Q. What did you want?

2 A. I wanted a copy of it with the solicitor's signature
3 promising that I'll get these 3 things.

4 Q. This is exhibit 5 of the court's exhibit on June
5 4th. What is the date on that, sir?

6 A. December the 20th, 2006.

7 Q. Who is that signed by?

8 A. Chrissy Adams.

9 Q. She's the solicitor for this circuit; is that
10 correct, sir?

11 A. Tenth Circuit solicitor.

12 Q. You needed these -- and are these 3 items that are
13 required or requested that she said that she would provide for
14 you?

15 A. That's correct.

16 Q. What did she say about the death penalty? Did she
17 say she would guarantee that she would seek the death penalty?

18 A. She said that assurance from the office that we
19 intend to seek the death penalty against you.

20 Q. And she also guaranteed that you would see a
21 chaplain; is that correct, on your return here to Anderson,
22 correct?

23 A. Right. She said I'd have the opportunity to speak
24 to a chaplain.

25 Q. And that what? What about a single cell?

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 A. If and when you transport to Anderson you have
2 requested a private cell.

3 Q. She said she would get that for you?

4 A. Right.

5 Q. If this had not been received in writing signed by
6 the solicitor what would you have done?

7 A. Refused to make a statement.

8 Q. After you got this what did you do?

9 A. I volunteered to make a statement.

10 Q. To?

11 A. Sergeant Zamberlin.

12 Q. Some 10-page statement that I think he hand wrote
13 out and that you signed; is that correct, sir?

14 A. That's correct, with Lieutenant Crammer as a
15 witness.

16 Q. You understood that when you invoked your right to
17 ask for a lawyer that means you didn't have to make any
18 statement, as noted here on exhibit number 3, correct?

19 A. That's correct.

20 Q. And that you weren't going to make any statement,
21 correct?

22 A. That's correct.

23 Q. Raymondeze, before being arrested in Douglas County
24 on December the 16th had you ever been in jail before?

25 A. Yes, sir.

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 Q. You had been in what jails, either state, county or
2 federal jails have you ever spent time in?

3 A. Fulton County, Dekalb, Dekalb County, Clayton County
4 and Alto prison.

5 Q. Alto is a state prison from the Georgia Department
6 of Corrections; is that correct?

7 A. Yeah, state prison. Excuse me.

8 Q. Now, let's say that again. It's in Alto, Georgia;
9 is that correct?

10 A. That's correct.

11 Q. And what is the name of the prison?

12 A. Lee Arrendul.

13 Q. Lee, L-e-e, Arrendul, A-r-r-e-n-d-u-l; is that a
14 close spelling?

15 A. Yes, sir, that's correct.

16 Q. Two different words?

17 A. That's correct.

18 Q. What was that like at the Alto prison?

19 A. I seen a lot of stabbings, killings.

20 THE COURT: I'm sorry. What did you say? I didn't
21 understand. What did you say, Mr. Rivera?

22 A. I seen a lot of stabbings and killings at --

23 THE COURT: Go ahead. I'm sorry to interrupt. I
24 just couldn't hear him.

25 MR. DELGADO: I understand.

RAYMONDEZE LAMON RIVERA - DIRECT BY MR. DELGADO

1 BY MR. DELGADO:

2 Q. Raymondeze, speak just a little louder. Maybe pull
3 your chair up a little further. You want me to move this down
4 towards your face? All right. There you go.

5 You saw stabbings, correct?

6 A. I saw stabbings, killings, and rape.

7 Q. Were any of those ever directed against you?

8 A. Some.

9 Q. And that's why you were in fear coming back here to
10 Anderson, correct?

11 A. Correct, because I knew the victim's family is here.

12 Q. Say that again.

13 A. I said because I knew the victim's family was here.

14 Q. That the victim's family lived here in Anderson,
15 right?

16 A. The Kwana Burns family.

17 Q. And that you feared for your safety unless you were
18 placed in a private cell, correct?

19 A. That's correct.

20 Q. And you based your fear on your history doing time
21 at Alto and the other prisons, correct?

22 A. That's correct.

23 Q. You said something happen to you in prison. Is that
24 the reason you feared for your safety?

25 A. That's correct.

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 Q. Raymondeze, were you ever assaulted physically or
2 otherwise in prison?

