

VOLUME FIVE 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

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1 out?

2 A. Okay. We do a forensically sound image of the
3 actual telephone including the logical and, according to
4 what we need; if we need the physical memory of the
5 actual cell phone.

6 Q. You first start off by photographing the phone?

7 A. Yes, we do. If there's -- if it's need be.

8 Q. And is a cell phone considered a computer?

9 A. It is in some sort.

10 Q. And does a cell phone also have a memory card or for
11 lack of better terms, a hard drive inside of it?

12 A. It actually has memory. It has memory in it. Not a
13 hard drive, but it has memory that stores the
14 information.

15 Q. And even if someone puts information into the phone
16 and they delete it, can you still retrieve this type of
17 information?

18 A. If this information has not been overwritten and is
19 in the residual memory, we can pull it back.

20 Q. And when you're talking about being overwritten,
21 you're referring to whatever the last entry is overrides
22 what the oldest entry is; is that right?

23 A. Yes.

24 Q. And did you make an attempt to do a forensic exam on
25 this Pantech phone?

1 A. I did. I did.

2 Q. And when you did this exam, what type of information
3 did you pull off of it to begin with just in general?

4 A. Okay. The phone, the Pantech phone did not support
5 S.M.S. or text messages to be retrieved, so we actually
6 pulled the contacts and phone list from the actual cell
7 phone.

8 Q. And how many -- did you have an opportunity to see
9 how many -- when you say contact list, how many contacts
10 were in it?

11 A. I didn't get the exact number although I do have it
12 in front of me at this time. There was actually fifty-
13 seven phone numbers in that cell phone.

14 Q. And part of the information that's included in your
15 contacts, is a name associated with them?

16 A. Yes, they are.

17 Q. And what is item number fifty-seven name associated
18 with this?

19 A. It says Raymond. And just to confirm, these names
20 are entered by the owner of the cell phone.

21 Q. And what is the phone number associated with the
22 name of Raymond?

23 A. It's 941-301-6613.

24 Q. And were you also able to look at any type of text
25 messages that were sent from this phone?

1 A. It was by picture only. We actually could make
2 pictures of each text message.

3 Q. I'm going to show you what's been marked for
4 identification State's Exhibit ...

5 MR. CAMPBELL: Court's indulgence, please.

6 Q. ... marked as State's Exhibit Number 37, 38, 39, and
7 40. Can you please identify these photographs, sir?

8 A. These are pictures of the actual Pantech cell phone
9 from Verizon with -- these are actual pictures of the
10 text messages from that phone.

11 MR. CAMPBELL: Your Honor, I'm going to move
12 these into evidence, 37, 38, 39, and 40.

13 MR. DELGADO: Without objection, Your Honor.

14 THE COURT: All right. Without objection,
15 State's Exhibits 30 -- what are they again?

16 MR. CAMPBELL: 37, 38, 39, and 40.

17 THE COURT: Very well. They're admitted into
18 evidence. You may proceed.

19 MR. CAMPBELL: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibits Number 37, 38, 39, and
21 40 were admitted into evidence.)

22 Q. First, I'm going to show you Exhibit Number 39. Can
23 you see from there?

24 A. I can. I can.

25 Q. And can you please briefly explain what the M.D.N.

1 number is and the M.I.N. number means.

2 A. Okay. With Verizon and some of the cellular

3 carriers, they do what's called porting. If you go to

4 their store and you actually take a number and move it

5 from another cell phone company, they don't use the

6 number per se; they use a porting number. Your mobile

7 direct number is the number that you dial, your number

8 that you have assigned to you as your telephone number.

9 Your mobile I.D. number is the number to access their

10 network that they assigned to the cell phone. The M.I.N.

11 number was assigned to this cell phone to enter their

12 network in order to make a phone call. The M.D.N. is

13 actually the cell phone telephone number that you would

14 dial if you were calling this number.

15 Q. And this M.D.N., this is 864-276-9875, that is the

16 telephone number someone would call or to dial that phone

17 number?

18 A. That's correct. That's the mobile direct.

19 Q. And that's the number associated with Ms. Kwana

20 Burns in this case?

21 A. Yes, sir.

22 Q. You also took -- in Exhibit Number 38, you made a

23 photograph of the texts that are still -- you were able

24 to pull off from this phone?

25 A. Yes.

- 1 Q. And is this a text that you were able to retrieve?
- 2 A. Yes, it was.
- 3 Q. To Raymond from 320 E. Beltline Boulevard?
- 4 A. It is.
- 5 Q. It also has the date and time. It was stamped sent
- 6 Wednesday, December 13th at 2:20 p.m. And C.B. number,
- 7 is that the call back number?
- 8 A. That's the mobile direct number.
- 9 Q. And that's the number from that phone?
- 10 A. Yes, it is.
- 11 Q. And also, State's Exhibit Number 37, is this also
- 12 another text from this phone that was sent?
- 13 A. It is.
- 14 Q. And this was sent to an individual named Raymond?
- 15 A. It is.
- 16 Q. Please answer your phone. You're on my mind. Is
- 17 what it states?
- 18 A. Yes, sir.
- 19 Q. That was sent on Tuesday, December 12th at 10:20
- 20 p.m. from Kwana Burns' phone?
- 21 A. Yes, sir, it was.
- 22 Q. I'm going to show you what's been marked as State's
- 23 Exhibit 40. Can you please identify what this is, sir?
- 24 A. That is a phone call coming in from Raymond, is what
- 25 the name says from the 941-301-6113.

1 Q. This telephone number, this 941-301-6113, were you
2 able to also do an analysis on that phone?

3 A. I was.

4 Q. I'm going to show you State's Exhibit 28, 29, and
5 30. Is this a photograph of the phone?

6 A. Yes, sir, it is. That is going to be the Samsung
7 SCH850 that I did forensics on.

8 Q. This is the phone that says Metro P.C.S. on it?

9 A. Yes, it is.

10 Q. And this was given to you by -- actually you
11 retrieved this out of evidence at the Anderson Police
12 Department; is that right?

13 A. Yes, sir, it is.

14 Q. And this phone was associated with Raymondeze
15 Rivera, was it not?

16 A. Yes, sir, it was.

17 THE COURT: All right. What's that exhibit?

18 MR. CAMPBELL: Your Honor, these are 28, 29,
19 and 30.

20 THE COURT: All of the same phone?

21 MR. CAMPBELL: Yes, sir. I think we've already
22 admitted those, Your Honor.

23 THE COURT: I just need to know what the
24 witness is looking at.

25 Q. And did you also do a computer analysis upon this

1 phone?

2 A. I did.

3 Q. And were you able to pull off any type of
4 information on it?

5 A. I was only able to actually pull just certain
6 information, and that was the actual phone number and
7 information inside the system. It gave me errors on the
8 contacts. I just -- so we took pictures of all the text
9 messaging and all from the cell phone.

10 Q. I'm going to show you what's been marked for
11 identification State's Exhibit Number 34, 35, and 36. If
12 you'll please identify what these are, sir.

13 A. Yes, sir. These are actual incoming text messages
14 into the phone from the 864-276-9875.

15 Q. And these are photographs you took of this Metro
16 P.C.S. phone; is that right?

17 A. Yes, sir.

18 MR. CAMPBELL: Your Honor, I move these into
19 evidence, 34, 35, and 36.

20 THE COURT: Any objection?

21 MR. DELGADO: No objection, Your Honor.

22 THE COURT: Admitted without objection.

23 (WHEREUPON, State's Exhibits Number 34, 35, and 36
24 were admitted into evidence.)

25 Q. I'll show you what's been marked State's Exhibit 34.

1 Is this a text that was received by this phone that's
2 identified to Raymond Rivera?

3 A. It is. It's a text message received from the 864-
4 276-9875.

5 Q. And ---

6 A. It coincides with the actual other one from the
7 other cell phone.

8 Q. And it coincides with Exhibit Number, State's
9 Exhibit Number 38 that was sent from Kwana Burns' phone?

10 A. Yes, it does.

11 Q. I show you what has been marked 36 and 35. Is this
12 also a message that was received on the phone of
13 Raymondeze Rivera?

14 A. Yes, sir, it is.

15 Q. And this came from the 276-9875 phone number
16 identified to Kwana Burns?

17 A. Yes, sir, it did.

18 Q. It states, please answer your phone, your on, and
19 it's completed on Number 35, my mind, December 12th at
20 9:54 p.m.

21 A. Yes, sir. That also coincides with the other one.

22 Q. And that coincides with State's Exhibit Number 37
23 that was sent from her phone to his; is that right?

24 A. Yes, sir.

25 MR. CAMPBELL: Your Honor, at this time, I want

1 to introduce reports in as Court's Exhibits. We've
2 already ...

3 THE COURT: All right. This is Court's
4 Exhibits ...

5 MR. CAMPBELL: This will be number 6 and 7.

6 THE COURT: ... 6 and 7. Very good.

7 Q. Mr. Bolt, please answer any questions either Mr.
8 Delgado or Mr. McGuire may have.

9 MR. DELGADO: Your Honor, we have no questions
10 for Officer Bolt. Thank you, sir.

11 THE COURT: All right. You may step down.
12 Thank you, sir.

13 MR. CAMPBELL: Your Honor, we call Melissa
14 Partain to the stand.

15 **MELISSA AIKEN PARTAIN,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. ADAMS:

19 Q. Melissa, where do you work?

20 A. Anderson City Police Department.

21 Q. And what are your duties there?

22 A. I'm an investigator in the C.I.D. department,
23 investigations.

24 Q. Now, did you go to the scene at 1506 Tribble Street?

25 A. I did.

1 Q. Okay. And that is back in December of 2006, right?

2 A. That's correct.

3 Q. On the 14th?

4 A. Correct.

5 Q. What did you do? What were your duties at the
6 scene?

7 A. At that time, I was working in crime scene, and my
8 job then was to process the crime scene.

9 Q. And did you do that?

10 A. I did.

11 Q. So as part of your duties -- so the jury kind of
12 understands that the law requires that, you know, law
13 enforcement keep track of all the evidence that they
14 collect; is that right?

15 A. That's correct.

16 Q. Okay. So did you collect all the evidence at the
17 scene and take it to the Anderson Police Department and
18 log it into evidence?

19 A. I did.

20 Q. And when you had that evidence, did you alter it or
21 tamper with it in any way?

22 A. No, ma'am.

23 Q. Now, one specific piece of evidence that was
24 collected at that scene that one of the officers
25 testified to prior, Melissa, was a swab off of Kwana's

1 ankle. Did you collect that swab?

2 A. Yes, ma'am, I did.

3 Q. Okay. And tell the jury what you did with that.

4 A. I collected the swab from the crime scene and took
5 it to the police department and placed it in our
6 evidence.

7 Q. And you did not alter with or tamper with that swab
8 in any way; is that correct?

9 A. No, ma'am.

10 Q. Okay. Now, did you also attend the autopsy of Kwana
11 Burns?

12 A. I did.

13 Q. Okay. And who was present at the autopsy? Do you
14 recall?

15 A. Kelly Chapman.

16 Q. Now, who is she?

17 A. She is an attendant, a coroner assistant. Dr.
18 Woodard, myself, and I believe, if I'm not mistaken, Greg
19 Shore was on the outside viewing from the window.

20 Q. Okay. And Greg Shore is ---

21 A. Is the coroner.

22 Q. Okay. And Dr. Woodard is obviously the forensic
23 pathologist who performed the autopsy?

24 A. He is.

25 Q. And is it common practice for law enforcement to

1 attend autopsies?

2 A. Yes, ma'am.

3 Q. Okay. Now, when you were there, did you collect
4 evidence from the autopsy as well?

5 A. I did.

6 Q. Did you collect a sample of Kwana's blood that was
7 taken by the medical personnel present at the autopsy?

8 A. I did.

9 Q. Okay. Did you witness them take that sample?

10 A. I did.

11 Q. Did you alter or tamper with that in any way?

12 A. No, ma'am.

13 Q. And obviously that is collected for DNA purposes; is
14 that correct?

15 A. That's correct.

16 Q. Okay. And then you also logged that into evidence
17 at the city police department?

18 A. I did.

19 Q. Okay. Now, Melissa, I'm going to show you what's
20 already been admitted into evidence which is State's
21 Exhibit Number 14. What is that a picture of?

22 A. Kwana Burns' feet with the ankle and the blood on
23 the ankle socks tied with the jump rope.

24 Q. Okay. So these are the socks, basically. Did you
25 collect these at the autopsy?

1 A. We did.

2 Q. Okay. And what did you do with the socks?

3 A. Took them to the police department and logged them
4 into evidence.

5 Q. Okay. And did you alter or tamper with these in any
6 way?

7 A. No, ma'am.

8 Q. And this is State's Exhibit 26. What is this? Or
9 did you -- let me just ask you this. Did you collect the
10 shorts from the autopsy ---

11 A. I did.

12 Q. --- that Kwana Burns was wearing?

13 A. Yes, ma'am.

14 Q. Okay. And obviously these were collected for
15 purposes of testing for urine?

16 A. Correct.

17 MS. ADAMS: I have no further questions, Your
18 Honor. Oh, wait. Sorry, Your Honor. No more questions.

19 THE COURT: Very well. Cross examine?

20 MR. DELGADO: We have no questions for
21 Investigator Partain.

22 THE COURT: All right. You may step down.
23 Thank you, ma'am.

24 MS. ADAMS: They're getting the next witness.

25 THE COURT: All right.

1 MS. ADAMS: Your Honor, the State calls William
2 Brooks.

3 WILLIAM BROOKS,

4 Being first duly sworn, testified as follow:

5 DIRECT EXAMINATION

6 BY MS. ADAMS:

7 Q. Mr. Brooks, where do you work?

8 A. At Belks.

9 Q. Okay. And what are your duties there?

10 A. Loss prevention manager.

11 Q. Okay. And how long have you worked at Belk?

12 A. Nine years.

13 Q. Now, were you working back on or back in December of
14 2006?

15 A. Yes, ma'am.

16 Q. Okay. And did you help law enforcement in
17 collecting video surveillance from the Belk department
18 store at the Anderson Mall?

19 A. Yes, ma'am.

20 Q. I want to show you what's been marked ...

21 (WHEREUPON, State's Exhibit Number 41 was marked for
22 identification only.)

23 Q. ... as State's Exhibit 41. Have you had an
24 opportunity to view this video?

25 A. Yes, ma'am.

1 Q. Okay. And you know that because you initialed it?

2 A. Yes, ma'am.

3 Q. Okay. Tell the jury what this video is.

4 A. It's a video of Mr. Rivera coming in the store at
5 different times throughout the day.

6 Q. All right. So it's a video of what took place in
7 Belks on December 10th, 2006?

8 A. Yes, ma'am.

9 Q. Okay. And is this a fair and accurate
10 representation of what took place that day?

11 A. Yes, ma'am.

12 MS. ADAMS: Your Honor, we'd like to move
13 State's Exhibit 41 into evidence.

14 MR. DELGADO: Without objection, Your Honor,
15 yes.

16 THE COURT: Without objection, Defense Exhibit
17 Number 41 is admitted.

18 (WHEREUPON, State's Exhibit Number 41 was admitted
19 into evidence.)

20 Q. And you gave this video to law enforcement as part
21 of their investigation; is that right?

22 A. Yes, ma'am.

23 MS. ADAMS: No further questions, Your Honor.

24 MR. DELGADO: We have nothing for Mr. Brooks.

25 Thank you, sir.

1 THE COURT: All right. You may step down.

2 MS. ADAMS: Your Honor, may we approach.

3 THE COURT: Certainly.

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen of the jury, I'm going to ask you to retire to
8 the jury room for a very short break. The next witness
9 could take some time. So when you're ready to come back,
10 just knock on the door and we'll come back and reconvene
11 the trial.

12 Again, do not undertake the discussion of the case
13 among yourselves in any way. Just knock on the door when
14 you're ready to come in.

15 (WHEREUPON, the jury exited the courtroom at
16 approximately 2:14 p.m.)

17 THE COURT: Now, let me see Counsel, if I may.

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

20 THE COURT: All right. We'll take a short
21 break.

22 (WHEREUPON, court stood at recess for a short break
23 during which State's Exhibits Number 42 through 52
24 were marked for identification only.)

25 THE COURT: Are we about ready?

1 MR. DELGADO: Yes, sir.

2 MS. ADAMS: Yes, sir, Your Honor, we are ready.

3 THE COURT: Anything from the State before we
4 bring the jury back?

5 MS. ADAMS: No, sir.

6 THE COURT: Anything from the Defense?

7 MR. DELGADO: No, Your Honor.

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

10 (Off record discussions)

11 THE COURT: All right. Let's see. Is there
12 anything else before we bring the jury in?

13 MS. ADAMS: Oh, no, sir.

14 THE COURT: Ask the jury to join us then.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 2:44 p.m.)

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

19 Mr. Foreman, I apologize about the delay, but I had
20 to take up some matters which hopefully will make us be
21 able to move forward without any further delay.

22 All right. I recognize the Solicitor.

23 MS. ADAMS: Thank you, Your Honor. May it
24 please the Court. The State calls John Zamberlin to the
25 stand.

1 JOHN ZAMBERLIN,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS

3 DIRECT EXAMINATION

4 BY MS. ADAMS:

5 Q. John, where are you employed?

6 A. I'm employed at the Anderson Police Department.

7 Q. In what capacity?

8 A. I'm a lieutenant assigned to the criminal
9 investigation division.

10 Q. Now, what are your duties?

11 A. The criminal investigation division manages five
12 program areas for the Anderson Police Department. I am
13 supervising the daily activities of the investigation
14 section, our victim's advocate services, our crime scene
15 investigation services, our property custodian services
16 as well as a computer forensics program.

17 Q. What type of training have you had?

18 A. In 1987 I attended the eight-week training course at
19 the South Carolina Criminal Justice Academy. As a result
20 of that, I received a Class I Certification from the
21 State of South Carolina to be a police officer. As a
22 result of that certification, I'm required to attend
23 certain yearly core courses as prescribed by the South
24 Carolina Criminal Justice Academy. I'm also a certified
25 basic instructor through the South Carolina Criminal

1 Justice Academy.

2 Since that time, I've also had advanced classes
3 and/or seminar class environment training in homicide
4 investigation, crime scene analysis, psychological
5 profiling, interview and interrogation, criminal sexual
6 conduct advanced training, child abuse investigations,
7 property crimes investigations and probably some more
8 classes along the way.

9 Q. So how long have you been in law enforcement?

10 A. I've been a police officer for twenty-four years.

11 Q. So you've come across a lot of defendants in your
12 time, I am sure.

13 A. Yes.

14 Q. How many homicides have you investigated?

15 A. I've either directly investigated or managed the
16 investigations regarding a homicide approximately twenty-
17 five to thirty times.

18 Q. And you are the lead investigator in this case, are
19 you not?

20 A. Yes.

21 Q. Now, did you go to the scene at 1506 Tribble Street
22 on Thursday, December 14th, 2006?

23 A. Yes, I did.

24 Q. Please tell the jury what, if anything, you located
25 at the scene that directed your investigation towards

1 this Defendant?

2 A. Kwana Burns' cell phone on scene.

3 Q. I want to show you, just so the jury can put it
4 together, John -- this has already been introduced into
5 evidence.

6 MS. ADAMS: This is State's Exhibit Number 40,
7 Your Honor.

8 Q. What was found in Kwana's phone?

9 A. It was a phone number with a Florida area code
10 located in the phone book, associated with the name
11 Raymond.

12 Q. Okay. And that's what they're looking at now,
13 right, John, Raymond? And the number's 941-301-6113?

14 A. Yes, it is.

15 Q. Okay. Now, why was that important to you?

16 A. The phone number was, at that point for me, one of
17 the main focuses concerning the investigation.
18 Information about a red vehicle with a white top and
19 having that number, a Florida area code, associated
20 beside a name in the phone, and I knew that through
21 technological services there was a potential that we
22 could track that telephone.

23 Q. So basically, though, when y'all arrived at that
24 scene that day -- obviously the first thing you do is
25 speak to the witnesses on the scene?

1 A. Yes.

2 Q. Okay. And I know the jury has already heard from
3 Kiki Hatten. You obtained the description from her?

4 A. Yes.

5 Q. And you knew that the last man seen with her went by
6 the name of Raymond?

7 A. That's correct.

8 Q. So once you got this phone number and you knew that
9 the car that was there with the Florida tag and this
10 Florida phone number, what kind of information were you
11 able to obtain regarding that phone number? In other
12 words, what kind of account was associated with that
13 number?

14 A. Yeah. We were able to determine that the account
15 was a pre-paid cell account in the name of Ramone, had an
16 address associated with it and we were also able to
17 receive some records from the holder of the account,
18 which was Metro P.C.S. Telephone Company.

19 Q. So you contacted them that day, the 14th?

20 A. Yes.

21 Q. Okay. What was the address associated with that
22 phone number? Do you recall?

23 A. It was an address in Sarasota, Florida on Whistle
24 Wood Drive.

25 Q. So what did you do once you got that information

1 from Metro P.C.S.?

2 A. Well, in theory again, we were attempting to locate
3 the telephone. And hopefully that phone would be
4 associated with a person. So I contacted the Sarasota
5 County Sheriff's Office in Florida and asked them if they
6 would send an officer to that residence in Sarasota to
7 see if I could receive some more information about that
8 residence and who lived there.

9 Q. Okay. And what happened? Was there actually a
10 residence with that number?

11 A. There was a street name by that number in Sarasota,
12 but there was no numerical. The numerical was incorrect.
13 And that was a dead-end.

14 Q. So it was a false address that was given to Metro
15 P.C.S.?

16 A. Yes.

17 Q. Okay. Did you obtain a search warrant for this cell
18 phone number on that, the number that the jury just saw,
19 that 941 number?

20 A. Yes.

21 Q. Okay. And did Metro P.C.S. cooperate with your
22 investigation?

23 A. Yes, they did.

24 Q. What did Metro P.C.S. do to aid your investigation
25 in locating that phone?

1 A. I had asked for local incoming and outgoing calling
2 information for the phone. But in addition to that, I
3 had also asked for cell phone to tower communicates.
4 Sometimes we, in my business, refer to that as a ping or
5 pings. And so I had asked them to provide me data
6 regarding that cell phone and what towers, if any, it was
7 communicating with.

8 Q. So basically if that cell phone was on, Metro P.C.S.
9 could tell you where it was located by the tower?

10 A. If a call was made from the phone, they would be
11 able to give me a tower in which that phone communicated
12 with, which is in -- could be within different
13 geographical proximities, generally three to five miles.

14 Q. So what information did you obtain as a result of
15 that track?

16 A. We were able to determine that the phone had most
17 consistently been communicating with a tower off of
18 Bankhead Highway in Douglasville, Georgia.

19 Q. So what did you do as a result of that?

20 A. As a result of that, I contacted the Federal Marshal
21 Service out of Atlanta to get some assistance.

22 Q. Now, John, is this -- how long is this process
23 taking? I want the jury to understand that, you know,
24 it's not thirty minutes. Explain to them how long this
25 process is taking?

1 A. I mean, this process started that Wednesday, and it
2 went on through the entire night. They were offering me
3 information in throughout the entire night.

4 Q. So are y'all sleeping, or are you staying up?

5 A. No, no. We were awake attempting to communicate
6 with engineers from Metro P.C.S.

7 Q. Now, was that the only tower that that cell phone
8 communicated with during the night of December 14th?

9 A. Yes, I believe so.

10 Q. Okay. So now it's Friday, correct, December 15th?

11 A. Yes.

12 Q. And as far as you know, that phone has not moved out
13 of Douglasville. Is that correct?

14 A. Based on the tower data, it appeared as though the
15 phone was likely still located in that general area.

16 Q. So why did you contact the federal marshals?

17 A. Anderson Police Department, you know, we have no law
18 enforcement jurisdiction outside of the City of Anderson,
19 let alone the State of Georgia. And I felt like we
20 needed the assistance -- I mean, we were possibility
21 going into territories that was unknown to us. I felt
22 like the federal marshals would be a good resource for us
23 to help us in attempting to locate that telephone.

24 Q. So what information did you give to the federal
25 marshals to help aid them in their investigation?

1 A. They were provided with the tower to cell
2 information as well as some local incoming and outgoing
3 calling record that we were already able to get from
4 Metro P.C.S. and a description of the vehicle that we
5 were trying to find in addition to a description of the
6 person that we were interested in finding.

7 Q. And the description of the car obviously came from
8 Kiki and that Shell Station video they've seen?

9 A. Yes. I had watched the video the day we were on
10 scene. That afternoon Captain Walters and myself spent a
11 long time watching that video from the Shell Station,
12 yes.

13 Q. Now, why did you send the marshals a copy of the
14 phone records associated with that?

15 A. That was some information that they thought and we
16 thought may assist them in locating the phone.

17 Q. Now, were the federal marshals able to find that
18 car?

19 A. Yes.

20 Q. And tell the jury about that.

21 A. The incoming and outgoing calling data is associated
22 with a phone number. Every time we call someone or we
23 receive a call, you know, you have a phone number that's
24 available to the phone company. In this case, Metro
25 P.C.S. And what they simply did was just take a look at

1 the prior calling information and they got address
2 information for those numbers, whether it was incoming or
3 outgoing. And they started out on the ground going to
4 physical locations in an attempt to locate the vehicle.

5 Q. So the area -- and when I mean area, the miles were
6 a pretty good area where they knew where to go hunt for
7 this car?

8 A. Yes.

9 Q. And then they found the car?

10 A. Yes, they did.

11 Q. All right. And they found this car at an address in
12 Douglasville, Georgia, right?

13 A. Yes, they did.

14 Q. Now, did you go to Atlanta?

15 A. We were on the way to Atlanta about seven-thirty
16 p.m. that night. And we did go. Yes, we did go.

17 Q. Okay. And who went with you?

18 A. Captain Mike Walters and the crime scene officer,
19 George Creamer.

20 Q. Both of them have previously testified. All right.
21 Now, while you were on your way to Atlanta, did you stay
22 in constant contact with the marshals?

23 A. Yes.

24 Q. Explain to the jury what happened while you were en
25 route to Atlanta?

1 A. An individual came out of the house that the vehicle
2 was parked in front of, got in the car, and drove off.

3 Q. So did the marshals follow?

4 A. Yes.

5 Q. And what happened?

6 A. The vehicle had pulled into a convenience store, and
7 they maintained surveillance on the vehicle and then the
8 individual that went in the convenience store came back
9 out, got in the car and drove off again. And they were
10 encountering some pretty heavy traffic conditions during
11 this time.

12 Q. Now, was the tag number run? Did you run that tag
13 number?

14 A. Yes.

15 Q. All right. And tell the jury about that?

16 A. The tag that was on the Buick Park Avenue was
17 registered to a B.M.W.

18 Q. So did the marshals stop that red Buick?

19 A. The vehicle was stopped, yes.

20 Q. Based on a bad tag?

21 A. Yes.

22 Q. And is that when the Defendant was arrested?

23 A. Yes.

24 Q. And this is, what, about seven-thirty at night?

25 A. Approximately seven-thirty.

1 Q. Now, where was the Defendant taken?

2 A. He was taken to the Douglasville County Detention
3 Center.

4 Q. And about what time did you get there?

5 A. Approximately eight-thirty.

6 Q. Now, at that time did Joey Garland, who is an
7 investigator with Douglas County, go talk to the
8 Defendant?

9 A. Yes.

10 Q. And were you able to look on and listen as Detective
11 Garland talked to him?

12 A. Yes.

13 Q. So you heard this conversation?

14 A. Yes.

15 Q. Okay. I'm going to show you, John ---

16 MS. ADAMS: Your Honor, this is State's Exhibit
17 43 that has already been entered into evidence, I
18 believe, without objection.

19 MR. MCGUIRE: Without objection.

20 THE COURT: All right. State's Exhibit Number
21 43 is admitted without objection.

22 (WHEREUPON, State's Exhibit 43 was admitted into
23 evidence.)

24 Q. All right. John, can you tell the jury what this is
25 and tell the jury about the conversation between Joey

1 Garland and the Defendant?

2 A. May I step down?

3 Q. Sure. Absolutely.

4 (WHEREUPON, the witness stepped down from the
5 witness stand.)

6 Q. What was Joey talking to the Defendant about? Just
7 explain to them what this is.

8 A. This is a consent to search form. It's not one of
9 our Anderson Police Department consent to search forms,
10 but the language is the same. And Investigator Garland
11 was asking Raymondeze Rivera if he would allow us -- to
12 consent to a search of his vehicle.

13 Q. Okay. So it's basically just a consent to search
14 his car?

15 A. Yes.

16 Q. Okay. And y'all watched on, and that's why George
17 and -- George Creamer and Mike Walters signed it?

18 A. Yes.

19 Q. Okay. Thank you.

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

21 Q. All right. So after the consent to search the car
22 was signed, what did you do?

23 A. Myself and George Creamer went out. The car was in
24 the Salley port area or intake area of the Douglasville
25 County Jail. That's where the car had been brought to.

1 And we started the task of searching and documenting the
2 vehicle.

3 Q. And you have not spoken to the Defendant at all yet,
4 have you?

5 A. No.

6 Q. What time is it now? Do you recall?

7 A. Approximately twelve-ten, twelve-fifteen.

8 Q. Okay. I believe the consent to search was signed at
9 twelve-twelve in the morning of the 16th.

10 A. Yes.

11 Q. So the Defendant doesn't even know you're there yet?

12 A. No.

13 Q. Let me show you, John, the pictures of the car.

14 MS. ADAMS: Your Honor, this is State's Exhibit
15 51 that has been admitted into evidence without
16 objection. Your Honor, all of these -- these are 50, 51,
17 49, 48, 47, 46, and 45 that we ask to be moved into
18 evidence, we believe, without objection.

19 MR. MCGUIRE: No objection.

20 THE COURT: Without objection. Again, now,
21 what are those?

22 MS. ADAMS: Your Honor, they are -- let's see
23 if I can put them in order -- 45, 46, 47, 48, 49, 50, and
24 51.

25 THE COURT: All right. State's Exhibits

1 Numbers 45, 46, 47, 48, 49, 50, and 51 are admitted
2 without objection.

3 (WHEREUPON, State's Exhibits Number 45, 46, 47, 48,
4 49, 50, and 51 were admitted into evidence.)

5 MS. ADAMS: Thank you, Your Honor.

6 Q. All right. John, this is State's Exhibit 50. Is
7 this the Defendant's car?

8 A. May I step down?

9 Q. Absolutely.

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

12 A. Yes, that's as pictured in the Salley port of the
13 Douglasville County Detention Center.

14 Q. And this may be a better one. This is State's
15 Exhibit 51. Please describe to the jury what that is.

16 A. It's a picture of the same vehicle. It's the back
17 area.

18 Q. And this is a closeup. This is State's Exhibit 49.
19 And that's the Florida tag?

20 A. Yes.

21 Q. And that's the tag that came back to the B.M.W.?

22 A. Yes.

23 Q. And another picture of the car just so the jury
24 could see the distinction. And that's the car that Kiki
25 had described as well, correct?

1 A. Yes. And also the vehicle that was captured in the
2 video surveillance here at the Shell station.

3 Q. Okay. Now, this is also a -- I want to show you
4 State's Exhibit 52.

5 MS. ADAMS: Your Honor, this is State's Exhibit
6 52. We'd ask that this be admitted without objection, I
7 believe.

8 MR. MCGUIRE: No objection, Your Honor.

9 THE COURT: Without objection, State's Number
10 52 is also admitted.

11 (WHEREUPON, State's Exhibit Number 52 was admitted
12 into evidence.)

13 MS. ADAMS: Okay.

14 Q. John, tell the jury what this is, please, and where
15 you found it?

16 A. This was located inside the car, and this is a
17 certificate of title. Of course, the name associated
18 with it is Raymondeze Lamon Rivera, 5819 Whistlewood
19 Circle, Sarasota, Florida.

20 Q. Okay. Now, is this -- this is Whistlewood. That's
21 the same street name he gave to Metro P.C.S.

22 A. It's that same street, but a different numerical.

23 Q. Okay. So 5819 is not what he gave Metro P.C.S.?

24 A. No.

25 Q. Okay. Now, this is State's Exhibit 47. Can you

1 tell the jury what this is?

2 A. This was located inside the vehicle as well. It's a
3 jacket, a red jacket. Of course, it says G Unit across
4 the front of it.

5 Q. And this is 46 which is just a different view
6 obviously of that jacket.

7 A. Yes.

8 Q. Okay. And this is 45.

9 A. Again, this is a picture of the jacket, but it's
10 also a picture of a red toboggan type hat.

11 Q. Okay. Thank you.

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

13 Q. And all of that you recovered in his car and
14 collected as evidence.

15 A. Yes.

16 Q. Is that correct?

17 A. Yes.

18 Q. All right. How long did it take y'all to search the
19 car?

20 A. It was probably a couple of hours.

21 Q. After searching the car, what did y'all do?

22 A. We interviewed the Defendant, Raymondeze Rivera.

23 Q. And this is the first time that you attempted to
24 speak with him?

25 A. Yes.

1 Q. And who is with you that day?

2 A. Mike Walters.

3 Q. So George did not go with you? Creamer?

4 A. George was there at Douglasville, but he was not in
5 the interview room, no.

6 Q. Okay. And about what time is it now?

7 A. It's approximately two forty-four, two forty-five
8 a.m.

9 Q. So you're now into the morning of December 16th,
10 right?

11 A. Yes.

12 Q. Describe for the jury the room that you were in when
13 you first met the Defendant?

14 A. It was a room inside the detention facility, the
15 Douglasville County detention facility.

16 Q. How big is that facility? Is it anything like ours?

17 A. No. It's a large facility. I believe, as I
18 understood, they house twelve to fifteen hundred inmates
19 there, so it's a large facility.

20 Q. So go back to the room, please. Describe it for the
21 jury.

22 A. It was a room inside of the detention facility. It
23 was a room approximately ten by ten, ten by twelve and it
24 had a small table in it with three chairs.

25 Q. How did the Defendant get into that room?

1 A. The detention personnel had brought him from the
2 jail area to the room.

3 Q. So did y'all walk in together?

4 A. Yes.

5 Q. Were y'all already in the room?

6 A. No. We walked in together.

7 Q. And when you say we, that's you, Mike Walters, and
8 the Defendant?

9 A. Yes.

10 Q. Okay. Now, did y'all sit at that table you just
11 described?

12 A. Yes.

13 Q. All right. Tell the jury what happened. What did
14 you say to the Defendant?

15 A. I introduced myself, my first name and last name. I
16 advised him that, you know, it was okay if he called me
17 John. Also, Mike Walters introduce himself by name, and
18 I read him his rights.

19 Q. All right. And how did you go about reading him his
20 rights.

21 A. We have a form for that purpose. It's called advice
22 of rights or waiver of rights form. And I utilized that
23 form.

24 Q. And what did he say when you read him his rights?

25 A. Well, between the first section and the second

1 section, I had asked him about his education. And at
2 that time, he told me that he had an eleventh grade
3 education.

4 Q. Go ahead.

5 A. And then I finished reading the form and explained
6 to him that because he was in custody, you know, I would
7 need for him to agree to talk with me if we were going to
8 go any further, basically.

9 Q. Okay. And I want to show you what's been marked as
10 State's Exhibit 3, which I believe is already in
11 evidence.

12 MS. ADAMS: Your Honor, we'd like to move
13 State's Exhibits Number 3 into evidence. I believe it's
14 without objection. It's the waiver.

15 MR. MCGUIRE: The waiver? No objection.

16 THE COURT: All right. Without objection,
17 State's Exhibit Number 3 is admitted.

18 (WHEREUPON, State's Exhibit Number 3 was admitted
19 into evidence.)

20 Q. John, is that the waiver form that you were just
21 talking about that you showed the Defendant?

22 A. It is. It is.

23 Q. And can you read the first part of that so the jury
24 knows exactly what you did, because, you know, the time
25 says two forty-four a.m.

1 A. Yes. The place was Douglas County S.O., the name,
2 Raymondeze Lamon Rivera at the top. At the top of the
3 form it says, waiver of rights form. Your rights.
4 Before we ask you any questions you must understand your
5 rights. You have the right to remain silent. Anything
6 you say can be used against you in court. You have the
7 right to talk to a lawyer for advice before we ask you
8 any questions and have him with you during questioning.
9 If you cannot afford a lawyer, one will be appointed for
10 you before any questioning, if you wish. If you decide
11 to answer questions now without a lawyer present, you
12 will still have the right to stop answering at any time.
13 You also have the right to stop answering at any time
14 until you talk to a lawyer. And then the bottom section
15 says, waiver of rights. I've read this statement of my
16 rights and I understand what my rights are. I'm willing
17 to make a statement and answer questions. I do not want
18 a lawyer at this time. I understand and know what I am
19 doing. No promises or threats have been made to me and
20 no pressure or coercion of any kind has been used against
21 me.

22 Q. Now, when you read those to him, obviously, do you
23 read them verbatim to him?

24 A. Yes.

25 Q. Did he seem to understand those rights?

1 A. Yes. He said he understood his rights, and he asked
2 me a question.

3 Q. Okay. Now, do you -- I'm sure in your experience as
4 a law enforcement officer you have come across many
5 people under the influence of alcohol or drugs.

6 A. Yes.

7 Q. Did the Defendant at that time appear to be under
8 the influence of anything at that time?

9 A. No.

10 Q. How much time did you spend with him in going over
11 those rights? What's the time at the bottom?

12 A. Approximately -- the time at the bottom is two
13 fifty-three, so nine minutes. Nine minutes.

14 Q. What was his demeanor? How was he when you walked
15 in and started talking to him?

16 A. He was polite, calm. He was likeable.

17 Q. Now, I notice that you said after you went over the
18 rights with him, he asked you a question.

19 A. He did.

20 Q. What was that question?

21 A. He asked me what we were there to talk with him
22 about.

23 Q. Okay. And what was your response?

24 A. I advised him that I was from Anderson, South
25 Carolina and that we were investigating a homicide.

1 Q. And what was his reaction when you said you were
2 from Anderson and you were investigating a homicide?

3 A. He just smiled and just kind of dropped his head
4 down toward the floor.

5 Q. But he smiled?

6 A. Yes.

7 Q. John, did he choose to speak to you that day about
8 anything?

9 A. No.

10 Q. And, in fact, did you write that on the form?

11 A. I did.

12 Q. Okay. And what did you write?

13 A. Subject has asked for a lawyer.

14 Q. And what did you do when he asked you for a lawyer?

15 A. I advised him that I would like to just give him my
16 name and phone number. And I tore a piece of paper off
17 the tablet and I wrote my name and phone number on it,
18 and advised him if he changed his mind, we would still be
19 in Douglasville for a little while longer. And we left
20 the room.

21 Q. So once you left, what did you do next? Did you get
22 the Defendant's belongings and ---

23 A. Yes. His belongings was collected. His contents
24 that was already at the jail included a telephone, his
25 telephone, his wallet and the contents of that.

1 Q. John, throughout that whole first meeting, did his
2 demeanor ever change in any way?

3 A. No.

4 Q. Okay. Even when you told him you were there to talk
5 about two homicides?

6 A. Well, I mean, his demeanor didn't change. I mean,
7 you know, he smiled and put his head down. But his
8 demeanor was the same.

9 Q. Did he get agitated?

10 A. No.

11 Q. Did he seem upset or anything like that?

12 A. No.

13 Q. All right. So once you collected his belongings and
14 you collected his wallet as part of those belongings as
15 well, you said?

16 A. Yes.

17 Q. Okay. Now, John, as part of your investigation,
18 obviously, you received a video from Belk Department
19 Store.

20 A. Yes.

21 Q. All right. And that's where Kwana worked.

22 A. Yes.

23 Q. And when did you become aware of what was on that
24 video? Was it that day, the sixteenth?

25 A. It was the sixteenth because of communications we

1 were having back and forth from the Anderson Police
2 Department to Douglasville, Georgia.

3 Q. Okay.

4 MS. ADAMS: Your Honor, I'd like to play that
5 video at this point for the jury.

6 Q. And John, if you don't mind, you can step down so
7 you can ---

8 THE COURT: All right. This is Exhibit Number?

9 MS. ADAMS: Your Honor, this is Exhibit Number
10 1. No. I apologize, Your Honor. Number 41.

11 (WHEREUPON, State's Exhibit Number 41 was played for
12 the jury at this time.)

13 A. This is just -- I'm sorry.

14 Q. No, go ahead, please. I want you to describe to the
15 jury what they're seeing, please.

16 A. It's just the interior. It's part of the interior
17 of Belk's of Anderson, located in the Anderson Mall.

18 Q. And this is what time? It says down in the corner
19 so the jury can see.

20 A. Fifteen hundred hours, which would have been three
21 o'clock.

22 Q. I believe it was real quick the Defendant was on the
23 top left.

24 A. And you had asked me a question before I could
25 point.

- 1 Q. Sorry about that.
- 2 A. But up in the corner, over here, you see ---
- 3 Q. And there he goes there.
- 4 A. Right here.
- 5 Q. And this is three fifteen?
- 6 A. Yes.
- 7 Q. And so he just walked through, in and out of Belks?
- 8 A. Yes.
- 9 Q. I think this is the one, the three o'clock ---
- 10 A. Over in the corner here.
- 11 Q. And how do you know that's him?
- 12 A. Well, the jacket and the hat he's wearing is
- 13 consistent with what was located in the back seat of his
- 14 car.
- 15 Q. That G-Unit jacket that we just showed them?
- 16 A. Yes. Yes.
- 17 Q. And this is three thirty-five.
- 18 A. And this is probably the best shot out of the video
- 19 that we received right here, coming right here.
- 20 Q. And that's that G-Unit jacket you found in the car.
- 21 A. G Unit, right there.
- 22 Q. And the red cap they just saw?
- 23 A. Yes.
- 24 Q. And it's about three thirty-six now?
- 25 A. Yes.

1 Q. So you were -- go ahead and have a seat.

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

3 Q. So John, you were being relayed this information?

4 A. Yes.

5 Q. Now, this is now Saturday, December 16th, 2006. Did
6 you all come back to Anderson that Saturday night?

7 A. Yes. We returned to Anderson on the 16th.

8 Q. Right.

9 A. Yes.

10 Q. Right. After you had just spoken to the Defendant
11 and he refused to talk to you?

12 A. Yes.

13 Q. You came back to Anderson?

14 A. Yes.

15 Q. All right. Now, what was your focus when you
16 returned back to Anderson? What were you going to do for
17 this investigation? Were you planning on ---

18 A. Well, we were going to take the case facts thus far
19 in front of a judge to establish probable cause for an
20 arrest warrant.

21 Q. So you were planning on arresting the Defendant?

22 A. Yes.

23 Q. So being that he was in Georgia, what is the proper
24 procedure to do that?

25 A. Well, we would have to be involved in an extradition

1 process.