3 A. No.

4 Q. If you had been would you tell us today that you
5 were ever sexually assaulted?

6 A. Right, I would.

7 Q. Because that's something you'd be proud of?

8 A. No.

9 Q. You were scared and that's why the three things you
10 wanted? You had to be separate for your own physical safety,
11 correct?

12 A. That's correct.

13 MR. DELGADO: That's all, Your Honor.

14 Answer anything the solicitor may have for you.

15 THE COURT: Cross-examination?

16 MS. ADAMS: Briefly, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. ADAMS:

19 Q. So, Mr. Rivera, you've never been assaulted in
20 prison; is that correct? Is that what you just said?

21 A. (There was no response).

22 Q. I just want to make sure I understood it correctly.
23 When Mr. Delgado just asked you if you had ever been assaulted
24 in prison you said no; is that correct?

25 A. That's correct.

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 Q. Okay. Now, you met with Mr. Zamberlin several
2 times, right?

3 A. That's correct.

4 Q. Okay. And when you met with him was he ever
5 forceful with you?

6 A. No, ma'am.

7 Q. Was he ever aggressive in any way?

8 A. Not that I know of.

9 Q. And if you wanted something to drink or something to
10 eat he would always accommodate you in that way?

11 A. Yes, ma'am.

12 Q. And that first day or the first time that you met
13 John when you actually requested a lawyer on this waiver of
14 rights that you were shown, which was December 16th, 2006 --

15 It was court's exhibit number 3, Your Honor.

16 THE COURT: Okay. Thank you.

17 Q. When you asked for a lawyer, okay?

18 A. That's correct.

19 Q. And John Zamberlin never questioned you about
20 anything that occurred in Anderson County at that time, did
21 he? He actually -- he left because you requested a lawyer?

22 A. That's correct.

23 Q. Okay. He didn't try to force you into making a
24 statement at any point in time on December 16th at 2:44 a.m.
25 when you signed this asking for a lawyer?

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 A. That's correct.

2 Q. Okay. So John came back actually with Mike Baskins.
3 I don't know if you remember Mr. Baskins, but he's the one
4 that actually took your fingerprints that day.

5 A. That's correct.

6 Q. Okay. And John Zamberlin was actually standing in
7 the doorway that day of the room that you were in when Mike
8 Baskins was taking your fingerprints; is that correct?

9 A. That's correct.

10 Q. Okay. Did John Zamberlin say anything to you that
11 day or did Mr. Baskins basically just go in and tell you he
12 was going to take your fingerprints, and that was the purpose
13 of that visit; is that correct?

14 A. That's correct.

15 Q. Okay. So after the fingerprints were taken you
16 requested to speak to John Zamberlin?

17 A. I approached Sergeant Zamberlin.

18 Q. Okay. And you actually called him by his first
19 name, didn't you? Called him -- wanted to speak with John?

20 A. That's correct.

21 Q. And when you speak to him you said that you wanted
22 to talk to him, basically, but you wanted these 3 requests,
23 the ones that you just read out previously; is that right?

24 A. I asked him to guarantee those 3 requests for me and
25 have it signed and give me a copy of it.

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 Q. And you wanted that from me, obviously?

2 A. That's correct.

3 Q. And he said that he couldn't promise you but he
4 would get back to you and let you know?

5 A. He said that he couldn't promise me these things but
6 he was assured that he can guarantee that I would get those 3
7 requests.

8 Q. He said he guaranteed you or he said that he said he
9 had to come check with me before?

10 A. No. He said that he could guarantee that I would
11 get those 3 requests.

12 Q. Okay. Well, in fact, when he came back and he met
13 with me a letter was dated that same day, December 20th,
14 and --

15 Your Honor, if I may, I'm going to read the entire
16 letter.

17 THE COURT: That's number 4?

18 MS. ADAMS: Yes, sir, Your Honor. Actually, court's
19 exhibit number 5.

20 THE COURT: Number 5. Okay.

21 BY MS. ADAMS:

22 Q. It's dated December 20th, 2006, and it says Dear
23 Mr. Raymondeze Lamon Rivera, it is my understanding per your
24 request that you wish to speak to Investigator John Zamberlin
25 regarding the deaths of Kwana Burns and Asha Wiley as long as

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 the follow 3 conditions met, and then I list out number 1, the
2 opportunity to speak with the chaplain; if and when you are
3 transported to Anderson County you have requested a private
4 cell; and 3, assurances from this office that we intend to
5 seek the death penalty against you.

6 Myself, along with Anderson City Police Department,
7 have made arrangements for you to meet with the chaplain, and
8 upon your return for you to be held in a private cell pending
9 trial. Furthermore, this office intends to seek the death
10 penalty against you as long as the investigation and evidence
11 supports such a penalty under the laws of the State of South
12 Carolina. Sincerely, Chrissy Adams, 10th Circuit Solicitor.

13 That's the entire letter that you received, right?

14 A. That's correct.

15 Q. Okay. And copy presented to Raymondeze Rivera
16 12-21-06 at 10:50 a.m.?

17 A. That's correct.

18 Q. That's when John went back and you all went over
19 this letter and you actually -- it was an appropriate letter
20 for you, and then you proceeded to give a statement to John
21 about the 2 murders; is that correct?

22 A. That's correct.

23 Q. Okay. Now, you were with John several hours that
24 day giving this statement about the deaths of Kwana and Asha;
25 isn't that correct?

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 A. That's correct.

2 MS. ADAMS: Okay. And, Your Honor, this statement
3 is court's exhibit 6.

4 BY MS. ADAMS:

5 Q. And it's dated 12-21 at 11:12 a.m. because they got
6 my letter on the 20th, and it was obviously late in the
7 afternoon and they came back the next day?

8 A. That's correct.

9 Q. All right. So you had plenty of time to think about
10 whether or not you actually wanted to talk to John when he
11 arrived?

12 A. That's correct.

13 Q. All right. You read the letter and you decided to
14 speak with him; is that correct?

15 A. Right. I read the letter and I decided to speak to
16 him at the -- I was assured that I was going to have those 3
17 things.

18 Q. Okay. Well, you read the letter and as long as the
19 evidence supported such?

20 A. Right.

21 Q. A conviction?

22 A. That's correct.

23 Q. And I guess -- all right. This statement took
24 about, what, 4 hours; do you recall?

25 A. About 4 or 5 hours.

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 Q. Okay. And actually, John Zamberlin -- you requested
2 that John write it out for you; is that right?

3 A. Right.

4 Q. Okay. While he was writing this statement you were
5 also actually very specific on the words that you wanted him
6 to use; is that right?

7 A. Some words he misspelled.

8 Q. Okay. Or, you know, certain words you wanted him --
9 you know, at one point on page 4 of your statement you said he
10 wrote down I got some cords, and you got him to scratch out
11 got because you cut them. You wanted him to be very specific
12 on what transpired when you wrote this statement; is that
13 right?

14 A. That's correct.

15 Q. Okay. And you voluntarily gave him this 10-page
16 statement; is that correct?

17 A. After I received the letter from you.

18 Q. Right. After you got this letter, correct? And he
19 didn't force you into saying anything at that point, did he?

20 A. No. The promises were already made, so I
21 volunteered to speak to him.

22 Q. And he was not aggressive with you at any point in
23 time?

24 A. No, ma'am.

25 Q. Now, you are familiar with the criminal justice

RAYMONDEZE LAMON RIVERA - CROSS BY MS. ADAMS

1 system; is that correct? I mean, you've been arrested before,
2 like you said?

3 A. Not familiar with South Carolina.

4 Q. Right, but you've been in Fulton County Jail, you
5 said, Dekalb County, Clayton County, and the state prison in
6 Alto, Georgia.