2 Q. Okay. And please explain to the jury exactly what
3 that entails?

4 A. It's just a legal standard for one state to bring a
5 defendant back to a particular state to stand trial. The
6 process involves a packet that's put out by the Attorney
7 General's office involving getting warrants certified,
8 fingerprint cards, incident reports, as some of the
9 requirements.

10 Q. And you actually had to have four sets of
11 fingerprints; is that right?

12 A. Four sets of ten-print cards, yes.

13 Q. Did you have those four sets?

14 A. No.

15 Q. Did Douglasville send you their sets of fingerprint
16 cards?

17 A. On the 18th or 19th I sent another officer from our
18 Department to Douglasville to get four ten-print cards
19 and bring them back to me.

20 Q. And I'm going to show you those cards. While I'm
21 doing that, John, tell the jury about the quality of
22 those prints. Well, the person that I sent was a
23 narcotics agent. And so probably not having been
24 involved in the extradition process, he just went down
25 and they got someone in the jail to get these cards and

1 he just brought them back to me. But when I got them
2 back, I noticed that the Defendant hadn't signed them.
3 The person that actually took the prints hadn't signed
4 them. There was no date on them. And really, while I'm
5 no fingerprint expert, I wasn't really particularly happy
6 with the quality of the prints on the card.

7 Q. And this is State's Exhibit 10 that's, I believe,
8 already in evidence.

9 MS. ADAMS: Your Honor, we'd like to move
10 State's Exhibit 10 into evidence.

11 THE COURT: Any objection?

12 MR. MCGUIRE: Without objection, Your Honor.

13 THE COURT: Without objection, State's Number
14 10 is admitted.

15 MS. ADAMS: Thank you. Your Honor, I
16 apologize.

17 (WHEREUPON, State's Exhibit Number 10 was admitted
18 into evidence.)

19 Q. So these are the prints, not signed, not dated and
20 you don't even know who the officer is that took them?

21 A. That's correct.

22 Q. So basically you can't even verify that those are
23 the Defendant's prints at this point?

24 A. I mean, I can't. I mean, these prints may be
25 identifiable, but I'm no fingerprint expert. And I've

1 seen better quality of prints rolled on many, many
2 occasions. But really, the person -- I mean, Raymondeze
3 Rivera hadn't signed these. And so for me, I mean, I
4 feel like I had a duty to verify that, you know, I've got
5 the right fingerprints.

6 Q. So based on that, then what did you do? Did you go
7 back to Georgia?

8 A. I did.

9 Q. And now this is Wednesday the 20th; is that right?

10 A. That's correct.

11 Q. And what was the sole purpose of that trip?

12 A. Actually, I think there were two purposes.

13 A. There was two purposes to that trip. The first
14 purpose was to bring back from the Salley port area of
15 the Douglasville County Jail, the red Buick with the
16 white top.

17 Q. The Defendant's car?

18 A. Yes. And the second purpose was to get four ten-
19 print cards for the purposes of completing the
20 extradition package.

21 Q. So who went with you to Georgia this time?

22 A. Mike Baskins went, who was an evidence tech for
23 many, many years.

24 Q. So he went to take the fingerprints?

25 A. Yes.

1 Q. You don't do that, right?

2 A. No, no.

3 Q. Okay. And who else went with you?

4 A. Travis Collier, who is a tow-truck driver, followed
5 us down in a rollback.

6 Q. Okay. And so Travis went just to bring the car
7 back?

8 A. Yes.

9 Q. At any point, did you intend to talk to the
10 Defendant about Kwana Burns?

11 A. No.

12 Q. And you were already going to charge him with the
13 murder anyway?

14 A. Yes.

15 Q. And he'd already asked for a lawyer?

16 A. Yes.

17 Q. All right. Did you take anything with you?

18 A. No.

19 Q. Where did you meet with the Defendant?

20 A. We met with him in the same room. Jail personnel
21 brought him over. And Mike Baskins has a portable
22 fingerprint table that he uses for these kind of
23 purposes, and he had that with him.

24 Q. Did you even talk to the Defendant at this point?

25 A. No.

1 Q. So how did he get in the room again?

2 A. Well, the detention staff brought him into the room,
3 and Mike Baskins went in to start the process of taking
4 his four print cards.

5 Q. So obviously, Mike told him why he was there?

6 A. Yes.

7 Q. What was his demeanor? Was he cooperative? Was he
8 ---

9 A. Oh, sure. Yes. Absolutely.

10 Q. Okay. Where were you during this process?

11 A. I was standing outside. There was some correctional
12 officers outside and they'd struck up a conversation, and
13 I was kind of outside the room.

14 Q. So you weren't even inside watching what was going
15 on?

16 A. No.

17 Q. All right. What happened while Mike Baskins was
18 rolling the prints?

19 A. Well, as he was getting almost finished, I believe
20 that -- I turned around and I heard my first name being
21 called. And when I turned around, it was Mr. Rivera who
22 had called my name. And he asked me if he could speak
23 with me.

24 Q. So he obviously knew you were there. He saw you
25 when he came in?

1 A. Oh, yeah. I was outside, yeah, just outside in the
2 hallway.

3 Q. How long did it take Mike Baskins to roll the
4 prints? Do you recall? I mean, five minutes, twenty
5 minutes?

6 A. Well, I'd say --- I mean, four cards approximately, I
7 think Mike could probably do that in about ten minutes, I
8 believe.

9 Q. So when Mike was done, you heard your name?

10 A. Yes.

11 Q. John?

12 A. Yes.

13 Q. And it was the Defendant?

14 A. Yes.

15 Q. Were you even paying attention when you heard your
16 name as to what was going on in that room?

17 A. No.

18 Q. All right. So did you initiate contact at all with
19 him?

20 A. No.

21 Q. On this day?

22 A. No.

23 Q. Did you intimidate him in any way ---

24 A. No.

25 Q. --- to initiate contact?

1 A. No.

2 Q. Did you threaten him or coerce him?

3 A. No.

4 Q. And what happened when you walked back in?

5 A. He had asked if he could speak with me. And I told
6 him that I would have to read him his rights again. And
7 -- well, I didn't have a rights waiver with me, so I ---

8 Q. Because you were not planning on talking to him,
9 right?

10 A. No.

11 Q. And so I started looking around the room. It was
12 the same room we were in before. And they had a tablet
13 there on the table and -- I guess that they utilize for
14 their purposes down in Douglasville. And there was
15 rights waivers on it. So I picked up one of the rights
16 waivers and I went over the waiver with myself first to
17 make sure it was the same as ours, it contained the same
18 language in it. It did. I felt it did. And so that's
19 the form that I used to read him his rights that day on
20 the 20th.

21 Q. And how did he seem that day? Did he appear under
22 the influence of anything?

23 A. No.

24 Q. Describe his demeanor.

25 A. You know, he seemed confident. He seemed to be in

1 an okay mood. He was polite. He's always been polite
2 with me and has a likeable personality, in my opinion.

3 Q. This is State's Exhibit Number 4 that I'm going to
4 show you.

5 MS. ADAMS: Your Honor, we'd ask that this be
6 moved in to evidence if it hasn't been already. I
7 believe without objection.

8 THE COURT: State's Exhibit 4 has been
9 admitted. But we'll go ahead. Any objection to State's
10 Exhibit 4 which is a ---

11 MS. ADAMS: A waiver of rights.

12 THE COURT: ... a waiver of rights.

13 MS. ADAMS: Yes, sir.

14 MR. MCGUIRE: No objection, Judge.

15 THE COURT: Without objection, State's Exhibit
16 Number 4 is admitted.

17 (WHEREUPON, State's Exhibit 4 was admitted into
18 evidence.)

19 Q. Okay. Is that the Georgia waiver form that you
20 picked up off the table?

21 A. It is.

22 Q. Okay. Can you please read that for the jury?

23 A. Yes. It says, your rights, place Douglas County
24 Jail, date 12/20/2006. The time is eleven forty-five
25 a.m. Before we ask you any questions, you must

1 understand your rights. You have the right to remain
2 silent. Anything you say can and will be used against
3 you in a court of law. You have the right to talk to a
4 lawyer and have him present with you while you're being
5 questioned. If you cannot afford to hire a lawyer, one
6 will be appointed to represent you before any
7 questioning, if you wish. If you -- you can decide at
8 any time to exercise these rights and not answer any
9 questions or make any statements. And then it has,
10 waiver of rights. I've read this statement of my rights
11 and I understand what my rights are. I am willing to
12 make a statement and answer questions. I do not want a
13 lawyer at this time. I understand and know what I am
14 doing. No promises or threats have been made to me, and
15 no pressure or coercion of any kind has been used against
16 me. And it's signed by Raymondeze Rivera and is signed
17 by me.

18 Q. So is anybody else in the room at this point?

19 A. No. Mike Baskins had packed up his fingerprint
20 table and left.

21 Q. Left. All right. And now, this is four days after
22 you first met the Defendant when he asked for a lawyer?

23 A. Yes.

24 Q. Okay. So he initiates contact with you?

25 A. Yes.

1 Q. And says he wants to talk?

2 A. Yes.

3 Q. All right. After you read him those rights, since
4 you didn't have any and you got the Georgia form, what
5 did he say to you?

6 A. He said he had three requests that he wanted to make
7 of the D.A.'s office.

8 Q. Okay. But I mean, did he tell you, I want to tell
9 you everything or how did this whole process start?

10 A. He said he would cooperate fully, but he had
11 requests that he wanted to make to the D.A.'s office.

12 Q. Okay. And now, John when he said he had three
13 requests, did -- how did he appear? Did he know what he
14 was talking about? Did he -- explain to the jury how you
15 viewed the Defendant this day?

16 A. Yeah. I mean, he was conversating (phonic) the way,
17 you know, like in my first encounter with him. He
18 appeared to be the same.

19 Q. Now, is there anything unusual about him?

20 A. No.

21 Q. So what did you do when he said, I want to tell you
22 everything, but I've got three requests.

23 A. I turned the form over on the back and I wrote on
24 the back of the form. And I wrote, three requests from
25 Raymondeze Rivera to prosecutors. And then I wrote those

1 requests down as he was asking.

2 Q. Okay.

3 MS. ADAMS: And Your Honor, at this point, just
4 for the record, the Defense has waived any objection to
5 these coming in at this phase of the trial.

6 THE COURT: Do you need to take it up?

7 MR. MCGUIRE: What are we talking about
8 specifically?

9 MS. ADAMS: Just the three requests.

10 MR. MCGUIRE: Oh, absolutely. No objection.

11 THE COURT: All right. So that would be ---

12 MS. ADAMS: Just at this phase.

13 THE COURT: That will be the complete document
14 that you're seeking to introduce, front and back?

15 MS. ADAMS: Yes, sir. Absolutely.

16 THE COURT: All right. Without objection. You
17 do understand that on behalf of the Defendant?

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: All right. Very good.

20 MS. ADAMS: Thank you, Your Honor.

21 THE COURT: That would be Exhibit Number 5?

22 MR. MCGUIRE: Four.

23 MS. ADAMS: Four, Judge.

24 THE COURT: I thought it was the waiver. It's
25 the waiver that has three? All right. Very good.

1 Exhibit Number 4, Waiver of Rights with statement on the
2 back is admitted without objection by the Defendant.

3 (WHEREUPON, State's Exhibit Number 4, front and
4 back, was admitted into evidence.)

5 Q. So he tells you he wants to talk. He just has three
6 requests. Please read those requests to the jury.

7 A. Number one, asking for prosecutors to seek the death
8 penalty; number two, in jail alone by self; and number
9 three, see chaplain when he gets to jail. Asking for
10 these things in writing to be signed by the D.A., then he
11 would cooperate fully. And I gave him these. And he
12 went over them and read them and he drew a line on the
13 piece of paper and put an X beside of it and he signed
14 his name to it.

15 Q. Now, John, how many people do you think you've
16 interviewed in your twenty-something years as a law
17 enforcement officer?

18 A. Oh, I don't know. It's been a lot. I mean, we
19 investigate, at some level, approximately fourteen
20 hundred cases a year, and most all cases involve
21 interviews. So I really -- it's a lot. A lot.
22 Hundreds. Hundreds. Maybe even thousands. Yeah.

23 Q. So you've probably come across a lot of strange
24 requests.

25 A. Sometimes.

1 Q. What did you do once he made those requests? Did
2 you talk to him about them?

3 A. No, no. No.

4 Q. What did you tell him?

5 A. I advised him I would contact the -- well, he was
6 asking for me to basically contact the D.A. -- District
7 Attorney in Georgia; here's it's the Solicitor's office.
8 And so that's what I did.

9 Q. Okay. So you contacted me?

10 A. I did.

11 Q. All right. So you didn't promise him anything that
12 day?

13 A. No.

14 Q. You didn't coerce him into giving you a statement
15 right then?

16 A. No.

17 Q. So what did you do? Did you leave?

18 A. Yes.

19 Q. Okay. How much time do you think you spent with him
20 that day?

21 A. It may have been three or four minutes, five
22 minutes.

23 Q. So you didn't discuss those requests with him at
24 all?

25 A. No.

1 Q. And is that what you would normally have done?

2 A. Yes.

3 Q. Okay. Now, what happened when you came back to
4 Anderson?

5 A. Well, we came back to Anderson and provided the
6 information to Chrissy Adams.

7 Q. Okay. And when did you go back?

8 A. The next day.

9 Q. So basically you discussed that with me.

10 A. Yes.

11 Q. And you say you went back the next day?

12 A. That's correct.

13 Q. All right. Now, I want to show you -- John, this is
14 State's Exhibit 5.

15 MS. ADAMS: Your Honor, this is State's Exhibit
16 5 we'd like to move into evidence.

17 MR. MCGUIRE: No objection, Judge.

18 THE COURT: Without objection, State's Exhibit
19 5 is admitted.

20 (WHEREUPON, State's Exhibit Number 5 was admitted
21 into evidence.)

22 Q. So John, when you came to see me, did I give you a
23 letter after we discussed it?

24 A. Yes.

25 Q. Okay. Can you please read the letter to the jury

1 that I gave you.

2 A. This is dated December 20th, 2006. On the
3 letterhead, From the Office of Solicitor, Tenth Judicial
4 Circuit. Dear Mr. Raymondeze Lamon Rivera, It's my
5 understanding, per your request, that you wish to speak
6 to Investigator John Zamberlin regarding the deaths of
7 Kwana Burns and -- Kwana Burns as long as the following
8 three conditions are met. The opportunity to speak with
9 a chaplain, number two, if and when you are transported
10 to the Anderson County, you have requested a private
11 cell, and number three, assurances from my office that we
12 intend to seek the death penalty against you. Myself,
13 along with the Anderson City Police Department have made
14 arrangements for you to meet with a chaplain upon your
15 return, for you to be held in a private cell pending
16 trial. And furthermore, this Office tends to seek the
17 death penalty against you as long as the investigation
18 and evidence supports such a penalty under the laws of
19 the State of South Carolina. Sincerely, Chrissy Adams,
20 Tenth Circuit Solicitor. And I presented this to
21 Raymondeze Rivera at ten fifty a.m. on 12/21/06.

22 Q. And so you took that letter with you and you went
23 back to Douglas, Georgia?

24 A. Yes.

25 Q. And I want to show you State's Exhibit 9. Is this

1 another waiver of rights form?

2 A. Yes, it is.

3 MS. ADAMS: Your Honor, we'd like to move
4 State's Exhibit 9 into evidence.

5 THE COURT: Any objection?

6 MR. MCGUIRE: Without objection, Judge.

7 THE COURT: All right. State's Exhibit Number
8 9 is admitted without objection.

9 (WHEREUPON, State's Exhibit Number 9 was admitted
10 into evidence.)

11 Q. All right. Now, John, what's the date on that?
12 Please explain to the jury what that is.

13 A. December 21st, 2006. It's a waiver of rights form
14 from our Department. This is one of our forms. Place,
15 Douglasville County Jail. And that's where it was ---

16 Q. Okay. So this is a day later?

17 A. Yes.

18 Q. All right. So the Defendant has had time to think
19 about what he said to you as well?

20 A. Yes.

21 Q. All right. You went over that letter with him, and
22 what happened?

23 A. Well, after I had -- I read him his rights, went
24 over the letter with him, and then he asked me if I was
25 ready to write.

1 THE JUROR: Ready to what?

2 A. He asked me if I was ready to write.

3 Q. And did he seem to understand his rights that day?

4 A. Yes, ma'am.

5 Q. All right. Was there anything different about his
6 demeanor?

7 A. No.

8 MR. MCGUIRE: Your Honor, I think this would be
9 a good time for me to renew an earlier objection pursuant
10 to *Jackson versus Denno*.

11 THE COURT: Your objection is noted, and it
12 will be subject to the Court's ruling.

13 Very good. You may proceed.

14 MR. MCGUIRE: Thank you, Judge.

15 Q. Had his demeanor changed at all in the three times
16 that you had met with him over this span of days?

17 A. No.

18 Q. Did he ever appear under the influence of alcohol or
19 drugs?

20 A. No.

21 Q. I mean, was he cooperative, polite, sane?

22 A. He's always been very polite, cooperative.

23 Q. Did he seem to know what he wanted, for lack of a
24 better way to say it?

25 A. Yes.

1 Q. Did he ask you to write his statement for him?

2 A. Yes.

3 Q. Did you take any breaks?

4 A. No.

5 Q. Did you offer him anything to eat or drink?

6 A. Yes.

7 Q. What did he do?

8 A. He denied wanting to have anything to drink or eat.

9 And we offered for him to go use the restroom on several
10 occasions, but he didn't -- he didn't.

11 Q. So this was really about lunchtime, right, getting
12 close to it, and he didn't want to eat or drink or have a
13 break or anything?

14 A. No.

15 Q. How long were you with him?

16 A. Four hours.

17 Q. Did he ever want to stop? Did he ever ask for a
18 lawyer at any point?

19 A. No.

20 Q. Explain to the jury exactly how you took his
21 statement. In other words, where y'all were sitting at
22 this table and what the Defendant wanted you to do?

23 A. I was sitting -- the table is pushed up against the
24 wall, and so there's three chairs. And so Raymondeze was
25 sitting across from me. And this is a small -- it's a

1 small table. It's a small table. And Lieutenant Creamer
2 who was there with me -- he's retired now. But he was
3 there as well. And he sat at the end of the table and
4 Raymondeze sat across from me. If you were to enter into
5 the room, Raymondeze sat on the left. I was on the right
6 of the table -- the table was pushed up against the wall
7 -- and Lieutenant Creamer sat at, I guess you'd say, the
8 head of the table since it was pushed up against the
9 wall.

10 Q. Now, did Lieutenant Creamer really say much or what
11 was he doing ---

12 A. No.

13 Q. --- throughout this process?

14 A. No.

15 Q. Was he just taking notes?

16 A. He was.

17 Q. So you and the Defendant were the ones that were
18 engaging in the conversation?

19 A. Yes. And I explained that, you know, I could not
20 write as fast as he could talk. There was no way. But
21 we would just take it sentence-by-sentence and, you know,
22 I would do the best that I could to, you know, write as
23 quickly as I could.

24 Q. Was it a conversation, or was he just telling you a
25 story? I mean, how did -- who did most of the talking

1 during these four hours?

2 A. He did. And I was sitting at the table and, you
3 know, the document's turned. It's a small table. He's
4 up on the table and he's reading along with me as I'm
5 writing what he's telling me to write.

6 Q. Now, is he making corrections along the way? What
7 is he doing while you're writing?

8 A. Yeah. If I misspelled a word, you know, he was -- I
9 did misspell some words, I think, and he corrected me on
10 that. And I would change it and draw a line through it.
11 And if he -- if I put down a word and he wanted to put
12 another word in there, you know, perhaps I would draw a
13 line through it and put the word he wanted me to put in
14 there.

15 Q. So he was really thinking about what he wanted to
16 put in this statement?

17 A. Oh, absolutely.

18 Q. Did his demeanor change at all in these four hours?

19 A. No.

20 Q. John, I want to show you what's been marked as
21 State's Exhibit 42.

22 MS. ADAMS: It's State's Exhibit 42, Your
23 Honor.

24 Q. Is that the statement that you took regarding the
25 death of Kwana Burns?

1 A. Yes.

2 Q. Okay.

3 MS. ADAMS: Your Honor, I'd like to move
4 State's Exhibit 42 into evidence.

5 THE COURT: Do you have any objection?

6 MR. MCGUIRE: The only objection I would have
7 is my previous objection pursuant to *Jackson versus Denno*
8 made earlier.

9 THE COURT: All right. Subject to the Court's
10 previous ruling, it will be admitted.

11 (WHEREUPON, State's Exhibit Number 42 was admitted
12 into evidence.)

13 THE COURT: If I may, Mr. Foreman, ladies and
14 gentlemen of the jury, no alleged confession or admission
15 on the part of the Defendant can be considered as any
16 evidence in the case against the Defendant unless the
17 State has satisfied you beyond a reasonable doubt that
18 the same was freely and voluntarily made without any
19 threats or inducements addressed to hope or fear. In
20 other words, before an alleged confession can be
21 considered by the jury as evidence, it must have not been
22 induced by promises nor extorted by fear. And it must be
23 made freely and voluntarily in every respect. And even
24 then, it must be believed by you as the jury.

25 While the Court generally determines an

1 admissibility of evidence, I instruct you that as regards
2 to any alleged statement by the Defendant, that you
3 members of the jury make the ultimate determination of
4 whether or not the Defendant made the said statement.
5 And if he did make the statement, whether the statement
6 was made by the Defendant voluntarily and of his own free
7 will and accord.

8 Finally, just what weight, if any, you should give
9 or should be given to any alleged statement, that, again,
10 is for you to determine. I charge you that you must
11 determine if the alleged statement was a product of an
12 essentially free and unconstrained choice by its maker.
13 If you determine it was -- and the burden is upon the
14 State to prove that fact, as all other facts beyond a
15 reasonable doubt -- then you may give the statement such
16 further consideration as you deem proper.

17 If you determine the alleged statement was not the
18 free and voluntarily willed expression of the Defendant,
19 then you should not consider the statement at all. In
20 determining whether a statement's will -- excuse me. In
21 determining whether a Defendant's will was overcome in
22 obtaining the statement, you should consider both the
23 characteristics of the accused and the details of the
24 interrogation which is referred to in the law as the
25 totality of the circumstances.

1 Some of the factors that you must consider are the
2 age of the accused, his education or lack thereof, his
3 mental ability or capacity, his IQ or intelligence, his
4 background and environment, advice or lack thereof to the
5 accused of his constitutional rights, including but not
6 limited to procedural safeguards known as *Miranda*
7 warnings concerning the right to remain silent, that a
8 statement could be used against him in a court of law,
9 the right to have a lawyer present, and that if he could
10 not afford a lawyer, then a lawyer would be appointed to
11 represent him without any cost. And that he can stop
12 making the statement at any time. Other factors to be
13 considered are the place and length of detention and the
14 nature of questioning.

15 You, the jury, must carefully scrutinize all of the
16 surrounding circumstances before you give any weight to
17 an alleged statement. You must be satisfied beyond a
18 reasonable doubt that the statement was made by the
19 accused, uninfluenced by promise or reward, threat or
20 fear or diminution of rights, all to your satisfaction
21 beyond a reasonable doubt.

22 All right. You may proceed.

23 MS. ADAMS: Thank you, Your Honor. At this
24 point, I'd like to publish the Statement to the jury.

25 THE COURT: You may.

1 MS. ADAMS: Thank you, Your Honor.

2 Sergeant John Zamberlin has written his
3 statement for me at my request. I was
4 traveling from Washington, D.C. and I was
5 coming by Anderson, South Carolina. I needed
6 gas, so I stopped at a gas station across from
7 a Wendy's. This was on Sunday December 10th,
8 2006. I asked somebody for directions to the
9 mall. It was still daylight, I want to say
10 about two to three p.m. Then I went to the
11 mall.

12 I walked around a little bit, then I went
13 into the store that has the men and women's
14 store. I met Kwana Burns working at the
15 cosmetic counter. She gave me a business card
16 with her cell number on it. She said she was
17 single. Kwana said she got off work at 3:30
18 p.m. She had to pick up her kids.

19 I noticed that my cell phone didn't work
20 in Anderson, so I used a phone in the store
21 Kwana works at to call Kwana. Kwana had left
22 work. I told Kwana I would call her in about
23 one hour, so I walked around some more. I
24 drove back to Atlanta. Along the way I stopped
25 at a rest stop and called Kwana Burns on the

1 phone. We was talking. I asked her what had
2 happened to her, then I drove to a friend's
3 house in Douglas, Georgia. My friend wasn't
4 home, so I went to a motel. Next day I went to
5 the friend's house and stayed. Then I talked
6 to Kwana again by phone. We set it up where I
7 would meet Kwana in Anderson Wednesday.

8 On Wednesday I drove back to Anderson. It
9 was about seven p.m. I had looked up the
10 address on Mapquest for Tribble Street, but I
11 got lost. I stopped at a Shell Station on Mall
12 Street in Anderson. I used the pay phone to
13 call Kwana. Kwana told me that she lived just
14 down the street. Kwana came to the store and
15 met me. She had her kids with her. I followed
16 her back to her house on Tribble Street. Kwana
17 didn't have any water, so she took her son to
18 her aunt's house to take a shower. I stayed at
19 Kwana's house. Kwana came back. She had her
20 cousin and her daughter with her. Kwana had a
21 plate of food. It was mashed potatoes, beans
22 and pork chops. Kwana got a Pepsi out of her
23 van and brought it in.

24 Kwana started cleaning up. Kwana asked me
25 if I wanted to see a movie and she put Poseidon

1 movie in with Kurt Russell. Some guy came by
2 and asked Kwana when did she want him to clean
3 the oven. Kwana told him about five thirty or
4 six a.m. The guy left, and then shortly after
5 Kwana's cousin left. Before Kwana went to her
6 aunt's house, she asked me if I wanted anything
7 to eat. I asked what did she have, and Kwana
8 said pork chops and mashed potatoes.

9 We were sitting on the couch watching a
10 movie and talking. We starting kissing. Kwana
11 asked me if that's all I came over for. Kwana
12 had moved away from me, and she asked me what
13 time I was leaving. Kwana was worried her son
14 would see me at the house. I told her I was
15 going to leave at about three thirty a.m. to
16 four a.m. I asked Kwana if I could lay down on
17 her bed. She told me it was not a good idea
18 because she was still moving and the bed wasn't
19 made up. She told me I could lay on the sofa.
20 Kwana was talking loud. I didn't want to wake
21 up her daughter, so I asked her if we could
22 talk in the hallway.

23 In the hallway I kissed her, and she
24 pulled away. I pushed her in the bedroom.
25 Kwana fell down. Kwana tried to hit me with

1 some kind of a pole. I think it was laying on
2 a box. I grabbed her arm and throat. I told
3 her we didn't want to wake her daughter up
4 because I would kill her daughter. Kwana was
5 trying to talk to me. I was trying to get
6 Kwana's shorts and underwear off. Kwana
7 started hollering for her daughter Kamille. I
8 grabbed Kwana by the troat. Her daughter came
9 in and was crying for her mom. I was going to
10 kill her daughter, but I couldn't, so I
11 strangled Kwana. She said she had asthma.
12 Kwana started peeing on herself. Kwana stopped
13 breathing.

14 I went to the dining room and got some
15 Clorox wipes, and I wiped down the bathroom. I
16 went back to the room where Kwana was at and I
17 wiped down Kwana. Then I wiped the fork down I
18 was eating with. I wiped down the two-liter
19 Pepsi. I got Kwana's cell phone. I deleted my
20 number out of it and wiped the phone down.
21 There was a tablet with my name and number on
22 it, so I tore the paper off and took it with
23 me.

24 After I had wiped down everything, I found
25 a jump rope in a box and I hogtied Kwana with

1 it. I put Kwana's hands behind her back first
2 and tied them, then tied her legs. I placed
3 her daughter on Kwana. I put the wipes in the
4 toilet, then I left.

5 I went back to my friend's house in
6 Douglasville, Georgia. End of statement. This
7 is a true and voluntary statement, and I have
8 received a copy of it.

9 Q. John, if you don't mind, if you'll step down for a
10 second.

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

13 Q. John, this is State's Exhibit 21 that's already been
14 introduced. Just so the jury can put it all together,
15 what is that a picture of?

16 A. This is a picture of The Poseidon Adventure movie.

17 Q. That the Defendant referenced in his statement that
18 he gave you?

19 A. Yes, ma'am.

20 Q. And this is State's Exhibit 22 where he describes
21 that Kamille was sleeping on the sofa. Is that obviously
22 her things on that sofa right there?

23 A. It is.

24 Q. Okay. And what else is in the bag? That's her cell
25 phone as well, on that back table, I believe?

1 A. Yes, yes.

2 Q. And, again, that is her card that he described she
3 gave her (sic) that was found in his wallet?

4 A. Yes.

5 Q. And what is that?

6 A. This is a box that's containing some cleaning
7 supplies like some wipes and some other kind of cleaner.

8 Q. Okay. And also, is that the pole that the Defendant
9 described in his statement that Kwana tried to hit him
10 with?

11 A. I believe that it is.

12 Q. And this is obviously where the red paper plate was
13 found that we know his fingerprint was on.

14 A. Inside the trash bag, yes.

15 Q. All right. That was State's Exhibit 20. And then
16 again, the purpose of State's Exhibit 19 was to show that
17 those were where the wipes were thrown, obviously ---

18 A. Yes.

19 Q. --- that he used to wipe the body?

20 A. Yes.

21 Q. Okay. Thank you. You may have a seat.

22 A. Thank you.

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

24 Q. So, John, basically his statement is extremely
25 consistent with the crime scene and the photos that this

1 jury has seen?

2 A. Yes, it is.

3 Q. John, the Defendant was transported back to Anderson
4 on December 28th. Is that right?

5 A. That's correct.

6 Q. Was he given his own cell?

7 A. Yes.

8 Q. To the best of your knowledge, was he given an
9 opportunity to talk to a preacher?

10 A. Yes.

11 MS. ADAMS: Thank you, Your Honor. I have no
12 further questions.

13 THE COURT: Cross-examine?

14 CROSS-EXAMINATION

15 BY MR. MCGUIRE:

16 Q. Detective Zamberlin, do you have the letter from Ms.
17 Adams to Mr. Rivera?

18 A. Yes. Yes.

19 Q. And the letter, which is in evidence, indicates that
20 from Solicitor Adams, It is my understanding per your
21 request that you wish to speak to Investigator John
22 Zamberlin regarding the death of Kwana Burns and Asha
23 Wiley. Asha Wiley is another woman from Anderson County,
24 is she not?

25 A. Yes.

1 MS. ADAMS: Your Honor, I'm going to object at
2 this point. I think there's a matter of law we need to
3 take up.

4 THE COURT: Very well.

5 All right. If you would, please, Mr. Foreman,
6 ladies and gentlemen of the jury, I'm going to ask you to
7 retire from my courtroom while I take up a matter of law.
8 We'll be right back.

9 (WHEREUPON, the jury exited the courtroom at
10 approximately 3:58 p.m.)

11 THE COURT: All right. Your Objection?

12 MS. ADAMS: Your Honor, Mr. McGuire has
13 informed me that he plans on introducing the entire
14 statement that was given which details the death or the
15 murder of not only Kwana Burns, but Asha Wiley. It's not
16 relevant at this stage. We are here for guilt on Kwana
17 Burns and Kwana Burns only.

18 THE COURT: All right. Mr. McGuire?

19 MR. MCGUIRE: Your Honor, it's relevant. First
20 off, that document's in evidence, and it's going to go
21 back to the jury. And it clearly indicates that there's
22 a death of Ms. Asha Wiley. And now I'm in a position
23 where I have to explain it based on them introducing the
24 document. That's the first grounds why it's -- that's
25 the first ---

1 THE COURT: Well, you didn't object to the
2 evidence coming in.

3 MR. MCGUIRE: I agree. But now that it is
4 and there's no effort to redact it --

5 THE COURT: So what's the relevance of it to
6 this charge?

7 MR. MCGUIRE: Judge, I can tell you -- I mean,
8 I think I would have to maybe address the Court ex parte
9 and tell you how it fits with our theory of defense. But
10 I can tell you it does, and it's necessary for us to ---

11 THE COURT: Well, as I understand it, the State
12 has noticed you that if you were going to raise any sort
13 of insanity defense or guilty but mentally ill, that you
14 would notify them. And you had ten days to do that. Did
15 you do that?

16 MR. MCGUIRE: Well, Judge, we're not doing
17 that. We're not going for guilty but mentally ill.

18 THE COURT: Well, then I'm asking what's the
19 relevance?

20 MR. MCGUIRE: Well, Judge, because -- Judge, I
21 feel compelled to ask you if I can do this ex parte
22 because it basically -- I have to hand over my entire
23 theory.

24 THE COURT: In order to rule, I have to have
25 the grounds.

1 MR. MCGUIRE: I understand, Judge. But if I
2 give you the grounds, I'm going to give you -- our play
3 book to the Prosecutor. I need to do this ex parte.
4 It's extremely relevant to our theory of defense, which
5 I'm not really obligated to turn over to the Prosecutor
6 at this point.

7 THE COURT: Well, you can always recall this
8 witness. You don't have to -- this is cross-examination
9 of the State's case. So if anything developed that is
10 relevant, then, of course -- what is it -- you can do it
11 at the time that you want to.

12 MR. MCGUIRE: I mean, Judge, without going into
13 all the details, you instructed that not only do they
14 have to believe the statement was voluntary, they have to
15 find that it's believable. And I can tell you that going
16 into all of the facts on that statement and some other
17 issues will go to that -- ultimately that issue.

18 THE COURT: But I don't quite understand. And
19 maybe you'll help me with this. You don't want to tell
20 the State what your strategy is, yet you're going to be
21 asking the questions that your strategy is based on.

22 MR. MCGUIRE: And just because I ask the
23 questions, it won't reveal it. I can tell you that. I
24 mean, I can do both.

25 THE COURT: Well, I can assure you you're not

1 going to be able to argue anything that is not in the
2 record.

3 MR. MCGUIRE: Don't intend to.

4 THE COURT: And the only way that I can
5 determine if it should come in the record is, first of
6 all, if it's relevant and then if it's admissible. Now,
7 I'm not in any way shifting the burden of proof to the
8 Defendant because the Defendant has already testified
9 through his attorneys by reason of 801(D)(2)(a)(b) and
10 (c), I think, as to certain matters. Now, if you want to
11 go into those, that's fine. But as I understand it, up
12 until this time, no mention of the other event has been
13 made in the presence of the jury.

14 MS. ADAMS: You mean regarding Asha Wiley?

15 THE COURT: Right.

16 MS. ADAMS: John did not say her name, no, sir,
17 Your Honor, and ---

18 THE COURT: And he didn't read it.

19 MS. ADAMS: He read the letter. He did not use
20 Asha's ---

21 THE COURT: Well, that's what I'm saying.
22 Well, the letter, but also -- you haven't read any
23 statement by the Defendant as to that.

24 MS. ADAMS: Absolutely not, Your Honor. It's
25 not relevant for guilt.

1 THE COURT: All right. Well, then there's
2 nothing, you know, for that. If you want to bring it up,
3 you can. But you do it at, you know, at your own peril.

4 MR. MCGUIRE: Sure. Yes, sir, I intend to
5 bring it up.

6 THE COURT: But first of all, it's got to be
7 relevant, and I still haven't found it to be relevant.

8 MR. MCGUIRE: Well, it's at least relevant to
9 explain who Ms. Wiley is just based on the letter.

10 THE COURT: We haven't had anything about Ms.
11 Wiley in this case.

12 MR. MCGUIRE: There's a letter in evidence that
13 mentions her name.

14 THE COURT: The letter is in evidence, but it
15 does not necessarily go back.

16 MR. MCGUIRE: It would have to. Your Honor, my
17 understanding is it would have to go back to the jury.

18 THE COURT: Well, that's your understanding.
19 But now you've raised some -- what is it -- objection to
20 it. So I will let it stand as it is, what has been
21 testified to and read as far as the statement.

22 MS. ADAMS: Your Honor, I believe the actual --
23 and this may be -- if I can clarify -- the actual letter,
24 when I introduced it into evidence, Detective Zamberlin
25 did not read Asha Wiley's name. It needs to be redacted.

1 We did not introduce that. Mr. Delgado had mentioned her
2 name in openings. These were the redactions that we
3 tried to talk about yesterday with the Defense. And they
4 brought it up in opening where it wasn't relevant. But
5 the facts and circumstances surround Asha Wiley's death
6 have absolutely no relevance on whether or not this
7 Defendant is guilty of the murder of Kwana Burns. So it
8 would be our position, -- and Judge, I don't know what
9 their theory is, but it has nothing to do with whether or
10 not he's guilty of murdering Kwana Burns, the facts and
11 circumstances with Asha. I just cannot imagine how that
12 is relevant. Now, it's relevant at penalty, but not for
13 the guilt phase. It's very relevant, and we intend to
14 introduce all of that in penalty. That's our aggravating
15 circumstance, as you know. So obviously, we're going to
16 introduce the rest of that statement in penalty. But
17 it's not appropriate now. It's not the right time. It's
18 not relevant and it has nothing to do with Kwana.

19 THE COURT: Well, Mr. Delgado did, in his
20 opening statement, refer to this is not the first time he
21 came to Anderson. Killed another person. That is before
22 the jury.

23 All right. I'm going to deny your motion to -- of
24 course, this is done entirely at the Defendant's request.

25 Do you understand, Mr. Rivera?

1 MR. DAY: Your Honor, Mr. Rivera's been
2 following and asking about that. He said, yes, he agrees
3 with what his attorneys are doing and would like to
4 proceed.

5 THE COURT: All right. Well, let me do this.
6 If we may, Mr. Rivera, do you mind standing and just
7 raising your right hand? I'm going to put you under oath
8 just to be sure there's no question that you do
9 understand and that you agree. Raise your right hand.

10 (WHEREUPON, the Defendant, Raymondeze Lamon Rivera,
11 was duly sworn.)

12 THE COURT: All right. Now, you've heard not
13 only your attorney advise the Court that -- you can have
14 a seat. No. He can sit.

15 You've heard your attorney advise the Court that you
16 have been following these proceedings and that you have
17 discussed these matters with your attorneys, at least
18 with your guardian ad litem, and that you understand what
19 Mr. McGuire wants to do is to bring up matters having to
20 do with your first conviction. Do you understand that?
21 Or your conviction. It's the only conviction you have
22 that I understand. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you waive any objection that
25 you might have individually as to them following that

1 tactic or going into that matter in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I beg your pardon?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Yes, sir, you have no objection?

6 You're waving your hand. Is it in response saying that
7 you do not have any objection to Mr. McGuire pursuing the
8 line of questioning that would elicit information about
9 another statement you allegedly made about another event?
10 Is that correct? In other words, I think it was Ms.
11 Wiley. Is that correct, Mr. Rivera?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you authorize Mr. McGuire to
14 pursue that line of questioning?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, Mr. Day, you have discussed
17 this with Mr. Rivera?

18 MR. DAY: I have, Your Honor.

19 THE COURT: Are you satisfied that he is doing
20 this knowingly, intelligently, freely and voluntarily?

21 MR. DAY: I do, Your Honor. He has asked very
22 pertinent questions about what we were doing to better
23 explain it. Based upon that, I believe he understands
24 it, yes, sir.

25 THE COURT: Very well. Then I will find that

1 the Defendant has waived his rights. He's done it
2 knowingly and intelligently, freely and voluntarily. And
3 Mr. McGuire may pursue the line of questioning that was
4 initially broached in the opening statement by Mr.
5 Delgado at which time, of course, the Defendant was
6 present.

7 MR. DAY: Excuse me, Your Honor, if I may just
8 one second.

9 (Off record discussion)

10 MR. DAY: I'm sorry, Your Honor. It was
11 something completely separate. When you get through with
12 this, Your Honor ---

13 THE COURT: Do you need a break?

14 MR. DAY: Yeah. He needed a restroom break.

15 THE COURT: Okay. We'll take a short break.

16 Yes, ma'am?

17 MS. ADAMS: Just one thing, Your Honor. And I
18 just want to make sure I'm being clear. If they want to
19 mention Asha Wiley by name, that he killed her before,
20 that's fine. It's the details that I just don't feel are
21 relevant.

22 THE COURT: Well, the thing is, I understand
23 that these are alleged statements, and I asked Mr. Rivera
24 about alleged statements he made about the prior event
25 for which he was convicted. So he obviously knows what

1 the statement's all about.

2 MS. ADAMS: Oh, yes, sir.

3 THE COURT: So anyway, it's not a surprise to
4 him. It's a surprise to the Court, of course, but I
5 understand.

6 All right. Anything else?

7 MS. ADAMS: No, I just want to make sure that
8 the jury's not confused, Judge, since it's just ---

9 THE COURT: The jury is confused.

10 MS. ADAMS: I know.

11 THE COURT: But that's not your doing, and so
12 you're not going to be held to any sort of -- what is it
13 -- judgment. All right.

14 All right. Let's do take a short break. You can
15 step down, of course, and you understand you're under
16 oath.

17 MR. ZAMBERLIN: Yes, sir.

18 THE COURT: You can't discuss your testimony
19 with anybody?

20 MR. ZAMBERLIN: Yes, sir.

21 (WHEREUPON, court stood at recess for a short break
22 during which Court's Exhibit Number 8 was marked for
23 identification only.)

24 (WHEREUPON, a bench conference was held off the
25 record.)

1 THE COURT: All right. I tell you what I'm
2 going to do.

3 (Off record discussion)

4 THE COURT: All right. What I'm going to do is
5 bring him out and ask him how he feels or if he wants to
6 continue or not. In any regard, whatever he says, I'm
7 going to send him back or excuse him, whichever, but then
8 I'm going to let the jury go and I'm going to take an in-
9 camera hearing on it and the State's going to be present
10 too.

11 All right. Ask the ...

12 (WHEREUPON, the jury foreman entered the courtroom.)

13 THE COURT: Just have a seat there, sir. Mr.
14 Foreman, I understand that you may be having some
15 problems with vertigo?

16 THE JUROR: Just a little bit.

17 THE COURT: All right. You know, I asked the
18 other day if you felt comfortable, you know, physically
19 or anything else or would it interfere with your service
20 as a juror. I'll ask the question again. Would it?

21 MR. FOREMAN: No, it won't interfere as long as
22 I can make it through the rest of the day. I have some
23 medicine at home.

24 THE COURT: Oh, all right. Well, I'll tell you
25 what I'm going to do is excuse you because as you can

1 seen, I've got some matters to take up. And so I'm going
2 to excuse the jury for today and ask you to come back in
3 the morning.