7 A. I've done time there.

8 Q. Okay. So you're familiar with the system, and how
9 it works, at least in Georgia?

10 A. Somewhat.

11 Q. Okay. And you stated that you've seen a lot of
12 stabbings and killings in prison; is that correct?

13 A. Prison and jail.

14 Q. Okay. How many have you seen? Can you be a little
15 more specific?

16 A. I seen a lot.

17 Q. Okay. Which prisons?

18 A. Only been in one in Georgia.

19 Q. So did all the stabbings and killings happen in one
20 prison?

21 A. The one I've been to, yeah.

22 Q. And that would be the Lee Arrendul?

23 A. It was the worst prison in Georgia.

24 Q. But is that the one where you saw those things?

25 A. Right.

RAYMONDEZE LAMON RIVERA - REDIRECT BY MR. DELGADO

1 Q. Okay. So you didn't see -- nothing of that
2 magnitude happened at Fulton County, Dekalb or Clayton?

3 A. I seen stabbings and killings happen at Fulton
4 County.

5 Q. In Fulton County, okay. And that's a local jail?

6 A. That's correct.

7 Q. So and Dekalb was a local jail and Clayton was a
8 local jail?

9 A. That's correct.

10 MS. ADAMS: All right. Your Honor, I have no
11 further questions.

12 THE COURT: Okay. Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. DELGADO:

15 Q. Raymondeze, tell the Judge while you were at the
16 Alto prison, the Lee Arrendul Correctional Institution whether
17 you ever requested for a segregated cell by yourself because
18 you had received homosexual threats against you?

19 A. That's correct.

20 Q. Someone threatened to rape you, correct?

21 A. That's correct.

22 Q. While you were at the Alto state prison, at the Lee
23 Arrendul State Prison in Alto, Georgia a young man died there,
24 correct, while you were present?

25 A. Willy Boatwright.

RAYMONDEZE LAMON RIVERA - REDIRECT BY MR. DELGADO

1 Q. Mr. Willy Boatwright was stabbed and gang raped,
2 correct?

3 A. That's correct.

4 Q. On the scale of 1 to 10, 1 being acceptable and 10
5 being absolutely, absolutely necessary for you, how important
6 to you was it for you to have a single cell when you came back
7 here?

8 A. Scale to 1 to 10, is 10.

9 Q. Why?

10 A. Basically because my safety.

11 Q. And what you'd already experienced?

12 A. That's correct.

13 MR. DELGADO: Thank you, Your Honor.

14 THE COURT: Any recross?

15 MS. ADAMS: No, sir.

16 THE COURT: Okay. Mr. Rivera, you may step down,
17 please, sir.

18 Do you have any further witness?

19 MR. DELGADO: I have nothing from the defense, Your
20 Honor.

21 THE COURT: All right. Would somebody hand me those
22 1 through 9 exhibits so I can look at them real quickly,
23 please.

24 [PAUSE]

25 THE COURT: Referring to court's number 8, you want

1 to come take a look at it. I want to ask both of you a
2 question on that, if you would, please.

3 The oral statement. Is that also contested? When
4 you said only the written statement, is that also contested?
5 Well, go talk to your client about it. I'm not trying to
6 hurry you. I just want to know if that's part of the ---

7 MR. DELGADO: Yes, sir.

8 (WHEREUPON, a private off-the-record conversation
9 took place between the defendant and his counsel.)

10 MR. DELGADO: Your Honor, as relates to exhibit 8 of
11 the June 4th composite exhibits, yes, our motion would also go
12 to the statements given orally by Mr. Rivera to Investigator
13 Zamberlin either at the Douglas County Sheriff's Department or
14 in transport back to South Carolina, yes, sir.

15 THE COURT: All right. Do you want to re-call your
16 client and ask him any questions about that before I rule?

17 MR. DELGADO: No, sir. The reason for that, sir, is
18 that we believe we've made the requisite showing.

19 THE COURT: I'm sorry? What?

20 MR. DELGADO: No, sir. We think that his testimony
21 would cover the elicitation of those.

22 THE COURT: Okay. That's fine I just want to give
23 you that opportunity because when we started we were talking
24 about the written statement and so I looked at --

25 MR. DELGADO: That was my -- I should have included

1 that in respect.

2 THE COURT: Okay. Thank you very much.

3 All right. Anything else from the defendant?

4 MR. DELGADO: Nothing from the defense, sir.

5 THE COURT: All right. I'll be glad to hear your
6 arguments on the voluntariness of your motion to suppress the
7 oral statement given to Detective Zamberlin and the written
8 statement given to Detective Zamberlin.

9 MR. MCGUIRE: Judge, I'll --

10 THE COURT: I'll be glad to hear you.

11 MR. MCGUIRE: Even though I'm a little under the
12 weather I'll give it my best shot.

13 Judge, we don't have any dispute with Miranda.

14 Miranda was given. There's testimony to that fact.

15 Mr. Rivera understood his rights and he invoked. He asked for
16 a lawyer, wished to remain silent when Mr. Zamberlin --
17 Detective Zamberlin -- I suppose it's detective.

18 Detective or sergeant?

19 LIEUTENANT ZAMBERLIN: Lieutenant.

20 MR. MCGUIRE: Lieutenant.

21 LIEUTENANT ZAMBERLIN: But that's fine.

22 MR. MCGUIRE: Sorry to have demoted you, sir.

23 Lieutenant Zamberlin.

24 [LAUGHTER]

25 THE COURT: He's been there a long time.

1 MR. MCGUIRE: Apparently.

2 THE COURT: It won't be long and he'll be captain.

3 MR. MCGUIRE: When Lieutenant Zamberlin returned and
4 Mr. Rivera initiated contact it was only so that he could
5 secure promise of three things; speak to chaplain, the state
6 would seek the death penalty, and that he be able to have a
7 cell with no roommate. And he would not give a statement
8 unless those demands were met.

9 They put them in writing. Mr. River signed it
10 saying these were, in fact, his demands. And one of the
11 demands is if these were met he'll cooperate fully and give a
12 statement. He got it in writing from the solicitor.
13 Mr. Rivera refers to the solicitor as the D. A. That's what
14 they are called in Georgia.

15 But the solicitor, herself, signed it and said that
16 she already made arrangements for a private cell. And what
17 happened was, whether people realized it was happening or not,
18 they allowed him to identify one of the most valuable things
19 to him in the world at the time, and that would be a cell with
20 no roommate so that his safety would be enhanced.

21 Mr. Rivera told you in his testimony that he's seen
22 great violence in county jails and in prison, and that a man
23 named Willy Boatwright was the murder victim of a gang beating
24 and a gang rate in Also prison.

25 Literally, life and death matters. That's what was

1 at issue. He seen people severely wounded and even killed in
2 these institutional correctional facilities, and when he
3 identified a cell with no roommate to try to enhance his
4 security he did pretty much identify, really, the most
5 valuable thing you could get in the world at this time for
6 somebody who is being incarcerated. And in his testimony with
7 Mr. Delgado, on a scale of 1 to 10 how important was that, and
8 it was a 10.

9 And with regards to -- in the context of a voluntary
10 statement it's clear that this promise, this guarantee moved
11 him from not giving a statement, which is where he was. And
12 he formally documented that by requesting a lawyer and having
13 that fact documented on a waiver of rights form.

14 And the only thing that moved him from that position
15 to giving a statement was a guarantee that his demands were
16 going to be met, and when they did that they guaranteed that
17 the thing that was the most important to him in the world at
18 the time was going to be delivered to him.

19 So is his statement voluntary? In the context of
20 our law it's actually not. If there's any promise that is so
21 great, the hope of reward so great that it overcomes one's
22 will to remain silent and moves them from that position to
23 giving a statement then the statement is not actually
24 voluntary.

25 And there's no real difference here. It may as well

1 have transpired with an officer coming to Mr. Rivera and
2 asking him, tell me what's the most important thing to you
3 that I can deliver to you and I'll do that for you if you give
4 us a statement. It really wouldn't have mattered at all if
5 that's the way it had transpired.

6 For instance, let's say this was an incident
7 involving rival drug gangs and the most important thing to
8 Mr. Rivera was that law enforcement move his family safely out
9 of that dangerous environment to protect him. It would be the
10 exact same issue.

11 Again, it's basically identified what's the most
12 important thing to him in promising that he's going to get it
13 if he gives a statement. When those things are connected that
14 closely it does render his statement involuntary. Thank you.