4 THE JUROR: Yes, sir.

5 THE COURT: So as I understand, you have
6 medication for it and you'll be all right tomorrow?

7 THE JUROR: Yes, sir.

8 THE COURT: Very good. Thank you very much,
9 sir. All right. If you'll just return to the jury room.
10 I'll ask you to come back out in just a minute.

11 THE JUROR: All right.

12 THE COURT: All right. Did Counsel hear that,
13 that the foreman is under medication, but he apparently
14 didn't have some today and he says he'll be fine tomorrow
15 if he gets his medication. Any -- and I asked him to
16 return to the jury. And I asked him, of course -- I
17 think you might have heard it. But the question was, is
18 there any condition that would interfere with your
19 ability to serve as a juror.

20 All right. Anything from the State?

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

22 THE COURT: From the Defense?

23 MR. MCGUIRE: Not with regard to that juror.

24 THE COURT: All right. Ask the jury to join
25 us. Oh, wait a minute. Whoa, whoa, whoa, sorry.

1 (WHEREUPON, the Defendant entered the courtroom.)

2 THE COURT: All right. Is there anything
3 before we bring the jury in and excuse them for the day?
4 From the State?

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

6 THE COURT: From the Defense?

7 MR. MCGUIRE: No, sir.

8 THE COURT: All right. Very good. Ask the
9 jury to join us, please.

10 (WHEREUPON, the jury entered the courtroom at
11 approximately 4:35 p.m.)

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

14 Mr. Foreman, ladies and gentlemen of the jury, it
15 looks like I'm going to have to take up some matters this
16 afternoon. Now, we've finished the direct examination of
17 the witness, but I'm going to have to take up some
18 matters before we begin the cross-examination. So I'm
19 going to excuse you for the day and ask you to come back.
20 What time would you like to start in the morning?

21 THE FOREMAN: Ten.

22 THE COURT: Ten o'clock. We'll come back at
23 ten o'clock to the jury room and we'll continue at that
24 time. Again, please do not undertake a discussion of the
25 case among yourselves or permit anyone to discuss it with

1 you. So I'll see you at ten o'clock in the morning.

2 Oh, by the way -- oh, wait a minute. I almost
3 forgot. I had the request about the other matter.
4 You'll be parking in the back tomorrow morning. And
5 there are going to be people there to meet you.

6 All right. Very good.

7 (WHEREUPON, the jury exited the courtroom at
8 approximately 4:37 p.m.)

9 THE COURT: All right. It's my understanding
10 that the Defendant, by his attorneys, wishes to pursue a
11 line of questioning that goes to the admissibility of the
12 confession or alleged confession or statements by the
13 accused and that such a hearing on these preliminary
14 matters will be heard outside the presence of the jury at
15 the accused's request.

16 Is that correct, Mr. McGuire?

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: Well, I'll consider this under Rule
19 104, and particularly the relevance -- the question of
20 relevancy as well as the ultimate admissibility.

21 Let's see. Let me know when the jury's out.

22 THE BAILIFF: They did take them all down the
23 back.

24 THE COURT: Oh, they have? All right. Very
25 well.

1 All right. We'll take a short break and then I'll
2 reconvene, but it'll be in-camera using the courtroom so
3 that I'll have a record for consideration. Anything from
4 the State before we recess to reconvene in-camera?

5 MS. ADAMS: No, sir. How long do you want us?

6 THE COURT: Ten minutes.

7 MS. ADAMS: Okay. Thank you, sir.

8 THE COURT: All right. Anything form the
9 Defendant?

10 MR. MCGUIRE: No, sir.

11 THE COURT: All right. Ladies and gentlemen
12 that are here, an in-camera hearing is a hearing before
13 the Court with -- so that a record can be made. It's to
14 determine matters that have been brought up and to
15 determine how the case will proceed. So with that, I'm
16 going to have to ask you to excuse us and withdraw from
17 the courtroom. And this will be -- I'm not going to
18 reconvene the trial until tomorrow morning at ten
19 o'clock, so you don't need to come back this afternoon.

20 (WHEREUPON, court stood in recess for a short break)

21 (WHEREUPON, court convened with all parties present
22 and the following proceedings were had in-camera
23 commencing at approximately 4:47 p.m.)

24 MR. MCGUIRE: I'm sorry, Your Honor, when you
25 said in-camera, I thought you meant ex parte.

1 THE COURT: Not ex parte, because I want --
2 well, tell me what would be the rule for ex parte?

3 MR. MCGUIRE: That in order to show relevance,
4 I have to basically connect the dots on how it's relevant
5 in our theory of defense. And there's really only one
6 way to do that, and that's basically to give you the
7 whole theory, just throw it out there. And it kind of
8 puts me in a box where I'd have to share that with the
9 other side. I'm not obligated to do that.

10 THE COURT: Well, I don't quite -- what's the
11 legal theory that we have trials by ambush?

12 MR. MCGUIRE: I would say that -- I would say
13 that rules are rules ---

14 THE COURT: It's very simple. Obviously,
15 you've been thinking about this some time, so you must
16 have some authority for it. So why don't you give that
17 to the Court.

18 MR. MCGUIRE: That I'm allowed to keep our
19 theory to ourselves and not share it with the State?

20 THE COURT: No, no. That -- what is it -- you
21 can try it by ambush. I mean, if you're going to take a
22 tact in a guilt phase of the trial to bring up matters
23 that would not be admissible, then, of course, I want to
24 know what permits that.

25 MR. MCGUIRE: I mean, Judge, I can tell you

1 that it ultimately goes to our challenge to the statement
2 of whether its voluntary and believable. That's the
3 relevance ---

4 THE COURT: Believable is not a question about
5 a *Jackson v. Denno*.

6 MR. MCGUIRE: But for the jury it is.

7 THE COURT: No, it's not. Now listen, remember
8 in the sentence phase, yes, you can -- what is it --
9 reject the evidence of the State for no reason at all or
10 mercy. But I don't know about that in the guilt phase.
11 You just have to believe he made the statement. It's not
12 that you have to believe the statement. I mean,
13 otherwise -- what is it -- we'd never have anybody
14 indicted for fraud.

15 MR. MCGUIRE: Well, I mean, certainly we should
16 be able to be in a position to challenge the accuracy of
17 the statement, the believability of it.

18 THE COURT: Well, you can do that.

19 MR. MCGUIRE: And that's what we're doing.

20 THE COURT: No, you're not. You're doing
21 something else. You said believability. It's not
22 believability. It's whether or not he made the
23 statement. And they believe he made the statement. Now,
24 if you have something to suggest that he doesn't, then,
25 of course, you're talking about impropriety because the

1 officer's already testified as to what occurred. I mean,
2 you've got a choice now. You can either take up the
3 relevance question or abandon it. And as I say, if you
4 give me authority for anything you want to do, I'll be
5 more than happy to consider it.

6 MR. MCGUIRE: All right, Judge ---

7 THE COURT: I'm giving you an opportunity to
8 test your theory.

9 MR. MCGUIRE: All right.

10 THE COURT: And if it's not supported here, I
11 don't think we're going to, in any way, permit a jury to
12 hear it.

13 MR. MCGUIRE: Sure. And if I could just ---

14 THE COURT: Do you want some time?

15 MR. MCGUIRE: --- politely renew my objection.

16 THE COURT: To what?

17 MR. MCGUIRE: To me having to disclose my
18 theory to the Prosecutor.

19 THE COURT: You're not having to disclose your
20 theory to the Prosecution.

21 MR. MCGUIRE: Well ---

22 THE COURT: You don't have to. Now, if you
23 want to give me some line of -- I mean, some authority
24 for asking whether or not a person is believable, I mean,
25 that's called credibility, believability. That is not

1 one of the requirements for a statement. It's the belief
2 that he made it, not that -- what is it -- they believe
3 the statement itself.

4 MR. MCGUIRE: Okay. I understand. And, Judge,
5 I'm just going to just take you up on your offer to try
6 to show relevance here. Judge, we want to be able to
7 attack the believability of the statement. I understand
8 the Court's position.

9 THE COURT: Well, it's not my position. It's
10 the law unless you can show me something else. I mean,
11 listen, I only practice. I don't know all the answers.
12 That's why I have to depend upon people who do know the
13 answers because obviously you wouldn't do anything unless
14 you had authority for it, I don't think, would you?

15 MR. MCGUIRE: No, sir. And I'm saying ---

16 THE COURT: All right. I mean, otherwise, we
17 might as well do away with all these little pieces of
18 paper we call -- what is it -- bar licenses.

19 MR. MCGUIRE: Yes. And, Judge, I would say
20 that the case probably the closest would be the *Bobby Lee*
21 *Holmes* case that came out of South Carolina and went all
22 the way to the United States Supreme Court where the
23 analysis of the evidence was such that even though there
24 was overwhelming evidence, the Court -- ultimately the
25 Court, the United States Supreme Court, said that the

1 Defense was able to -- or should be able to go with a
2 third-party guilt theory despite the fact that it would
3 not be very successful. I mean, sort of that's kind of
4 the bottom-line holding in that case.

5 THE COURT: Well, now, is that going to be what
6 we're having here, that he didn't do it?

7 MR. MCGUIRE: Well ---

8 THE COURT: Well, that's a different thing. If
9 you've got some idea that he didn't do the act.

10 MR. MCGUIRE: No, no, I'm just saying by
11 analogy, that's sort of the closest case. And with
12 regard to relevance, Judge, I'll just throw it out there
13 for what its worth, that our only challenge to that
14 statement -- and if we don't challenge it, then ---

15 THE COURT: Yes, sir.

16 MR. MCGUIRE: --- the game's sort of over on
17 guilt. But our only challenge would be to the
18 voluntariness and the believability of the statement
19 based on Mr. Rivera's multiple confessions to various
20 other acts and that they don't really make sense. For
21 instance, the reason I want to go into Ms. Wiley's
22 statement, there are certain descriptions of events that
23 just seem implausible. And we do want to point out that
24 some of this just can't be believed. And we want to
25 reference his testimony from the previous trial where he

1 declared himself to be a hit name, code name Circle K-24,
2 where he was on a spy mission to kill Ms. Kwana Burns
3 that he received from a P.O. box in Atlanta, and that he
4 was operating as sort of a pro bono hit man without even
5 knowing who he was getting instructions from. And we
6 want to ---

7 THE COURT: Well, how are you going to
8 establish that?

9 MR. MCGUIRE: We can do it multiple ways. I
10 mean, I can certainly ask Detective Zamberlin about it.

11 THE COURT: Well, the thing is, you've already
12 put it in argument.

13 MR. MCGUIRE: Sure.

14 THE COURT: The opening statement had
15 everything that you've mentioned.

16 MR. MCGUIRE: Sure.

17 THE COURT: So what more do you want? If it's
18 unbelievable, then why would anybody believe it?

19 MR. MCGUIRE: Well, we need to use it ---

20 THE COURT: Well, listen, again, let me just
21 also let you understand that -- and I'm sure you do. I
22 mentioned it earlier -- a confession or statement aliunde
23 is not enough for a conviction. And so that's just it.
24 I don't know if the gentleman was ever tried for the six
25 cases in Florida and Ohio and Georgia, if they have any

1 evidence -- what is it -- corpus delecti of the crime
2 other than the statement.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: So, I mean, I don't understand.
5 You got what you want that -- what is it -- he confesses
6 to everything. I let that in in front -- and I think
7 I've let it in over the State's objection.

8 MR. MCGUIRE: Sure. Yes, sir. And what we
9 want to do is to be able to attack the statement and
10 point out parts of it that are just not plausible, just
11 not ---.

12 THE COURT: Well, you can do that. But I don't
13 know why you have to have -- well, as I say, you've
14 already got it in.

15 MR. MCGUIRE: But I would have to -- and I'm
16 sorry. I would have to actually get Ms. Wiley's -- the
17 statement -- Mr. Rivera's statement regarding Ms. Wiley
18 would have to come in because that's where those
19 discrepancies are, where the things that are just not
20 plausible. They actually appear in Ms. Wiley's portion
21 of the statement when he's referencing her. Actually,
22 the part about Ms. Burns is actually kind of logical. So
23 the part that really was ---

24 THE COURT: It's not only logical, but -- what
25 is it -- there's something else to support it than just

1 the mere confession or statement. I mean, that's what it
2 comes down to. And I definitely will give the jury a
3 charge that they cannot convict on a statement alone.

4 MR. MCGUIRE: Yes, sir. And for instance,
5 Judge, on page three of ten of the statement, there's a
6 description of a very bizarre event where Ms. Wiley asked
7 to go to the bathroom, and then the Defendant says, no, I
8 don't want you to go to the bathroom. And he denies her
9 permission and she just pees in her house. And then they
10 decided to go to sleep then. I mean, it just -- it's a
11 description like that which is just so implausible as to
12 be real that we need to go into with the whole statement
13 to point out that it's not to be believed.

14 THE COURT: Well, do you believe that, that
15 that's what happened?

16 MR. MCGUIRE: Do I believe that that physically
17 could happen?

18 THE COURT: Yeah.

19 MR. MCGUIRE: No.

20 THE COURT: Well, then how is it admissible?

21 MR. MCGUIRE: Because I can point it out to
22 them. That's something that he's confessing to that's
23 not likely to be true. And therefore, he's likely to be
24 confessing to stuff that is also not true.

25 THE COURT: The jury wants to come in at ten.

1 I haven't heard anything yet that -- what is it -- would
2 go to relevance in the guilt phase. Now, it might when
3 you get time to do the sentence phase, fine. But this
4 gentleman is being tried in the guilt phase for one
5 alleged event. Now, the fact that he's confessed to
6 everything else, of course -- what is it -- prior bad
7 acts and convictions are not. I rule right now, if you
8 want me to, that that would be more prejudicial than
9 probative.

10 MR. MCGUIRE: Well, and Judge we would ask ---

11 THE COURT: Is that what you want me to do,
12 that any testimony or evidence as to another alleged bad
13 act or conviction for a crime is outweighed by the
14 prejudice?

15 MR. MCGUIRE: You may as well because that is
16 where I'm ---

17 THE COURT: No, you've got it in right now.
18 But if you want me to rule it out, I'll be glad to.

19 MR. MCGUIRE: Well, it's not the issue of, for
20 instance, Mr. Rivera confessing to six other murders in
21 various jurisdictions.

22 THE COURT: Well, let me ask you this. That
23 obviously came up because that was in the statement in
24 the Wiley case, that ---

25 MS. ADAMS: Which one, Judge? The six other

1 murders?

2 THE COURT: Right.

3 MR. MCGUIRE: No, that's actually another
4 separate statement.

5 MS. ADAMS: No, sir. He didn't even talk about
6 that until after Asha's trial. He did not talk about
7 that at all in the first trial. What he said on the
8 stand was -- I asked him, was Asha the first time you've
9 killed? And he said no. That was it. All the
10 statements to the six other murders was post-trial just
11 with Detective Zamberlin, not in front of any jury
12 whatsoever, totally separate.

13 THE COURT: I didn't ask that about it. I
14 thought -- the thing is, all of that information was
15 available at the other trial.

16 MS. ADAMS: Oh, no, sir. We didn't know any of
17 that. He had never said any of that until after he was
18 convicted.

19 THE COURT: Well, why not?

20 MS. ADAMS: Why didn't he?

21 THE COURT: Why didn't you? Because if you
22 had, you'd have gotten a mistrial for sure because that
23 would be inadmissible even in the first trial.

24 MS. ADAMS: Well, we had no ---

25 THE COURT: But the statement that the officer

1 took related to both events.

2 MS. ADAMS: Asha and Kwana, yes, sir. And
3 that's all we knew in the Asha Wiley trial was just that
4 he had confessed to killing Asha Wiley and Kwana Burns.
5 And that's -- and then in the Asha Wiley trial is when he
6 took the stand and confessed again to both.

7 THE COURT: But the thing is, the jury had in
8 the first thing that he had apparently committed or he
9 accepted that he'd committed other crimes.

10 MS. ADAMS: Just -- he got on the stand Judge,
11 and he confessed to not only killing Asha -- because we
12 had not mentioned Kwana Burns at all in the first trial.
13 And then against his lawyers' advice, he took the stand
14 and confessed to killing both women, Asha Wiley and Kwana
15 Burns. And during cross-examination he just said that
16 Asha was not his first, and then Judge Nicholson cut me
17 off. So we didn't go into anything else. And then a
18 couple of days later, when Detective Zamberlin talked to
19 him is when he gave the confession to six other murders,
20 alleged six other murders.

21 THE COURT: Is that the third statement?

22 MS. ADAMS: I guess you could call it the third
23 statement.

24 THE COURT: Well, there were two that Mr.
25 Delgado went into at length. And then there was a third

1 one that stayed in the folder.

2 MS. ADAMS: Well, I think there's the one
3 statement he gave where he confessed to Asha and Kwana.

4 THE COURT: Well, what were the three -- or
5 were they letters?

6 MR. MCGUIRE: Yes, sir.

7 MS. ADAMS: Oh, he's talking about the --
8 right.

9 THE COURT: Yeah, that's right. There were
10 three letters, too.

11 MS. ADAMS: Sorry, Judge.

12 MR. MCGUIRE: Yeah, sort of the chronology of
13 statements would be -- the first one would be the one
14 that Detective Zamberlin testified to. It's a
15 description of the deaths of Ms. Wiley and Ms. Burns and
16 doesn't talk about any other murders.

17 MS. ADAMS: And it also doesn't talk about hit-
18 man theory or any of that stuff, too.

19 MR. MCGUIRE: Correct. And then, of course, I
20 guess you could sort of say the second statement would be
21 the first trial, where Mr. Rivera said he was a hit man,
22 getting instructions from a P.O. box, that -- code name
23 Circle K-24, and that kind of fantastic testimony. And
24 on the stand he confessed to not just Ms. Burns ---

25 THE COURT: Well, did that statement come in

1 about the Circle K?

2 MS. ADAMS: No, that -- well, that's what he --
3 it wasn't really a statement. It was a confession on the
4 stand. And we have a videotape of that, that -- which
5 this is ---

6 THE COURT: But you plan to put this in in the
7 sentencing phase if there's guilt, right?

8 MS. ADAMS: Absolutely, because that has
9 nothing to do with the guilt phase now of Kwana.

10 MR. MCGUIRE: And then the remaining statements
11 would be ---

12 MS. ADAMS: Call it post-trial.

13 MR. MCGUIRE: The post-trial statements would
14 be a sit-down with Detective Zamberlin at the county jail
15 with a tape recorder where the Defendant confesses to six
16 other murders occurring in Florida, Georgia and Ohio.
17 That would be the third statement.

18 MS. ADAMS: Post-trial. Yeah, that took ---

19 THE COURT: Well, there are three statements.
20 Now, I don't feel ---

21 MS. ADAMS: Yeah. No, that just took several
22 days.

23 MR. MCGUIRE: Sure. And then the remaining
24 statements are the series of letters written by the
25 Defendant.

1 THE COURT: Well, let me ask you, what would
2 those statements have to do with this trial?

3 MR. MCGUIRE: It's the only thing that gives us
4 any ability to attack the credibility of -- I mean, the
5 believability or the voluntariness of the statement about
6 Ms. Burns.

7 THE COURT: All right. How about if at this
8 point I rule that the statement's inadmissible.

9 MS. ADAMS: I just want to clarify, Judge. The
10 believability he just -- he said the believability of
11 Kwana Burns -- the part about Kwana Burns he has no
12 issues with. In fact, I think he said it was very
13 logical. The part that he stated regarding Asha Wiley --
14 and I know he made one reference on page three of ten --
15 there actually was evidence in the first trial that ---

16 THE COURT: Well, that's what I say.

17 MS. ADAMS: --- that is accurate.

18 THE COURT: Well, again, back when I used to be
19 in your position, the last thing I ever wanted a case
20 built on was a confession.

21 MS. ADAMS: Oh, Judge, and we have more.

22 THE COURT: Well, that's what I'm saying.

23 MS. ADAMS: Absolutely.

24 THE COURT: With the hard evidence, I'm just
25 wondering if I instruct the jury not to consider the

1 statement ...

2 MS. ADAMS: Wait. His statement regarding
3 Kwana Burns?

4 THE COURT: Right. That's the only one that's
5 in other than the opening statements.

6 MS. ADAMS: Well, Judge, I guess I'm just
7 confused because what ---

8 THE COURT: Well, don't. Don't be confused.
9 In other words, I'm trying to cut through this thing so
10 we can get the trial on the road, all right?

11 MS. ADAMS: Yes, sir.

12 THE COURT: And the thing is, if your case is
13 strong enough based on the investigation and the evidence
14 that the law enforcement have been able to produce, then
15 why do you need the statement?

16 MS. ADAMS: The evidence ---

17 THE COURT: Well, I'm giving you that balance.
18 I'm trying to -- this will be as close as I'll ever come
19 to be a Solomon. But I'm trying to decide who is the
20 real party in interest as far as that statement's
21 concerned. Because if I strike the statement, then
22 you're no longer concerned because that doesn't -- it's
23 not necessary.

24 MR. MCGUIRE: You're correct.

25 THE COURT: And if you -- what is it -- if

1 you've got to depend upon the statement and not rely on
2 all the evidence that you have, then -- what is it --
3 that tells me you're more interested in the statement
4 than you are with the case.

5 MS. ADAMS: Well, no, sir, I'm not more
6 interested in the statement. The statement is very
7 compelling. It is very factually accurate. It's part of
8 the State's case. It's already been published.

9 THE COURT: Okay. Well, that's your position.
10 I understand your position. You want the statement
11 regardless, no matter what it costs the case.

12 MS. ADAMS: Well, I don't think it's going to
13 cost the case, Judge, from our perspective. We just want
14 ---

15 THE COURT: I know from your perspective we're
16 wasting my time. But unfortunately, I don't get to try
17 or I don't get to decide issues based on just one side's
18 perspective.

19 MS. ADAMS: If I may, Judge ---

20 THE COURT: You may -- anything. Listen, I
21 would -- have for it. But just give me something that
22 will help me make a decision here.

23 MS. ADAMS: Right now our phase is -- the only
24 question is whether or not the Defendant is guilty of the
25 murder of Kwana Burns. When they want to go into the

1 believability of Asha Wiley, that means we're going to
2 have to retry that entire case because there is evidence
3 that supports her case as well, which is what we did in
4 the first trial. We're going to get into all of that in
5 the penalty phase because that's when it's relevant.

6 THE COURT: But you have to have the statement
7 in this case?

8 MS. ADAMS: Regarding just Kwana Burns, which
9 is why we redacted the statement to deal just with Kwana.

10 THE COURT: But they're saying, their whole
11 issue in cases that it's not believable because of all of
12 these other statements. The credibility is less than
13 sterling.

14 MS. ADAMS: The part about Asha Wiley is very
15 believable.

16 THE COURT: Well, otherwise, you know, I'm
17 going to let you have at it. Let him, you know, examine
18 the witness and see if he says that he believed all of
19 this.

20 MS. ADAMS: I mean, in-camera?

21 THE COURT: And why do you believe this and not
22 that? I mean, I'm beginning to think that there might be
23 something to it.

24 MS. ADAMS: Something?

25 THE COURT: I mean, something to the question

1 about whether or not -- what is it -- it's reliable.

2 MS. ADAMS: Your Honor, we have no problem with
3 him finishing with the in-camera hearing, Judge, if
4 that's ...

5 THE COURT: Well, that's just it. All right.
6 Let's go ahead. Let's do that.

7 Officer, take the stand, please. We are at cross-
8 examination. All right. You do understand you're still
9 under oath?

10 MR. ZAMBERLIN: Yes, sir.

11 THE COURT: Very Good.

12 All right. Mr. McGuire?

13 JOHN ZAMBERLIN,

14 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

15 IN-CAMERA EXAMINATION

16 BY MR. MCGUIRE:

17 Q. Detective Zamberlin, did Mr. Rivera give you a
18 statement not just regarding Ms. Burns, but also a Ms.
19 Asha Wiley?

20 A. Yes.

21 Q. And part of that statement indicates -- and if you
22 can read it with me ---

23 THE COURT: Is this the original statement ---

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: --- where the portion of it has

1 been introduced to the Burns' event.

2 MR. MCGUIRE: This is the full statement.

3 THE COURT: That's what I'm saying. The full
4 statement?

5 MR. MCGUIRE: Yes, sir. Yes, sir.

6 Q. At one point, there's a statement.

7 THE COURT: Let's also have it marked as a
8 Court's Exhibit so we can ---

9 MS. ADAMS: I think it is marked, Judge.

10 MR. MCGUIRE: It's marked as State's Exhibit 6.

11 THE COURT: The full statement?

12 MR. MCGUIRE: The full statement.

13 MS. ADAMS: Yes, sir. Because we ---

14 THE COURT: Okay. Very good.

15 MS. ADAMS: Yes, sir.

16 Q. Detective, at one point, does the statement indicate
17 that Asha asked me if she could go to the bathroom and I
18 said, no, so Asha peed on the floor?

19 A. Yes.

20 Q. Does the statement go on, then we moved back to the
21 couch and we fell asleep?

22 A. Yes.

23 Q. Does she also indicate in the statement that Mr.
24 Rivera reported to you that she didn't give her phone
25 number to strangers?

1 A. Yes.

2 Q. And yet she ended up with Mr. Rivera at her
3 apartment and drinking vodka that afternoon.

4 A. Eventually, yes.

5 Q. According to the statement?

6 A. Yes.

7 Q. And the statement also indicates that Ms. Wiley was
8 desperately asking for a banana because she was diabetic?

9 A. That is according to Mr. Rivera's statement, yes.

10 Q. True. And, of course, there's no medical evidence
11 she was a diabetic?

12 A. That's correct.

13 Q. I mean, he made up something that was we know is not
14 true.

15 A. Yes. She's not diabetic.

16 MS. ADAMS: Objection, Your Honor. She ---

17 THE COURT: It doesn't matter. I've got to
18 determine is it relevant in this case, if true.

19 MR. MCGUIRE: Yes, sir.

20 Q. And there's another part of the statement where
21 after he threatens her with a knife, he leaves her
22 unattended all by herself in part of the house while he
23 goes to whole another part of the house. Is that true,
24 sir?

25 A. I would have to read this statement again, sir, if

1 you'd give me a copy.

2 THE COURT: Why don't you give him a copy. If
3 it's in evidence, give him the one that's in evidence and
4 we use the one that y'all apparently have in your file.

5 MR. MCGUIRE: I'll tell you what. It's
6 probably quicker if we just do this, Your Honor.

7 Q. Well, I tell you what. I might have to come back to
8 that. Let me get to the other issue that I think the
9 Court wants me to get into.

10 MR. MCGUIRE: And give me some guidance if I'm
11 wrong, Judge.

12 THE COURT: I want you to go ahead and do what
13 you want to. This is your time to proffer what you
14 intend ---

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: --- to establish by this witness
17 and the statements.

18 MR. MCGUIRE: Sure.

19 Q. And Detective Zamberlin, you were present for the
20 Defendant's first trial?

21 A. Yes.

22 Q. And you saw him take the stand?

23 A. Yes.

24 Q. And he testified to that in a manner completely
25 different, almost completely different from the

1 statement. Is that fair to say?

2 A. Yes.

3 Q. He indicated he was a hit man?

4 A. He did, yes.

5 Q. That he did not know who employed him, he merely
6 took his instructions from a P.O. box?

7 A. Yes.

8 Q. And that he was sort of a pro bono hit man. He
9 didn't get paid for his work. Do you remember that?

10 A. Yes. I think so, yes.

11 Q. Okay. And so without knowing who was hiring him and
12 without payment, he was apparently dispatched to Anderson
13 to terminate Ms. Burns?

14 A. Based on my recollection of his testimony, I believe
15 that's correct.

16 Q. And his code name was Circle K-24.

17 A. I believe he did say that, yes.

18 Q. Do you believe that? Any of that?

19 A. Do I believe any of that?

20 Q. Right.

21 A. My opinion?

22 Q. Your personal opinion.

23 A. Personal opinion. No.

24 Q. Okay. He got on the stand. Gave a statement, just
25 false.

1 A. Yeah. I have no evidence to suggest any credible
2 circumstantial or physical evidence to suggest that Mr.
3 Rivera is a hit man.

4 Q. Okay. And he's also talked to you -- well, he's
5 also talked to you about committing six other murders.

6 A. Correct.

7 Q. In Florida, Georgia and Ohio?

8 A. Correct.

9 Q. And he indicates that he abducts these women -- and
10 apparently for sport with no motive whatsoever; is that
11 correct?

12 A. My opinion?

13 Q. Yes.

14 A. Motive?

15 THE COURT: I'm not sure he has qualification
16 to give anything as to an opinion.

17 MR. MCGUIRE: Sure.

18 THE COURT: Just so I can ...

19 Go ahead and ask the question. Answer the question.
20 It's in-camera.

21 MR. MCGUIRE: Sure.

22 Q. I'm going to talk to you about the six -- after his
23 first trial, after the hit-man testimony, he requested to
24 speak to you?

25 A. I went and had him transported from the Anderson

1 County Detention Center to our facility for the purposes
2 of speaking with him, yes.

3 Q. Okay. And you had a tape recorder?

4 A. No, not at that time.

5 Q. There's a tape recording of his conversation with
6 you about the six murders?

7 A. Later on there was a statement taken that was taped,
8 and that was at the Anderson County Detention Center.

9 Q. The first conversation you had, did he reference the
10 six murders?

11 A. In the first conversation that I had with him in my
12 office, he talked about Phoebe. That that's where it all
13 started.

14 Q. Okay. Okay. And then he said he wanted to talk to
15 you some more. Or he indicated he wanted he was willing
16 to talk to you in greater detail about ---

17 A. He did. He wanted me to find out who Phoebe was and
18 to obtain a statement that she had provided law
19 enforcement in a previous case.

20 Q. Okay. And he wanted to talk to you about that in
21 greater detail?

22 A. About Phoebe.

23 Q. Yes.

24 A. Yes. He wanted me to locate a statement that she
25 had provided to law enforcement in a previous case, but

1 that's all he told me about her was that her name was
2 Phoebe.

3 Q. Oh. You don't have her last name and nothing else.

4 A. No. He would not tell me her last name and he would
5 not give me an address. And so it took a great deal of
6 investigation to find out who Phoebe really was. But we
7 did accomplish that.

8 Q. And you got her statement.

9 A. Yes.

10 Q. And you went and talked to him about that?

11 A. Yes.

12 Q. And tell me how that conversation went.

13 A. Well, that's in the -- some eighty-four pages of
14 transcripts that was taped at the Anderson County
15 Detention Center.

16 Q. Sure. But that's the conversation regarding the six
17 other murders?

18 A. Yes, sir. Yes, it is.

19 Q. Okay. And basically he describes meeting women ---

20 A. Yes.

21 Q. --- who are strangers to him?

22 A. Yes.

23 Q. Killing them and then burying them?

24 A. Yes.

25 Q. And did you take him seriously?

1 A. Yes.

2 Q. And is there any corroborating evidence regarding
3 those six?

4 A. Yes.

5 Q. Is that the one in Florida you're talking about?

6 A. One in Florida and one in Carrollton, Georgia.

7 Q. And what's the corroborating evidence on the one in
8 Georgia?

9 A. Do you want me to go into the specifics of the
10 evidence?

11 Q. Yeah.

12 A. In Carrollton, Georgia?

13 Q. Yes.

14 A. There was a female by the name of Lucretia Crowder
15 killed on August the 14th of the year 2000 in Carrollton,
16 Georgia. The manner of death was positional
17 asphyxiation, and her seven-year-old son was beaten to a
18 state of mental retardation, severe mental retardation as
19 a matter of fact, a condition that he still suffers
20 today. In meeting with Agents Larry Durham from the
21 G.B.I. and also Mark Griffith who's a homicide
22 investigator for Carrollton, they were able to determine
23 from the statement that he gave me that there was a car
24 rented in the name of a friend of Rivera's named Keith
25 Jordan. And that automobile, according to Rivera, had

1 been rented the day prior to the killing taking place.

2 So the authorities in Georgia verified that through the
3 rental company that actually rented Keith Jordan the car.

4 In addition to that, they did find a phone call in
5 the victim's phone records that went from the car rental
6 company to the victim's home on the day that she was
7 killed. The records from the car rental company
8 indicated that the car, I believe, was rented on August
9 the 13th of 2000 and the killing was on August the 14th
10 of 2000.

11 Q. Okay. Now, of course, his statement regarding the
12 Georgia murder doesn't mention anything about the young
13 boy, does it?

14 A. No.

15 Q. In fact, that's -- there's no mention of a boy or
16 beating the boy or anything like that at all?

17 A. No.

18 Q. So you'd agree that his statement is not in line
19 with the facts of that case?

20 A. Not totally, except for the time frame. The time
21 frame and the location. I also went with Raymondeze
22 Rivera to the State of Georgia, and he agreed that he
23 would ride along with law enforcement and take us to the
24 home of the particular victim that he had claimed in
25 Carrollton.

1 When we entered into Carrollton, Georgia downtown
2 area, he became sort of confused as to the geography.
3 Some things had changed, according to him. And he showed
4 me the location of a telephone where he had allegedly
5 gotten lost and he had to call the victim to get better
6 directions to the home. Those phones were not there any
7 longer, but homicide detectives in Carrollton did confirm
8 that during that time frame, there was pay phones at that
9 location. They had just been moved up against the
10 convenience store that was adjacent to there.

11 At one point in time, we were approximately two or
12 three blocks away from this particular victim's home, but
13 he got lost and he couldn't quite get us to that
14 particular house.

15 Q. Okay. Regarding -- there's one in Florida, that ---

16 A. Yes, sir.

17 Q. I'm aware of that.

18 A. Yes, sir.

19 Q. And there was body found approximately a mile away
20 from where he used to work.

21 A. Yes, sir. He described the location including the
22 neighborhood and a cow pasture across the street from the
23 neighborhood. Homicide detectives in Sarasota, Florida
24 on February 6th of 2006 did dig up a body that's been
25 considered a Jane Doe. It is still considered a Jane

1 Doe. The location of the body was as described in his
2 statement that he provided me within the transcripts, was
3 consistent with his description of where this person
4 would be buried. Again, though, I say that she is a Jane
5 Doe.

6 I would take note that there was a photo of a female
7 contained in Rivera's cell phone after he was arrested of
8 an individual who he has not identified for us which is a
9 very close rendition to a claymation of the skeletal
10 remains on the Jane Doe that was conducted by the Florida
11 State Law Enforcement Department.

12 Q. Okay. And the remaining murders that he talks
13 about, which ones are those?

14 A. The other individuals that he talked about were
15 allegedly killed in other jurisdictions around the
16 Atlanta area, but all of them were allegedly buried by
17 him in Douglasville. And he did take us to three
18 locations in Douglasville. And as far as I know as of
19 now, there's no verification that bodies are buried
20 there.

21 Q. Okay. Despite him taking you to where they're
22 supposed to be?

23 A. Yes, sir.

24 Q. I assume cadaver dogs went out on the scene.

25 A. You know, my position on this was that we fell back

1 into an assistance role. These are not my homicide
2 investigations. These belong to other agencies. It was
3 never our position that we wanted to become involved in
4 their homicide investigations. I simply offered
5 assistance to their agencies, and I acted upon their
6 requests.

7 Q. Okay. Were you present when Mr. Rivera took people,
8 law enforcement, to where ---

9 A. Yes, sir.

10 Q. --- these people were supposed to be buried?

11 A. Yes, sir.

12 Q. And on the scene there were law enforcement
13 officers?

14 A. There was.

15 Q. And did you see cadaver dogs?

16 A. They were bringing out cadaver dogs after we had
17 left. At least that was the plan as I understood it from
18 the major crimes unit of the Douglasville County
19 Sheriff's Office. But to my knowledge, there's been no
20 recovery of any remains in any of those three approximate
21 locations that he provided us.

22 Q. Right. And then, of course, there's the Ohio case.

23 A. Yes.

24 Q. And tell me about that.

25 A. Well, the Ohio case, I did talk to a homicide

1 investigator. But, you know, Cincinnati is a large
2 jurisdiction, and there are so many murders a year down
3 on the Rhine River that I think they have a struggle
4 keeping up with, you know, those. But you know, they did
5 try and search by the first name that he provided me, and
6 there was nothing consistent that they could find, at
7 least in the Cincinnati jurisdiction.

8 But just like Atlanta, you know, Cincinnati is
9 surrounded by suburbs who each have their own law
10 enforcement agencies and things like that. So you know,
11 as far as the first name, because Mr. Rivera only
12 provided me the first name of the -- the alleged first
13 name of these alleged victims.

14 Q. Sure.

15 A. And so, you know, I was not able to verify that the
16 name that he gave me was someone that was on the missing
17 person's lists of the homicide, unsolved cold case
18 homicide list out of Cincinnati.

19 Q. Right. And that's something that typically exists,
20 it was a missing persons list.

21 A. Yes, sir.

22 Q. And that's not difficult to access?

23 A. Yes, sir.

24 Q. And there's not anybody turning in missing with the
25 first name or the time frame that he gives you regarding

1 the Ohio case?

2 A. Right.

3 Q. And then Mr. Rivera has apparently sent letters to
4 the family members of the victim in this case, Ms. Kwana
5 Burns?

6 A. Yes.

7 Q. He indicates that he -- or implies that he had a
8 relationship or knew this family some time ago. Is there
9 any evidence to support that at all?

10 A. No evidence that I'm aware of that would support
11 that at all, sir.

12 Q. Right. And you agree with me the letters indicate
13 that he describes Eleanor as a nice, virtuous woman until
14 Ken came into her life?

15 A. Yeah, there was some language in the last letter, I
16 believe, suggesting that type language, yes.

17 Q. Right. Implying that he thought well of her until
18 that event occurred. There's no evidence he knew these
19 people from Adam's house cat, really, right?

20 A. No, sir, there's not.

21 Q. In fact, in our interviews with the family, you've
22 established beyond any doubt they don't know who -- they
23 have no connection to him whatsoever?

24 A. That's correct.

25 MR. MCGUIRE: Judge, I think that's about all

1 I'd have for this proffer.

2 THE COURT: Any questions from the State?

3 MS. ADAMS: Your Honor, I can go through and
4 match up all the evidence with Asha if you like. But I
5 know he mentioned specific factors like in Mr. Rivera's
6 statement.

7 IN-CAMERA EXAMINATION

8 BY MS. ADAMS:

9 Q. In other words, John, was actually urine found on
10 the sofa?

11 A. Yes.

12 Q. Okay. And urine was also found -- Mr. McGuire did
13 not mention this. But Mr. Rivera talks about how Asha
14 peed on the bed. And wasn't urine found on the mattress
15 or the comforter that was on the bed as well?

16 A. Yes.

17 Q. Okay. And having been the lead investigator in that
18 case, isn't his statement extremely consistent with all
19 the evidence that was found in that case as well?

20 A. Yes.

21 Q. And in fact, when Asha Wiley was killed or murdered,
22 you really at that point had no real suspects until Kwana
23 Burns was murdered; is that correct?

24 A. Correct.

25 Q. Okay. And once you got that statement regarding

1 Asha Wiley, you went back to that crime scene and the
2 crime scene matched ...

3 A. Yes.

4 Q. pretty much exactly to what the Defendant
5 stated?

6 A. Yes.

7 Q. Okay. Because it had been wiped down clean.

8 A. Yes.

9 Q. Just like he had said. Everything he describes in
10 his statement was what you found at the crime scene?

11 A. Yes.

12 Q. Okay. Now, tell the Judge, who's Tommy Jackson?

13 A. Tommy Jackson was Kwana's exboyfriend and ---

14 Q. Kamille's daddy?

15 A. Kamille's dad, yes.

16 Q. Okay. And tell the Judge, what was the word on the
17 street regarding how Kwana died?

18 A. There had been some shadow-type information get out
19 on the streets, and some of the street sources that Tommy
20 Jackson, you know, must have had something to do with
21 this because of some domestic issues between him and
22 Kwana and issues with the child.

23 Q. That Tommy actually got somebody to kill Kwana?

24 A. Yes.

25 Q. All right. And now, Mr. Rivera was in the local

1 detention center from December '06 to February of '08
2 when his trial for Asha Wiley took place, right?

3 A. Yes.

4 Q. Is it very plausible and believable that he heard
5 those rumors while he was in the jail?

6 A. Oh, absolutely.

7 Q. Because that's what happens in the jail, isn't it?

8 A. Absolutely.

9 Q. Rumors are flying?

10 A. Yes, ma'am.

11 Q. That Jane Doe, too, in Florida, John, they can't
12 determine a cause of death? In other words, she didn't
13 die from a gunshot wound. They ruled out physical
14 violent death, so to speak, like knife, stabbing,
15 shootings, all that. Is that right?

16 A. That's my understanding, yes.

17 Q. Okay. So it's very possible that she died of
18 asphyxiation as well. Is that not correct?

19 A. I mean, that would be possible. I mean, she was
20 buried.

21 Q. Okay. All those six murders, as far as you know,
22 are still under investigation?

23 A. Yes.

24 Q. All right. Now, John, you've spent a lot of time
25 with this Defendant, haven't you?

1 A. Yes, ma'am.

2 Q. Has he consistently and always wanted to be in
3 control of what happens when you meet with him?

4 A. Absolutely.

5 Q. And he wants to tell you what he wants before he
6 talks to you?

7 A. That's correct.

8 Q. Okay. And he's actually shown that to his lawyers
9 and doctors as well. He always has conditions before he
10 speaks?

11 A. Yes.

12 Q. Okay. And based on your dealings with him, pretty
13 much what he tells you has been pretty accurate, hasn't
14 it?

15 A. Deliberate and manipulative would be the two words
16 that would come to my mind.

17 Q. Cold and calculating?

18 A. Yes, ma'am.

19 MS. ADAMS: Your Honor, I have nothing further.

20 THE COURT: All right. Anything further from
21 the Defendant?

22 MR. MCGUIRE: Not at this time.

23 THE COURT: All right. You may step down. All
24 right.

25 As I understand it, the whole thrust of -- forgive

1 me -- I think you used the expression theory of your case
2 -- is that the statements given by the Defendant as to
3 not only the case which he was found guilty in, but the
4 other cases in Ohio, Florida and Georgia were
5 unbelievable so that we shouldn't consider his statement
6 in this case, which has been corroborated. Or at least
7 there's testimony that would corroborate the statement.

8 Well, in a very good, effective examination of
9 Officer Zamberlin, it seems that he believed the
10 statements. He followed up in Florida, in Georgia, even
11 in Ohio. He acted on the statements. And interesting
12 enough, apparently, there was something there. Maybe not
13 enough to make a case in Anderson, South Carolina on
14 murders in Florida or Georgia or Ohio, but enough for an
15 Anderson police officer. He believed it. He found that
16 there was some something to the allegations or at least
17 the statements by the Defendant. And then, of course --
18 what is it -- as far as the Asha Wiley case was
19 concerned, that there was corroboration for it, not only
20 because the jury found it, but apparently the testimony
21 was such that it corroborated the statement to that. So
22 I would say that's believable.