15 MS. ADAMS: Your Honor, I don't know if you have a
16 copy of this but we did file a memorandum in support of the
17 admissibility of his confession --

18 THE COURT: Have you filed one, Mr. McGuire?

19 MS. ADAMS: -- June the 4th, a written --

20 THE COURT: You have filed a memorandum?

21 MS. ADAMS: I know they have a copy but we do have a
22 written, if you would like to read it.

23 THE COURT: Please.

24 Mr. McGuire, do you have a memorandum?

25 MR. MCGUIRE: No, sir.

1 THE COURT: Have any cases? Was this McGuire law or
2 do you have any cases?

3 MR. MCGUIRE: Well, Judge --

4 THE COURT: Well, do you want some time to submit a
5 memorandum?

6 MR. MCGUIRE: I mean, I don't think it's necessary.

7 THE COURT: I mean, I'll be happy to give you time
8 to submit a memorandum if you want it.

9 MR. MCGUIRE: Sure. I'll take you up on that.

10 THE COURT: Your client is shaking his head yes.

11 MR. MCGUIRE: Then we'll deliver that.

12 THE COURT: Okay. Do you want to do a reply to his
13 memorandum or do you want me to go with this?

14 MS. ADAMS: Your Honor, the case law is pretty
15 clear. I mean --

16 THE COURT: I'm not arguing whether the case is
17 clear or not. I'm just asking you, do you want to give a
18 reply memorandum to his memorandum or is this sufficient for
19 you?

20 MS. BYFORD: Can I see his memorandum first?

21 MS. ADAMS: Right.

22 THE COURT: I mean, that's fine. If you want to do
23 a reply memorandum I'll give you that opportunity.

24 MS. BYFORD: Okay. It won't take me long, Your
25 Honor. I just need a day after he files his. I'm confident

1 that that is probably sufficient but I would like to see his
2 first.

3 THE COURT: Okay. I will take it under advisement
4 waiting on your memorandum and waiting on the reply
5 memorandum, or at least a word from that she's not going to do
6 a reply and stand on what you've already given me, okay?

7 MS. BYFORD: Yes, sir.

8 THE COURT: Anything else?

9 MR. MCGUIRE: No, sir.

10 THE COURT: What's your time frame?

11 MR. MCGUIRE: I'll have it in Charleston by next
12 Friday.

13 THE COURT: By next Friday?

14 MR. MCGUIRE: Not this coming but next.

15 THE COURT: I'm trying to remember where I'm going
16 to be next week. I'm going to be here probably until next
17 Wednesday then I'm going to be in Charleston for a week. So
18 I'll be down there by next Friday, then I'll be back here.
19 Sort of like a ping-pong ball.

20 Anything else?

21 MS. ADAMS: No, Your Honor. And if he files it
22 here --

23 Are you going to file it here Friday or get it to
24 him Friday?

25 THE COURT: He don't need to file it. He just gives

1 it to me. We'll get it filed after I receive it.

2 MS. ADAMS: Okay.

3 THE COURT: Anything else?

4 MR. MCGUIRE: No, sir.

5 THE COURT: All right. Thank you so very much.

6 MS. ADAMS: Thank you, Judge.

7 (WHEREUPON, the hearing was concluded.)

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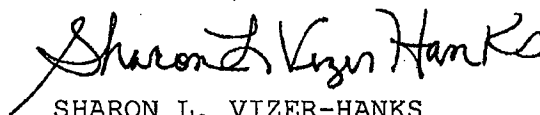
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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 10th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 1st and 2nd day of December 2009.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

June 29, 2010


SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)
) Indictment No. 2007-GS-04-0649
)
)
The State of South Carolina) MEMORANDUM IN SUPPORT OF
) ADMISSIBILITY OF DEFENDANT'S
vs.) CONFESSION
)
Raymondeze Lamone Rivera,)
Defendant.)

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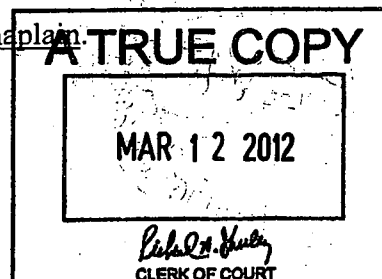
Admissibility of a Defendant's Confession.

A confession is only admissible if it is voluntarily made. State v. Von Dohlen, 471 S.E.2d 689, (1996) *quoting* State v. Childs, 385 S.E.2d 839 (1989). The court's determination of whether a confession is voluntarily given involves an examination of the totality of the circumstances. State v. Von Dohlen, 471 S.E.2d at 694-695. The focus of the inquiry is always whether the defendant's will in giving the confession was overborne by some improper factor or influence. Id. The judge must determine whether, beyond a reasonable doubt, the defendant's confession was given with a knowing and intelligent waiver of his constitutional rights. To be so voluntarily given, the confession must be given:

"freely and voluntarily, without duress, without undue influence, without reward, without promise or hope of reward, without promise or hope of lenience, without threat of injury, and without compulsion or inducement of any kind, and that such alleged incriminating state or confession was the voluntary product of the free and unconstrained will of the defendant." State v. Aleksey, 538 S.E.2d 248 (S.C. 2000).