23 As far -- and this is where we come down. Maybe
24 they weren't accurate, I mean, not to -- they weren't
25 complete statements, but they were enough to follow up

1 and find some corroboration for them, if not enough to
2 prove. But the main thing is those statements have
3 absolutely no relevance to this case. This case doesn't
4 involve six people either in Georgia, Florida or Ohio.
5 It doesn't involve any sort of contract hit or anything
6 like that even though there could be on the street some
7 testimony that would suggest there would be a contract in
8 it. But that's not the aggravation they're seeking to
9 establish in this case.

10 More importantly, I think that this motion in this
11 line of questioning has to be ruled inadmissible.
12 Although relevant, evidence may be excluded if its
13 probative value is substantially outweighed by the danger
14 for unfair prejudice, confusion of the issues, or
15 misleading the jury, or by considerations of undue delay,
16 waste of time or needless presentation of cumulative
17 evidence.

18 I won't say that this is cumulative because I don't
19 find them relevant to the case at issue. Obviously, the
20 mention of them would be prejudicial. But more
21 importantly, it adds to the confusion of the issues and
22 would be misleading to the jury without consideration of
23 undue delay. Not necessary, inadmissible. And that line
24 of questioning will be excluded.

25 All right. Anything else for today? I note your

1 objection to the Court's ruling, Mr. McGuire.

2 MR. MCGUIRE: Thank you very much, Judge.

3 THE COURT: You're quite welcome.

4 All right. Anything else from the State?

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

6 THE COURT: From the Defense?

7 MR. MCGUIRE: No, sir.

8 THE COURT: All right. I do want to thank you,
9 as I always say, for your patience.

10 Very good. I'll see you in the morning at ten
11 o'clock.

12 MR. MCGUIRE: Yes, sir.

13 MS. ADAMS: Thank you.

14 THE COURT: Well ---

15 MS. ADAMS: Your Honor?

16 THE COURT: Yes, ma'am.

17 MS. ADAMS: Do you want me to redact Asha
18 Wiley's name off of that letter? We did not mention it.
19 The jury has not seen it.

20 THE COURT: Yes. You obviously do a plain copy
21 but redacted.

22 MS. ADAMS: Yes, sir.

23 THE COURT: All right.

24 MR. MCGUIRE: Judge, if you could also politely
25 note my objection to that.

1 THE COURT: I note the objections to that too.

2 MR. MCGUIRE: Thank you, Judge.

3 THE COURT: You're welcome.

4 All right. See you in the morning.

5 MR. MCGUIRE: Yes, sir.

6 (WHEREUPON, court stood at recess for the day at

7 5:35 p.m.)

8 *** END OF VOLUME VII ***

County of Anderson

State of South Carolina,

Plaintiff,

February 1 through 18, 2010

-VS-

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume VIII of X

The Honorable Alexander Macaulay, Judge

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Renee H. Tollison
Circuit Court Reporter

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1 his second statement given to Officer Zamberlin where he
2 talks about other activities, and all three letters that
3 were written to the victims, and using sort of the
4 totality of the circumstances to show that maybe,
5 perhaps, his testimony was either not voluntary or
6 believable and accurate. And the grounds would just be
7 the Sixth and Fourteenth Amendment of the United States
8 Constitution and Section 3 and 14 of Article I of the
9 South Carolina Constitution.

10 THE COURT: All right. Very well. In fact, as
11 the record will reflect, there was a proffer of the
12 evidence yesterday as well as examination of the witness
13 who would have been the witness that would have
14 authenticated one of the documents that the Defense is
15 relying on. And the Court ruled at that time that they
16 were not relevant and they were not admissible under 401
17 and 402. And even if -- they weren't relevant to the
18 case and they were -- the officer who is going to be on
19 the stand now for cross-examination actually testified
20 that he relied on those statements. So apparently they
21 were believable because he did investigations as to the
22 matters related plus the statements were supported by --
23 as to the first victim, Ms. Wiley, they were supported by
24 facts that were brought out or mentioned in the
25 statements.

1 And finally, even if they were relevant under 403
2 the Court felt that the prejudicial value and the
3 confusion of the issues in misleading the jury and other
4 considerations, so under Rule 403 would not make them
5 admissible. So based on 401, 402 and 403, the Court
6 rules that we could not -- that testimony and exhibits
7 would be excluded.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: All right. Very good. And noting
10 the objection to the ruling.

11 All right. Anything else from the Defendant?

12 MR. MCGUIRE: No, sir.

13 COURT: All right. Anything from the State?

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

15 THE COURT: All right. Let's ask the jury to
16 join us, please.

17 MS ADAMS: Judge, do you want John to get back
18 up there real quick, or do you want him to wait?

19 THE COURT: Yes, let's have him do that.

20 Now, you do understand that you're still under oath?

21 THE WITNESS: Yes, sir.

22 THE COURT: Very good. Thank you.

23 (WHEREUPON, the jury entered the courtroom at
24 approximately 10:31 a.m.)

25 THE COURT: All right. Let the record reflect

1 the jury and alternates are in the jury box.

2 Ladies and gentlemen of the jury, does anyone need
3 to report any breach or violation of the Court's order as
4 to exposure to outside information or media coverage or
5 have any other concern to bring to the Court's attention
6 at this time? If so, raise your right hand.

7 (No response)

8 THE COURT: Very good. Thank you very much.

9 Mr. Foreman, ladies and gentlemen of the jury, we'll
10 now continue with the trial of the case. And I think
11 that the witness is -- the Defense is ready to proceed
12 with their cross-examination.

13 MR. MCGUIRE: Yes, sir. Thank you, Judge.

14 THE COURT: Mr. McGuire?

15 CROSS-EXAMINATION

16 CONTINUED BY MR. MCGUIRE:

17 Q. John, I've just got a couple follow up questions for
18 you. I'm going to show you what's been marked State's
19 Exhibit Number 4. If you could just tell me if you
20 recognize that document?

21 A. Yes, I do.

22 Q. Okay. And that is the waiver of rights form where
23 you used the back of it?

24 A. Yes.

25 Q. And there's some handwriting on the back?

1 A. Yes.

2 Q. Okay. And that's where Mr. Rivera and you put in
3 writing his request for a single cell, see the chaplain,
4 and he wanted the death penalty?

5 A. Yes.

6 Q. And if you could just flip it over there. And who
7 wrote the three requests?

8 A. The three requests is in my handwriting.

9 Q. Okay. And then he signed underneath saying that
10 those were his requests?

11 A. Yes.

12 Q. And then you took that information to Ms. Adams, the
13 10th Circuit Solicitor, correct?

14 A. That's correct.

15 Q. And then she wrote a letter which is -- I'm going to
16 hand you what's been marked State's Exhibit 5 for the
17 record. She prepared a letter for you to take down to
18 Georgia and show the Defendant.

19 A. Yes.

20 Q. And so you brought that letter to Mr. Rivera?

21 A. Yes.

22 Q. And that letter basically, it guaranteed or promised
23 that his conditions would be met. That the single cell
24 had already been arranged for, the chaplain had already
25 been arranged for, and if the law and evidence allowed,

1 she'd seek the death penalty.

2 A. Yes.

3 Q. And you know, Ms. Adams asked you -- obviously
4 you've seen some odd requests from defendants. Have you
5 ever had a person request the death penalty before?

6 A. Personally? In cases I've been associated with
7 personally?

8 Q. Yes.

9 A. No.

10 Q. Okay. And did you stop and take any steps to
11 determine what his mental health condition was at the
12 time?

13 A. No.

14 Q. Okay. For instance, did he see a counselor in the
15 Douglas County Jail or anything like that?

16 A. Not to my knowledge.

17 Q. Okay. And you all didn't take any steps to have him
18 evaluated by a psychiatrist?

19 A. No.

20 Q. Okay. With regards to the Defendant and who he is
21 as a person, his background, did you do any investigation
22 into that before promising that you'd seek the death
23 penalty?

24 A. I mean, I had information that was related to his
25 exposure to the system, but other than that, no.

1 Q. A criminal history or criminal record?

2 A. Yes, sir. Right..

3 Q. I mean, that's easy to pull up on a computer so to
4 speak.

5 A. Yes, sir.

6 Q. But beyond that, I mean, did you interview next of
7 kin, anybody like that?

8 A. Prior?

9 Q. Right.

10 A. No.

11 Q. Okay. So when the decision or the promise was made
12 to seek the death penalty, you had basically his
13 confession and his RAP sheet?

14 A. Yes.

15 Q. Detective, that's all I have for you. Thank you
16 very much.

17 A. Yes, sir.

18 THE COURT: Re-examine?

19 MS. ADAMS: Thank you, Your Honor.

20 BY MS. ADAMS:

21 Q. John, just a few follow-ups. Have you ever stopped
22 an interview to determine a defendant's mental well
23 being?

24 A. Not unless it was something blatantly obvious.

25 Q. Okay. So you have before if it was blatantly

1 obvious?

2 A. Yes.

3 Q. Was anything obvious at all? Did anything register
4 with this Defendant that there was any sort of reason for
5 you to stop?

6 A. No.

7 Q. Okay. In fact, describe to the jury again just how
8 competent he seemed when you spoke to him.

9 A. I mean, he seemed competent in my opinion. He was
10 very absorbed into our conversations. He was actually an
11 integral part of that communications that I had with him,
12 and he was very attentive, polite and engaged. I guess I
13 would say engaged.

14 Q. And he wanted to speak to you?

15 A. Yes.

16 Q. All right. Have you ever interviewed next of kin
17 before you interviewed a suspect for a murder case?

18 A. Prior, no, ma'am.

19 Q. Okay. Have you ever looked into a murder suspect's
20 background before you interviewed them?

21 A. A total background check, no.

22 Q. Okay. Just like you said, his criminal record, as
23 Mr. McGuire called it?

24 A. Yes.

25 Q. So you ran a criminal history on the Defendant?

1 A. Yes.

2 Q. Okay. And he had been exposed to the system before?

3 A. Yes.

4 Q. So he knew what he was doing even at that point?

5 A. In my opinion.

6 Q. Thank you.

7 MS. ADAMS: Thank you. I have nothing further,
8 Your Honor.

9 THE COURT: Any recross?

10 MR. MCGUIRE: Nothing further, Judge.

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

12 Thank you, sir.

13 You may call your next witness.

14 MS. ADAMS: Thank you, Your Honor. The State
15 calls Dr. Woodard.

16 **BRETT WOODARD,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MS. ADAMS:

20 Q. Good morning, Dr. Woodard. Please tell the jury
21 where you're employed.

22 A. I'm employed with Piedmont Pathology Associates here
23 in Anderson, South Carolina.

24 Q. Okay. And in what capacity?

25 A. I'm a pathologist, a forensic pathologist by sub-

1 specialty training.

2 Q. Tell the jury a little bit about your educational
3 background.

4 A. I received a baccalaureate degree from the
5 University of Pittsburgh. I received a medical degree
6 from Tulane University School of Medicine in New Orleans.
7 I did residency training at the Charity Hospital in New
8 Orleans in pediatrics. I then did residency training at
9 Duke University Medical Center in pathology. Following
10 that training, I did fellowship training at the North
11 Carolina Medical Examiner's Office.

12 Q. And how long have you been a forensic pathologist?

13 A. I've been board certified since 1994.

14 Q. And what specifically are your job duties?

15 A. I am employed by various coroners in various
16 counties in South Carolina to do death investigations on
17 individuals who die under their statutory requirements.

18 Q. How many autopsies have you performed approximately?

19 A. I do somewhere around two hundred and fifty
20 autopsies a year.

21 Q. And have you testified as an expert in the field of
22 forensic pathology before?

23 A. Yes, I have.

24 Q. About how many times?

25 A. Hundreds of times in South Carolina and various

1 other states.

2 MS. ADAMS: Your Honor, at this point I'd like
3 to move that Dr. Woodard be qualified as an expert in
4 forensic pathology.

5 MR. DELGADO: Your Honor, there's no objection
6 to that under the rules.

7 THE COURT: Very good. The Court does find
8 that the witness, Dr. Woodard, is an expert in forensic
9 pathology.

10 Mr. Foreman, ladies and gentlemen of the jury, this
11 will be the same instruction that I've given you before
12 as far as expert witnesses. By reason of his background,
13 training and experience he's qualified to give his
14 testimony to include an opinion in the area of forensic
15 pathology. Of course as all witnesses, lay & expert,
16 testimony is for your evaluation.

17 You may proceed.

18 MS. ADAMS: Thank you, Your Honor.

19 Q. Dr. Woodard, did you have an opportunity to perform
20 an autopsy on Kwana Burns?

21 A. Yes, I did.

22 Q. And when was that autopsy?

23 A. It was performed on the 15th of December in 2006.

24 Q. And Dr. Woodard, explain to the jury exactly the
25 process of what you go about when you perform an autopsy.

1 A. In this particular case, the day before the autopsy
2 I went to Ms. Burns' residence at the request of the
3 coroner's office and examined her at the residence.

4 Q. So you went to the scene?

5 A. That's correct, where she was discovered dead. Then
6 the body was brought to me at the morgue facility at
7 Anderson Area Medical Center where we examined the body
8 as it was clothed for any unusual features on the
9 clothing or manifestations on the clothing that may have
10 indicated or suggested an underlying trauma or injury may
11 be present.

12 We then collected the clothing and examined the
13 skin. We would take photographs and take samples. In
14 this case we took some samples for the possibility of
15 foreign DNA and look for any signs or injuries that would
16 manifest themselves on the surface of the body. Then we
17 look inside the body for any signs of injuries that would
18 be manifested there and would allow us to determine what
19 the cause and manner of death was.

20 Q. And Dr. Woodard, obviously, especially when it's a
21 homicide case, law enforcement is present during these
22 autopsies; is that correct?

23 A. That's correct. Representatives not only from the
24 coroner's office but from the Anderson City Police were
25 present.

1 Q. So as part of your autopsy, you take known samples
2 of the victim's blood and other samples to send to SLED
3 for further testing?

4 A. That's correct.

5 Q. Okay. And did you do that in this case?

6 A. Yes, I did. I took blood samples, vitreous humerus
7 samples for possible DNA and drug testing, and then we
8 took known samples and samples where we thought, perhaps,
9 there was other individual's blood or DNA. We also did
10 what we call a rape kit where we looked for any evidence
11 of recent sexual activity between the deceased and
12 another individual so that other individual could be
13 identified. And then there were certain features on the
14 surface of her body that suggested that her hands had
15 been in contact with another individual, so we took
16 samples of the nails and of the hands.

17 Q. When you went to the scene that day before Kwana's
18 body was transported to the morgue for you, what did you
19 notice about her at the scene?

20 A. Other than her general positioning and the external
21 signs that we had associated with what we call an
22 asphyxia death, lack of blood flow and oxygen to the
23 brain, there was a blood smear on one of her socks that
24 didn't make sense in that it didn't seem that it could
25 have come from her. So before the body was transported,

1 we suggested that that sock be taken into evidence.

2 Q. And that was done, to the best of your knowledge?

3 A. That's correct.

4 Q. Okay. Now, when you say you suspected asphyxiation,
5 what do you go about doing -- what are the signs or
6 injuries that you expect to see with asphyxiation?

7 A. Asphyxiation can be produced by placing pressure on
8 the blood vessels that run through the neck. The amount
9 of pressure that's placed can range from as little as
10 five to ten pounds, which blocks the veins, to as much as
11 twenty pounds, which blocks the arteries than run through
12 the neck. Once the arteries are blocked, the blood flow
13 stops and the brain function will stop in as little as
14 ten seconds in most people. But in that time period
15 between blocking the veins and blocking the arteries, the
16 veins become congested because arterial blood continues
17 to push into the veins. This causes small capillaries to
18 break. And we look for signs of these capillaries to
19 break as well as trauma to the neck area on the outside
20 of the body. The capillaries are easiest to see in most
21 people in the parts of the eye, the pink part of the eye
22 when you pull the eyelid down, and then the white part of
23 the eye that separates the eyeball from the eye socket.
24 Q. Can you explain to the jury exactly how long it
25 would take someone to strangle another person to death?

1 A. If someone placed their hands very strongly around
2 your neck and squeezed, in as little as half a minute
3 they could produce irreversible brain damage. It tends
4 to produce less injuries. In Ms. Burns, there was
5 extensive bruising of her neck from immediately above her
6 collarbone all the way up to underneath her jawbone all
7 the way around the side of her neck and all the way to
8 the notch of your breastplate where your two collarbones
9 come together, what would be under a man's tie knot. It
10 takes time to produce all that bruising. The extensive
11 bruising is either produced by the victim fighting for
12 their life or the strangler putting on pressure and
13 releasing it, putting on pressure and releasing it over a
14 period of time, or a combination of both of those events.

15 Q. And Dr. Woodard, if you would ---

16 MS. ADAMS: Your Honor, may he step down?

17 THE COURT: Yes.

18 MR. DELGADO: Your Honor, may I reposition
19 myself as well?

20 THE COURT: Certainly.

21 (WHEREUPON, the witness stepped down from the
22 witness stand.)

23 MS. ADAMS: All right. Your Honor, this is
24 State's Exhibit 58.

25 THE COURT: 68?

1 MS. ADAMS: 58, Judge.

2 THE COURT: 58.

3 MS. ADAMS: Which we'd move into evidence.

4 THE COURT: Has it been -- have you seen these?

5 MR. DELGADO: Yes, Your Honor.

6 THE COURT: All right. Any objection?

7 MR. DELGADO: No, Your Honor.

8 THE COURT: How many do we have there so we can
9 go ahead, if there's no objections, and get them all in.

10 MS. ADAMS: Okay. We have 53 through 60,
11 Judge.

12 THE COURT: All right. And you've seen those,
13 Mr. Delgado?

14 MR. DELGADO: Yes, Your Honor.

15 THE COURT: Without objection?

16 MR. DELGADO: Yes, Your Honor.

17 THE COURT: All right. The State's Exhibits
18 53, 54 ,55, 56, 57, 58, 59, and 60 are admitted without
19 objection.

20 (WHEREUPON, State's Exhibits Number 53, 54 ,55, 56,
21 57, 58, 59, and 60 were admitted into evidence.)

22 MS. ADAMS: Thank you, Your Honor.

23 Q. All right. Dr. Woodard, I'm going to show you
24 State's Exhibit 58. You were just telling the jury about
25 the bruising around Kwana's neck. So I'd like for you to

1 explain exactly what it is.

2 A. Here you see the neck area here and the collarbones
3 underneath her tee shirt. You can see the collarbone
4 here. And you can see the dark purple area coming down
5 from what would be the notch in the breast plate. You
6 can't quite see how high it goes. Here is the left side
7 of her neck, and you can see the bruises and some
8 superficial scratches on the left side of her neck.

9 Q. And why do you think -- would that be from
10 struggling? Would that be ---

11 A. As I said, this degree of bruising, if someone like
12 someone in the Army went to choke another individual and
13 set out to do it, there would be some bruising but it
14 wouldn't be as extensive over this area. That indicates
15 that the victim struggled while they were being choked to
16 try and stop the choking or the individual choking kept
17 replacing their hands on and off from the pressure or a
18 combination of both of events.

19 Q. So when you say on and off, you mean it was not
20 constant and instant, so to speak?

21 A. That's right. It wasn't as a soldier might do with
22 an enemy combatant just applying pressure until the
23 individual died. There was release.

24 Q. Okay. Dr. Woodard, this is State's Exhibit 60. It
25 may be ...

1 A. It's a little more central, and you can see the
2 extensive bruising. Again, here is the sternal notch.
3 You can see the extensive bruising going all the way up
4 underneath the edge of her jaw. You can see how broad
5 this is and how there's pale areas in between which
6 indicates that whatever was used to place the pressure,
7 be it hand or object, has skipped some areas of the skin.

8 Q. Now, Dr. Woodard, I believe you had a chance to
9 review the Defendant's statement as well?

10 A. Yes. It was given to me before the trial.

11 Q. Okay. And part of his statement he says that when
12 he grabbed Kwana by the throat he also grabbed her by the
13 arm. I'm going to show you State's Exhibit 54. I know
14 it's kind of hard to see.

15 A. This represents her arm. You can see rounded
16 bruises here. This is the backside of the arm. This is
17 just our number of the autopsy to identify it. But you
18 can see this rounded bruising here on her skin. This is
19 what we refer to as fingertip bruises which indicate that
20 pressure has been placed by the surface of the finger,
21 and it produces a round shaped bruising on the skin.

22 Q. So it would be consistent with what the Defendant
23 said in his statement?

24 A. That would be consistent.

25 MR. DELGADO: Your Honor, may I ask my friend

1 not to lead the doctor, please?

2 THE COURT: Very well.

3 MS. ADAMS: Yes, sir, Your Honor.

4 Q. Now, you talked about ---

5 THE COURT: By the way, leading questions, Mr.
6 Foreman, ladies and gentlemen of the jury, are questions
7 which suggest an answer. So what the effect is that the
8 person who's asking the question is just really asking
9 the witness to agree with them and not hearing the
10 testimony of the witness.

11 Leading questions are not permitted with your own
12 witness. Now, on cross-examination -- it's the other
13 side's witness -- then you are permitted to lead. But
14 these rules apply to both the State and the Defendant.
15 You may proceed.

16 MS. ADAMS: Thank you, Your Honor.

17 Q. Dr. Woodard, this is State's Exhibit 57. Please
18 explain what this depicts for the jury.

19 A. This -- we're looking in the pink part of the eye
20 and in the white edge of the eye that separates the
21 eyeball. We see at the white edge of the eye that there
22 are hemorrhages. Following here in the pink part of the
23 eye where we see petechial hemorrhages which is the
24 phenomena that occurs in strangulation when the veins are
25 blocked but the arteries aren't.

1 MS. ADAMS: State's Exhibit 55, Your Honor.

2 Q. Please explain that for the jury.

3 A. This is her left hand. You can see she had
4 fingernail extensions, artificial nails, on -- this is
5 her third finger. You see that this one is broken in an
6 irregular pattern. We also see bruises over the palms of
7 the hands, the fat part next to your thumb and the
8 smaller part next to your little finger with a small
9 scratch at the little finger. This led us to collect
10 these nails because of this being so discordant with how
11 all the other nails were to see if there was any evidence
12 of contact with another individual. The bruises of the
13 hand indicate that, in somewhat of an open hand fashion,
14 the hand was struck against something producing recent
15 bruises.

16 Q. So what would that indicate to you as well?

17 A. Given the entirety of the autopsy, it would indicate
18 that she struck with her hand her attacker in an effort
19 to stop it.

20 Q. State's Exhibit 59. Please -- is that a better way,
21 Dr. Woodard?

22 A. Yeah. This was her cheek. We saw this circular or
23 semi-circular injury on her cheek that looked like the
24 edges of teeth placed against the surface of her face.
25 We collected DNA samples from this area because the

1 overall pattern was that of suggesting tooth contact or a
2 bite mark against the cheek.

3 Q. Now, can you tell if that is an adult's mouth or a
4 child's mouth?

5 A. Well, there's a great deal of dentition here. Most
6 of these little lines represent individual teeth that
7 have been applied. The amount of dentition would be
8 inconsistent with a two-year-old.

9 Q. Dr. Woodard, this is State's Exhibit 53. Please
10 explain what that depicts for the jury.

11 A. If we can go back to the left hand for one second.

12 Q. Sure.

13 A. I don't remember the number.

14 THE COURT: 55.

15 MS. ADAMS: It is 55. Yes, sir. Thank you.

16 A. She came tied in this child's jump rope. You can
17 see her tied in these pictures. And you can see that the
18 jump rope came across her arms. And in the next picture,
19 the picture the Solicitor has just shown me, the jump
20 rope has been removed and we're looking at this
21 particular area.

22 MS. ADAMS: This is State's Exhibit 53, Judge.

23 A. Here we see pallor underneath the area and we see
24 what we call lividity, the settling of blood after death.
25 The pallor matches the areas where the rope was, but

1 there's no bruising under these areas which is indicative
2 that the body had stopped its circulation at the time
3 that the restraint around the wrist is in place.

4 Q. So what does that mean?

5 A. That it happened after death.

6 Q. That it happened after death, consistent with the
7 Defendant's statement?

8 MR. DELGADO: Objection again, Your Honor,
9 please.

10 THE COURT: Again, disregard that statement.
11 You can ask a question but not make a statement.

12 MS. ADAMS: Yes, sir.

13 Q. Here is State's Exhibit 56. Can you please explain
14 that to ---

15 A. Yes. If you look in the previous one, you can see
16 out of the corner a heart shaped or multiple heart shaped
17 bracelet that the deceased was wearing.

18 Q. That's State's Exhibit 55 again.

19 A. Yeah. Here you see this multiple heart shaped
20 bracelet on the wrist area. And again now we've removed
21 the bracelet and we're re-photographing the hand. And
22 you can see that pressure was placed on the bracelet so,
23 if you will, it's stamped its shape into the individual,
24 but it didn't produce any bruises. So this pressure was
25 placed on this bracelet after the individual was dead.

1 Here you can see a higher powered view of the thumb
2 portion of the hand indicating that it again, in somewhat
3 of an open-hand fashion, was struck against something
4 with force.

5 Q. Thank you, Dr. Woodard. I believe that's all the
6 pictures. You can -- if you don't mind ...

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

8 Q. So obviously Dr. Woodard, based on all this
9 evidence, have you formed an opinion based on a
10 reasonable degree of medical certainty as to the cause of
11 death of Kwana Burns?

12 A. Yes, I have.

13 Q. And what is that opinion?

14 A. Manual strangulation producing asphyxia.

15 Q. Dr. Woodard, could you tell from the autopsy how
16 long Kwana Burns had been dead?

17 A. From examining her at the time that I saw her at her
18 residence, which was in the late morning hours on the
19 14th, and the degree of stiffening of the body and
20 settling of blood, she'd been dead somewhere between six
21 and twelve hours. At the time of the autopsy we looked
22 at the contents of her stomach, and we could still
23 recognize food materials that she'd eaten. So we know
24 that she died somewhere around two to three hours after
25 she ate that meal.

1 Q. So what would her body temperature be at 7:30, 7:00
2 in the morning?

3 A. Her body temperature would drop approximately a
4 degree an hour after death. There's some variability.
5 The house really wasn't all that warm and she wasn't
6 heavily dressed. But it would feel cold to another
7 individual, and it would be significantly below your
8 traditional ninety-eight, ninety-eight point six, degree
9 body temperature that you expect when you take your
10 temperature when you think you're sick.

11 Q. So she would be noticeably cold to someone touching
12 her?

13 A. Yes, she would.

14 Q. So, Dr. Woodard, was your autopsy consistent with
15 the Defendant's statement?

16 A. Yes, it was.

17 Q. Thank you, Dr. Woodard. Please answer anything the
18 Defense may have.

19 MR. DELGADO: We have no questions for Dr.
20 Woodard.

21 THE COURT: All right. You may step down.
22 Thank you, sir.

23 May this witness be excused?

24 MS. ADAMS: Yes, sir, Your Honor.

25 THE COURT: All right. Without objection, the

1 witness will be excused. All right. You may call your
2 next witness.

3 MR. CAMPBELL: I call Gaile Heath.

4 BRENDA GAILE HEATH,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Ms. Heath, where are you currently employed?

9 A. South Carolina Law Enforcement Division, commonly
10 referred to as SLED.

11 Q. And how long have you been employed with SLED?

12 A. I've been at SLED twenty-six years.

13 Q. In what capacity or position are you employed there?

14 A. I was the lieutenant and the supervisor of the
15 forensic document department for twenty years. I retired
16 back in December, and they've hired me back and I'm now a
17 forensic scientist there in the questioned document
18 department.

19 Q. In your twenty-six years, have you ever been
20 qualified as an expert in questioned documents and pad
21 impressions?

22 A. Yes, sir, a hundred and fifty-nine times.

23 MR. CAMPBELL: Your Honor, at this time I move
24 to have her qualified as an expert.

25 MR. DELGADO: Without objection.

1 THE COURT: All right. Without objection the
2 witness will be qualified as an expert in forensic
3 science.

4 MR. CAMPBELL: Forensic documents ---

5 THE WITNESS: Handwriting verification,
6 questioned documents.

7 THE COURT: Handwriting identification?

8 All right. The witness will be qualified as an
9 expert in handwriting identification. Again, that's by
10 reason of background, training, and experience, and she
11 will be permitted to give her opinion on matters in that
12 particular area of her expertise. Again, all witness'
13 testimony is for your evaluation.

14 All right. You may proceed.

15 MR. CAMPBELL: Thank you, Your Honor. Your
16 Honor, for the clarification, she's been qualified as an
17 expert in questioned documents and analysis. Is that
18 right?

19 THE COURT: Well, I had handwriting expert.
20 That's what you told me. Now, what is it?

21 MR. CAMPBELL: Questioned documents.

22 THE COURT: Questioned documents?

23 THE WITNESS: Yes, sir, the entire field. I
24 look at handwriting, typewriting, indented impressions,
25 anything involving written forms of communications.

1 THE COURT: All right. Any objection to the
2 qualification?

3 MR. DELGADO: No, Your Honor.

4 THE COURT: All right. Without objection, she
5 will be qualified in questioned document expertise.
6 Again, the instructions are the same, that -- what is it
7 -- all witnesses testimony is for your evaluation.

8 Q. Ms. Heath, did you have an opportunity to examine a
9 yellow legal pad brought to you by the Anderson Police
10 Department?

11 A. Yes, sir, I did.

12 Q. And I believe this was brought to you on April 20th,
13 2009?

14 A. Yes, sir. That is correct.

15 Q. Can you briefly explain to the ladies and gentlemen
16 of the jury when such as us, the State, requests analysis
17 of an item for in the field of questioned documents, what
18 process you go through in this case to identify what is
19 on, in this case, a yellow legal pad?

20 A. The yellow legal pad was submitted to me. There
21 were several sheets still attached to the pad. There
22 were six sheets that contained handwriting on them, and
23 then the remainder of the pad was empty. There appeared
24 to be nothing on the remainder of the pad. I was given
25 the request to look for indented impressions. I didn't

1 know what type of indented impressions I was looking for,
2 but I was to look for indented impressions.

3 I have a machine at the SLED laboratory that is
4 known as an electrostatic detection apparatus. It was
5 originally invented for use at Scotland Yard over in
6 London, England, for latent fingerprints. But after
7 about twenty-four to forty-eight hours they decided that
8 it wasn't as great on finding latent fingerprints, but it
9 did terrific in finding indented writing in paper.

10 This works similar to the principle of if you
11 remember when you were children and if you ever took a
12 notepad that had something written on it and then a
13 second sheet under it and you took your pencil and kind
14 of rubbed it over it, and then you could see what those
15 indented impressions were. Well, this piece of equipment
16 is -- it's a box and it has a vacuum in it, and it has a
17 porous plate on top. And that has little holes and all
18 in the porous plate. Very, very minuscule, very small
19 holes that you can't even see.

20 We place the document in a humidifying chamber and
21 we add moisture back into the paper. And all of this is
22 a non-destructive process. We then place that sheet of
23 paper on this plate or platen, and then we have something
24 that looks like saran wrap that's called imaging film and
25 I pull that over the document. And then I have something

1 with glass beads and toner that's kind of like your
2 pencil shavings. And I cascade that down the document,
3 and it brings up any indented impressions that may be
4 found on that document. And these indented impressions
5 can go down for several sheets of paper. So if someone
6 is writing on, say, a legal pad, then several layers down
7 these same indented impressions can show up for several
8 layers down depending on the quality of the paper and the
9 writing instrument.

10 Q. I want to show you just for identification -- is
11 this the yellow pad and also the pages that you were
12 requested to analyze?

13 A. Yes, sir. It contains my laboratory number, my item
14 number, and my initials.

15 Q. And I believe you analyzed seven pages off of this
16 writing pad. Is that correct?

17 A. That is correct.

18 Q. And more specifically, just kind of looking at item
19 18.7 ---

20 THE COURT: Now, has that been admitted into
21 evidence?

22 MR. CAMPBELL: No, sir. I'm not going to admit
23 it. I'm just going to have her identify it and talk
24 about it.

25 THE COURT: All right. Very well.

1 Q. This is your identification mark you were talking
2 about right here?

3 A. Yes, sir. That's the laboratory number, and then
4 the item number 18.7, and then that thing that looks ---

5 Q. Squiggly?

6 A. --- kind of squiggly. Those are my initials G.H.

7 MR. DELGADO: Your Honor? Your Honor?

8 Excuse me, Solicitor.

9 Perhaps for the purposes of the court reporter that
10 may ought to be marked as an identification witness --
11 exhibit.

12 THE COURT: I think so.

13 MR. DELGADO: That might make it easier for the
14 transcript.

15 THE COURT: Let's do that. Let's for the
16 record let's have it identified as -- for identification.

17 (WHEREUPON, State's Exhibits Number 61 and 62 were
18 marked for identification only.)

19 Q. I want to show you State's Exhibit Number 61. This
20 is the last page that you took off the tablet that you
21 were examining. Is that right?

22 A. That is correct.

23 Q. Okay. And as shown in this, there is -- you cannot
24 with the visual eye see anything upon it?

25 A. That is correct, yes, sir.

1 Q. And as you were explaining to the ladies and
2 gentlemen of the jury, you put it on the electrostatic
3 ---

4 A. Detection apparatus.

5 Q. --- detection apparatus, and that was able to show
6 what was actually written or written down on top of this
7 page?

8 A. That is correct.

9 Q. I want to show you what's been marked for
10 identification State's Exhibit Number 62. Can you please
11 identify what this is, ma'am?

12 A. Okay. This is the hard copy or work product off of
13 the ESDA machine. This is the actual indented
14 impressions that I received off of that blank sheet of
15 paper that you were just observing on the screen up
16 there, item 18.7. These are the impressions that I found
17 on that sheet of paper.

18 MR. CAMPBELL: Your Honor, at this time I'm
19 going to move items for identification State's Exhibits
20 Number 61 and 62 into evidence.

21 MR. DELGADO: Without objection.

22 THE COURT: All right. Without objection,
23 State's Exhibit 61 and 62 are admitted.

24 (WHEREUPON, State's Exhibits Number 61 and 62 were
25 admitted into evidence.)

1 Q. Now, Ms. Heath, did you make a blow up of State's
2 Exhibit Number 62?

3 A. Yes, sir, I did.

4 (WHEREUPON, State's Exhibit Number 63 was marked for
5 identification only.)

6 MR. CAMPBELL: Your Honor, may I have the
7 witness step off the stand, please?

8 THE COURT: Certainly.

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

11 Q. This is a chart, or an enlargement of State's
12 Exhibit Number 62 which was item 18.7.1 when you did an
13 analysis upon this blank piece of paper. Is that
14 correct?

15 A. That is correct.

16 Q. I'm going to show you this. Can you just please
17 explain to the ladies and gentlemen of the jury ---

18 THE COURT: Now, does that have a -- has it
19 been introduced?

20 MR. CAMPBELL: This is number 63, Your Honor.

21 THE COURT: Any objection?

22 MR. DELGADO: No, Your Honor.

23 THE COURT: Without objection, State's Exhibit
24 Number 63 is admitted.

25 (WHEREUPON, State's Exhibit Number 63 was admitted

1 into evidence.)

2 A. The blank sheet of paper that you saw, the yellow
3 legal pad, when I processed it on the ESDA machine, these
4 indented impressions came up on that sheet of paper. So
5 that means that probably one, two, three, even four
6 sheets of paper above this were picking up indented
7 impressions from that. When I received the pad there
8 were six pages of writing already on the previous sheets
9 of writing and then on the seventh pad -- page, this is
10 the indented impressions that were on that page. And
11 after processing it and all, I wrote up a report. And
12 then later on I found out that what the police department
13 had been looking for was this phone number and the name
14 Raymond that appeared in indented form on that blank
15 sheet of paper that you see.

16 Q. And this is at the top of the page; is that correct?

17 A. Yes, sir, at the top of the page.

18 Q. And what exactly is the phone number on this?

19 A. 941-301-6113.

20 Q. And all this writing underneath it is the
21 accumulation of the pages above this blank piece of paper
22 ---

23 A. That is correct.

24 Q. --- State's Exhibit Number 61.

25 A. Yes, sir.

1 MR. CAMPBELL: Your Honor, at this time I move
2 State's Exhibit Number 63 into evidence.

3 MR. DELGADO: Without objection.

4 THE COURT: Without objection, State's Exhibit
5 Number 63 is admitted.

6 Q. And will the witness take the stand please.

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

8 Q. And, ma'am, this enlargement is a true and accurate
9 representation of State's Exhibit Number 62, the 18.7.1?

10 A. That is correct, yes, sir.

11 MR. CAMPBELL: Your Honor, I have no further
12 questions for this witness.

13 THE COURT: Cross-examination?

14 MR. DELGADO: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. DELGADO:

17 Q. Good morning.

18 A. Good morning.

19 Q. Ms. Heath, I'm now referring to State's Exhibit
20 Number 63, the foam board blowup, ma'am.

21 A. Yes, sir.

22 Q. Ma'am, the telephone number that you noted up here.

23 A. Yes, sir.

24 Q. Do you know whose handwriting that is, ma'am?

25 A. No, sir, I do not.

1 Q. Okay. In your field of expertise, not only are you
2 a documents examiner, questioned documents examiner, you,
3 through your skilled training, have been called upon to
4 identify handwriting examples to see whether or not they
5 come from an individual that you have record of. Would
6 that be fair?

7 A. Yes, sir.

8 Q. Did I phrase that correctly?

9 A. Yes, sir, that's correct.

10 Q. So in other words, you could take some of my checks
11 where I signed my name, you could look at that and see
12 whether or not my signature is consistent or the forming
13 of my letters is consistent with the questioned document
14 that may or may not have my name?

15 A. Yes, sir, that is correct.

16 Q. Ms. Heath, I saw a man here in -- and I'm not going
17 to open this. I saw in your other document bag you have
18 some other matters in here that you've been called upon
19 to look at, have you not, ma'am?

20 A. Yes, sir, that is correct.

21 Q. Those relate to some letters that you were asked to
22 look at from my friends with the Solicitor's office,
23 correct, ma'am?

24 A. Yes, sir, that is correct.

25 MR. CAMPBELL: I'm going to object to any

1 amount of questioning regarding any type of letters
2 that's outside the scope.

3 MR. DELGADO: Your Honor, may I ask again ---

4 MR. CAMPBELL: We've already had a ruling on
5 this, Your Honor.

6 MR. DELGADO: No, Your Honor. I believe that I
7 have a right under Rule 611(B) that a witness may be
8 cross-examined on ---

9 THE COURT: I understand.

10 MR. DELGADO: I'm just trying to ---

11 THE COURT: I'm going to overrule the
12 objection. But of course, what you're asking is what is
13 in this witness; expertise.

14 MR. DELGADO: Exactly.

15 THE COURT: Right. Very good. All right.

16 Q. Ma'am, there are some matters here that you have
17 blown up into a large fashion, like 612 -- excuse me, 63,
18 correct, ma'am?

19 A. Yes, sir, that's correct.

20 Q. And you've been called upon to look at those matters
21 to determine who wrote those letters, correct, ma'am?

22 A. Yes, sir.

23 Q. Does that handwriting in those letters that you'll
24 be called upon to talk about, does the handwriting relate
25 to this handwriting at all, ma'am?

1 A. No, sir.

2 Q. It's a different individual?

3 A. Yes, sir.

4 Q. You'll be called upon to discuss those letters in
5 the same fashion as an expert to determine who wrote
6 those letters?

7 A. That is my understanding, yes, sir.

8 Q. Ms. Heath, it's nice to see you. Thank you.

9 A. Thank you.

10 THE COURT: All right. Anything else?

11 MR. CAMPBELL: No, Your Honor.

12 THE COURT: All right. Very good. You may
13 step down.

14 THE WITNESS: Thank you, sir.

15 THE COURT: I tell you what. Let's -- well,
16 approach if you would, please.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, I'm going to suggest that we take
21 a break at this time before we continue with the trial of
22 the case. Again, when you're ready to come back, knock
23 on the door and we'll come back and proceed with the
24 trial.

25 My instructions throughout have been and will be do

1 not discuss the case among yourselves in any way. Very
2 good.

3 Everyone else remain seated while the jury retires
4 from the courtroom.

5 (WHEREUPON, the jury exited the courtroom at
6 approximately 11:22 a.m.)

7 THE COURT: All right. Anything from the State
8 before we break?

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

10 THE COURT: From the Defense?

11 MR. MCGUIRE: No, sir.

12 THE COURT: All right. We'll stand at ease.
13 (WHEREUPON, court stood at recess for a short break
14 during which Court's Exhibits Number 10 through 13
15 and State's Exhibit Number 64 were marked for
16 identification only.)

17 THE COURT: All right. Are you about ready?

18 MS. ADAMS: Yes, sir, we're ready.

19 THE COURT: All right. Anything from the State
20 before we bring the jury in?

21 MS ADAMS: No, sir.

22 THE COURT: Anything from the Defense?

23 MR. DELGADO: No, sir.

24 THE COURT: Very good. Ask the jury to join
25 us, please.

1 We had a note about the heat in the jury room.

2 That's what it was. I just had it marked.

3 (WHEREUPON, the jury entered the courtroom at
4 approximately 11:51 a.m.)

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

7 Mr. Foreman, ladies and gentlemen, I got a message
8 from the jury about the heat in the jury room, and the
9 Clerk is seeing what can be done about that.

10 All right. With that, we'll continue with the
11 State's case.

12 MR. CAMPBELL: Your Honor, the State calls Mike
13 Baskin.

14 WILLIAM MICHAEL BASKIN,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Mr. Baskin, you were employed by the Anderson Police
19 Department back in December 2006?

20 A. Yes, I was.

21 Q. You're currently retired from the Anderson Police
22 Department; is that right?

23 A. Yes, I am.

24 Q. And what were your duties with the Anderson Police
25 Department at the time during December 2006?

1 A. Crime scene and maintain all evidence.

2 Q. And on or about December 28th, 2006 did you have an
3 opportunity to be present when some blood was drawn from
4 the Defendant in this case, Mr. Rivera?

5 A. Yes, I was.

6 Q. And where was this done?

7 A. It was done upstairs in the doctor's office of the
8 jail.

9 Q. And was this done in your presence?

10 A. Yes, it was.

11 Q. And who was the nurse or doctor who drew the blood?

12 A. Mark Dorn (phonic).

13 Q. And what steps or process did you first go through
14 prior to drawing the blood?

15 A. I had to get a vile out of the cabinet and write the
16 person's name on it. I hold it while he draws blood. He
17 sticks the needle in the vile and I seal it up in a
18 suspect's kit.

19 Q. And first, prior to that, did you get authorization
20 or permission from Mr. Rivera prior to drawing his blood?

21 A. Yes, I did have a consent to search form.

22 Q. I want to show you what's been marked as State's
23 Exhibit 64. Can you please identify this, sir?

24 A. This is the form that I received.

25 Q. And this was signed in your presence by the suspect?

1 A. No, sir. It was signed in the presence of Layton

2 Creamer and Donnie Drykes (phonic).

3 Q. And you were present while this was done?

4 A. No, I was not.

5 Q. And who was the agent who was drawing the blood in
6 this case?

7 A. Mark Dorn.

8 Q. Is the suspect's signature at the bottom?

9 A. Yes.

10 Q. And what is the date on it?

11 A. 12/28.

12 Q. Of what year?

13 A. 2006.

14 MR. CAMPBELL: Your Honor, I move State's
15 Exhibit Number 64 into evidence.

16 MR. DELGADO: Without objection.

17 THE COURT: Without objection, State's 64 is
18 admitted into evidence.

19 (WHEREUPON, State's Exhibit Number 64 was admitted
20 into evidence.)

21 Q. After you had this consent to draw his blood form
22 signed, what did you do next?

23 A. I gave it to Mark Dorn.

24 Q. And did y'all go ahead and draw his blood?

25 A. Yes, he drew the blood.

1 Q. And did you secure the blood?

2 A. Yes, I did.

3 Q. The samples?

4 A. Yes, I did.

5 Q. What, if anything, did you do with those blood
6 samples?

7 A. I took it to SLED.

8 Q. And I believe that was on January 3rd of 2007?

9 A. That's correct.

10 Q. And you also took, at that time, the victim's blood
11 as well as some shorts of hers that were collected at
12 autopsy?

13 A. Yes, sir.

14 Q. I have no further questions. Please answer any
15 questions the Defense may have.

16 MR. DELGADO: We have no questions for Mr.
17 Baskin.

18 THE COURT: All right. You may step down.

19 All right. You may call your next witness.

20 MR. CAMPBELL: Your Honor, the State calls
21 Kevin Warren to the stand.

22 WILLIAM KEVIN WARREN,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. CAMPBELL:

1 Q. Mr. Warren, are you employed with the Anderson
2 Police Department?

3 A. I am.

4 Q. And back in December of 2006, were you employed as
5 an evidence custodian or technician?

6 A. That's correct.

7 Q. In fact, you helped Mr. Baskin with the evidence
8 processing and the custodianship of the evidence; is that
9 right?

10 A. That's correct.

11 Q. On or about -- on December 27th, 2007, did you have
12 an opportunity to go to SLED?

13 A. I did.

14 Q. And on that date did you take ankle socks that were
15 shown earlier?

16 A. I did.

17 Q. Did you also take a suspect kit of Raymondeze
18 Rivera?

19 A. That's correct.

20 Q. Excuse me. You picked up a suspect kit of
21 Raymondeze Rivera on October 1st, 2007?

22 A. 10/1/07, yes, sir.

23 Q. And did you also have an opportunity on December
24 27th, 2007 to take down swabs of Ms. Burns?

25 A. I did.

1 Q. And did you alter, change or -- alter or change any
2 of the condition or appearance of those items that you
3 had taken down?

4 A. No, I did not.

5 Q. I have no further questions.

6 MR. DELGADO: I have no questions for Mr.
7 Warren.

8 THE COURT: Very good. You may step down.
9 Thank you, sir.

10 MR. CAMPBELL: Janice Bryson.

11 **JANICE BRYSON,**

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. CAMPBELL:

15 Q. Ms. Bryson, you're employed with the South Carolina
16 Law Enforcement Division?

17 A. Yes, sir.

18 Q. Also known as SLED?

19 A. That's right.

20 Q. And what department are you employed in or do you
21 work in?

22 A. I'm in the evidence processing department.

23 Q. And briefly, what exactly do you do as part of your
24 duties?

25 A. Whenever items of evidence are submitted to the lab

1 with a request to look for hair, fiber, blood or semen,
2 it's my responsibility to process the evidence. And if I
3 collect anything I make sure it goes to the appropriate
4 department.

5 Q. I'm going to show you what's been marked State's
6 Exhibit 14. Can you see this, ma'am?

7 A. I can.

8 Q. On or about January 28th, 2008, were you asked to
9 process a pair of white socks in this case?

10 A. Yes, sir, I was.

11 Q. And what was the purpose and what were you looking
12 for when you looked at these socks?

13 A. When the socks were submitted to the lab, the
14 request was made to look for blood on the socks.

15 Q. And what type of brand are these socks?

16 A. Nike.

17 Q. And were you able to identify or find any type of
18 standard or -- excuse me. Were you able to process these
19 socks for any type of DNA evidence?

20 A. Yes, I did. I do a visual looking for any stains on
21 the socks that appear to be blood, and then I do a
22 chemical test. And if that test is positive, I know to
23 cut that area out and send it to the DNA department for
24 further examination.

25 Q. And did you do that in this case?

1 A. Yes, sir, I did.

2 Q. And how many cuttings did you do?

3 A. I took two cuttings.

4 Q. And did you do the phenylthalline test prior to
5 cutting them?

6 A. That's correct.

7 Q. And were they positive or indicate blood?

8 A. Right.

9 Q. And you submitted those to DNA for analysis; is that
10 right?

11 A. That's correct.

12 Q. And Robin Taylor is the chemist who does the DNA
13 analysis?

14 A. Right.

15 Q. Were you also asked to process a pair of shorts?

16 A. Yes, sir, I did.

17 Q. And would you please just describe the shorts?

18 A. They were blue and white in color with an elastic
19 waistband. They were size medium. And I made a note
20 that there was a strong odor of urine.

21 Q. I'll show you what's been marked as State's Exhibit
22 26. Is this the shorts that you examined?

23 A. Yes, sir. It appears to be.

24 Q. And just briefly describe what steps you did and
25 what steps you took in analyzing these shorts.

1 A. When they were first submitted to SLED, the request
2 was made to look for semen. The first time they were
3 submitted?

4 Q. The second.

5 A. The second time I was to take a cutting for possible
6 urine.

7 Q. And did you do that?

8 A. Yes, sir, I did.

9 Q. Did you submit that to DNA for analysis?

10 A. That's correct.

11 Q. Ms. Bryson, I have no further questions. Please
12 answer any questions the Defense may have.

13 CROSS-EXAMINATION

14 BY MR. DELGADO:

15 Q. Ms. Bryson, two different times in your procedure
16 you were asked to do something related to those blue
17 shorts, correct, ma'am?

18 A. That's correct.

19 Q. The first time to detect whether or not there was
20 any semen on the shorts?

21 A. That's correct.

22 Q. How long between that first request and the request
23 about the urine on the shorts was there, ma'am?

24 A. The date that I originally processed the pair of
25 shorts was July the 2nd of 2007, and then the second time

1 they were submitted to SLED I processed them on June the
2 10th of 2009.

3 Q. Approximately two years in between. Is that right,
4 ma'am?

5 A. That's correct.

6 Q. There's no chance of any deterioration. In other
7 words, those shorts were kept with the State Law
8 Enforcement Division during that whole time. Is that
9 correct, ma'am?

10 A. No, sir. They were returned.

11 Q. Returned. So I assume they were returned to you a
12 second time, and that's when you did the analysis
13 relating to the urinalysis?

14 A. That's correct.

15 Q. Or sent to someone else for that?

16 A. Right.

17 Q. Thank you very much, ma'am. That's all I have.
18 Thank you.

19 MR. CAMPBELL: No questions, Your Honor.

20 THE COURT: All right. You may step down.

21 Thank you, ma'am.

22 Call your next witness.

23 MS. ADAMS: Thank you, Your Honor. Your Honor,
24 the State calls Robin Taylor.

25 ROBIN A. TAYLOR,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MS. ADAMS:

4 Q. Ms. Taylor, where are you employed?

5 A. South Carolina Law Enforcement Division.

6 Q. And what is your occupation?

7 A. I am the supervisor over the DNA Casework
8 Laboratory.

9 Q. And how long have you been employed with SLED?

10 A. March will be twenty years.

11 Q. Please tell the jury a little bit about your
12 educational background and training.

13 A. Well, I have a Bachelor of Science degree in medical
14 technology from the University of South Carolina. I
15 graduated from Baptist Medical Center School of Medical
16 Technology in Columbia. I worked in clinical
17 laboratories for approximately two and a half years prior
18 to joining SLED. Since I've been at SLED, I have
19 completed three training programs in the fields of
20 forensic serology, forensic R.F.L.P. DNA analysis, and
21 forensic P.C.R. DNA analysis. I was promoted to team
22 leader in the DNA department in 2006, and in 2008 was
23 promoted to supervisor.

24 Q. Have you ever testified as an expert before?

25 A. Yes, I have, in excess of sixty-five or seventy

1 times.

2 MS. ADAMS: Your Honor, at this point I'd like
3 to qualify Robin as an expert in the field of forensic
4 serology and DNA analysis.

5 THE COURT: Any voir dire?

6 MR. DELGADO: Your Honor, may I just voir dire
7 Ms. Taylor just one second?

8 EXAMINATION

9 BY MR. DELGADO:

10 Q. Ms. Taylor, the times that you have -- you've been
11 employed with the State Law Enforcement, you said, for
12 some twenty years. Is that correct, ma'am?

13 A. March will be twenty years.

14 Q. The first time that you were qualified as a DNA
15 expert was not twenty years ago, it would be when?

16 A. No, sir. I was qualified as a DNA expert, I
17 believe, in 1997.

18 Q. All right. So of some twenty years, approximately
19 ten to twelve of those related to other specialties,
20 correct?

21 A. Serology. I've been in serology or DNA analysis the
22 entire twenty years.

23 Q. Yes, ma'am. For the purposes of our jury, serology
24 is related but different from the DNA testing that you do
25 now; is that correct?

1 A. It is. Serology is basically the identification of
2 body fluids. And prior to the advent of DNA technology,
3 we used different testing, such as A.D.O. testing, that
4 you would hear about with red -- associated with blood
5 typing and some other genetic markers to characterize
6 body fluids. Serology is the characterization of body
7 fluids and then applying it in forensics to law
8 enforcement concerns. And I did that for about six years
9 and then started training in DNA.

10 Q. And the training programs that you have gone into,
11 ma'am, that you've noted in your credentialing, that
12 relates to DNA testing and testifying relating to that.
13 Is that correct, ma'am?

14 A. Yes, sir.

15 Q. All right.

16 MR. DELGADO: Your Honor, I have no objection
17 to Ms. Taylor's qualifications. Thank you.

18 THE COURT: All right. And the qualifications
19 are forensic serology and DNA?

20 MS. ADAMS: Yes, sir.

21 THE COURT: All right. The witness will be so
22 qualified as an expert in that area.

23 Again, Mr. Foreman, ladies and gentlemen of the
24 jury, the value of her testimony will be for your
25 determination.

1 You may proceed.

2 MS. ADAMS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 CONTINUED BY MS. ADAMS:

5 Q. Robin, please tell the jury what DNA is?

6 A. DNA stands for deoxyribonucleic acid. And basically
7 it's a chemical in your body that carries genetic
8 information from one generation to the next. You get
9 half of your DNA from your mother and half from your
10 father. And in forensics, we just test a very small
11 portion of that DNA that's highly variable from person to
12 person; however, it doesn't really characterize any
13 physical characteristics that you can see. And we just
14 take those characteristics and run the testing on
15 evidence and then run the testing on known standards
16 associated with the case and make a comparison.

17 Q. What type of fluids do you test?

18 A. Usually it's blood, semen, saliva are the most
19 common things we can get DNA on. Although technology now
20 allows us to get DNA from skin cells, contact on clothing
21 or sweat, other things as well.

22 Q. So basically you'd receive known samples and then
23 compare them to evidence submitted by law enforcement?

24 A. Right. And then we determine if there's a match or
25 a non-match -- or sometimes it's somewhere in between --

1 and then present our results in a written report form

2 and, when necessary, testify in court.

3 Q. Now, what about urine? Can you test for urine?

4 A. We can test for the presence of urine; however,

5 normal urine doesn't have any cells in it. And we need

6 -- we're looking for DNA in the nucleus of usually white

7 blood cells or skin cells or spermatozoa, things like

8 that. So normal urine will not easily yield a DNA

9 profile. And usually if it's deposited and in a dried

10 form, it's not going to yield a DNA profile. We don't

11 even usually attempt it at this stage.

12 Q. To get DNA from urine?

13 A. To get DNA. We can identify the presence of urine.

14 But other than that, classifying it is not possible.

15 Q. So you can tell if something -- if it's urine, but

16 you can't get DNA from it?

17 A. Right.

18 Q. Can you tell if it's male or female?

19 A. No.

20 Q. Okay. Did you receive -- or was the cutting

21 submitted from Kwana Burns' blue shorts to test for urine

22 in this case?

23 A. Yes, it was.

24 Q. And please tell the jury the results.

25 A. The results were simply that urine was indicated.

1 Q. Did you receive a swab from Kwana Burns's right
2 inner ankle as well in this case to test for DNA?

3 A. Yes, I did. That was item 6.8, a swab from her
4 right inner ankle. There was no semen indicated, but
5 blood was indicated. And I did perform DNA analysis on
6 that swab.

7 Q. So blood was indicated. What were your findings
8 when you tested the blood from Kwana's right inner ankle?

9 A. When I did DNA on item 6.8, which is the swab from
10 her inner ankle, the DNA profile matched that of Mr.
11 Rivera. The probability of randomly selecting an
12 unrelated individual who would have that profile the same
13 as Mr. Rivera or that that I found on the evidence is one
14 in three hundred and ninety quadrillion.

15 Q. And before you explain to the jury exactly what that
16 means, Robin, did you also receive a cutting from the
17 victim's sock in this case to test for DNA?

18 A. Yes.

19 Q. The Nike sock from Kwana?

20 A. Yes, I did. Actually, I received two cuttings from
21 a sock, items 10.1 and 10.2 from my report dated
22 September 26th of 2008. And I tested those for blood.
23 Blood was indicated, and the DNA profile also matched Mr.
24 Rivera with the probability also being one in three
25 hundred and ninety quadrillion.

1 Q. So what -- explain to the jury what that means.

2 A. Well, it means that the probability of finding
3 another person who has that same profile that I developed
4 is one in three hundred and ninety quadrillion. That's
5 three hundred and ninety with about fifteen zeroes behind
6 it. It's a relatively rare profile. Not an unusual
7 statistic with the technology that we're using today.

8 Q. So, Robin, in your opinion, to a reasonable degree
9 of scientific certainty, does the blood found on Kwana
10 Burns' right inner ankle and the blood found on the
11 cutting from Kwana's sock match the Defendant?

12 A. Yes, it does.

13 MS. ADAMS: I have no further questions, Your
14 Honor.

15 Q. Please answer anything that the Defense may have.

16 MR. DELGADO: We have no questions, Judge.
17 Thank you.

18 THE COURT: All right. You may step down.
19 Thank you, ma'am.

20 MS. ADAMS: Your Honor, may she be excused?

21 MR. DELGADO: Absolutely.

22 THE COURT: All right. Without objection, you
23 may be excused. Thank you very much, ma'am.

24 MS. ADAMS: Your Honor, may we approach
25 quickly?

1 THE COURT: Sure.

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

4 MS. ADAMS: Your Honor, with no objection, we'd
5 just like to move State's Exhibit 44 into evidence.

6 THE COURT: All right. Any objection from the
7 Defendant?

8 MR. MCGUIRE: No, sir.

9 THE COURT: Without objection, State's Exhibit
10 Number 44 is admitted.

11 (WHEREUPON, State's Exhibit Number 44 was admitted
12 into evidence.)

13 THE COURT: All right. You may call your next
14 witness.

15 MS. ADAMS: Your Honor, the State rests.

16 THE COURT: All right. Very well. Is there
17 anything else from the State?

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

19 THE COURT: All right. Anything from -- well
20 ---

21 MS. ADAMS: Not at this point.

22 THE COURT: Excuse, me? All right. I tell you
23 what.

24 Mr. Foreman, ladies and gentlemen of the jury, the
25 State's rested. And I need to take up some matters with

1 the attorneys. I'm going to ask you to retire to the
2 jury room for a few minutes, and then we'll see how we'll
3 proceed from that point.

4 I do hope that the heat's a little bit better. If
5 not let me know. But if you would, please, retire to the
6 jury room. Again, you've only heard a portion of the
7 case, so do not undertake a discussion among yourselves
8 in any way.

9 (WHEREUPON, the jury exited the courtroom at
10 approximately 12:12 p.m.)

11 THE COURT: All right. Now I'll ask again. Is
12 there anything else from the State before I take up any
13 motions?

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

15 THE COURT: Anything now from the Defense?

16 MR. DELGADO: Yes, Your Honor. Preserving our
17 previous objections prior to trial as relates to the voir
18 dire and every other motion we've made, we ask the Court
19 to under -- pursuant to Rule 19 to grant a motion,
20 directed verdict motion, based on the insufficiency in
21 the evidence both direct and circumstantial as to Mr.
22 Rivera's guilt.

23 THE COURT: Very well. Anything from the
24 State?

25 MS. ADAMS: Yes, sir. Your Honor, we feel that

1 there's ample evidence to go forth.

2 THE COURT: Obviously under Rule 19 the Court
3 is not concerned with the weight of the evidence, but
4 only if there's any evidence or there's sufficient
5 evidence to go forward to sustain a verdict if the jury
6 should so find. At this time, the Court finds that there
7 is sufficient evidence to go forward and denies the
8 motion for directed verdict. And that motion is based on
9 all previously made motions and objections by the
10 Defendant.

11 All right. Let's see, thoughts of the Defendant?
12 It's 12:15. I mean, do you need some time? Also, I
13 don't know. If you'll approach, I think there's
14 something I need to discuss with you.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: Mr. Rivera, if you would please
18 stand. You remember yesterday I think I put you under
19 oath. Do you understand you're still under oath?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Very good. I'm advised
22 at this time that this might be the time to explain to
23 you certain of your rights. If you do not understand
24 anything I say, please let me know. If you want me to
25 explain anything in more detail, please let me know. Do

1 you understand this?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: We have now reached or are
4 approaching the stage in the trial where you may present
5 your defense. You have the right to claim the
6 protections given to you by the Fifth Amendment to the
7 Constitution of the United States. This amendment states
8 in pertinent part, no person shall be compelled in any
9 criminal case to be a witness against themselves. Do you
10 understand this?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: This means that you cannot be
13 required to testify in this case. You have the right to
14 testify on your own behalf; however, no one can make you
15 testify. This is a personal right, and no one can waive
16 this right except you. Do you understand this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you decide to testify, you'll be
19 subject to the same rules that govern other witnesses and
20 you may be examined and cross-examined on any relevant
21 issue in the case. In addition, if you have any
22 convictions involving dishonesty or false statement or
23 for crimes punishable by imprisonment for more than one
24 year and this Court determines that the probative value
25 of admitting this evidence outweighs its prejudicial

1 effect to you, the Solicitor will be able to introduce
2 your record to attack your credibility. You understand
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: If you decide to testify, this
6 decision on your part must be freely, voluntarily and
7 intelligently made with knowledge of the protections
8 given to you by the Fifth Amendment and the consequences
9 of your decision to testify. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you decide not to testify, I
12 will instruct the jurors that they cannot give the fact
13 that you did not testify any consideration whatsoever and
14 that there is to be absolutely no prejudices to you
15 because you did not testify. It is left entirely up to
16 you whether or not to testify. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You may talk with your attorney or
19 anyone else about this, but it will be your final
20 decision -- or the final decision will be left entirely
21 up to you. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand what I've
24 explained to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions about
2 what I've explained to you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you discussed with your lawyer
5 whether you should testify or not?

6 MR. DAY: Excuse me, Your Honor. He just asked
7 if we could have a small break. He needs to go to the
8 restroom and he would like to ask a couple questions of
9 us.

10 THE COURT: Certainly. All right. We'll take
11 a short break. When you're ready to return, of course,
12 let me know. Thank you.

13 THE COURT: Counsel, approach while we're
14 waiting.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 THE COURT: All right. Is the State ready to
18 proceed?

19 MS. ADAMS: Yes, sir, Your Honor.

20 THE COURT: Is the Defendant ready to proceed?

21 MR. DAY: He is, Your Honor. He had a couple
22 questions and we've answered them, and he wishes to
23 proceed on to finish answering the questions.

24 THE COURT: Very good.

25 Mr. Rivera, you can remain seated if you'd like.

1 Have you discussed with your lawyer whether you should or
2 you should not testify?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You do wish to testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Well, I think he's talking to --
9 are y'all also talking to him about final argument?

10 MR. MCGUIRE: We addressed both issues, Judge.

11 MR. DAY: Thank you, Your Honor. In
12 discussions with Mr. Rivera, he has indicated to me that
13 apparently he does wish to testify, but he would like to
14 do so after lunch if he could. His lunch is being
15 delivered to him.

16 THE COURT: Very well. Well, let me do this
17 too, since he'll also have to consider the regards as to
18 the last argument.

19 Mr. Rivera, you still understand you are under oath,
20 right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: South Carolina Code Section § 16-3-
23 28 states, notwithstanding any other provision of law, in
24 any criminal trial where the maximum penalty is death, or
25 in a separate sentencing proceeding following such trial,

1 the defendant and his counsel shall have the right to
2 make the last argument. Now, have you discussed this
3 with your lawyers?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. This is something you
6 will have to discuss with your lawyers, whether you wish
7 to exercise your right to make the last argument to the
8 jury. You may talk to them at this time over lunch.
9 Then I'll ask you whether or not you wish to exercise
10 your right to make last argument to the jury, or do you
11 wish to waive your rights to make last argument to the
12 jury.

13 All right. Very good. So you understand two
14 things. The first is whether or not you want to testify,
15 in other words, on your own behalf. That will be under
16 oath as a witness. And the second, after the case is
17 closed and rested, then whether or not you want to make
18 your last argument to the jury. So those are the two
19 things you have to consider. You understand, Mr. Rivera?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Any questions of the Court?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. Very good.

24 All right. I'm going to ask the jury to come out.
25 And I guess we're going to just send them to lunch then

1 and come back at two.

2 All right. Ask the jury to come in.

3 All right. The State has rested and that's where
4 we'll stop.

5 (WHEREUPON, the jury entered the courtroom at
6 approximately 12:59 p.m.)

7 THE COURT: Ladies and gentleman of the jury, I
8 apologize for having to keep you in the jury room this
9 long. I still have some matters I have to take up with
10 Counsel before we continue with the case. And it's one
11 o'clock. I'm going to suggest you go to lunch at this
12 time, come back at two o'clock, and then we'll conclude
13 the case at that time.

14 Again, do not undertake a discussion of the case
15 among yourselves or permit anyone to discuss it with you.
16 I'll see you back at two o'clock in the jury room. Very
17 good.

18 Everyone else remain seated while the jury retires
19 from the courtroom. All right.

20 (WHEREUPON, the jury exited the courtroom at
21 approximately 1:00 p.m.)

22 THE COURT: Let me see Counsel while we're
23 waiting.

24 (WHEREUPON, a bench conference was held off the
25 record.)

1 THE COURT: All right. Anything from the
2 State?

3 MS. ADAMS: No, sir.

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

6 MR. DELGADO: Yes, there is, Your Honor.

7 THE COURT: Mr. Delgado?

8 MR. DELGADO: Your Honor, Mr. Rivera has
9 indicated to the Court that he wishes to take the stand
10 on this own behalf. That is something Mr. McGuire and I
11 have explained to him on innumerable occasions was not in
12 his interest. This is the same scheme of things that
13 occurred in the Asha Wiley case, exactly the same thing.
14 Your Honor, I would like to be able to tell the Court as
15 an officer of the Court -- and I do so with full
16 knowledge of Court's responsibilities -- Mr. McGuire and
17 I will refuse to call him to the stand.

18 If the Court wishes to call him under Rule 614, the
19 extraordinary circumstances that 614 notices, that
20 obviously would be the Court's option. Mr. McGuire and
21 I, however, feel that under our constitutional oath as
22 his attorneys, we cannot put him on the stand without him
23 harming his case so irreparably as to void any meaningful
24 consideration to guilt or innocence in this matter.

25 In addition, Your Honor, this is exactly what

1 happened the last time, and we saw what happened as a
2 result of that. The jury there was allowed to consider
3 other matters that should not have been considered. It's
4 inconceivable that a Defendant would take the stand. I
5 cannot recall it occurring in thirty-some years of
6 practice. But if that is Mr. Rivera's wish, we will
7 respectfully and honorably decline the opportunity to
8 call him.

9 THE COURT: Very well. Anything from the State
10 on that issue?

11 MS. BYFORD: Your Honor, the State has no
12 position on this matter.

13 THE COURT: All right. I'm going to along --
14 inasmuch as Mr. Rivera has to consider these matters over
15 lunch, I'm going to have the other matter to consider,
16 whether or not I will exercise under the appropriate rule
17 to call him as the Court's witness.

18 All right. So you have three things to consider
19 now. So any questions, Mr. Rivera?

20 THE DEFENDANT: (No response)

21 THE COURT: All right. Let me restate the
22 three things you need to consider. One is whether you
23 wish to testify as a witness. Two, whether you wish to
24 give the final argument after the case is closed. And
25 three, knowing that your attorneys would decline to call

1 you as a witness, whether you want the Court to call you
2 as a witness. Those are the three things that you need
3 to consider. Any questions?

4 THE DEFENDANT: No, sir.

5 THE COURT: Very good. I'll see you after
6 lunch.

7 All right. Let's try to be back at two o'clock.

8 (WHEREUPON, court stood at recess for the lunch
9 break.)

10 THE COURT: All right. Is there anything from
11 the State before we go back on the record?

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

13 THE COURT: Anything from the Defendant?

14 MR. MCGUIRE: Judge, if I could just briefly --
15 we talked briefly at the bench about my request for a
16 continuance to get a psychiatrist here to determine the
17 competency of Mr. Rivera to make this decision. I
18 concede to the Court that we don't have a case in the
19 country that says we're allowed to do that, but this is a
20 rather unique situation that I would make that request.

21 In the alternative, I would request that the Court
22 have Mr. Rivera proffer his testimony to make sure that
23 it's not going to be the kind of testimony that would
24 erode the integrity of these proceedings.

25 THE COURT: I understand. On the first, I

1 understand that he has been examined.

2 MR. MCGUIRE: He's been examined by a
3 psychiatrist, Dr. Donna Schwartz-Watts, who found him
4 competent to stand trial but not represent himself.

5 THE COURT: All right. And on the second, I
6 think that's how we're going to proceed.

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: Ladies and gentlemen who are here
9 and not participating in the trial other than as the
10 public, I'm going to be doing a -- for me. And I don't
11 know. I've asked and even chastised my colleagues that
12 apparently it is a unique procedure for all of us because
13 none of us have been able to find a clear answer. But
14 it's a unique procedure.

15 I'm going to ask the Defendant if he wishes to
16 testify. And if he tells me so, I'm going to call him as
17 a Court's witness. And he's going to be on the stand,
18 and he's going to be under oath. I have no idea what he
19 wants to testify to. It's his right, his absolute right,
20 to testify if he wants to provided that his testimony is
21 material, relevant, and the probative value outweighs any
22 prejudice to his case. In making that decision, I'll
23 hear what he says. Now, I say this by reason of what
24 I've heard during the trial of the case. I know a little
25 bit about what has happened in this case and in another

1 case apparently that he was involved in.

2 And in order to avoid any disruption, any outburst,
3 anything that might be said that would irritate you,
4 agitate you, or in any way interfere with the proper
5 order in this courtroom, I will have you removed. Now,
6 if you cannot maintain proper decorum and order in this
7 courtroom, now is the time to leave.

8 Very well. Anyone who is now in the courtroom will
9 stay in the courtroom unless there is some reason to have
10 you removed. I hope that's not necessary, but I have to
11 assure you that as far as I'm concerned, the duty of this
12 Court is to ensure justice. And that's what I'll do.

13 Very well. Mr. Rivera, do you understand your right
14 to testify or not to testify under our Constitution?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you discussed with your lawyer
17 and others whether you should testify or not testify?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what has their advice been?

20 What has their advice been? What have they advised you?

21 THE DEFENDANT: Not to testify.

22 THE COURT: Now, I'm going to ask you --
23 because it is your decision -- do you wish to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. You understand that

1 whatever you have to say must be relevant, admissible and
2 its probative value, meaning its value to the decision of
3 the issues in this particular case, must outweigh any
4 prejudicial value. You understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand I will cut you off
7 just as I would any witness and any lawyer that does
8 violate the law. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Anything from the State
11 before I call Mr. Rivera as a Court's witness under 614?

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

13 THE COURT: Anything from the Defense?

14 MR. DELGADO: Nothing from the Defense.

15 THE COURT: All right. And again, I understand
16 that the Defense has advised Mr. Rivera not to take the
17 stand and testify?

18 MR. DELGADO: We have, Your Honor, yes, sir.

19 THE COURT: Very good.

20 All right. In order that we might understand what
21 we're doing here -- as I said, it's Rule 614 but the only
22 case that we've ever had in South Carolina addressing it
23 is *State vs. Anderson* where our Supreme Court, prior to
24 the adoption of 614, gave us certain guidelines. I say
25 -- yes, it is before 614. First, the parties must be

1 unwilling to vouch for the veracity or integrity of the
2 witness, in other words, proffer the witness as their own
3 witness. Two, it must be a close relationship between
4 the Court's witness and the defendant. There must be
5 evidence of a witness that he's aware of the information
6 that he's going to testify to, and the testimony must be
7 material, and without the testimony, a miscarriage of
8 justice would be likely. That's *State vs. Anderson*, 304
9 South Carolina 551, 1991.

10 All right. Mr. Rivera, come around and take the
11 witness stand.

12 **RAYMONDEZE LAMON RIVERA,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 IN-CAMERA EXAMINATION

15 BY THE COURT:

16 Q. All right. You understand that you are under oath?

17 A. Yes, sir.

18 Q. All right. If you would please give us your name
19 for the record.

20 A. It's Raymondeze Lamón Rivera, R-I-V-E-R-A.

21 Q. And you are the Defendant in this case?

22 A. Yes, Your Honor.

23 Q. And you wish to testify?

24 A. Yes, sir.

25 Q. What's the testimony you wish to give?

- 1 A. About the murders in Anderson County.
- 2 Q. Pardon?
- 3 A. The murders in Anderson County, sir.
- 4 Q. Murders? Both murders?
- 5 A. Right.
- 6 Q. No. What's the testimony you want to give us about
- 7 the death of Kwana Burns?
- 8 A. Okay. That will be fine, sir.
- 9 Q. What do you want to testify to?
- 10 A. To what happened, sir.
- 11 Q. Pardon?
- 12 A. To what happened.
- 13 Q. And what are you going to testify to?
- 14 A. About the killing of Kwana Burns.
- 15 Q. You're what?
- 16 A. The killing of Kwana Burns.
- 17 Q. What are you going to testify to? What is the
- 18 testimony you're going to give?
- 19 A. I just said it, Judge.
- 20 Q. If that's all you say, that's no probative value. I
- 21 want to hear your testimony. I want to find out if it's
- 22 relative, material and non-prejudicial.
- 23 A. That is my testimony, Your Honor.
- 24 Q. Then you don't testify.
- 25 A. That's fine with me.

1 Q. Very well. Step down.

2 A. All right.

3 THE COURT: In light of the Defendant's
4 reluctance to offer anything in a particular way or of a
5 particular nature that would actually be material to the
6 charges in this indictment and any of the issues raised
7 in this matter other than a generalization, and being
8 asked on more than one time to make or to give testimony
9 that would be relevant, material and probative without
10 prejudicial value outweighing that probative value, the
11 Court finds that the Defendant has exercised his right to
12 testify and declined to testify to anything that would be
13 helpful to the jury in reaching the issues in this case.

14 Having so exercised his rights and declined to give
15 anything of material value to the jury, in determining
16 the issues of the case as required by 401 and 402, the
17 Court finds that whatever probative value the
18 generalization without any specificity substantially
19 outweighs of unfair prejudice -- or is substantially
20 outweighed by the danger of unfair prejudice, confusion
21 of the issues or misleading the jury, and also undue
22 delay, waste of time, and needless presentation. Rule
23 403, South Carolina Rules of Evidence.

24 All right. Now, Mr. Rivera, that does not mean that
25 you do not have the right to address the jury in the

1 final arguments. I'll leave that to you at that time.
2 Again, final arguments are also subject to remaining in
3 the propriety of such argument. And if you fail to do
4 that or you exceed the bounds of proper argument, like I
5 would with any person who is licensed and authorized to
6 practice in this court, I will set you down on my own
7 motion.

8 All right. Anything from the State?

9 MS. ADAMS: Yes, sir. Can we have five
10 minutes, if you don't mind?

11 THE COURT: Well, I wanted -- before you take
12 your five minutes, I want to get this ready so that we
13 can come back and start the trial. I've got some more
14 things I need to do.

15 MS. ADAMS: It has to deal with this issue,
16 Judge. And if we may approach?

17 THE COURT: All right. Very good.

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

20 THE COURT: All right. The Court has
21 considered a case that was brought to its attention at
22 the sidebar, *State vs. Norris*, 285 S.C. 86, 328 S.E.2d
23 339, Supreme Court 1985. And in that case the court in a
24 capital case that went to sentencing gave the defendant
25 an opportunity to either testify or aliunde -- not

1 aliunde -- have argument. And they said that that would
2 be reversible, and it was. But this is not the case
3 here. The Court's concerned with right now not any
4 reason or no reason or mercy. This is the guilt phase
5 when the proof must be upon the State beyond a reasonable
6 doubt or something that is material, relevant and
7 probative not exceeded by the prejudicial value. So I do
8 find that -- and I have tried to give the Defendant every
9 opportunity to testify to something that would be
10 admissible.

11 A defendant, like any other witness, if he
12 testifies, he has the right to testify under our rules of
13 evidence and procedure in law and not to -- what is it --
14 use it as a forum to do anything he would like. I don't
15 know if he wanted to do that or not, but I asked him at
16 least once, maybe twice or three times, what would be his
17 testimony, what would he proffer, what would he offer.
18 And that's the same thing that I'm going to have to know
19 before I permit any testimony.

20 All right. Mr. Day, you're on your feet.

21 MR. DAY: Yes, sir. Your Honor, the Defendant
22 wishes to -- if he may address the Court.

23 THE COURT: Certainly.

24 THE DEFENDANT: Your Honor, I just want to, for
25 the record, I just want to go ahead and object to the

1 Court's decision under Rule -- excuse me -- under the
2 Constitution's Sixth and Fourteenth Amendments.

3 THE COURT: All right. What was the testimony
4 you were going to give?

5 THE DEFENDANT: As I said, Your Honor, I was
6 going to testify about ---

7 THE COURT: What is that testimony? What is
8 that testimony?

9 THE DEFENDANT: About the details of the case.

10 THE COURT: What are the details?

11 THE DEFENDANT: That's for me to say on the
12 stand, Your Honor.

13 THE COURT: Sir?

14 THE DEFENDANT: That's for me to say on the
15 stand, Your Honor.

16 THE COURT: No, sir. Unfortunately -- or
17 rather fortunately, it's not for you to testify to
18 anything you want to, but it has to be something --
19 remember those three things, material, relevant, and not
20 prejudicial or the probative value not outweighed by the
21 prejudice.

22 THE DEFENDANT: Your Honor, I never said I was
23 going to testify to anything. That was you saying.

24 THE COURT: It's not mine, sir. It's the law.
25 Anything else?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. I'll note your
3 objection. Thank you very much.

4 Anything else? I note that the State feels that the
5 Court has erred too in -- what is it -- limiting the
6 testimony of the Defendant only to those matters that
7 would be relevant, material, and probative value
8 outweighed -- not outweighed by the prejudice.

9 Now, also I've given you the opportunity to have the
10 final argument. Do you want to exercise that right? You
11 want to exercise your right to have the final argument?

12 THE DEFENDANT: Yes, sir, I would.

13 THE COURT: You do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Do understand in the
16 same sense that it's not an opportunity to say whatever
17 you want to say. It has to be proper argument within the
18 rules of procedure in this court. You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And if it's improper, I will
21 instruct you to stop. And if you decline to do that, you
22 will be set down. You understand? Or removed even if
23 you choose to waive your right to be present. You
24 understand?

25 THE DEFENDANT: I understand.

1 THE COURT: All right. Very good. Anything
2 from the State?

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

4 THE COURT: Anything from the Defense?

5 MR. DELGADO: Your Honor, the Defendant intends
6 then to rest as soon as the jury returns to the
7 courtroom.

8 THE COURT: All right. Any reply?

9 MS. ADAMS: No, sir.

10 THE COURT: If there isn't any case, there
11 wouldn't be reply. Fine.

12 Very well. Ask the jury to join us.

13 Let's see, you immediately go into arguments.

14 Defense, do you waive?

15 I'll just let the Defense argue first, then you'll
16 argue, and then Defense closes, final arguments.

17 MS. ADAMS: I think I go first, Judge, and they
18 ---

19 THE COURT: Well, I'm going to leave it to you,
20 if you don't want open, that's fine.

21 MR. MCGUIRE: I'll take the opening, Judge, and
22 if I could also close after Mr. Rivera.

23 THE COURT: Certainly. No, you're going to get
24 the final argument, the final argument is the one.

25 MR. MCGUIRE: Thank you, sir.

1 MS. ADAMS: So do I go -- they get last
2 argument.

3 THE COURT: They open the same way as the State
4 would.

5 MS. ADAMS: Okay.

6 THE COURT: Then you argue, the same as the
7 Defense would. Then they close. Any questions, Madam
8 Solicitor? Any questions?

9 MS. ADAMS: No, sir.

10 (WHEREUPON, the jury entered the courtroom at
11 approximately 2:41 p.m.)

12 THE COURT: All right. Let the record reflect
13 the jury and the alternates are in the jury box. All
14 right. The State has rested. I'll recognize the
15 Defense.

16 MR. DELGADO: Thank you, Your Honor. Your
17 Honor, at this time the Defense rests as well.

18 THE COURT: Very well.

19 Madam Forelady, ladies and gentlemen of the jury,
20 that concludes the testimony, exhibits and other evidence
21 in this trial. So now we'll proceed to the next part of
22 the trial which would be argument by Counsel, and
23 following that will be a charge on the law by the Court.

24 I recognize Mr. McGuire for his final argument or
25 argument.

1 MR. MCGUIRE: Thank you, Your Honor.

2 CLOSING ARGUMENT

3 BY MR. MCGUIRE:

4 This case is extremely painful and difficult not
5 just for Ms. Burns family, the prosecutors and me, you.
6 The tragedy and pain that her family has gone through is
7 -- you can feel it. I waded in it with you. And yet I
8 have an obligation to come to you and eventually ask you
9 for mercy for Mr. Rivera.

10 And as you might imagine, that is a difficult thing
11 for me to do personally because, you know, the reason I
12 do this is part of it is my faith. And I'm extremely
13 sensitive to their pain. You know, the law is, and the
14 Judge will instruct you, that murder is the unlawful
15 killing of another human being with malice aforethought.

16 And as Mr. Delgado told you in his opening
17 statement, we don't expect you to pause long in deciding
18 guilt in this case. And as you've noticed, we've not put
19 up any evidence to fight guilt. And really this case is
20 going to be about punishment. The way to phrase that is,
21 the ultimate question you're going to have is do you have
22 to kill another one of God's creatures? Is there any
23 alternative that's acceptable? We will ask you for
24 mercy, life without parole, when the time comes.

25 You know, people -- when you feel so much anger and

1 hate and pain in a courtroom, I can feel it focused on me
2 when I sit over there. I mean, I can feel it on my back.
3 And there's nothing that I can tell any one of you to
4 forgive Raymondeze Rivera. We're not going to ask for
5 forgiveness. I don't condone any of his actions and I
6 don't excuse and I'll never ask you to either.
7 Eventually we'll ask you to send him to prison for the
8 rest of his life. Death in prison is the sentence that
9 we're going to ask for, and let God take over when God's
10 ready for him.

11 I've briefly touched on the law, what murder is, and
12 I'm going to let the Solicitor come and speak to you.
13 And again, I don't disagree with much of what she's going
14 to tell you.

15 You heard some information in Mr. Delgado's opening
16 about other murders, letters to the victims, terrible
17 things. And I don't excuse -- I'm not asking you to
18 forgive that either. It's going to make you angry,
19 extremely angry. But what you're going to see eventually
20 is that -- that's the reason I'm here. I've dedicated my
21 life to coming to the aid of the most tortured and abused
22 of God's creatures. And that's what we're going to show
23 you in the next phase of the trial.

24 Now -- right now I'm going to let Ms. Adams address
25 you, then I'll address you briefly after that.

1 Thank you.

2 CLOSING ARGUMENT

3 BY MS. ADAMS:

4 Ladies and gentlemen, we started this process almost
5 two weeks ago. It's been a long two weeks. Some of it
6 has been confusing. I don't want you to be confused.
7 Right now your sole purpose is to determine the guilt of
8 the Defendant. I think that is very clear just as the
9 Defense has said. But I want you to remember some things
10 for me. What we say, the attorneys say, is not evidence.
11 The only evidence that you can consider comes from that
12 witness stand. That's it. Not what we say, but from
13 that witness stand when you make your decisions.

14 From that witness stand came a horrible, horrible
15 statement from a cold-blooded killer. You will have it.
16 You can look at it. Read it. Remember it. Because
17 there will be more. And our job is to bring you the
18 appropriate admissible evidence at the appropriate stage
19 of this process. That is what we have done because that
20 is what the law says, and that is what we will do in the
21 next phase of this trial.

22 He is a cold-blooded killer. You have a statement.
23 You have forensic evidence that shows a brutal and
24 horrible crime. Don't forget that.

25 Thank you for your time and your attention. And it

1 is time to find this Defendant guilty, guilty as charged.

2 Thank you.

3 MR. MCGUIRE: Judge, in light of those brief
4 comments, I don't believe anybody here at this table has
5 any further comments for the jury.

6 THE COURT: Mr. Rivera, is that correct?

7 THE DEFENDANT: That's what he said.

8 MR. MCGUIRE: He indicated that I was correct,
9 Your Honor.

10 THE COURT: What?

11 MR. MCGUIRE: He indicated that I was correct.

12 THE COURT: All right. Very good.

13 CHARGE

14 BY THE COURT:

15 Mr. Foreman, ladies and gentlemen of the jury, as
16 jurors in this case, you have certain functions and
17 responsibilities to perform which are entirely separate
18 and distinct from those of mine as the trial Judge. I am
19 prohibited by the Constitution of our state from charging
20 you on the facts of this case. I'm also prohibited from
21 discussing the facts of the case with you or in any way
22 intimating what my feelings, if any, are about the facts
23 of this case.