A confession may be suppressed by the courts where there are promises of leniency, lengthy questioning, tricks or deceit; no force psychological or physical. State v. Rochester, 301 S.C. 196 (1990).

Defendant's request for a private jail cell and to speak with a Chaplain.



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“An adult’s request for someone other than an attorney does not invoke a Fifth Amendment right to speak with counsel.” State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996). See Fare v. Michael C., 442 U.S. 707 (1979) (request for a third party who is not an attorney does not invoke a Fifth Amendment right to counsel during custodial police interrogation). In Register, the S.C. Supreme Court held that the defendant’s request to speak with his mother was not an invocation of his Fifth Amendment rights and his confession was nonetheless voluntary and admissible. Id. Further, a Defendant’s request to speak with a priest did not render his confession involuntary. People v. Rosochaki, 244 N.E.2d 136, 140 (Ill. 1969) discussing Escobedo v. Illinois, 378 U.S. 478 (1964). There is no implication that the protections relating to an in custody interrogation were intended to apply to a defendant who seeks the assistance of anyone other than a lawyer.

The majority of the cases in which the court ruled to suppress the confession dealt with forceful, aggressive behavior by the government or unfulfilled promises of leniency. Neither of which are alleged to be a factor in this case. The defendant was not worn down by improper interrogation tactics. He approached the government. Moreover, there were no promises of leniency, lengthy questioning, tricks or deceit; no force psychological or physical as was the case in State v. Rochester, 301 S.C. 196 (1990). No one bent his will or played on his hopes or fears. The defendant’s will was not overcome by the State’s concession to give him a visit with a chaplain and his own jail cell. Meeting requests for minor comforts is not enough to subvert the will of an individual who was intelligent enough to negotiate for them in the first place.

Defendant’s request re: death penalty:

As previously noted, the test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Compton, 623 S.E.2d 661, 666 (S.C. Ct. App. 2005). The focus remains on whether the defendant’s will is overborne by improper police or prosecutorial conduct or whether the inducement’s coaxed a statement from an otherwise unwilling suspect. People v. Wright, 469 N.E.2d 351 (Ill. 1984). Where it is the defendant’s will to

discuss and/or resolving penalty issues, he lacks the standing to then challenge the conversation later.

Other states have ruled that confessions are voluntary, despite promises made by the government where the *defendant initiates or solicits the deal*. In State v. Williams, 664 P.2d 202 (AZ, 1983) the Arizona Supreme Court held that where the defendant solicited the deal, the defendant is precluded from now claiming that he was the victim of the prosecutor's compelling influences. Similarly, the Supreme Court of Indiana held that where the defendant requested the deal as a *condition precedent* to making a statement, he had already manifested a propensity to waive his rights and confess prior to the offer of reward or promise of leniency or any action on the part of the state. Drew v. State, 503 N.E.2d 613 (IN, 1987). Accordingly, the "the resulting statement was freely self-determined and not induced" by improper police or prosecutorial conduct. Id. See also Taylor v. Commonwealth, 461 S.W.2d 920, 922 (Ky. App. 1970), *cert denied sub nom. Brown v. Kentucky*, 404 U.S. 837 (1971) ("here, the promise was solicited by the accused, freely and voluntarily, so they cannot be heard to say that in accepting the promise they were the victims of compelling influences."); State v. Richardson, 342 S.E.2d 823, 831 (N.C. 1986) ("Promises or statements indicating to an accused that he will receive some benefit if he confesses do not render his confession involuntary when made in response to a solicitation by the accused."); State v. Harwick, (552 P.2d 987, 990 (KS 1976) ("When the promises are solicited by the accused, freely and voluntarily, the accused cannot be heard to say that in accepting the promise he was the victim of a compelling influence."); People v. Wright, 469 N.E.2d 351 (Ill. 1984) (Confession given pursuant to plea agreement negotiations initiated by the defendant held voluntary). Bivins v. State, 642 N.E.2d 928, 941 (IN 1994)

Additionally, the Solicitor clearly did not make an "unequivocal promise" as the court frowned on in State v Peake 291 SC 138 (1986). See also State v. Rochester, 301 S.C. 196 (1990). Any assurances that the death penalty would be sought were conditional upon whether or not the facts would meet the statutory elements. This response is not coercive and so does not render the confession inadmissible.