24 It's your responsibility and yours alone to pass
25 upon all issues of fact presented in the case. I would

1 therefore charge you that if during the course of this
2 trial or during my charge, you have been given or left
3 with the impression or feeling that I do have a personal
4 feeling about the facts of this case, I would
5 specifically instruct you to disregard that feeling or
6 impression. Moreover, you are the sole judges of what
7 the testimony was and not the argument of counsel.

8 In this particular case, I must instruct you and
9 emphasize that whether the Defendant exercised his
10 absolute constitutional right not to take the stand, the
11 witness stand, and testify is not a factor to be
12 considered by you in any way in your deliberations. And
13 in your consideration of the question of whether the
14 State has proven the Defendant is guilty of the charge in
15 the indictment or is to be found not guilty, it must not
16 be considered by you in any manner whatsoever.

17 The Defendant has an absolute constitutional right
18 to remain silent. And the assertion of that right must
19 not be considered by you in your deliberations. I
20 repeat. Under the law and your oath, you are to draw no
21 conclusion whatsoever from the fact that the Defendant in
22 this case exercised his constitutional rights and did not
23 testify. The fact that the Defendant exercised his
24 rights should not even be discussed in the jury room.

25 The burden of proof, as I have stated to you, is on

1 the State. The Defendant is not required to prove his
2 innocence. The burden of proof remains on the State to
3 prove guilt beyond a reasonable doubt.

4 It is also your duty and yours alone to weigh the
5 testimony and evidence in this case and to pass upon the
6 credibility or believability of the witnesses. In this
7 regard you have the right to believe all that a witness
8 tells you or disbelieve all that a witness tells you.
9 You have the right to believe a part of what a witness
10 tells you and to disbelieve a part of what a witness
11 tells you. You have the right to take into consideration
12 any bias or prejudice or interest you feel a witness
13 might have in the case. I say this merely to emphasize
14 that the weight you see fit to give to the testimony, to
15 the credibility of the witnesses as well as all issues of
16 fact are for your sole determination.

17 As judges of the facts, you are the sole judges of
18 the credibility. That is the believability of the
19 witnesses who have testified in this case. In passing
20 upon their credibility, you may take into consideration
21 many things such as the appearance and manner of the
22 witness on the stand, sometimes referred to as the
23 demeanor of the witness. Was the witness forthright or
24 hesitant? Was the witness' testimony consistent, or did
25 it contain discrepancies? What was the ability of the

1 witness to know the fact about which he or she testified?
2 Did the witness have a cause or a reason to be biased and
3 prejudiced in favor of the testimony he or she gave? Was
4 the testimony of the witness corroborated or made
5 stronger by other testimony in evidence, or was it made
6 weaker or impeached by such other testimony in evidence?

7 As jurors, you have a right to believe a small
8 portion of a witnesses testimony and discard the larger,
9 or visa versa. You may believe all of a witnesses
10 testimony or none.

11 Now, the rules of evidence ordinarily do not permit
12 witnesses to testify to opinions or conclusions. An
13 exception to this 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 profession may give an opinion as to the subject the
17 witness claims to be an expert in and may also give the
18 reasons for the opinion. You should consider any expert
19 opinion given by a witness, and like any other evidence,
20 give it the weight you think it deserves. If you decide
21 that an expert witness' testimony or opinion is not based
22 on sufficient education and experience, or if you decide
23 that the reasons given in support of the opinion are not
24 sound or that the opinion is outweighed by other
25 evidence, you may disregard the opinion entirely.

1 An expert witness's testimony is to be given no
2 greater weight than that of other witnesses simply
3 because the witness is an expert. You do not have to
4 accept an expert's opinion even though it's
5 uncontradicted. And when a party relies on expert
6 testimony to show a connection between an alleged harm
7 and a subsequent injury or death, the expert must state
8 with reasonable certainty that it is in his or her
9 professional opinion the injury or death most probably
10 resulted from the act of or connected with the Defendant.
11 However, it is not necessary that the expert actually use
12 the words most probably. It is enough that the testimony
13 impresses upon you that their opinion represents the
14 expert's professional judgement.

15 Now, throughout this entire process you have but one
16 single objective, and that is to seek the truth
17 regardless of what witness the testimony may have come.

18 Now, by the same constitution and law which makes
19 you the finders of the facts and evidence as I have
20 discussed with you, I am, as the Judge, made the sole and
21 only instructor in the law. You must accept as correct
22 the law which I charge and apply to it the evidence as
23 you find it and reach your verdict.

24 If I should make an error in the law as I instruct
25 it to you, there's another time and place that error can

1 be considered and, if necessary, corrected. But for the
2 purposes of this case today, you must accept the law as I
3 charge it to you to be the correct law. And finally, I
4 charge you in this regard that you nor, for that matter,
5 I should be concerned with what the law ought to be, but
6 rather what I charge you the law to be.

7 Now, the Defendant has plead not guilty to this
8 indictment, and that plea of not guilty puts the burden
9 on the State to prove the Defendant guilty beyond a
10 reasonable doubt. A person charged with committing a
11 criminal offense in South Carolina is never required to
12 prove himself innocent. I charge you that it is an
13 important rule of the law that the Defendant in a
14 criminal trial, no matter what the seriousness of the
15 charge may be, will always be presumed to be innocent of
16 the crime for which the indictment was issued unless the
17 guilt has been proven by evidence satisfying you of that
18 guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when you
20 begin your deliberations, but it accompanies the
21 Defendant throughout the trial until you reach a verdict
22 of guilt based on evidence satisfying you of that guilt
23 beyond a reasonable doubt.. The presumption of innocence
24 is like a robe of righteousness placed about the
25 shoulders of the Defendant which remains with the

1 Defendant until it has been stripped from the Defendant
2 by evidence satisfying you of the Defendant's guilt
3 beyond a reasonable doubt.

4 The presumption of innocence is not a mere legal
5 theory. It's not a legal phrase. It is a substantial
6 right to which every defendant is entitled unless you,
7 the jury, are satisfied of the evidence of the
8 Defendant's guilt beyond a reasonable doubt.

9 Now, what is a reasonable doubt? Under the law, a
10 reasonable doubt is the kind of doubt that would cause a
11 reasonable person to hesitate to act.

12 Now, there have been admitted into the record in
13 this case statements allegedly to have been made by the
14 Defendant to law enforcement officers. Before you may
15 consider these statements as evidence for any purpose,
16 you must determine four questions. Did the Defendant
17 make the statements? Was the Defendant warned of his
18 constitutional rights? Did the Defendant knowingly and
19 intelligently waive his constitutional rights? Were the
20 statements given voluntarily?

21 The fact that the Court has admitted the statement
22 into evidence should not be considered by you as any
23 evidence whatsoever that the Defendant made such a
24 statement or that the required constitutional safeguards
25 were in fact provided and waived by the Defendant or that

1 the statement was voluntarily given because these are
2 issues for you, the jury, to determine. The State must
3 prove beyond a reasonable doubt each of the four
4 requirements I just stated to you before you may
5 considered the statement as evidence for any purpose
6 whatsoever.

7 As to the first requirement, did the Defendant make
8 the statement, if you conclude the Defendant did not make
9 the statement, you must then completely and totally
10 disregard the statement. As to the second requirement,
11 was the Defendant warned of his constitutional rights,
12 when an individual is taken into custody or otherwise
13 deprived of his freedom of action in any significant way
14 by a law enforcement officer, he must be warned of
15 certain constitutional rights prior to and before any
16 custodial interrogation with custodial question.

17 These rights are the right to remain silent, any
18 statement made by the Defendant can and will be used
19 against the Defendant in a court of law, the right to
20 select the lawyer of his choice, but if the Defendant is
21 without money or resources to employ a lawyer, then the
22 court will appoint and provide a lawyer to represent him
23 without cost or expense if he so desires, the right to
24 consult a lawyer before answering any questions or making
25 any statement, the right to have a lawyer present at all

1 times during all interviews and interrogations.

2 If you determine that these constitutional rights
3 were [sic] given to the Defendant prior to interrogation
4 and the taking of a statement or that the Defendant was
5 not afforded the opportunity to exercise these rights,
6 you must completely disregard the statement. In that
7 event you cannot consider the statement as evidence in
8 any matter whatsoever.

9 As to the third requirement, did the Defendant
10 knowingly and intelligently waive his constitutional
11 rights, if you find the Defendant did not knowingly and
12 intelligently waive his constitutional rights, then any
13 answer given by him or any statement made by him cannot
14 be used against him, and you must completely disregard
15 all of the testimony concerning any such answers or
16 alleged statement.

17 As to the fourth requirement, was the statement
18 given voluntary, if the statement is not voluntary it may
19 not be used against the Defendant unless it is the
20 product of an essentially free and unconstrained choice
21 by its maker. The true test to be applied is whether a
22 statement is freely, voluntarily and understandingly made
23 without compulsion or inducement. In determining whether
24 or not the alleged statement of the Defendant was
25 voluntary, you may consider all of the facts and

1 circumstances surrounding the taking or making of the
2 statement.

3 With regard to the alleged statement of the
4 Defendant, the State must prove by evidence of each and
5 every requirement about which I have instructed you
6 beyond a reasonable doubt before you can consider the
7 alleged statements as evidence in this case. Absence of
8 one of the requirements about which I have instructed
9 you, the alleged statements must be disregarded
10 completely. And in that event you will accord no
11 evidentiary weight whatsoever to them or to any part of
12 them.

13 A defendant cannot be convicted on his or her --
14 excuse me. A defendant cannot be convicted on his or her
15 extrajudicial confession -- that is to say, on his or her
16 confession made out of court -- unless the State offers
17 proof of the corpus delicti. This means that before any
18 confession may be relied upon to convict a defendant at
19 the actual commission by someone of the crime charged
20 must be independently proved. Unless from the evidence
21 in addition to and independent of that pertain to any
22 alleged confession or admission on the part of the
23 Defendant, you find that it has been established beyond a
24 reasonable doubt that the crime charged to the Defendant
25 was committed by someone, you shall not consider for any

1 purpose the evidence offered as to such confession or
2 admission. The additional and independent evidence,
3 however, need only prove that the crime charged was
4 actually committed. Such independent evidence need not
5 establish the identity of the person by whom it was
6 committed.

7 Now, there are two types of evidence generally
8 presented during a trial, direct evidence and
9 circumstantial evidence. Direct evidence is the
10 testimony of a person who claims to have actual knowledge
11 of a fact such as an eyewitness. It is evidence which
12 immediately establishes the main fact to be proved.
13 Circumstantial evidence is the proof of a chain of facts
14 and circumstances indicating the existence of a fact. It
15 is evidence which immediately establishes collateral
16 facts from which the main fact may be inferred.
17 Circumstantial evidence is based on inference and not on
18 personal knowledge or observation. It is proof that does
19 not actually establish the fact in question, but asserts
20 and describes something else from which you may either
21 reasonably infer the truth of the fact or at least
22 reasonably infer an increase of the probability that the
23 fact is true. For circumstantial evidence to be
24 sufficient to warrant a finding of a fact, the
25 circumstances must lead to that fact with reasonable

1 certainty.

2 The facts and circumstances should be considered in
3 light of ordinary experience and common sense. The
4 existence of a fact cannot be based on speculation,
5 surmise or conjecture. The law makes absolutely no
6 distinction between the weight or value to be given to
7 either direct or circumstantial evidence nor is a greater
8 degree of certainty required of circumstantial evidence
9 than on direct evidence.

10 Now, criminal intent is a state of mind that
11 operates jointly with an act or omission in the
12 commission of a crime. Criminal intent is a mental
13 state. Criminal liability is normally based upon the
14 concurrence of two factors, an evil meaning mind and an
15 evil doing hand. Proof of intent necessarily rests on
16 inference from the conduct.

17 The Defendant, Raymondeze Lamon Rivera, is charged
18 with murder. The State must prove beyond a reasonable
19 doubt that the Defendant killed another person with
20 malice aforethought. Malice is a wicked condition of the
21 heart. It is a wicked purpose. In its popular sense the
22 term malice conveys the meaning of hatred, ill will, or
23 hostility towards another. In its legal sense, however,
24 as it is employed in the description of murder, it does
25 not of necessity employ ill will toward the individual

1 and signifies rather a general malignant recklessness of
2 the lives and safety of others or a condition of the mind
3 that shows a heart regardless of social duty and fatally
4 bent on mischief. In other words, a malicious killing is
5 where the act is done without legal provocation or
6 justification, excuse or extenuation. And malice has
7 been frequently substantially so defined as consisting of
8 the intention of doing a wrongful act towards another
9 without legal justification or excuse.

10 Malice aforethought does not require that malice
11 exists for any particular time before the act is
12 committed. Malice must exist in the mind of the
13 Defendant just before and at the time the act is
14 committed. Therefore, there must be a combination of the
15 previous evil intent and the act.

16 Malice aforethought may be expressed or inferred.
17 These terms expressed and inferred do not mean different
18 kinds of malice, but merely the manner in which the
19 malice may be shown to exist. That is either by direct
20 evidence or by inference from the facts and circumstances
21 which are approved.

22 Expressed malice is shown when a person speaks words
23 which express hatred or ill will towards another or when
24 the person prepared before to do that which was later
25 accomplished. For example, lying-in-wait for a person or

1 any other acts of preparation going to show that the deed
2 was done -- excuse me, that the deed was within the
3 defendant's mind would be expressed malice. Malice may
4 be inferred from the conduct towards -- or rather malice
5 may be inferred from conduct showing a total disregard
6 for human life.

7 Mere presence at the scene is not sufficient to
8 prove someone guilty of a crime. The burden is on the
9 State to prove every element of the crime charged. If
10 you find after reviewing all the evidence that the State
11 has proved that the Defendant was only present at the
12 scene of the crime and they have not proved beyond a
13 reasonable doubt any other participation in the crime,
14 then you must find the Defendant not guilty. The law is
15 that the proof of at the scene of the crime is not
16 sufficient to find someone guilty.

17 In summary, if you have a reasonable doubt of the
18 Defendant's guilt after considering all of the evidence,
19 then you must find the Defendant not guilty. On the
20 other hand, if you have no reasonable doubt of the
21 Defendant's guilt after considering all the evidence,
22 then you must find the Defendant guilty of that charge.

23 Mr. Foreman, ladies and gentlemen of the jury, you
24 have been selected as fair and impartial jurors sworn to
25 impartially try and determine the facts of this case.

1 And when you comply with your oath to do so, then no one
2 will have a right to criticize your verdict and you will
3 have fully discharged your duty as jurors. You should
4 not be influenced by opinions or expressions of opinions,
5 if any, which you may have heard on the outside. But you
6 are to decide this case according to the testimony that
7 you have heard from the lips of the sworn witnesses along
8 with the other evidence that may have been introduced.

9 As to those questions to which an objection was
10 sustained, you must not speculate as to what the answer
11 might have been or the reason for the objection. You
12 must not consider for any purpose any offer of evidence
13 that was rejected or any evidence that was stricken by
14 the Court. Such matters are to be treated as though you
15 have never known it. You must never speculate to be true
16 any insinuations suggested by a question asked of a
17 witness. A question is not evidence and may be
18 considered only as it supplies meaning to the answer.

19 As I said earlier, you are the judges of the facts
20 in this case and you are to determine only if the
21 Defendant is guilty or not guilty based upon the
22 testimony and evidence presented in the trial and after
23 applying the law as I have given it to you. If, from the
24 evidence, you have a reasonable doubt as to whether or
25 not the Defendant is guilty, it is your duty to acquit

1 him and write the words, not guilty. Under the oath you
2 took, you swore to try this case based only and solely on
3 the testimony, evidence and law presented and heard in
4 this courtroom.

5 It is your duty to lay aside all bias, prejudices or
6 sympathy you may have in reaching your verdict. You have
7 no friends to reward or enemies to punish in this case.
8 I might note that the word verdict comes from the Latin
9 term veredicto, which means to speak the truth. Abide by
10 your oath and return a verdict which does speak the
11 truth.

12 As I mentioned at the first of the trial, whatever
13 verdict you reach, it must be unanimous. That means all
14 twelve members of the jury must agree to that verdict.
15 Once the verdict is reached, if you would please, I've
16 prepared a verdict form for you, Mr. Foreman. And as
17 you'll notice, it says, The State of South Carolina
18 versus Raymondeze Lamon Rivera, Indictment Number 2007-
19 GS-04-649, the charge of murder. We, the jury,
20 unanimously find that the Defendant, Raymondeze Lamon
21 Rivera, is -- and you've got two possible verdicts. It
22 makes no difference which one comes first. It's just
23 that one has to come before the other. But whatever
24 verdict you do reach, it must be unanimous.

25 Once you have reached a unanimous verdict, you will

1 either mark -- if the verdict is guilty of the murder of
2 Kwana Burns, then you will check that, or if it's not
3 guilty, you will check that. Whatever verdict, it must
4 be unanimous. That means all twelve members of the jury
5 must agree.

6 Once you have reached your verdict and indicated on
7 the verdict form, if you'll please sign, knock on the
8 door, return and we'll receive your verdict.

9 I'll need the verdict form back and ask you one more
10 time to retire to the jury room without deliberating.
11 This is just going to take a few minutes. I need to
12 discuss some matters with the attorneys, and then I will
13 send in the verdict form together with the exhibits.
14 Once you receive that from the bailiff, then you commence
15 your deliberation. Once you've reach the verdict,
16 unanimous verdict, as to one of the verdicts on the form
17 and the form has been completed, knock on the door and
18 we'll ask you to return to receive the verdict.

19 I'm going to ask the twelve jurors if they would
20 please now retire with the bailiff.

21 (WHEREUPON, the jury exited the courtroom at
22 approximately 3:10 p.m.)

23 THE COURT: Alternates, I think you understand
24 why you were drawn, but I'm going to ask you to go with
25 the Clerk, and she will show you a place I need you to

1 wait for a few minutes and then I'll call you back.

2 (WHEREUPON, the jury alternates exited the
3 courtroom.)

4 THE COURT: All right. Any exceptions or
5 requests from the State?

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

7 THE COURT: Any from the Defense?

8 MR. DELGADO: None, Your Honor, no.

9 THE COURT: Very good. Look at the ---

10 MR. DAY: Excuse me, Your Honor.

11 THE COURT: Oh, I'm sorry. Mr. Day for Mr.
12 Rivera?

13 MR. DAY: Mr. Rivera wishes to address the
14 Court very briefly.

15 THE COURT: Very well.

16 THE DEFENDANT: Your Honor, just for the
17 record, I'd like to object to the Court's instruction.

18 THE COURT: You need to turn the mike on or
19 speak into it.

20 THE DEFENDANT: I'm sorry, Your Honor. Just
21 for the record, I'm going to ask again to object to the
22 Court's instructions instructing the jury that they had
23 to not consider me waiving my right to testify.

24 THE COURT: I didn't say you waived it, I said
25 you exercised it.

1 THE DEFENDANT: Excuse me?

2 THE COURT: I said you exercised your right to
3 testify.

4 THE DEFENDANT: I'm sorry. You didn't say
5 waived, you said I decided not to, Your Honor. I was
6 going to object to that, Your Honor. I didn't decide not
7 to testify.

8 THE COURT: Excuse me, go ahead.

9 THE DEFENDANT: No, that's all I have to say.

10 THE COURT: You didn't waive your right to
11 testify; you waived your right to testify according to
12 law. And that's what I -- since you didn't want to tell
13 the Court what you were going to testify to, then I had
14 no reason to -- I didn't know what you were going to
15 testify to and you declined to tell the Court. You spoke
16 in generalities. You were going to talk about the death
17 of the victim. Well, not everything that's relevant to
18 the death of the victim would be material or admissible.
19 And since you declined to help the Court decide what
20 would be the interest of justice, as you understand -- I
21 think you do -- the Court has a great responsibility and
22 it rests upon a trial judge. It is his duty to see to it
23 that justice be done in every case, if it can be done
24 according to law. And you decided to exercise your right
25 not to do it according to law. You did not want to

1 cooperate and assure -- or not assure -- but just provide
2 the Court with information necessary to determine whether
3 or not what you wanted to testify to and your testimony
4 would be material, relevant and the probative value would
5 not be outweighed by prejudice to you.

6 Your objection is noted. Thank you, sir. Anything
7 else?

8 THE DEFENDANT: No, Your Honor. That's it.

9 THE COURT: Okay. Thank you very much.

10 All right. Look at the exhibits. Be sure
11 everything goes back that's suppose to and nothing goes
12 back that is not to. And also put one of our verdict
13 forms ...

14 (WHEREUPON, the exhibits in evidence and verdict
15 form were delivered to the jury to begin their
16 deliberations at approximately 3:15 p.m. after which
17 court stood at recess awaiting the verdict of the
18 jury.)

19 THE COURT: Anything from the State?

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

21 THE COURT: Anything from the Defense?

22 MR. DELGADO: Nothing.

23 THE COURT: Mr. Day, anything from the
24 Defendant?

25 MR. DAY: He indicates nothing, Your Honor.

1 THE COURT: Very good. Ask the jury to joins
2 us, please.

3 All right. Let's come in if you're coming in.
4 Let's get settled down. Close the door.

5 All right. Ask ...

6 Again, just a moment. Just a moment, please. Mr.
7 Bailiff? Let's wait for the jury. I need to be sure.

8 All right. Regardless of what the verdict is, there
9 will not be any outbursts or any demonstration
10 whatsoever. I do not want the order of this court in any
11 way interfered with. If you feel like you cannot
12 constrain yourself or restrain yourself, then I'll ask
13 you to leave as I have before. Anybody want to leave?

14 (No response)

15 THE COURT: Very well. Thank you.
16 Ask the jury to join us, please.

17 (WHEREUPON, the jury entered the courtroom at
18 approximately 3:26 p.m.)

19 THE COURT: Mr. Foreman, I understand that the
20 jury has reached a verdict.

21 MR. FOREMAN: We have.

22 THE COURT: If you would, please, sir, hand it
23 up to the bailiff.

24 (WHEREUPON, the verdict form was passed up to the
25 Court)

1 THE COURT: Madam Clerk, if you would please
2 publish the verdict.

3 MADAM CLERK: Thank you, Your Honor.
4 Indictment 2007-GS-04-649, the State of South Carolina
5 versus Raymondeze Lamon Rivera, indictment for murder,
6 the verdict of the jury, we, the jury, unanimously find
7 that the Defendant, Raymondeze Lamon Rivera, is guilty of
8 the murder of Kwana Burns.

9 Mr. Foreman, ladies and gentleman of the jury, if
10 this is your verdict, would you please indicate by
11 raising your right hand?

12 (WHEREUPON, all jurors hands were raised.)

13 MADAM CLERK: All hands raised, verdict of the
14 jury, Your Honor.

15 THE COURT: Very good. Thank you very much.
16 Anything for the jury from the State before I instruct
17 them?

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

19 THE COURT: Anything for the jury from ---

20 MR. DELGADO: None. None, Your Honor.

21 THE COURT: All right. Does the Defendant
22 waive the twenty-four hours?

23 MR. DELGADO: Your Honor, I'm sorry. The
24 Defendant does not waive ---

25 THE COURT: Well, I understand. I just -- no,

1 that's your right. I just need to instruct the jury.

2 What I've inquired about, Mr. Foreman, ladies and
3 gentlemen of the jury, is in these cases -- and I think
4 it's been discussed I think in the voir dire on some of
5 the cases -- it might have even been done in opening
6 argument. But under this particular type of case,
7 there's a twenty-four hour waiting period from the time
8 that a guilty verdict is rendered in the first phase and
9 before the second phase starts. Now, also we have --
10 that takes us through tomorrow and Sunday. I think I
11 told you Sunday too. What does the jury want to do as
12 far as Monday?

13 MR. FOREMAN: We have decided to work Monday.

14 THE COURT: Decided to work Monday. All right.
15 Very well. So come -- you want to start at ten o'clock
16 Monday?

17 MR. FOREMAN: I believe we've agreed ten
18 o'clock.

19 THE COURT: All right. Ten o'clock Monday.
20 Mr. Foreman, ladies and gentlemen of the jury, I do want
21 to thank you for your service on this part of the case.

22 And I tell you what. Ask the alternates to join us
23 too so we can give them directions at one time.

24 (WHEREUPON, the jury alternates entered the
25 courtroom.)

1 THE COURT: All right. It's going to be
2 necessary -- let the record now reflect the alternates
3 have joined the jury.

4 It's going to be necessary to come back at ten
5 o'clock on Monday morning, and then we'll conduct the
6 second phase of the trial. Again, do not undertake a
7 discussion of this case with anyone or permit anyone to
8 discuss it with you. Do not -- what is it -- watch any
9 media or outside source or use any or receive any
10 information in any way.

11 And you're excused now until ten o'clock Monday
12 morning again. And I'll see you at that time. Just come
13 back to the jury room you've been using.

14 All right. Everyone else remain seated while the
15 jury retires from the courtroom.

16 (WHEREUPON, the jury exited the courtroom at
17 approximately 3:32 p.m.)

18 THE COURT: All right. Is there anything from
19 the State before we recede until ten o'clock Monday
20 morning?

21 MS. ADAMS: Your Honor, just we have some
22 outstanding motions that need to be heard, I believe,
23 unless they've been waived. Your Honor, the outstanding
24 motions are several things that the Defense has already
25 mentioned to the jury, so I don't know what we need to do

1 about those, about admissibility.

2 MR. DELGADO: Your Honor, it is my
3 understanding that what the Solicitor is referring to are
4 the unadjudicated crimes in foreign states -- that is
5 Florida and Georgia -- that I expect the State to attempt
6 to introduce during the penalty phase of this proceeding.
7 I think it behooves all of us to make an inquiry into
8 that as to the propriety of allowing that testimony. We
9 would be willing to start that. I think the Court needs
10 to hear from the actual witnesses, hear from them live
11 prior to making a decision.

12 THE COURT: And these are some of those
13 witnesses that are being brought in on Monday?

14 MS. ADAMS: Sir, I apologize. Do what?

15 THE COURT: Mr. Delgado says in order for the
16 Court to make a proper determination on the motions that
17 I should hear proffer on what's going to be offered by
18 way of testimony.

19 MS. ADAMS: On which issues? All the prior
20 unadjudicated?

21 MR. DELGADO: Anything the State indicates it's
22 going to bring into evidence relating to an unadjudicated
23 crime in Florida, Georgia, Ohio, wherever. I think the
24 Court needs to be able to hear the lack of evidentiary
25 value that that -- Your Honor, to be candid with you,

1 they may have someone that saw him in Dallas, Texas in
2 November 1963. That's as little weight as you're going
3 to have in these matters.

4 Your Honor, there are allegations that this man has
5 committed other offenses. One of those, as we heard from
6 the stand yesterday, occurred ten years ago. And the
7 local authorities in Georgia still do not have probable
8 cause to arrest him. If that in fact is the case, we
9 think it behooves the Court to inquire into whether or
10 not that is proper evidence that should be allowed before
11 a jury in a punishment stage.

12 Secondly, there's another alleged incident in
13 Florida somewhere in 2005, possibly the first part of
14 2006, same exact situation. No identification, can't
15 tell who the body is of. There's no eyewitness. There's
16 no forensic evidence. There's nothing. I think the
17 Court needs to be able to inquire into that with the
18 actual witnesses that they intend to bring.

19 THE COURT: All right. Madam Solicitor?

20 MS. ADAMS: Your Honor, I believe Mr. Delgado
21 is referring to a statement that the Defendant made.
22 They're not allegations. He's claiming that he has
23 killed before. And he gave a very long statement about
24 it. It goes to character, Your Honor. It's only
25 character. We have filed briefs on this. It goes to

1 character, Judge. We filed written briefs on this, and
2 we do not have to prove corpus delicti. I mean, it's
3 character evidence.

4 MR. DELGADO: They still have to comply with
5 the rules of evidence, Your Honor.

6 THE COURT: Well, I think what she's saying is
7 in the sentencing phase it goes to character. That's
8 *State v. Owens*, if I'm not mistaken, one of the more
9 recent cases. And it's done, if I remember, primarily to
10 -- I'll have to -- and I would charge the jury they
11 cannot consider it as evidence of a conviction or even --
12 what is it -- admission as to the crime. It's much like
13 propounded, you might say, that his character is such
14 that he admits to anything, and so -- and that he's
15 willing to admit to something as heinous as other
16 murders. That goes to his character. I will give a
17 charge though that it can't be considered for any other
18 reason other than it's a reflection of character that he
19 would admit to unlawful acts.

20 MS. ADAMS: Absolutely, Judge.

21 THE COURT: All right. And also, so the record
22 is complete on this, that as far as those crimes, we went
23 into at length and exhausted, you might say, the
24 testimony of the investigating officer, I think,
25 yesterday ...

1 MS. ADAMS: Yes, sir.

2 THE COURT: ... about all that could be said is
3 what you did say that -- what is it -- that you had -- no
4 actions been brought by various jurisdictions over which,
5 of course, this law enforcement agency wouldn't have any
6 control. But it comes back to the fact that it was a
7 statement made, so I'm going to -- again, I'm not going
8 to require a pre-hearing on the admissibility as long as
9 it's actually what it's going to be. Let's see.

10 All right. I will give an instruction that the jury
11 cannot consider the statement as evidence of Appellant's
12 character or -- no, excuse me. Can only consider the
13 statement as evidence of the Appellant's character, not
14 as evidence of statutory aggravating circumstances. And
15 also instruct them that they can only consider the
16 aggravation element in this case in the sentencing phase
17 which is the prior conviction of murder.

18 MS. ADAMS: Yes, sir.

19 THE COURT: All right. Your motion at this
20 point is denied depending on any developments at the time
21 because I consider this a motion in limine and, of
22 course, has to be renewed.

23 All right. Yes, ma'am?

24 MS. ADAMS: The other piece of evidence we
25 intend to introduce is there is a videotape of his

1 confession in the first trial when he did take the stand.
2 We intend to introduce that as well for the jury to see.
3 They mentioned that in their opening as well, Judge.

4 MR. DELGADO: Your Honor, that's statutorily
5 prohibited.

6 THE COURT: I'm just curious.

7 MR. DELGADO: Yes, sir.

8 THE COURT: What do you have there? I mean, it
9 will help me just to know what you're relying on.

10 MR. DELGADO: Your Honor, I'm sorry. My laptop
11 is over there. I can give you the statute and ---

12 THE COURT: Just tell me what it is. We've got
13 a laptop up here.

14 MR. DELGADO: It says that no testimony of the
15 Defendant can subsequently be used against him in any
16 other proceeding.

17 THE COURT: All right. Very good. Is that the
18 law? That's what I need to know. Unfortunately, I've
19 been at it forty years, but -- what is it -- I'm still
20 practicing. I don't know all the law. I have to depend
21 on good lawyers like y'all. All right. With that being
22 the case, of course, then that would control. But it has
23 to be -- that has to be the case. So we'll stand or fall
24 on the statute.

25 Is that understood, Madam Solicitor?

1 MS. ADAMS: We would like to look into --
2 Judge, it's a confession. It's clearly admissible ---

3 THE COURT: All right. As I say, if it's
4 clearly admissible, then it'll be clearly admissible. If
5 it's clearly not admissible, then it's clearly not
6 admissible. In other words, you do understand that
7 you're going to have to do something more than say what
8 we believe.

9 MS. ADAMS: Yes, sir. Yes, sir.

10 THE COURT: You understand, Mr. Delgado?

11 MR. DELGADO: I do, Your Honor, yes, sir.

12 THE COURT: Very good.

13 MR. DELGADO: Thank you.

14 THE COURT: That obviously won't require any
15 proof other than just establishing what it is.

16 Very good. Anything else? So we will be reconvened
17 at ten o'clock on Monday morning, but let's obviously get
18 here a little bit early if we can.

19 All right. Have a good weekend. Enjoy the snow.

20 (WHEREUPON, court stood at recess for the weekend at
21 approximately 3:44 p.m.)

22 FEBRUARY 15, 2010

23 (WHEREUPON, court convened with all parties present
24 and the following proceedings were had commencing at
25 approximately 10:15 a.m.)

1 (WHEREUPON, State's Exhibits Number 65 through 85
2 were marked for identification only.)

3 THE COURT: All right. Are we ready to go back
4 on the record, from the State?

5 MS. ADAMS: Yes, sir, Your Honor.

6 THE COURT: From the Defense?

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: All right. Anything from the State
9 before we proceed?

10 MS. ADAMS: Yes, sir, Your Honor. We have a
11 couple issues to address. Just so the Court knows, we
12 have pre-marked our exhibits for this morning, and I
13 believe the Defense has no objection to them being
14 admitted.

15 THE COURT: Are these the ones that were
16 admitted during the guilt phase?

17 MS. ADAMS: No, sir, Your Honor. Not -- this
18 is for penalty. We do need to first move to incorporate
19 all of the guilt-phase evidence into the penalty phase,
20 yes, sir.

21 THE COURT: All right. So that -- have you --
22 and that's your motion?

23 MS. ADAMS: Yes, sir.

24 THE COURT: Any objection?

25 MR. DELGADO: No, sir.

1 THE COURT: All right. Without objection, all
2 exhibits previously marked and admitted in the guilt
3 phase will be admitted and used -- and can be used in the
4 sentencing phase. They'll retain the same numbers.

5 MS. ADAMS: Yes, sir, Your Honor.

6 (WHEREUPON, all State's Exhibits marked and admitted
7 in the guilt phase were admitted into evidence in
8 the sentencing phase.)

9 MS. ADAMS: And we have -- the Defense has
10 actually stipulated -- and this is State's Exhibit 85 --
11 as to the handwriting analysis of the letters that the
12 Defendant wrote. And those letters have been marked as
13 State's Exhibit 67, 68, and 69.

14 THE COURT: All right. All right. I have
15 State's Exhibit 85 as stipulation of handwriting
16 analysis; is that correct, Mr. McGuire?

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: All right. Will be admitted
19 without objection. And the numbers are?

20 MS. ADAMS: The letters are 67, 68, and 69.

21 THE COURT: Those exhibits will be -- State's
22 Exhibits 67, 68, and 69 will be admitted without
23 objection.

24 (WHEREUPON, State's Exhibits Number 67, 68, 69 and
25 85 were admitted into evidence.)

1 THE COURT: All right. Let me ask you.

2 Inasmuch as those statements are coming in, in my
3 preliminary instructions to the jury for the sentencing
4 phase, I usually say, if that is the case, the State may
5 present to you for your information facts concerning the
6 Defendant's statements about prior crimes he's committed.
7 You must remember the alleged crimes the Defendant may
8 have committed may not be used as proof of statutory
9 aggravating circumstances. Since you have the statements
10 in now, then I think that it would proper to let them
11 know this will be something that they will be hearing.

12 All right, without objection I will so instruct the
13 jury.

14 All right. Anything else?

15 MS. ADAMS: Your Honor, we do have the
16 certified convictions from the first murder have been
17 marked as State's Exhibit 83, I believe, without
18 objection.

19 MR. MCGUIRE: Without objection.

20 THE COURT: All right, without objection,
21 State's Exhibit 83 ...

22 MS. ADAMS: Yes, sir.

23 THE COURT: ... will be admitted.

24 (WHEREUPON, State's Exhibit Number 83 was admitted
25 into evidence.)

1 MS. ADAMS: And State's Exhibit 84, Your Honor,
2 is the certified conviction from Georgia, the Defendant's
3 convictions from Georgia.

4 MR. MCGUIRE: Without objection.

5 THE COURT: All right. Without objections,
6 State's Exhibit ...

7 MS. ADAMS: 84.

8 THE COURT: ... 84 will be admitted.

9 (WHEREUPON, State's Exhibit Number 84 was admitted
10 into evidence.)

11 MS. ADAMS: And then, Your Honor, just -- we
12 have pre-marked the pictures for the first few witnesses.
13 And these are State's Exhibits 70 through 82.

14 THE COURT: All right. Have y'all looked at
15 them?

16 MR. MCGUIRE: Yes, sir. We ---

17 THE COURT: Any objection?

18 MR. MCGUIRE: No objection.

19 THE COURT: All right, without objection
20 State's Exhibits 70, 71, 72, 73, 74, 75, 76, 77, 78, 79,
21 80, 81, and 82 will be admitted into evidence.

22 (WHEREUPON, State's Exhibits Number 70 through 82
23 were admitted into evidence.)

24 MS. ADAMS: And, Your Honor, we have two more,
25 which are State's Exhibits 65 and 66 which are two

1 pictures as well.

2 THE COURT: All right.

3 MS. ADAMS: Did you get the last two, Judge?

4 THE COURT: Which -- what are the numbers?

5 MS. ADAMS: 65 and 66.

6 THE COURT: State's Exhibits Number 65 and 66,
7 any objection?

8 MR. MCGUIRE: No objection, Judge.

9 THE COURT: Without objection, they will be
10 admitted into evidence.

11 (WHEREUPON, State's Exhibits Number 65 and 66 were
12 admitted into evidence.)

13 MS. ADAMS: And Your Honor, the only other
14 pretrial matter we have is the admissibility regarding
15 the video of the 2008 which ...

16 THE COURT: All right. Now, Mr. Delgado, I
17 think that's your ---

18 MR. DELGADO: Yes, sir.

19 THE COURT: --- issue.

20 MR. DELGADO: Yes, sir.

21 THE COURT: And your position on that?

22 MR. DELGADO: Is it that it's statutorily
23 prohibited to allow the video of the Defendant's prior
24 testimony as part of the State's case. It's an unrelated
25 case. It has nothing to do with this matter. It is

1 played in or used in derogation of the statute.

2 THE COURT: What do you say about that, Madam
3 Solicitor? Or -- yes, ma'am?

4 MS. BYFORD: Yes, sir, Your Honor. May it
5 please the Court. The State's first response to that --
6 to Mr. Delgado's argument is that he has quoted a portion
7 of that testimony in his opening argument. So we sort of
8 -- we feel that they have waived any objection they might
9 have to it.

10 Secondly, Your Honor, we are not opposed to an
11 instruction that it not be used as proof of our
12 aggravating circumstance, that the jury can only consider
13 that video tape as evidence of character, not for any
14 substantive guilt finding as far as the aggravator goes
15 or as far as the conviction on Kwana Burns goes. And I
16 don't believe that were it admitted for those purposes,
17 it would be in violation of that statute.

18 THE COURT: All right. Mr. Delgado, anything?

19 MR. DELGADO: The statute appears to be very
20 clear, Your Honor. It cannot be used against the
21 Defendant in any other criminal case, save for perjury.
22 Actually an indictment for perjury is our standard.

23 THE COURT: All right. Do you have anything
24 from the State as to why the statute wouldn't be
25 applicable?

1 MS. BYFORD: I'm sorry, Your Honor, I couldn't
2 hear.

3 THE COURT: Do you have anything that would
4 show that the statute would not be applicable?

5 MS. BYFORD: Your Honor, there isn't a whole
6 lot of case law on this. I don't think this actually
7 comes up all that often. The closest thing we were able
8 ---

9 THE COURT: Well, I can -- I can assure you,
10 from what I understand, this is my first experience with
11 it.

12 MS. BYFORD: Your Honor, the closest thing we
13 were able to find is *State v. Gaskins*, which is -- and
14 that situation is not entirely on point. That was a
15 situation where they had -- it's -- for everybody, it's
16 326 S.E.2d 132. That was a situation where they had
17 prepared a written statement to be introduced as part of
18 the record for a plea, and that was thereafter able to be
19 used in his -- in the sentencing phase of a death penalty
20 trial. That's the closest we could get.

21 THE COURT: Well, that's not testimony.

22 MS. BYFORD: But that's ---

23 THE COURT: That was not testimony; it wasn't
24 under oath.

25 MS. BYFORD: It was a sworn statement, Your

1 Honor, that was entered as part of a plea agreement.

2 THE COURT: Oh, it was a plea agreement?

3 MS. BYFORD: Yes, sir. Done for the purposes
4 of the plea for the Court's record. But as I said, Your
5 Honor, that's the closest we can get as far as case law
6 goes. This seems to be an area of first impression.

7 THE COURT: All right. Anything else, Mr.
8 Delgado?

9 MR. DELGADO: Nothing, Your Honor.

10 THE COURT: My notes reflect that in opening
11 statement, the statement was made, Defendant got on stand
12 and said -- or excuse me. In February 2008, Defendant
13 got on stand and said he was a contract killer, code name
14 Circle K, on an assignment to -- in Anderson to kill
15 Kwana Burns. As I said, that, in prior -- in overruling
16 the objection of the State to such a motion, I -- or to
17 such statements being made -- which obviously by a party
18 opponent under Rule 801(D)(2)(b)(c)(d) -- that the
19 statement would be permitted. But of course, being
20 permitted does also carry with it its effect that it
21 would be a waiver of the testimony in a prior trial that
22 relates directly to this trial. And then, of course, the
23 -- the jury will be instructed that it's not to be
24 considered as anything else other but as to character,
25 which I understand is an issue in this case. But such a

1 statement will be made not as to the truth, but as to the
2 matter alleged. All right. The ---

3 MR. DELGADO: Your Honor, may we then inquire
4 -- maybe we can do this at our break this morning so that
5 we may be able to review that. My understanding is that
6 they were going to call someone from a local TV station.
7 Maybe we could see that again just to make certain. If
8 it's going to be played, I think we have to play all of
9 it.

10 THE COURT: Oh, there's no question.

11 MR. DELGADO: I'm not waiving anything; I just
12 want to make sure ---

13 THE COURT: No, I understand. My ruling is
14 that it's admissible. Once part of it is admissible, the
15 whole, or any part that the Defendant wants played. And
16 it has to be played at the time.

17 MR. DELGADO: All right, sir.

18 THE COURT: I mean, you don't have to wait
19 until cross-examination or anything.

20 MS. BYFORD: Yes, sir. We have every intention
21 of playing the whole thing.

22 THE COURT: All right, anything else?

23 (No response)

24 THE COURT: All right, there are certain
25 matters that I need to clarify from our proceedings

1 Friday. The Court has a grave responsibility to assure
2 that justice be done in every case if it can be done
3 according to law. And Friday the Defendant advised the
4 Court that he chose to exercise his right to testify, and
5 the Court permitted him to testify except the Court did
6 what it would do on any case out of the presence of the
7 jury, have an in-camera hearing as to what the testimony
8 might be. The reason for that, of course, is our rules
9 of evidence in South Carolina, and particularly Rules
10 401, 402 and 403. Because it's not just what somebody
11 wants to say; it's whether what somebody wants to say is
12 material -- or excuse me -- relevant, material, and even
13 if relevant, is there any -- if the prejudicial value
14 outweighs any probative value to be admissible.

15 So I trust the record will reflect -- and I can't
16 remember how many times I asked the Defendant, once he
17 was on the stand -- to proffer his testimony as to what
18 he wished to testify. And if my recollection is correct,
19 it was to a general matter of, about the death of the
20 victim. Obviously, he did not give any specifics as to
21 what would be presented, so the Court had no way to rule
22 on the admissibility of such evidence. And no evidence
23 or no testimony was suggested or was offered that the
24 Court could let it go forward to the jury. The Court
25 made every effort to see if there was something that

1 would be admissible under our rules of evidence, and the
2 Defendant declined to give the Court any assistance in
3 that matter and, therefore, disallowed his -- just did
4 not permit him to testify to something that the Court
5 could not, in response to its duty to see that justice is
6 done in every case, could exercise that awesome
7 responsibility.

8 I do note that -- what is it -- the right of the
9 defendant to testify is well established in *Brock v.*
10 *Arkansas*, 483 U.S. 44, 107 Supreme Court 2704, a 1987
11 case. The court there knew or addressed the situation
12 when there was a per se rule against admissibility. In
13 other words, the rule in Arkansas at the time was that, I
14 think, it was post-hypnotic testimony would not be
15 admissible per se. In other words, without
16 consideration. There the court said that that was a
17 violation of the Defendant's right to testify. In so
18 doing, the -- not only did the majority, five of the
19 Supreme Court at the time, noted -- note that in the
20 exercise of this right, the accused, as is required of
21 the state, must comply with established rules of
22 procedure and evidence designed to assure both fairness
23 and reliability in the ascertainment of guilt and
24 innocence. And that was a cite from a prior decision,
25 Chamber -- *Chambers vs. Mississippi*, 410 U.S. at 284 and

1 302 a '93 Supreme Court at 1049. Interesting enough, the
2 four-member dissent cited *Chambers* as well. The
3 Constitution does not in any way relieve a defendant from
4 compliance with, quote, rules of procedure and evidence
5 designed to assure both fairness and reliability in the
6 ascertainment of guilt and innocence.

7 The Court, in the exercise of its discretion, it's
8 well in light of the grave responsibility to assure that
9 justice is served, complied in its opinion with its duty.
10 I might note that also, considering the nature of this
11 particular Defendant's propensity to say things that
12 would obviously not be in his best interest, although he
13 would like to do it perhaps or has done it in the past,
14 this Court does not feel that this would be in the
15 Court's -- in the Defendant's best interest and would be
16 prejudicial. And which is I say, 401 is relevant
17 evidence, 402 is material to the particular issues and
18 403, Rule 403, although relevant, evidence may be
19 excluded if its probative value is substantially
20 outweighed by the danger of unfair prejudice, confusion
21 of the issues, or misleading the jury. And in this case,
22 since nothing was offered that would be any different
23 from what had already been addressed in the -- as far as
24 evidence is concerned, the Court found that even that, if
25 anything, would be cumulative.

1 So as far as the efforts to have the Defendant
2 exercise his rights were not successful. The Court
3 stands by its ruling.

4 As far -- and then thereafter he was given the
5 opportunity to make final argument in the guilt phase.
6 And there again, the Court is concerned that no abuse was
7 done and advised him that he would be held to the same
8 standard as any other attorneys would be in final
9 argument. And when advised that he would be held to such
10 a standard under the law as any other advocate would be,
11 he declined to exercise his right to make final argument
12 in the guilt phase. And I find that that was knowingly,
13 intelligently, freely, and voluntarily made.

14 All right. Anything else before we proceed from the
15 State?

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

17 MR. DELGADO: Yes, sir. At the appropriate
18 time when the Solicitor brings the television
19 reproduction of the Defendant's prior testimony, I will
20 also object to it under a 403 analysis as well. So a
21 statutory as well as an evidentiary basis for the
22 objection. Thank you.

23 THE COURT: Very good. So noted for the
24 record.

25 All right, anything further from the Defendant?

1 MR. DELGADO: No, sir.

2 THE COURT: All right. Ask the jury to join us
3 please.

4 (WHEREUPON, the jury entered the courtroom at
5 approximately 10:51 a.m.)

6 THE COURT: Ladies and gentlemen of the jury
7 panel, does anyone need to report any breech or violation
8 of this Court's order as to exposure to outside
9 information or media coverage or have any other concern
10 to bring to the Court's attention? If so, indicate by
11 raising your right hand.

12 (No response)

13 THE COURT: Very good.

14 Mr. Foreman, ladies and gentlemen of the jury, the
15 Defendant Raymondeze Lamon Rivera was convicted on
16 February the 12th, 2010 for the murder of Kwana Burns.
17 Therefore, it becomes necessary to hold this additional
18 proceeding which will determine the punishment that the
19 Court is to impose upon the Defendant. Section § 16-3-20
20 of the South Carolina Code of Laws as amended provides in
21 pertinent part, a person who is convicted of or pleads
22 guilty to murder must be punished by death or by
23 imprisonment for life. That section, as further amended,
24 also provides in part, upon conviction of a defendant for
25 murder, the Court shall conduct a separate sentencing

1 proceeding to determine whether the defendant should be
2 sentenced to death or life imprisonment.

3 So our purpose in conducting the proceeding in which
4 we are now engaged is to determine whether the Defendant,
5 Raymondeze Lamón Rivera, should be sentenced by the Court
6 to death or to life imprisonment. With respect to your
7 particular role in this proceeding, you will be asked to
8 recommend to the Court whether it should sentence the
9 defendant, Raymondeze Lamón Rivera, to death or to life
10 imprisonment. You should be advised that the Court will
11 follow your recommendation for sentencing.

12 During this sentencing proceeding, the State and the
13 Defendant will have the opportunity to introduce
14 additional evidence in extenuation, aggravation or
15 mitigation. And both sides will have an opportunity to
16 present arguments for and against the death penalty.

17 Should you recommend a sentence of life
18 imprisonment, or should you recommend a sentence of
19 death? That is the only issue involved in this
20 proceeding. After the last argument has been made to you
21 concerning the punishment that should be imposed upon the
22 Defendant, the Court will give you certain instructions
23 and you will then retire to determine whether a life
24 sentence or a death sentence is to be recommended.

25 Now, the purpose of the sentencing phase in a

1 capital case or trial is to direct your attention to the
2 specific circumstances of the crime and the
3 characteristics of the offender. In capital cases the
4 Eighth Amendment requires consideration of the character
5 and record of the individual offender as a
6 constitutionally indispensable part of the process of
7 inflicting the death penalty, or the penalty of death.

8 In the penalty phase, the admission of evidence that
9 the Defendant committed a similar crime is proper as it
10 indicates his individual characteristics. Information
11 concerning the Defendant's statement about prior crimes
12 he has allegedly committed were alluded to in earlier
13 parts of this trial. You must remember that alleged
14 crimes the Defendant may have committed may not be used
15 as proof of statutory aggravating circumstances. The
16 previous or subsequent allegations of crimes may only be
17 considered to [sic] you in reference to the character of
18 the Defendant and for no other purpose.

19 The Defendant is on trial for his life, and it is
20 important that you have for your consideration all
21 pertinent information about him. This evidence may be
22 considered by you and given whatever weight, if any, that
23 you feel it's entitled to. You may consider the
24 Defendant's past conducts as indicative of his probable
25 future behavior. And, in addition, you may consider as a

1 mitigating factor any aspect of the Defendant's character
2 or record and any of the circumstances of the offense
3 that the Defendant presents as a basis for a sentence
4 less than death. The Defendant may also present evidence
5 that his probable future conduct would not pose a danger
6 if he were given a life sentence. I emphasize again
7 these alleged offenses may not be used by you as evidence
8 of the aggravating circumstances which the State relies
9 on. You may, if you choose, consider this as evidence of
10 the Defendant's characteristics as they bear logical
11 reference to a sentence for the crime for which the
12 Defendant has been convicted.

13 I recognize Mr. Campbell with his opening statement.

14 MR. CAMPBELL: Thank you, Your Honor. May it
15 please the Court.

16 THE COURT: Mr. Campbell?

17 Mr. CAMPBELL: Good morning, ladies and
18 gentlemen.

19 THE JURORS: (In unison) Good morning.

20 OPENING STATEMENT

21 BY MR. CAMPBELL:

22 We are to begin at this point and this time the
23 phase of the trial in which you determine the punishment
24 to impose on Raymondeze Rivera for the brutal killing of
25 Kwana Burns. I wish I could tell you that this phase is

1 going to get easier, but it's not. This is typically the
2 part of the trial -- the phase which is the most
3 difficult.

4 This trial has been -- it's a difficult process when
5 we do a death penalty trial. This trial has been a
6 difficult one. And as you sit here, I just want to let
7 you know -- and I think I can speak freely for everybody
8 in this courtroom, that we all greatly appreciate the
9 service that y'all do. For without a jury, our criminal
10 justice system in the United States would cease to exist.
11 And we all understand that you are sacrificing.

12 But it's not only you. It's your family, friends,
13 employers, things that you like to do. And we know none
14 of us choose to be here, but you have a job to do. And
15 we greatly appreciate that. And I can honestly say that,
16 as you sit there, y'all have probably been one of the
17 most attentive, observant, and diligent juries I've ever
18 had the opportunity and the pleasure to stand before.

19 This part of the case deals strictly with
20 sentencing. Guilt has been decided. That was decided by
21 y'all on Friday. That is no longer a question. It comes
22 down to punishment, as the Judge told you. There's
23 either two choices. One is life and one is death.

24 Now, during this process that you all started when
25 you walked through that door on February the 1st, you

1 probably already figured out this process is really
2 divided up into three stages. One is your jury
3 selection, two is your guilt phase. And If we get beyond
4 that, your sentencing phase. And I know that y'all had
5 some questions of why do we have to sit around and listen
6 to this or that, why can't we just go to this point.

7 Well, the law requires -- and we were not allowed to
8 elaborate or talk about it at the time. The law requires
9 the State is only allowed to get into the evidence that
10 deals with the indictment that we had brought forth. And
11 that indictment was on or about December 14th, 2006,
12 Raymondeze Rivera willfully, maliciously killed Kwana
13 Burns. In the guilt phase that's the only thing we can
14 bring to you. We're not allowed to get into anything
15 that has to deal with passion or anything that tries to
16 divert your attention or anything that would try to sway
17 your verdict either way, either towards life or death.
18 The State is not allowed to get into that type of
19 information at the time. Now is the time. And that's
20 what you're going to hear in the penalty phase.

21 The penalty phase is going to be focused upon the
22 circumstances surrounding the death of Kwana Burns, how
23 it impacted her family, her friends, her loved ones. And
24 you're going to hear about the Defendant's character in
25 this part of the case.

1 Now, before you can even consider a verdict of
2 death, we have to prove to you -- the State -- that we
3 have met a statutory aggravating circumstance. And in
4 this case, what the State has relied upon is that the
5 person who killed Kwana Burns has previously committed
6 another murder. And what that means is that we don't
7 have to prove to you that back in December of 2006
8 Raymondeze Rivera had already killed someone else and
9 that he had already been found guilty by another jury
10 somewhere. What that means is at the time of this trial
11 he had already been found guilty by another jury.

12 And the Defense talked about in their opening -- and
13 this is kind of an easy point to get through -- is that
14 they told you that in February 2008, he sat in that
15 witness stand right there, in that chair and told about
16 killing another girl, Asha Wiley. And that is the
17 aggravating circumstance that we are relying upon. Now,
18 you'll see a certified conviction showing that he was
19 bound exactly -- found guilty of that murder.

20 The aggravating evidence that you're going to hear
21 from the State, some of it's going to deal with Asha
22 Wiley. And it's just going to be just as difficult and
23 disturbing as some of the information you heard in the
24 guilt phase. You will learn that Ms. Wiley was also at
25 the mall that fateful day of Sunday, December 10, 2006,

1 and that she too was approached by a charming man. And
2 she too was swept off her feet by this man, the man
3 Raymondeze Rivera.

4 And you're going to hear that she took a different
5 approach when dealing with Mr. Rivera. Whereas Kwana
6 Burns fought for her life, Asha begged. She took a
7 passive approach. She figured if she did what he said,
8 then maybe she would live. But it was for naught for she
9 met the same brutal demise. She was killed in the same
10 brutal manner as Kwana Burns.

11 You will hear that these cases are eerily similar.
12 You can basically lay them on top of one another. And
13 Asha Wiley's case at her Belton Woods apartment, he
14 methodically and meticulously cleaned the crime scene.
15 You're going to learn that he went to great extent to
16 hide his identity. Perhaps what is probably the most
17 disturbing, even before Ms. Wiley's body was found, even
18 before her body got cold, Raymondeze Rivera had already
19 planned on coming back to Anderson to finish, to kill
20 Kwana Burns.

21 You're going to hear about the Defendant's
22 character. He's a cunning, calculating, manipulating
23 individual that preys on women. You're going to hear
24 about his past run-ins with the law. And you're also
25 going to hear mitigating evidence Defense will put up to

1 kind of lesson the severity of the ultimate punishment,
2 trying to get you all to lean towards life.

3 And you probably, as you've figured out by now, this
4 is a concept that the Defense has started since they
5 questioned you initially when you sat here during
6 individual jury questioning. Remember they asked you --
7 usually the last question that was asked. What does
8 mercy mean to you? Is it freely given and bestowed, or
9 is it earned? That's by design. As you heard in their
10 opening, that's the point they were hammering. I can
11 guarantee you're going to hear it again.

12 But remember this, ladies and gentlemen. You all
13 have the ultimate say, the final decision in this case.
14 You decide the punishment. And this is not an individual
15 punishment each of you have to make individually, but it
16 is done as a collective group, as a body. And you will
17 apply what you hear from this witness stand to the law
18 that the Judge gives you. The law comes from His Honor.
19 It doesn't come from what I say, Solicitor Adams says,
20 Mr. McGuire says or Mr. Delgado says. The law comes from
21 the Judge. And he'll instruct you on this, and you apply
22 what you hear from the stand to help to formulate your
23 decision. But ultimately that decision is yours.

24 This case is not about what the State wants or the
25 mercy that the Defense so desperately seeks. This case

1 is about what is just, right, and fair in the
2 circumstances. At the end of this trial, we're going to
3 get up and ask you to render a verdict that this case
4 deserves, that Asha Wiley and Kwana Burns deserves.

5 Thank you.

6 THE COURT: Mr. McGuire?

7 MR. MCGUIRE: Good morning.

8 THE JURORS: (In unison) Good morning.

9 OPENING STATEMENT

10 BY MR. MCGUIRE:

11 I talked to you briefly on Friday, and I'm going to
12 go over a couple of things I don't want you to forget.
13 And first off is that we don't condone or seek to excuse
14 any actions of Mr. Rivera. And our heart goes out to the
15 family. I know y'all don't see the media, but I must
16 tell you, I mean, I saw Mr. Caldwell and he had some very
17 eloquent words for the media. And he talked about his
18 loss, his family's loss and his grandchildren's loss.
19 And it's all very real, and we should not ignore that.
20 And I feel it with you.

21 I told you earlier, when I sit at that table
22 sometimes the anger and the hate -- I can feel it on my
23 back. I really can. It's a hard place to be. But I've
24 dedicated my career coming to the aid of some of God's
25 most tortured creatures. And when I meet my God, after

1 maybe thirty years of doing this, I'll be able to say,
2 God, I came to the aid of your most abused and tortured
3 creatures. And I have no doubt where I'm supposed to be
4 with my God. I have no doubt about -- I'm very sensitive
5 to the pain that the families feel. I just want you all
6 to know that. And we never forget it. We never forget
7 it.

8 And sometimes when we're up here talking to you, and
9 we are -- I mean, I'm going to tell you. I'm going to
10 ask you to spare that man's life. And I'm going to tell
11 you why in just a second. But because I asked that, it
12 doesn't mean that I ignore the pain that the family goes
13 through. Not at all.

14 And one of the notes that you sent out was why do we
15 -- why are we going to have a trial because it seemed
16 from the very beginning we weren't really contesting
17 guilt. And we didn't -- you'll notice we didn't put up
18 any evidence to fight guilt. Mr. Delgado indicated that
19 he thought it was very likely you would convict. And I
20 said I'd didn't think you'd pause very long on it at all.
21 And it's clear that we're not running a very hard guilt-
22 phase case here. We're not putting up a lot of defense.

23 But for why the trial, it's a very good question.
24 And part of it is we do have a system in South Carolina
25 where the only way that Mr. Rivera can be judged by a

1 jury is to have the trial. Now, one piece of evidence
2 that you're going to hear in this guilt-phase part of the
3 case is that -- let me look at my notes. One piece of
4 evidence that you will hear during this part of the case
5 is that Mr. Rivera agreed to plead guilty and go to
6 prison for the rest of his life.

7 Despite his emotional issues and his mental health
8 issues, when Mr. Delgado and I got on this case, we
9 worked with him. And we got to a point where he was
10 ready to come to court and plead to the charge and go to
11 prison for the rest of his life, for a consecutive life
12 without parole sentence. And we didn't want to have a
13 trial, and we didn't want people to have to come to
14 court, nobody. We wanted to come to court where we could
15 stand alone in front of a judge and have this whole case
16 over in about thirty minutes. And we're sorry it didn't
17 work out that way.

18 I, like Mr. Campbell, appreciate your service. You
19 know, we're all parents. All the lawyers you see here,
20 we're all parents. And we know each other. I'm from
21 Columbia and I want to get back to my family. I haven't
22 seen my boys in three weeks. I know it's inconvenient
23 for you. And we appreciate that very much and we want to
24 get you back to your jobs and families as soon as we can.
25 And we didn't want you here at all, to be quite honest.

1 We wanted to plead the case and send Mr. Rivera to prison
2 for the rest of his life.

3 Mr. Campbell talked a little bit about the law, and
4 I'm going to talk a little bit about the law too. And
5 sometimes we'll do it by analogy or by story. I want to
6 tell you a little bit about how I learned an issue of law
7 that we're going to talk about in this case.

8 When I was young, my brother and I, we lost our
9 mother. And my father was a single parent before it was
10 kind of a popular, normal thing back then. And he was a
11 federal probation officer, my dad. And we used to,
12 because he was a single parent, we followed him around to
13 work all the time. And that meant I spent more time at
14 the Sheriff's office, police departments, courts than
15 most ten- or twelve-year-old boys did.

16 And I want to tell you about one case in particular
17 that taught me a lesson that I still hold today. And
18 that is, when I went with my dad to Washington, D.C. --
19 that was in the wintertime -- he had a case there. I
20 remember it was cold. It was one of the first times I'd
21 seen snow as a boy. And I watched a black male plead
22 guilty to bringing marijuana into the state. He learned
23 to be a pilot in Vietnam. He was a Vietnam vet. And
24 basically, based on discrimination, he didn't get the
25 crop-dusting jobs that other people got. He, in a moment

1 of weakness, brought some marijuana into the country.

2 I watched him plead. And in federal court, the way
3 that works is an agent stands in court and gives the
4 judge the facts of the crime, and then court ends.
5 There's no sentence.

6 And the judge saw my dad and saw that he had a boy
7 with him, called us back so I could meet the judge. And
8 the judge asked me, what should I do to the fellow who
9 just pled guilty. And I was a twelve-year-old boy, so I
10 said what I think every twelve-year-old boy would say. I
11 have no idea, I don't know, I don't know. And the judge
12 said, that's why I have your dad. My dad did pre-
13 sentence investigations, and it was my dad's job to learn
14 this man's life and how he came to be in court and what
15 should happen to him.

16 And imagine the pride there, a twelve-year-old boy
17 and this very powerful judge is saying, basically, I'm
18 going to rely on your dad to decide what to do in this
19 very important matter. And we walked out of court. And
20 I'm not sure if you all have been to this part of D.C.,
21 but the Department of Justice is not far from the federal
22 courthouse. And we we're walking around in the snow and
23 we're looking at some of the statues around the
24 Department of Justice. And my dad -- we get to the one
25 that's actually Lady Justice herself in a little

1 courtyard. And my dad points at the plaque underneath
2 the statue and says, that's what the judge was talking
3 about, my job. And the plaque said, vengeance is never
4 justice.

5 Because the judge had all the facts of the crime.
6 He didn't need to know any more about that. And if he
7 would have sentenced just on that, that would be
8 vengeance. Just sentencing somebody automatically for a
9 law without really knowing more. And that was my dad's
10 job, was to learn the man's life and then take that to
11 the judge and literally tell the judge what was
12 appropriate in that case. And I saw that man later
13 because my dad had to go and visit him at home. I
14 probably sat on his porch maybe three or four times
15 drinking a soda with his child.

16 And what the law requires -- and what I saw
17 firsthand -- and what the laws will require you to do is
18 to absolutely swear that you will not engage in
19 vengeance. Basically you are promising to look at Mr.
20 Rivera's life to determine what's right to you and your
21 individual moral judgment with regard to what's right for
22 him.

23 And I did talk to, I think, all of you about the
24 concept of mercy. So I'll ask you for it, or Mr. Delgado
25 will ask you for it if he speaks to you last. We'll ask

1 you for it. We don't pretend that we're not going to.
2 And I just wanted to know how you thought. Is it
3 something freely bestowed and given to somebody, or is it
4 earned? And if it is earned, how can you earn it?

5 What I'm going to tell you right now is that he has
6 earned it. Right now you just kind of know him through
7 the facts of the case and you probably think he's a
8 monster right now. But I'm going to tell you, when he
9 was a child, his father would beat him so violently that
10 if it was on a battlefield, it would be called torture.
11 With a belt wider than this, and he would beat him until
12 he was tired. Not Mr. Rivera, but his father would beat
13 him until he ran out of energy to do it. Sometimes the
14 beatings involved him stripping down naked, being
15 compliant and stripping off his clothes and getting on a
16 bed. Sometimes he had to lay on his back and his
17 genitals would be beaten by this man.

18 He was tied up and locked in a room underneath the
19 house and denied food. I talked to his brother who is in
20 the Army now. He describes sneaking him food. The
21 people who were supposed to take care of him and love him
22 and nurture him tortured him.

23 I just mentioned a little while ago I've got boys
24 that I'm dying to get back to. I have twin boys, a
25 handful. They're about this high. And that's when the

1 beatings started for him. He was a toddler. I can't
2 imagine. I can't imagine who can raise their hand to a
3 child like that. But that was his lot in life.

4 He went to his grandmother's one time. And you
5 know, and you would hope that a grandparent's house would
6 be maybe a place a refuge for somebody who's being
7 tortured like that. One of his aunts will come and talk
8 to you and tell you that his grandmother beat him with
9 her fist in his face to the point where his face was so
10 swollen, it was just easily recognizable. And it caused
11 an argument between his father and his grandmother.

12 That's the walk in life that he's had. And his
13 mother didn't sweep him out and save him. She
14 completely, mercilessly abandoned him. We'll hear
15 stories of he and his brothers eating out of a trash can
16 because she was too busy to be bothered to be a mother.

17 Some of you all might know downtown Atlanta and you
18 might be familiar with a large inner city hospital called
19 Grady Hospital. His mother took him there when he was in
20 diapers -- with his brother. They were both in diapers.
21 Then dropped him off and said, here's the phone number
22 for his other side of his family. If you can't get them,
23 call social services. I'm leaving. Complete abandonment
24 by his mother who should have been there to rescue him.

25 I'm looking at good people. When we picked this

1 jury, you saw how long it took. And we debated who
2 should we put up, who should we not put up. But
3 basically it came down to we had faith that you were all
4 good people. And I don't doubt for a second, a second,
5 that if you were witness to this boy's abuse and his
6 torture, that there's not one of you who wouldn't have
7 rescued him and physically carried him out of that house
8 and gotten him to social services or a police officer or
9 a nurse or somebody. And why -- ask the question, why
10 would we do that? Why would we rescue him from that
11 situation? And it's because we all know the answer
12 without even having to think about it. It's because we
13 know that kind of torture and abuse changes somebody
14 permanently. That's permanent destruction. His father
15 broke his mind and his body.

16 You'll hear that violence ran through his father's
17 family. It was just a matter of living for them. Mr.
18 Rivera's grandmother, his father's mother, actually
19 stabbed him with a knife when he was a child. Physical
20 abuse was the order of the day, and unfortunately it was
21 passed down to Mr. Rivera's father in full force. And he
22 probably took it another step.

23 It breaks our heart to hear about the victim's
24 family and the tragedy that they suffered. I'm just
25 going to tell you, don't ever forget that.

1 But now you're going to be confronted with a tragic
2 situation of his life, and you're going to be asked to
3 either spare him, put him in prison for the rest of his
4 life. Because we don't ask that he be ever let out. He
5 should pay, exactly, for his crimes. He should go to
6 prison for the rest of his life, die in prison. But has
7 he earned, by his walk in life, the smallest bit of mercy
8 that should take you from the death penalty to life in
9 prison?

10 Killing him accomplishes what? It would be a
11 tragedy if he's -- he has earned mercy. His entire
12 childhood was forfeited. His childhood was torture.
13 He's a broken man. His adulthood is the residual
14 remnants of his childhood being completely broken by his
15 father and completely abandoned by his mother. If he
16 didn't earn mercy through that walk in life, I don't know
17 who can earn it. I mean, who can earn it? And we're not
18 asking that anything be excused. Send him to prison for
19 the rest of his life.

20 And Mr. Campbell talked about a jury being a
21 collective group. And the Judge will charge you each
22 individual juror can vote for the life penalty for any
23 reason whatsoever. I think we all agreed collectively
24 that the torture he went through warrants mercy.

25 Thank you.

1 THE COURT: You may call your first witness.

2 MS. ADAMS: Thank you, Your Honor. May it
3 please the Court. We call Kiki Hatten to the stand. Oh,
4 Your Honor ...

5 (Off record discussion)

6 NIKELLA HATTEN,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION:

9 BY MS. ADAMS:

10 Q. Kiki, now, you testified in the guilt phase about
11 what happened with Kwana because you found her body?

12 A. Yes, ma'am.

13 Q. Now I want to talk about Kwana Burns as a person.

14 A. She was very outgoing, down-to-earth person. She
15 never met a stranger. She was somebody that you can
16 always call a friend, there when you needed her. And she
17 -- she was loved by everybody.

18 Q. Kiki, how close were you and Kwana?

19 A. We was very close. Even though we was cousins, she
20 was like my sister.

21 Q. How often would you talk to her and see her?

22 A. On the phone, I guess I would talk to her at least
23 three or four times a day, and I basically seen her every
24 day.

25 Q. You did? Okay. Now, Kiki, we know that Kwana

1 worked at Belk in the cosmetic counter. I want to show
2 you what's been marked as State's Exhibit 65.

3 MS. ADAMS: Your Honor, it's already been
4 admitted into evidence without objection.

5 THE COURT: Very well.

6 Q. Who is this?

7 A. That's Kwana.

8 Q. Now, please describe for the jury her hair and just
9 the way she looks in this picture.

10 A. She has makeup on and she always wore her hair
11 pulled back, mostly because that way you can see her
12 face, and because she liked makeup, so she wanted it to
13 be shown.

14 Q. And is that why she worked at the cosmetic counter
15 at Belk?

16 A. Yes, ma'am.

17 Q. Okay. So she would always look this way going to
18 work?

19 A. Yes, ma'am.

20 Q. Okay. So this is most likely the way she looked
21 when she went to work December 10th ---

22 A. Yes, ma'am.

23 Q. --- 2006 when she met the Defendant?

24 A. Yes, ma'am.

25 Q. Kiki, let's talk about Kwana's kids. Tell the jury

1 what kind of mother she was to Kamille and Kameron.

2 A. She was a great mother. She loved doing anything
3 that involves anything with her kids, playing with them,
4 going out with them. She was just trying to be their
5 friend and their mother as well.

6 Q. Now, there are a few years in between Kameron and
7 Kamille; is that right?

8 A. Yes, ma'am.

9 Q. So Kameron was in her life for a while before ---

10 A. Yes, ma'am.

11 Q. --- Kamille was born. Tell the jury about her
12 relationship with Kameron. What did she call him?

13 A. Little buddy. They was like -- more like brother
14 and sister. She always played with them. They played
15 video games together. She just -- she just loved him.
16 You couldn't mess with him without going through her.

17 Q. What's Kameron's favorite sport?

18 A. Basketball.

19 Q. What did Kwana always say about Kameron and
20 basketball?

21 A. He going to the NBA.

22 Q. So she loved to watch him play basketball?

23 A. Yes, ma'am.

24 Q. What about Kamille? What was she like when Kamille
25 was born?

1 A. She was very happy. That was her first little girl.

2 They danced together, played together.

3 Q. What kind of relationship did they have?

4 A. They was friends too. And you couldn't mess with
5 Kamille as well.

6 Q. Now, Kameron and Kamille had two different fathers;
7 is that right?

8 A. Yes, ma'am.

9 Q. What has happened since Kwana's death with Kamille
10 and Kameron?

11 A. They've been separated for quite some time.

12 Q. So now, it's been about a little over three years.

13 A. Yes, ma'am.

14 Q. Tell -- since Kwana was murdered, tell the jury what
15 transpired those first two years regarding Kameron and
16 Kamille. Did they get to see each other?

17 A. No, ma'am.

18 Q. Okay. Explain that to the jury.

19 A. He never got to see her. Only like we used to see
20 her in public and she would ask to have us ---

21 Q. And now, you're talking about Kameron and Kamille,
22 right?

23 A. Uh-huh (affirmative). And they never got to be
24 together.

25 Q. Where did Kamille go -- who did she go live with?

1 A. She lives with her father.

2 Q. And where does Kameron live?

3 A. He lives with his grandmother.

4 Q. Okay. And that is Jeano, Kwana's mom?

5 A. Yes, ma'am.

6 Q. So Kamille and Kameron, did they see each other at
7 all for two years after ---

8 A. No, ma'am.

9 Q. Tell the jury how that has affected Kameron and
10 Kamille.

11 A. It hurts him a lot because he don't get to play with
12 his sister like he wants to. He only can -- he don't get
13 to see her. He wants her to be around and she's not
14 around.

15 Q. Were they close?

16 A. Very close.

17 Q. Are they still close?

18 A. Yes, ma'am.

19 Q. Now, in the past year they have gotten to see each
20 other. How was that?

21 A. They get to see each other every other weekend, but,
22 to me, that's not good enough because they supposed to be
23 together. That's not how Kwana wanted them to be.

24 Q. Kwana would have wanted them together?

25 A. Yes, ma'am.

1 Q. Kiki, tell the jury how Kameron is doing. What has
2 happened to him and what kind of child he is now since
3 his mother's death.

4 A. He's on two different medications. One of them is
5 to help him rest at night and one of them is for his
6 nerves. He bites his nails a lot. He walks a lot. He's
7 just not -- he is not the Kameron he used to be; he's a
8 totally different person.

9 Q. Kiki, I'm going to show you State's Exhibit 66
10 that's already in evidence. Who is this?

11 A. That's Kwana and the kids.

12 Q. That's Kameron and Kamille?

13 A. Yes, ma'am.

14 Q. And this was actually taken December 1st, 2006,
15 wasn't it?

16 A. Yes, ma'am.

17 Q. So this was right before ---

18 A. Uh-huh (affirmative).

19 Q. --- she was murdered? Kiki, how about you? How are
20 you doing since you found your best friend hogtied?

21 A. Not so good. It's been -- I remember when she first
22 got killed. I didn't sleep alone. I slept with my
23 mother. It was hard for me to go to school and just to
24 deal with it. It was hard for me just to go back being
25 the same old me because she was not there. I didn't have

1 nobody to go to, nobody to talk to.

2 Q. What about her friends at work, Kiki? How have they
3 been affected?

4 A. They miss her so much. She was the one that
5 brightened up their day. She was just always there for
6 them just like she was there for me. And she treated
7 them just like they were family as well.

8 Q. Had she actually gotten employee of the month a
9 couple times?

10 A. Yes, ma'am. If I can recall, I believe it was
11 twice.

12 Q. She was about to get her own store?

13 A. Yes, ma'am.

14 Q. Kikki, you received a letter from the Defendant at
15 your mom's house.

16 A. Yes, ma'am.

17 Q. Do you remember that?

18 A. Yes, ma'am.

19 Q. Do you remember when that was?

20 A. I believe it was on December the 15th when it
21 actually arrived.

22 Q. Okay. And I want to show you what's been marked as
23 State's Exhibit 67.

24 MS. ADAMS: Your Honor, it's already in
25 evidence without objection.

1 Q. Is this the letter that you received?

2 A. Yes, ma'am.

3 Q. And, Kikki, I'm not going to read this letter with
4 you because I know it's very, very difficult. But it --
5 this letter talks about you, doesn't it?

6 A. Yes, ma'am.

7 Q. Who is this letter from?

8 A. It's from Rivera.

9 Q. Okay. Explain to the jury what happened when you
10 got this letter that day.

11 A. Me and my mother had just came home. And we always
12 checked the mailbox when we first got there. And she
13 opened the mail and then she thought it was a letter from
14 a friend of our family. And she was like, oh, we got a
15 letter. And I was like, huh? And I read it and I was
16 like, Mama, that's not from him. I was like, that's from
17 Rivera. And she was just in complete shock. She
18 couldn't even concentrate, like she just -- she basically
19 broke down.

20 Q. And it says some very derogatory, hateful things
21 about you too.

22 A. Yes, ma'am.

23 Q. How has -- how did these three letters that the
24 Defendant sent to your family just this past December,
25 how has that affected you?

1 A. I mean, it hurt me at first. But I try not to think
2 about it because I know he can't do anything to me. But
3 it hurts that somebody will say something like that about
4 you, but I try to not let it affect me.

5 Q. How about Kameron, Kiki? How has Kameron reacted
6 since ---

7 A. He has nightmares a lot. He says that he has dreams
8 about Rivera coming to get him. And he say he can't
9 sleep at night.

10 Q. How about before? What was Kameron's sleep habits
11 like? Were they ever good?

12 A. The first two years he wouldn't sleep alone. And
13 then after they put him on his medication, he was
14 sleeping alone. But it's been nights when he would get
15 up in the middle of the night and sleep next to his
16 mother picture on the floor in the living room.

17 Q. Kiki, if you had one thing that you could say to
18 Kwana right now, what would you say?

19 A. I love you.

20 Q. Please answer anything the Defense may have.

21 MR. MCGUIRE: I'm sorry, ma'am. I'm sorry you
22 had to come here.

23 THE COURT: All right. You may step down.

24 Thank you very much, ma'am.

25 MS. BYFORD: Your Honor, at this time we'd like

1 to publish what's been moved into evidence as Exhibits 84
2 and 83 to the jury.

3 THE COURT: They are admitted into evidence?

4 MS. ADAMS: Yes, sir.

5 THE COURT: Very well.

6 MS. ADAMS: Thank you, Your Honor. This is
7 State's Exhibit 83. This is indictment number 2007-GS-
8 04-650, the State versus Raymondeze Lamon Rivera. It's
9 an indictment for murder. That Raymondeze Lamon Rivera
10 did in Anderson County within the city limits of
11 Anderson, South Carolina on or about December 10th, 2006
12 feloniously, willfully, and with malice aforethought kill
13 one Asha Wiley by means of physical force, and the said
14 victim died as a proximate result thereof. Attached is
15 the verdict of the jury. It's signed by the foreman and
16 dated February 13th, 2008. The sentencing sheet is on
17 the first page.

18 This is State's Exhibit 84. It's the State of
19 Georgia versus Raymondeze Lamon Rivera, certified by the
20 Clerk of Court, or the Deputy Clerk, Rhonda Davis, on
21 December 6, 2007. The sentencing information is on the
22 first two pages.

23 I'll start with count six. This is Raymondeze
24 Rivera of the county and state aforesaid which is
25 Georgia, Dekalb County, charged with the offense of

1 family violence battery March 10th, 2003. Intentionally
2 caused physical bodily harm to Renee Karls by striking
3 her in the eye, causing a blackened eye, and the said
4 accused is the father of her child. Same county and
5 state, Dekalb, Georgia, Raymondeze Rivera, cruelty to
6 children in the second degree, March 9th, 2003. Being
7 the primary aggressor and having knowledge that a child
8 under eighteen years of age is present and seeing the
9 act, did commit a forceful felony to wit aggravated
10 battery and aggravated assault and family violence
11 battery. Again, Dekalb, Georgia, Raymondeze Rivera,
12 simple battery, March 9th, 2003, did intentionally make
13 physical contact of an insulting and provoking nature
14 with the person of Renee Karls to wit by punching and
15 biting her in the face and head. Dekalb, Georgia,
16 Raymondeze Rivera, family violence battery, March 9th,
17 2003, intentionally caused visible bodily harm to Renee
18 Karls by biting her breasts and causing red marks and
19 said accused is the father of her child. Dekalb,
20 Georgia, Raymondeze Rivera, aggravated assault, March
21 9th, 2003, did make an assault on the person of Renee
22 Karls with his hands, an object when used offensively
23 against said person was likely to result in serious
24 bodily injury to wit by choking Renee Karls with his
25 hands. The bill of indictment is attached. And the last

1 page is the State versus Raymondeze Rivera. It's the --
2 where he signed the guilty plea for the counts. The
3 counts are listed aggravated battery, aggravated assault,
4 family violence battery two counts, simple battery and
5 cruelty to children. And it's signed at the bottom.

6 MS. ADAMS: Your Honor, may we call our next
7 witness?

8 THE COURT: Certainly.

9 MS. ADAMS: Okay. Your Honor, the State calls
10 Joya Joseph to the stand.

11 JOYA JOSEPH,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. ADAMS:

15 Q. Hi, Joya.

16 A. Hi.

17 Q. Now, let me first explain to the jury, you testified
18 in the Asha Wiley trial back in February of 2008; is that
19 correct?

20 A. Yes.

21 Q. All right. So you do not know Kwana Burns, do you?

22 A. No.

23 Q. Okay. And I want to talk a little bit about what
24 happened back on December 10th of 2006, okay?

25 A. Okay.

1 Q. How do you know Asha Wiley?

2 A. We were friends. We met in like 1999.

3 Q. If you could get a little closer to the microphone
4 here. Thank you, Joya.

5 A. We were friends. We met through relatives of mine
6 that she was in school with in 1999 and we were best
7 friends.

8 Q. Now, on -- back in December of 2006, were you
9 talking with Asha that day?

10 A. Yes.

11 Q. That Sunday?

12 A. Yes.

13 Q. Explain to the jury why you remember that day.

14 A. I had just picked up Asha's daughter and brought her
15 to be with Asha's grandfather because Asha had school and
16 work and stuff.

17 Q. And what is her name?

18 A. Kaya.

19 Q. And how old was she in 2006?

20 A. At the time Kaya was eight. Yeah, she was eight at
21 that time.

22 Q. And where were you living when you say you picked
23 her up?

24 A. I was living in Vance at the time, where Asha's
25 grandfather lived. So I picked -- I met Asha in Colombia

1 and we ended up staying and brought Kaya down to Vance,
2 you know, to stay with her grandfather. You know, just
3 help her out so she wouldn't have to make the trip all
4 the way to Vance.

5 And so Kaya was with me that Sunday at a parade.
6 And so we just, you know, talked back and forth with Asha
7 basically to, you know, tease her that she couldn't be
8 there with us at the parade. She had school and work.
9 And we just talked back and forth that whole day.

10 Q. So you had picked Kaya up that Saturday?

11 A. That -- well, that Friday.

12 Q. That Friday.

13 A. And we spent the night. And then that Saturday I
14 brought her to be with Mr. Harry. And then I ended up
15 picking her up again, you know, for the parade that
16 Sunday.

17 Q. And you're talking about the Christmas parade ---

18 A. Yes.

19 Q. --- since it was Christmastime?

20 A. Uh-huh (affirmative).

21 Q. Now, you had mentioned that Asha was in school and
22 working. Is that why -- what was going on during
23 December that she wanted Kaya to go down and stay with
24 her grandfather?

25 A. Kaya was going to be out of school that week that

1 was coming up, and that Saturday Asha had school. She
2 was going to Webster University, so she had school that
3 Saturday. And I just basically was bringing her down,
4 you know, with Mr. Harry, her grandfather, to help -- you
5 know, help her out so she wouldn't have to worry about
6 somebody watching her up there.

7 Q. Now, you and Asha talked throughout that day, right?

8 A. Yes.

9 Q. What was Asha doing? You said you all were at the
10 Christmas parade; what was she doing?

11 A. She was at the mall shopping for stuff for Kaya and,
12 you know, said something about their Christmas, that she
13 just started early Christmas shopping.

14 Q. So you two were talking back and forth that day?

15 A. Uh-huh (affirmative).

16 Q. Joya, I want to show you what has been marked as
17 State's Exhibit 72.

18 MS. ADAMS: Judge, which -- without objection.

19 THE COURT: All right. State's Number 72.

20 Q. Do you recognize this?

21 A. Yes.

22 Q. Can you tell the jury what that is?

23 A. Asha's cell phone.

24 Q. Now, did you receive a text message from Asha that
25 day?

1 A. Yes.

2 Q. And I want to show you that text message. Let me
3 show you, Joya, what's been marked as State's Exhibit 73.
4 Do you recognize that?

5 A. Yes, that's the text message that she sent me.

6 Q. So she sent this at ---

7 A. 5:31.

8 Q. Okay. And how do you remember that?

9 A. I just never forget it.

10 Q. Okay. Can you see that from there, Joya?

11 A. Uh-huh (affirmative).

12 Q. Can you please read that text message that you
13 received from Asha that day?

14 A. It said, I just met a dude that I would marry next
15 week if he asked me.

16 Q. And did you and Asha actually talk about that?

17 A. We talked about it.

18 Q. Okay. And so obviously, she had met somebody that
19 day?

20 A. Yes, while she was at the mall.

21 Q. Joya, when did you learn that Asha had been
22 murdered?

23 A. Tuesday morning.

24 Q. Did you speak to her again after that Sunday
25 evening?

1 A. No. The last time I talked to her was about seven,
2 seven thirty Sunday.

3 Q. And what was her mood when you talked to her?

4 A. She was in a good mood. She had company, and so she
5 just -- she was in a good mood.

6 Q. In fact, she had told -- had she told you about the
7 company?

8 A. Yes.

9 Q. And in fact, did you help law enforcement after her
10 body was found?

11 A. Yes, I did.

12 Q. So did you tell law enforcement what you had learned
13 from Asha regarding this Defendant?

14 A. Yes.

15 Q. Had you tried to call her several times Monday and
16 Tuesday?

17 A. I called her Monday like all day. And about the
18 time she would have come home from work, I called the
19 house phone and the cell phone and didn't get no
20 response.