For the foregoing reasons, the State asserts that the Defendant's confession is admissible at trial.

Respectfully Submitted,



Christina T. Adams
Tenth Circuit Solicitor

Anderson, South Carolina
June 3, 2009

DOCKET NO. 2007-615-04-049

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS

FEB 20 2007 TERM _____

RLC

THE STATE

vs.

RAYMONDEZE LAMON RIVERA

ARREST WARRANT NO. I-715656

ACTION OF GRAND JURY

TRUE BILL

FEB 20 2007

Foreman of Grand Jury

[Signature]
Foreperson

VERDICT

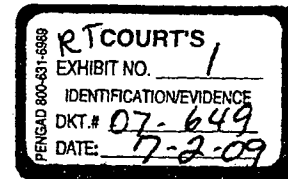
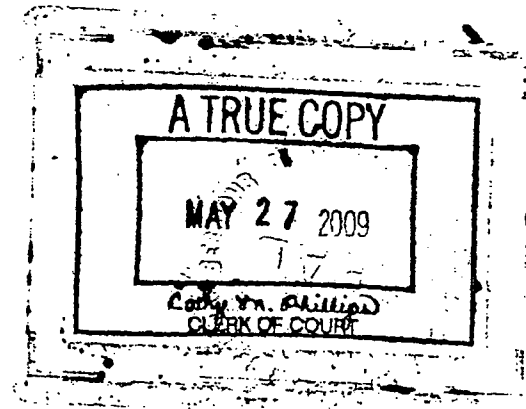
Foreman of Petit Jury

Date: _____

Indictment for

MURDER

16-3-10/16-3-20 [0116]



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR

MURDER
16-3-10/16-3-20 [0116]

At a Court of General Sessions, convened on FEB 20 2007,
the Grand Jurors of ANDERSON County present upon their oath:

MURDER

That Raymondeze Lamon Rivera did in Anderson County, within the city limits of Anderson, South Carolina, on or about December 14, 2006, feloniously, wilfully and with malice aforethought, kill one Kwana Burns by means of physical force, and the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Rome L Campbell
asst. SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

The State of South Carolina)

Plaintiff,)

vs.)

Ramondeze Rivera,)

Defendant.)

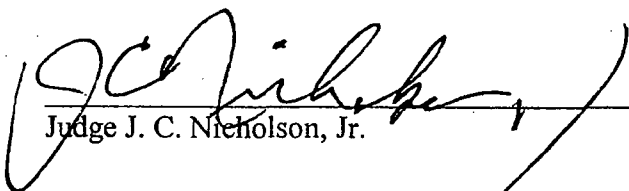
IN THE COURT OF GENERAL
SESSIONS

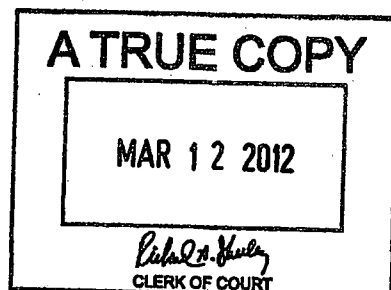
C.A. NO. 2007-GS-04-649

Order

In the above-entitled action, this Court appoints William S. McGuire, Esquire, of the South Carolina Commission on Indigent Defense, as counsel to represent the Defendant, Ramondeze Rivera during this death penalty trial. William S. McGuire will join R. Daniel Day, Jr. Esquire, and John Delgado, Esquire, as counsel for Ramondeze Rivera. It is understood that there will be no additional charge as William S. McGuire is employed by the South Carolina Commission on Indigent Defense. A trial in the above-entitled action will be held the week of July 7, 2009.

IT IS SO ORDERED


 Judge J. C. Nicholson, Jr.

 September 25, 2008
 Anderson, South Carolina

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 COMMON PLEAS AND
 GENERAL SESSIONS