21 Q. How about Kaya? Did Kaya try to call her mom?

22 A. Yes.

23 MS. ADAMS: No further questions, Your Honor.

24 Please answer anything the Defense may have for you.

25 THE COURT: Cross examine?

1 MR. MCGUIRE: Sorry, ma'am. Sorry you had to
2 come.

3 THE COURT: You may step down. Thank you
4 ma'am.

5 THE WITNESS: Thank you.

6 THE COURT: You may call the next witness.

7 MR. CAMPBELL: Your Honor, the State calls Mike
8 Walters to the stand.

9 **MIKE WALTERS,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Captain Walters, I know the jury's already heard
14 from you during the guilt phase regarding Kwana's murder.
15 And I now want to talk to you a little bit about your
16 involvement in the murder of Asha Wiley. Do you recall
17 being involved in that case?

18 A. I do.

19 Q. And what initially prompted law enforcement to begin
20 an investigation of her death?

21 A. Well, it was -- it was on a Tuesday morning that we
22 received a call by 911 that some of her coworkers had
23 gone to her apartment to look for her because she was
24 working with New Foundations as a counselor for troubled
25 kids. And they were supposed to go on a field trip that

1 day, and she had failed to show, which was highly
2 unlikely for Asha because she had always been very
3 conscientious about her work and her job.

4 And so when they -- her coworkers went to the
5 apartment, the front door was locked and they stepped
6 around to the back door and they realized the back door
7 -- or observed the back door being open. At that point
8 they notified the manager of the apartment complex of
9 Belton Woods who called law enforcement. And we went
10 there, and the officers went in to her apartment for a
11 well-being check, and that's when they discovered Ms.
12 Wiley's body.

13 Q. And did you also go to the crime scene in the Belton
14 Woods apartment?

15 A. I did. I went to the crime scene. And at that
16 point in time, it was a couple -- maybe an hour, hour-
17 and-a-half, after the initial call had come in, I talked
18 with a Lieutenant Creamer who was the first investigator
19 on the scene. And he gave me a brief rundown of what
20 they knew at that time. And the information that he
21 passed on was that we had a young female in mid twenties
22 that -- with no apparent signs of -- of cause of death,
23 and that she was last seen or heard from on Sunday. And
24 at that point in time, I began to talk with some
25 neighbors and also some of the coworkers to gather

1 information about what we could about Ms. Wiley.

2 Q. And through your investigation talks, did you learn
3 anything? Had she showed up to work that Monday,
4 December 11th, 2006?

5 A. No. They -- she did not work Monday as well, and
6 that was another reason for concern. They tried to call
7 her a couple times by phone and got no answer, called her
8 home phone and got no answer. But when she failed to
9 show the second day, they immediately realized that there
10 was something not right.

11 Q. And did you go through her apartment at 117-F Belton
12 Woods Apartment and take a look around?

13 A. I did. I walked through the apartment. There was
14 no apparent disarray of the apartment. The apartment was
15 fairly neat. There was no sign of any type of struggle
16 or anything that had taken place.

17 Q. I'm going to show you what's been marked or entered
18 into evidence, State's Exhibit Number 74 through 80.
19 Could you please identify what these are, sir?

20 A. That is a power cord or extension cord from a
21 computer.

22 Q. Well, first of all, just look at the pictures. Do
23 these fairly and accurately represent what you observed
24 on the morning of December 12th, 2006?

25 A. Yes. That's her -- that's her apartment and the

1 contents.

2 Q. And these are photographs taken inside by someone
3 with the Anderson Police Department; is that right?

4 A. By our crime scene technician at that time, yeah.

5 Q. And at that point in time, were you able to
6 determine any type of cause of death?

7 A. No, there was no apparent cause of death immediately
8 available. That came out after the autopsy was revealed.

9 Q. Going back to your investigation on that morning of
10 December 12th, did anything stand out to you or in
11 particular regarding whether or not this was something
12 out of the ordinary?

13 A. Well, there was a couple of things. One was that
14 her car was not parked in the front of her apartment like
15 it normally would be. It was found a couple of
16 courtyards down from where she actually lived. And
17 again, when I began to talk to her coworkers and stuff,
18 they advised me about her friend Joya.

19 And so at that point in time, I made contact with
20 Joya. And Joya related to me the information that Asha
21 had passed on to her about meeting this young man at the
22 mall and was immediately smitten by him and the fact that
23 he drove a red car with a white top.

24 Q. And you also went to Kwana Burns' crime scene; is
25 that correct?

1 A. I did.

2 Q. And Detective, did you, after looking at the crime
3 scene on Tribble Street and also the crime scene at
4 Belton Woods Apartments, did you form an opinion of
5 whether or not these two murders were related?

6 A. I did. I began to just almost immediately put the
7 two together based on the fact that both of these young
8 ladies were professionals, in their mid-twenties, lived a
9 low, actually a low-risk life. They worked at
10 professional jobs and both were strangled to death. Both
11 had been reportedly seen with a light-skinned male that
12 fit the description of Mr. Rivera, driving a -- it was a
13 red car with a white top. There was a lot of
14 similarities between the two just immediately that stood
15 out.

16 MR. CAMPBELL: Your Honor -- Your Honor,
17 State's Exhibit 74 through 80 has already been admitted
18 without objection. Just wanted to put that on the
19 record.

20 THE COURT: Very well.

21 MR. CAMPBELL: I have no further questions of
22 this witness.

23 THE COURT: Cross examine?

24 MR. MCGUIRE: I have no questions for Detective
25 Walters. Thank you, sir.

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

2 MR. CAMPBELL: Your Honor, the State calls
3 Melissa Partain to the stand.

4 MELISSA AIKEN PARTAIN,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Detective Partain, you went to the crime scene
9 located at 117-F Belton Woods Apartments?

10 A. I did.

11 Q. And that was on the morning of December 12th, 2006?

12 A. It was.

13 Q. And that's located here in Anderson County?

14 A. Correct.

15 Q. And my understanding, you were also there as a crime
16 scene technician; is that right?

17 A. I was.

18 Q. In fact, you're the one that photographed the crime
19 scene there at the apartment to begin with?

20 A. That's correct.

21 Q. And did you have an opportunity to observe the body?

22 A. I did.

23 Q. And I'm going to show you what's been marked without
24 objection, entered into evidence without objection,
25 State's Exhibit 81 and 82. Could you please identify

1 those? Do those pictures fairly and accurately represent
2 the body as you found it on the morning of December 12th,
3 2006?

4 A. Yes, sir, they do.

5 Q. Now, Detective Partain, did you also have an
6 opportunity to go to the autopsy on Ms. Wiley?

7 A. No, sir.

8 Q. But you also -- but you did collect evidence that
9 was collected from the autopsy; is that right?

10 A. I did. I did.

11 Q. And did you have an opportunity to collect a C.S.C.
12 or a rape kit ---

13 A. That's correct.

14 Q. --- from ---

15 A. I did.

16 Q. --- the body of Ms. Wiley?

17 A. Correct.

18 MR. CAMPBELL: I have no further questions.

19 MR. MCGUIRE: No questions.

20 Thank you.

21 THE COURT: All right, you may step down.

22 Thank you, ma'am.

23 MS. ADAMS: Your Honor, the State calls Dr.

24 Woodward to the stand.

25 Your Honor, Dr. Woodard was previously qualified as

1 an expert in forensic pathology. Do I need to go through
2 that again?

3 THE COURT: All right. No. This witness has
4 been previously qualified as an expert in forensic
5 pathology, so you may proceed.

6 MS. ADAMS: Thank you, Your Honor.

7 BRETT HOTEN WOODARD,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. ADAMS:

11 Q. Dr. Woodard, did you have an opportunity to perform
12 the autopsy on Asha Wiley?

13 A. I did.

14 Q. Okay. And when was that?

15 A. It was performed on the 12th of December 2006.

16 Q. And please explain to the jury your findings at that
17 autopsy.

18 A. She had evidence of strangulation. She had
19 extensive hemorrhaging to the white part of the eye and
20 petechial hemorrhages under the conjunctiva of the eye.
21 She had some bruises, one bruise on the side of her head
22 where the muscle is above your ear, and then some other
23 bruises on her legs.

24 Q. Now, when we talk about bruising, Dr. Woodard, I
25 want to show you State's Exhibit 82. When you say she

1 was strangled -- during the guilt phase, we -- the jury
2 saw the extensive bruising around Kwana Burns' neck. Can
3 you explain to the jury why Asha Wiley would not have
4 such extensive bruising as Kwana did?

5 A. It would depend on the mechanism by which the person
6 strangled her. If they placed a soft object between
7 their hands or an object they used for strangulation, it
8 would leave little sign on the skin. A towel, bedding, a
9 pillow. Also the -- a vascular compression hold done
10 with the arm or the carotid sleeper hold where the arm's
11 placed around the neck and squeezes leaves very little
12 sign on the outside of the neck because of that padding
13 and the softness of your arm.

14 Q. So if someone put a pillowcase over her head, that
15 would ---

16 A. Very easily could, yes.

17 Q. --- would prevent severe bruising?

18 A. That's correct.

19 Q. Now, I want to show you State's Exhibit 81 as well.

20 And you can see that there's a printer cord underneath
21 her hand there. If she were bound and tied as well,
22 would that necessarily mean that she would have extensive
23 bruising around her arms or legs?

24 A. It would depend on how hard she struggled against
25 her attacker. The extent of her struggling against

1 whatever the restraint was would decide if it produced an
2 injury or -- a significant injury or only a minor injury
3 to her.

4 Q. Now, explain to the jury what happens to other
5 bodily functions while one is being strangled.

6 A. Well, as consciousness is lost, our ability to
7 control our bowels and bladder becomes lost. Our ability
8 to focus and concentrate becomes lost. A person may
9 urinate on themselves and may defecate on themselves or
10 do both. As they come out of the hypoxic episode because
11 the compression stopped, they won't be as sharp and clear
12 and focused or directed as they would have otherwise.
13 This residual clouding of the judgment and senses.

14 Q. Explain to the jury, please, the pressure again that
15 is required to strangle another person to death.

16 A. To produce the blocking of the blood vessels, the
17 veins, it takes about five to ten pounds of pressure. It
18 takes about twenty pounds of pressure to produce the
19 pressure that's necessary to cut off the arteries. This
20 is why we tend to see the bleeding into the little
21 capillaries, because the venous blood is obstructed much
22 easier than the arterial blood. But after maintaining
23 about ten seconds of arterial pressure closure, a person
24 will become unconscious. And if that pressure is held on
25 for another half a second -- or excuse me -- half a

1 minute to a minute, it produces irreversible brain
2 damage.

3 Q. Now, based on your autopsy, could you determine
4 whether or not Asha Wiley was strangled immediately or if
5 there was more on and off again.

6 A. She had extensive hemorrhaging into the white of her
7 eyes and the conjunctiva. This requires obstruction of
8 the veins and arterial pressure to be maintained or the
9 releasing and reapplying of pressures. It was most
10 consistent with the pressure having been applied,
11 stopped, applied, stopped.

12 Q. So would Asha have been conscious during the
13 intervals where pressure was not applied?

14 A. She would have regained consciousness, yes.

15 Q. Now, you said you found bruising on her leg?

16 A. That's correct. She had bruising over the anterior
17 portion of her legs and up above her ear in the soft
18 tissue. Not the scalp, but the tissues underneath the
19 scalp.

20 Q. So would that be consistent with falling off of a
21 bed?

22 A. Yes, it could be.

23 Q. And bruising around her wrists. If she were tied,
24 why would she not have bruising?

25 A. Again, it would depend on the individual's decisions

1 on how to handle the crisis that they were in. If the
2 individual made a decision not to fight, thinking that
3 was their best option for survival, they wouldn't
4 restrain themselves or pull hard against the restraints.
5 If the restraints were somewhat loose around the wrists,
6 even if the individual pulled against them, it wouldn't
7 produce significant injury.

8 Q. Thank you, Dr. Woodard. I have no further
9 questions.

10 MR. MCGUIRE: No questions. Thank you, sir.

11 THE COURT: You may step down. Thank you, sir
12 You may call your next witness.

13 MS. BYFORD: Thank you, Your Honor. The State
14 calls Kelli Chapman.

15 **KELLI CHAPMAN,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. BYFORD:

19 Q. Ms. Chapman, where do you work?

20 A. I work at Piedmont Pathology.

21 Q. And what are your duties?

22 A. My duties include assisting Dr. Woodard with
23 autopsies and cervical specimens.

24 Q. And did you assist in the autopsy of Asha Wiley?

25 A. I did.

1 Q. Did you collect anything from her?

2 A. We did. We collected evidence. We collected a rape
3 kit, took pictures.

4 Q. What all goes into the rape kit?

5 A. The rape kit is a box that contains separated
6 envelopes, sterile swabs and slides that we take from the
7 mouth, the vagina and the rectum.

8 Q. And do you seal those in the kit?

9 A. We do. We seal them individually. We label them
10 with the name. We seal it with evidence tape that's
11 tamper-proof and we send it to SLED.

12 Q. Did you -- in this particular case, did you give
13 that sealed kit to Melissa Partain?

14 A. Yes, ma'am.

15 Q. Thank you. I have no further questions.

16 MR. MCGUIRE: No questions. Thank you, ma'am.

17 THE COURT: You may step down. Thank you,
18 ma'am.

19 Can these witnesses be excused?

20 MR. MCGUIRE: Without objection.

21 MS. BYFORD: No objection.

22 THE COURT: All right, without objection, the
23 last two witnesses will be excused.

24 Call the next witness.

25 MS. BYFORD: Yes, sir, Your Honor. Your Honor,

1 the State calls Adrienne Riley.

2 **ADRIENNE RILEY,**

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. BYFORD:

6 Q. Thank you, Ms. Riley. What is your occupation?

7 A. I'm resident DNA analyst for the South Carolina Law
8 Enforcement Division, more commonly known as SLED.

9 Q. And how long have you been employed with SLED?

10 A. Since November of 1997, so a little shy of thirteen
11 years.

12 Q. Could you tell the jury a little bit about your
13 educational background and training?

14 A. Sure. I have a Bachelor of Science degree in
15 biology from the University of South Carolina. I am
16 currently a master's degree candidate at Winthrop
17 University in the field of business administration. I
18 have received court-qualified training from a court-
19 qualified analyst upon joining SLED. Each year I attend
20 numerous symposiums on human identification since there
21 are many changes in the DNA and serology.

22 Q. And have you ever testified as an expert before in
23 forensic serology?

24 A. Yes, I have.

25 Q. Approximately how many times?

1 A. I've testified as a DNA analyst/serologist
2 approximately forty-seven times now.

3 MS. BYFORD: Your Honor, at this time we'd move
4 to qualify Ms. Riley as an expert in the field of
5 forensic serology.

6 THE COURT: Any voir dire?

7 MR. MCGUIRE: No. No objection.

8 THE COURT: All right.

9 Without objection, the witness will be qualified as
10 an expert in forensic serology, and she will be permitted
11 to give her opinion based on her background, training,
12 and experience. However all witnesses' testimony is for
13 your evaluation.

14 You may proceed.

15 Q. Ms. Riley, Ms. Taylor testified in the guilt phase
16 last week a little bit about serology. If you could just
17 give us a brief review of what serology is and what sort
18 of fluids you test for.

19 A. Sure. Serology is the scientific identification of
20 body fluid. And this could mean identifying fluids such
21 as urine, semen, saliva, as well as blood in forensics as
22 it pertains to crime.

23 Q. And do you -- how do you test for the presence of
24 urine?

25 A. We use a test known as a creatinine test.

1 Creatinine is a byproduct of urine. It's excreted in
2 urine. And we use a chemical reaction. If you see a
3 color change, then that indicates the presence of urine.
4 If we do not see a color change, then it indicates that
5 urine was not present.

6 Q. Did you receive some items from the State in the
7 case of Mr. Rivera to test for urine?

8 A. I did.

9 Q. Okay. And were these -- I believe they were also
10 identified as being from the victim, Asha Wiley's case?

11 A. That's correct.

12 Q. Okay. I believe you received a cutting from the
13 carpet, a left sofa cushion, the middle sofa cushion, the
14 right sofa cushion and cushions from the love seat; is
15 that correct?

16 A. That's correct.

17 Q. Okay. Could you please tell the jury what you
18 found?

19 A. Sure. From the cutting from the carpet, there was
20 no urine indicated. From the left sofa cushion, that
21 means there was nothing of apparent serological
22 evidentiary value found. And what that means, we looked
23 for -- first, we looked at it under alternate light
24 source to see if we saw any areas that fluoresced. And
25 from there, we tested for urine. So in that case where

1 I'd say nothing of apparent serological evidentiary value
2 found, it did not fluoresce.

3 On the next one, middle sofa cushion, there was
4 urine indicated. On the right sofa cushion, no urine
5 indicated. On the left love seat cushion, again nothing
6 of apparent serological evidentiary value found. And
7 this also pertains to the right love seat cushion.

8 Q. Did you also take cuttings from the top of the
9 mattress?

10 A. I did.

11 Q. I'm sorry. Did you test the cutting from the top of
12 the mattress?

13 A. I tested cuttings from the top of the mattress.

14 Q. And what were your results?

15 A. The cutting from the mattress top, there was urine
16 indicated. From the cutting from the mattress bottom,
17 there was no urine indicated.

18 Q. Oh, did you also test a bedspread?

19 A. I did.

20 Q. And what were your findings?

21 A. There were, on one cutting from the
22 bedspread/comforter, there was urine indicated.

23 MS. BYFORD: Okay. I have no further
24 questions, Judge.

25 MR. MCGUIRE: No questions. Sorry you had to

1 come, ma'am.

2 THE COURT: You may step down. Thank you,
3 ma'am.

4 MS. BYFORD: Your Honor, the State calls Robin
5 Taylor.

6 Your Honor, Ms. Taylor was previously qualified at
7 the guilt phase as an expert in DNA analysis.

8 THE COURT: As I understand, there's still no
9 objection, so the witness is qualified as an expert in
10 DNA analysis. You may proceed.

11 ROBIN TAYLOR,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. BYFORD:

15 Q. Ms. Taylor, I want to turn your attention to the
16 samples that were collected in Asha Wiley's case. You
17 received -- can you tell us a little bit about what you
18 got out of the C.S.C. kit that was submitted?

19 A. Contained in the C.S.C. kit submitted from Asha
20 Wiley was smears collected from vaginal, oral, and rectal
21 areas. Vaginal swabs, oral swabs, rectal swabs, and
22 pubic hair combings.

23 Q. And what, if anything, were you able to identify
24 from those swabs?

25 A. On the vaginal swabs I was able to identify semen.

1 And also again, on the rectal swabs, semen was
2 identified. There was no analysis performed on the
3 smears. That's our policy. When the swabs are positive,
4 there is no need to back up that finding visually. The
5 oral swabs, there was no semen identified. And the pubic
6 hair combings, no hairs were found.

7 After I identified semen on the rectal swabs and
8 vaginal swabs, I proceeded to perform DNA analysis on
9 those items.

10 Q. And just very briefly, if semen is identified on a
11 rectal swab, does that necessarily mean that there was
12 anal intercourse?

13 A. Not necessarily. It could mean that there was
14 drainage. If the victim was laying face up or some other
15 condition could cause draining vaginally into the rectal
16 areas. It's not uncommon, in the absence of rectal
17 assault, to actually see semen in the area.

18 Q. Okay. Thank you. You said you took the semen and
19 compared it to the DNA profile that you had?

20 A. Yes. I had a blood standard from Asha Wiley and a
21 blood standard from Mr. Rivera. And the DNA profile
22 developed in the semen on item 7.4, which was the rectal
23 swabs, matches the DNA profile of Mr. Rivera. The
24 probability of randomly selecting an unrelated individual
25 having the same DNA profile is approximately one in three

1 hundred and ninety quadrillion.

2 Q. And just briefly, could you explain to the jury why
3 that statistic is the same in both cases?

4 A. Because I had the same information. The statistic
5 comes from the evidence. But I have a full profile from
6 the evidence in both cases. So it's the same information
7 and it would, and should, reflect the same statistic.

8 Q. So in your opinion, to a reasonable degree of
9 medical certainty, does the semen you found on those
10 swabs match the Defendant, Raymondeze Rivera?

11 A. Yes, it does.

12 MS. BYFORD: I have no further questions, Your
13 Honor.

14 MR. MCGUIRE: No questions. Sorry you had to
15 come.

16 THE COURT: You may step down. Thank you,
17 ma'am.

18 Can the last two witnesses be excused?

19 MS. ADAMS: Yes, sir, Your Honor.

20 MR. MCGUIRE: Without objection.

21 THE COURT: Without objection, the last two
22 witnesses will be excused.

23 Can Counsel approach? All right. Thank you very
24 much.

25 (WHEREUPON, a bench conference was held off the

1 record.)

2 THE COURT: Ladies and gentlemen of the jury,
3 we've moved rather quickly this morning. And of course,
4 I have something I need to do between twelve thirty and
5 two thirty, so I'm going to suggest that we take a very
6 long break for lunch today, sort of a mini holiday, so to
7 speak. But anyway, I'm going to ask you to go to lunch
8 at this time and come back at two thirty, and we will
9 continue the trial at that time. Again, do not undertake
10 a discussion among yourselves in any way.

11 Mr. Foreman, I do need to see you for a moment
12 though, please. I'll see you in the hall. Very good.

13 All right, anything else from the State before we
14 take a lunch break?

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

16 THE COURT: Very good. Anything from the
17 Defense?

18 MR. MCGUIRE: No, sir.

19 THE COURT: All right, thank you.

20 Just so the record reflects, I need to have the
21 foreman of the jury conform the indictment to the verdict
22 form. So it's just to note the verdict from the jury on
23 the indictment itself because the indictment did not go
24 back, only the verdict form.

25 All right, is there anything from the State?

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

2 THE COURT: Very good.

3 (WHEREUPON, court stood at recess for the lunch
4 break during which State's Exhibit Number 86 was
5 marked for identification only.)

6 THE COURT: All right. Are we ready, from the
7 State?

8 MS. ADAMS: Yes, sir, Your Honor, we're ready.

9 THE COURT: From the Defense?

10 MR. MCGUIRE: I think there's just one issue
11 with regard to one witness, Your Honor. Mr. Delgado will
12 argue that point.

13 MR. DELGADO: Your Honor, yes, sir. I'm sorry.
14 It's our understanding from the Solicitor that the State
15 is going to call in its aggravation phase someone from
16 the Anderson County Detention Center relating to
17 something about Mr. Rivera not being able -- to not being
18 able to prevent Mr. Rivera from writing letters. I would
19 just be able to ask the Court if -- inquire with the
20 Solicitor whether or not that's the focus of that
21 individual's testimony and whether or not relevant or
22 Germaine in any way. What character trait does that
23 show?

24 THE COURT: All right. Now, who's going to
25 proffer that testimony? Mr. Campbell?

1 MR. CAMPBELL: Your Honor, the witness that
2 he's talking about is actually not Anderson County
3 Detention Center; it's actually a Department of
4 Corrections warden who's over the supervisor of the mail
5 room. He's not to testify about the contents of the
6 letter, but how letters are -- get through and can get
7 out of the Department of Corrections. And it does go to
8 the character, as Mr. Delgado indicated in his opening
9 when he read these letters. It shows that he can still
10 get this type of information out if he seeks to and so
11 wishes to.

12 MR. DELGADO: Your Honor, that may be a First
13 Amendment violation that they're talking about invoking.
14 I mean, so in other words, he could write members of his
15 family, but he can't write other folks and the Department
16 of Corrections gets to comment on that? This is
17 intentional because of the inflammatory nature of what
18 those letters will mean to those jurors. If you recall,
19 Your Honor ---

20 THE COURT: Well, as I understand, the letters
21 are either coming in or have been introduced?

22 MR. DELGADO: One has, Your Honor.

23 THE COURT: But two of them have?

24 MR. DELGADO: Two? I thought one through Kiki,
25 Ms. Adams.

1 THE COURT: As far as you're talking about as
2 far as proof here?

3 MR. DELGADO: Yes, sir.

4 THE COURT: All right. And I'm talking about
5 in the opening statements, two were referred to.

6 MR. DELGADO: That is correct, Your Honor.

7 Yes, sir. I'm sorry, yes.

8 THE COURT: All right. I'm going to, just for
9 the sake of the process, I'm going to find that any
10 probative value would be outweighed by the -- not only
11 the prejudice to the Defendant, but -- which I think
12 would probably require some sort of professional
13 testimony as to what the effect of such rules would have.
14 But also, it could be confusing and unnecessary at this
15 time. So even if relevant, I'm going to rule it
16 inadmissible under Rule 403.

17 All right, very good. You may proceed.

18 Hope that wasn't your next witness.

19 MS. ADAMS: Your Honor, was that -- I'm sorry,
20 Mr. Barkley's testimony regarding how letters -- how the
21 mail room works and how letters get out? Is ---

22 THE COURT: Yes.

23 MS. ADAMS: Okay. I just want to make sure.

24 Not the actual letters themselves.

25 THE COURT: No.

1 MS. ADAMS: I was just ---

2 THE COURT: No. We were talking about whatever
3 the policy is today, which again, I don't know if it will
4 be tomorrow or what.

5 MR. DELGADO: It's the same thing.

6 THE COURT: It's the -- isn't that what you
7 were objecting to?

8 MR. DELGADO: I'm objecting to the method
9 because we're not just talking anybody here. There's
10 only going to be one person in the Department of
11 Corrections in this room. And it's obviously ---

12 THE COURT: Again, I've ruled out that their
13 policy on letters is not to be admitted in this case.

14 MR. DELGADO: I thought she just ---

15 THE COURT: I don't know what she said. I
16 mean, I do know what she said, but what I'm saying is
17 that was the only motion I had before me and that's the
18 one ---

19 MS. ADAMS: Okay.

20 THE COURT: --- that I granted.

21 MS. ADAMS: Okay. Your Honor, may we approach
22 real quick?

23 THE COURT: Certainly.

24 (WHEREUPON, a bench conference was held off the
25 record.)

1 THE COURT: All right. Are we now ready to
2 proceed from the State?

3 MS. ADAMS: Yes, sir, Your Honor.

4 THE COURT: From the Defense?

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: Very good. Ask the jury to join
7 us, please.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 3:13 p.m.)

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

12 All right. If you would, call your next witness.

13 MS. ADAMS: Thank you, Your Honor. May it
14 please the Court. The State calls Phoebe Kenney.

15 PHOEBE KENNEY,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. ADAMS:

19 Q. Phoebe, we're going to take our time, okay?

20 A. Okay.

21 Q. Take a deep breath. If you need to take a break at
22 any time, you just let me know, okay?

23 A. Okay.

24 Q. All right. Phoebe, I want you to tell the jury a
25 little bit about yourself. How old are you?

- 1 A. I'm thirty-one.
- 2 Q. And where do you work?
- 3 A. I work for a company based in London, but my office
4 is in D.C.
- 5 Q. And what do you do for that company?
- 6 A. My company buys HIV test kits and medical supplies
7 with government funds and donates them for free to Africa
8 and Asia. It's my job to buy those goods and train
9 people in Africa and Asia how to use them and buy them
10 based on government regulations.
- 11 Q. And actually you get to travel to Africa and Asia a
12 good bit ---
- 13 A. I ---
- 14 Q. --- as part of your job, right?
- 15 A. I do.
- 16 Q. Now, Phoebe, are you married? Do you have any
17 children?
- 18 A. Single, no kids.
- 19 Q. Okay. Phoebe, have you ever been to Anderson
20 before?
- 21 A. No.
- 22 Q. Okay. Do you remember when the Anderson Police
23 Department first contacted you back in February of 2008?
- 24 A. Yes.
- 25 Q. What was your reaction? Tell the jury about that

1 experience.

2 A. I was at my office, and I got an e-mail from -- on
3 MySpace. And the e-mail said, if you know Raymondeze
4 Rivera, please call this number. And my heart just
5 dropped because I hadn't heard the name in a while, so I
6 just -- I called the number to find out why they were
7 contacting me.

8 Q. And what was your reaction when you actually talked
9 to law enforcement and they told you what was going on?

10 A. I was nervous and anxious, and I just couldn't
11 believe what I was being told. Just a state of shock
12 really.

13 Q. Now, Phoebe, you said you hadn't heard the name
14 Raymondeze Rivera in a long time. So I want to take you
15 back to 1999, all right? Where were you living in 1999?

16 A. Atlanta, Georgia.

17 Q. And what were you doing in Atlanta? Why were you
18 there?

19 A. I was an undergrad studying English and Spanish at
20 Clark Atlanta University.

21 Q. So since that was a little over ten years ago, how
22 old were you then?

23 A. About twenty.

24 Q. When did you first meet the Defendant?

25 A. It was the beginning of the fall semester that year,

1 and I was walking home from the Metro, or the MARTA, the
2 transportation -- train station. And I met him there.

3 Q. So you met him at the MARTA?

4 A. Yes.

5 Q. Okay. How did that happen? Did he start talking to
6 you first?

7 A. Yeah, he just walked up to me and said I was pretty
8 and asked me my name and where I went to school. Just
9 basically flirty conversation.

10 Q. What was your first impression of the Defendant?

11 A. He was cute. He was well dressed, well spoken, very
12 sweet, very charming. He was dressed nice, so when he
13 told me that he went to Morehouse, I believed him. He
14 was just -- he looked like a student.

15 Q. So he was actually dressed like a student?

16 A. He had on like khakis and a shirt and he had like a
17 mailbag like a ---

18 Q. Messenger bag?

19 A. Yeah, a messenger bag.

20 Q. And he told you he was going to Morehouse?

21 A. Yes.

22 Q. How much time did you spend with the Defendant when
23 you first met him when he approached you at the MARTA?

24 A. Oh, he just walked me back to campus and then -- I
25 don't know. Maybe campus was like maybe less than a

1 mile, so we walked to campus and exchanged information
2 and then we parted ways.

3 Q. And when you say exchanged information, what does
4 that mean?

5 A. Phone number.

6 Q. So you gave him your phone number?

7 A. Probably my pager number because I don't think I had
8 a cell phone then.

9 Q. Okay. Did he contact you again after that?

10 A. Yes.

11 Q. When was that? Do you recall. ---

12 A. Yeah.

13 Q. --- how much time?.

14 A. Yeah, it wasn't -- it could be a day or so. It
15 wasn't that long.

16 Q. And what happened when he contacted you? Did you
17 meet with him again?

18 A. We did. Just we talked on the phone and we went to
19 -- that first weekend I think we went to Six Flags with
20 some of his friends.

21 Q. And how was Six Flags? Describe your date with him.
22 What was he like?

23 A. It was fun. It was -- I mean, we rode rides and ate
24 food and talked and laughed and took pictures, and it was
25 fun.

1 Q. Phoebe, where were you living at that time exactly?

2 Like describe the apartment you were living in.

3 A. I was renting a -- an attic apartment from a woman
4 that lived close to my campus. So the house was, I
5 believe, two main levels for me. I had access to the
6 kitchen and the living room and the sitting room, the
7 dining room in the main floor. And then upstairs, which
8 would have been an attic, was transformed into like a
9 two-bedroom, or two room and a bathroom apartment. And I
10 lived in that level of the house.

11 Q. So after you went to Six Flags, did you see the
12 Defendant again?

13 A. Yes. I was going to a family reunion, so he came by
14 my house while I packed and to see me off for the family
15 reunion.

16 Q. And what happened while he was there? What did you
17 all do?

18 A. We had -- well, we talked and then we ended up
19 getting into an argument that actually turned into
20 shouting, and it turned physical to the point where we
21 were hitting each other and shoving each other. And I
22 basically told him to get out of my house and -- but he
23 took my keys with him, which were returned before I got
24 back.

25 Q. Tell the jury about the conversation that led to the

1 fight.

2 A. We got into an argument about being disrespectful.

3 There was conversation about -- somehow abortion came up
4 and my beliefs on abortion. And he wasn't agreeable with
5 my beliefs on abortion. When the fight became physical,
6 there was a point where I pushed a door to basically to
7 hit him. And after that, he choked me against the wall
8 and told me that I should never do that again. But
9 again, he was kicked out of my house after that time, so
10 ...

11 Q. Were you telling him about any of your past
12 relationships? Did y'all talk about that?

13 A. Yes, we talked about a guy that I was dating before
14 I met him.

15 Q. What was his name?

16 A. His name was Latiffe (phonic). And he accused me of
17 basically still sleeping with him or being intimate with
18 him and just very accusatory of everything.

19 Q. And were you seeing Latiffe at that time?

20 A. No.

21 Q. And did you tell him that?

22 A. Yes, I did. I did tell him I was not seeing Latiffe
23 anymore.

24 Q. Where were you physically in the house when you got
25 into the argument regarding Latiffe and past

1 relationships?

2 A. It had to be in my apartment. The --

3 Q. The upstairs?

4 A. --- attic, yes.

5 Q. Okay. What was his reaction to you when you got
6 upset about him asking about past relationships?

7 A. His reaction? He was upset but not -- like he
8 wasn't -- it wasn't -- it was really me yelling. I was
9 doing all the yelling. He was more -- it was more like a
10 controlled questioning as if he was my boyfriend and he
11 was accusing me of cheating on him, which wasn't the
12 case.

13 Q. So after you kicked the door -- and which door?
14 Where are you?

15 A. My bathroom door.

16 Q. Okay. Because you're packing to leave for your
17 reunion ---

18 A. Right.

19 Q. --- right? After you kicked the door -- and you
20 said it hit him in the back, I believe?

21 A. Uh-huh (affirmative).

22 Q. All right. What happened after that?

23 A. That's when he basically put me up against the wall
24 and choked me and told me that I was never to do that
25 again and that I was basically -- I don't know how to put

1 it. He was just basically -- I was basically ungrateful.
2 Like he had been coming around to see me and he had been
3 calling me and he had taken me to Six Flags and, you
4 know, how dare I treat him this way and ...

5 Q. What was his demeanor during all of this, Phoebe?

6 A. It was -- like I said, it was just very -- I was the
7 one yelling. He was just very controlled and talking
8 tightlipped. Is that a way to describe it? But I was
9 the one doing all the yelling and ...

10 Q. So after he threw you up against the wall and choked
11 you ---

12 A. Uh-huh (affirmative).

13 Q. --- what did he do? Did he just leave the house?

14 A. No. I kicked him out of the house.

15 Q. But he left?

16 A. Yes, he left but he took my keys with him.

17 Q. Okay. But then you got your keys back, right?

18 A. Right, my keys were returned to me.

19 Q. Did you see him again before you left for your
20 reunion?

21 A. No.

22 Q. What happened at the reunion?

23 A. I told my mom and my -- her sisters, my aunts, what
24 happened and they basically told me that I needed to
25 control my temper and that I should apologize and rectify

1 the situation.

2 Q. Did you try to call him while you were in -- at your
3 family reunion?

4 A. Yes.

5 Q. Did you get him ---

6 A. No.

7 Q. --- at that point? Okay. So what happened when you
8 got back to Atlanta?

9 A. I bought a card at the airport, an apology card. I
10 called him and asked him to meet me at the house because
11 I was going to cook dinner for friends anyway. So I just
12 told him to meet me a little bit early so that we could
13 talk and I could apologize to him.

14 Q. And how did he react to all of that?

15 A. He met me. He said great, no problem, and he met me
16 at my house.

17 Q. And you were having a dinner party, so you were
18 expecting other people there as well?

19 A. Yes.

20 Q. Do you recall anything different about him this
21 night, what he was wearing, his demeanor, anything?

22 A. Well, this would have been the first time that he
23 would have met my friends, so he came really relaxed. He
24 had on like sweat pants and a tee shirt, just very
25 different than how I'd met him or how we even went to Six

1 Flags. He didn't even wear shorts at Six Flags, so it
2 was kind of weird to see him dressed down. But his
3 demeanor was fine, like he -- it was almost like the
4 argument before we left never happened.

5 Q. So what happened when he first got there?

6 A. Well ...

7 Q. It was just the two of you?

8 A. Yes. Through a series of events, for whatever
9 reason, my three female friends who were supposed to come
10 canceled. So I told him that it would just be us, so we
11 ate dinner in front of the TV and watched a game. And
12 again, there was no issues at all.

13 Q. So what were you all talking about, anything
14 specific?

15 A. No.

16 Q. And everything seemed fine?

17 A. Everything was fine.

18 Q. When did the conversation turn?

19 A. I had gone upstairs and came back down, and it
20 turned about that time, when I came back downstairs. But
21 it wasn't that he had said anything. It was that his
22 demeanor was just different, like he was just staring at
23 me. And I was, you know, wondering what was wrong.

24 I went back upstairs. He followed me back upstairs.
25 He really didn't say anything, but he told me that he was

1 going to go downstairs and get cookies and asked me if I
2 wanted some. I said no.

3 When he came back upstairs, again, it was just --
4 just this really weird vibe that I got from him. It was
5 like he was contemplating something. And I asked him
6 again if something was wrong, and he said no. But then
7 he ended up attacking me at that point.

8 Q. Phoebe, I know this is hard. Take your time, okay?

9 A. Uh-huh (affirmative).

10 Q. When he came back upstairs, what did he do?

11 A. He basically -- he didn't have any cookies, which
12 was my first indication that something was wrong. And he
13 -- he kept like touching his thigh as if something was in
14 his pocket. I asked him if anything was in his pocket,
15 and he said no. And then he basically came over and
16 threw me onto the bed and straddled me. And we were
17 fighting, or I was struggling physically.

18 And I heard something hit the metal frame of my bed.
19 And so then I started panicking because I didn't know
20 what it was. And then he put the knife to my throat and
21 he said that -- that -- if I had ever thought about what
22 my last day on earth would be like and -- and what would
23 I do? Would I call Latiffe and would I -- would I say
24 goodbye? And he went on to talk about the fact that I
25 had just come back from my family reunion. And what

1 would the headlines say, college student returns from
2 family reunion and is murdered.

3 And he went on to talk about the argument that we
4 had before I left and said that, you know, I bet you
5 regret everything that you did to me now, and you think
6 you can just talk to me and do whatever to me and get
7 away with it and -- and then he started like taking the
8 knife to my -- to my face and to my -- just to my throat
9 or whatever.

10 Then he started telling me this story about -- and
11 I'm crying and I'm praying. And while I'm praying, he's
12 basically asking me, you know, if I'm, you know, talking
13 trash, and if I'm not as loud as I was before and, you
14 know, what do I have to say now? And he goes on to talk
15 about how he basically took some drugs at a party and how
16 he almost died during that episode. And that, even
17 though he lived, that his soul had left him. And he --
18 because he didn't have a soul, that he didn't give a fuck
19 about my soul. And ...

20 Q. Phoebe, what's going through your mind during all
21 this?

22 A. My family. And I'm thinking, damn it, I shouldn't
23 have apologized and I should have never called him. And
24 I'm thinking I'm never going to see my family again.

25 Q. Phoebe, after he told you about his soul, that he

1 didn't have any feelings anymore, what did he do next?

2 A. He -- he puts his knees on my, like my arms.

3 Q. So you're on the bed, right?

4 A. Uh-huh (affirmative). And he basically -- he
5 basically masturbates until he finishes, and then he puts
6 himself inside me. And then I start fighting him again
7 and accusing him of trying to give me a disease or get me
8 pregnant. And he pulls a sharper knife, and he ...

9 Q. So he had another knife.

10 A. He had another knife. And he basically asked me
11 that if I was pregnant, would I abort the baby? And I
12 tell him yes. And then I -- and then I spit on him. And
13 then it's at that point that he actually pulls out the
14 other knife. It was after I had spit on him. And then
15 he -- I can't remember what happens right after that.
16 But right soon after that, he did -- his demeanor
17 completely changes and he starts crying and ---

18 Q. Is he still on top of you?

19 A. He's still on top of me. And he gives me the knife
20 and tells me that I should kill him for what he's done.
21 And ---

22 Q. What are you doing, Phoebe? Are you ---

23 A. I'm talking to him and I refuse to kill him or stab
24 him. And he then stops crying and tells me that there's
25 another weapon in the house and that if -- he asked me

1 how much I value my life over his and that -- that if he
2 doesn't -- if I don't kill him, then he'll kill me. And
3 that if I don't, then he'll shoot me and they'll find the
4 knife with my fingerprints on it. And I'm like, it was
5 self-defense.

6 Q. Is the knife still in your hand, Phoebe?

7 A. No.

8 Q. What happened?

9 A. I can't remember how I was able to talk my way out
10 of the bed, but I told him that I needed to call my mom
11 and let my mom know that I had arrived safely in Atlanta.
12 And so he tells me that he's going to run me a bath and
13 pick something out to wear and that now that I may be
14 carrying his baby, we're going to go on a date. So ---

15 Q. What are you actually wearing, Phoebe?

16 A. I'm wearing a blue shirt.

17 Q. And nothing else?

18 A. A bra. So I go downstairs and I call my mom --
19 well, while I'm in front of him, I started talking about
20 financial aid and telling my mom that I arrived safely,
21 and then I go downstairs and I tell her what's happened.

22 Q. And where is he?

23 A. He's upstairs in my bathroom running a bath. And
24 she -- I called my friend who was supposed to come to the
25 dinner party and didn't make it, and my mom talks to her

1 and tells her on three-way what happened, and asks her to
2 come to my house. So she agrees to come to my house.

3 Q. Phoebe, why didn't you just leave? Is it because
4 you didn't have clothes on?

5 A. I don't know.

6 Q. But you called your mom, so you have your mom and
7 your friend, Kendra ---

8 A. Uh-huh (affirmative).

9 Q. --- on the phone?

10 A. Uh-huh (affirmative).

11 Q. And where is your mom? Is she in Atlanta?

12 A. No. She's in Virginia. And Raymondeze comes
13 downstairs and he gets me, and so we go back upstairs.
14 He somewhat takes the phone from me because he talks to
15 my mom. And my mom is trying, I assume, to talk to him
16 and calm him down. I don't know what she said to him.
17 And ---

18 Q. What is his demeanor?

19 A. It's completely calm. It's completely calm.

20 Q. Like he was before?

21 A. Yeah, like he was before. It was as if nothing had
22 happened, and he really thought we were going on a date.
23 So at that point, he makes me get into the bathtub. I
24 had a -- the bathtub was an old-fashioned bathtub, so it
25 didn't have a shower to it. I had a -- like a plastic

1 tube that you could use to like rinse yourself off.

2 Q. So it came off the showerhead?

3 A. No. It came off the bath -- of the faucet. It
4 connected to the faucet. And so he bathed me and he put
5 some of my like a Summer's Eve soap for sensitive skin in
6 the tub. And he bathed me and then he reattached the --
7 the shower -- the little tube or whatever, and he put it
8 in me and ---

9 Q. Phoebe, the shower head?

10 A. It's not a showerhead. It's like an attachment,
11 like a hose almost, but it's meant for tubs.

12 Q. So the water went up inside you?

13 A. Right. And ...

14 Q. And he cleaned you off?

15 A. Right.

16 Q. And what happened when you got out of the shower --
17 or the bath?

18 A. At some point he says that he's going to call a
19 friend or page a friend. And so he does that. I hear my
20 phone ring. I hear him talk, and then he takes my
21 umbrella and says that he's walking home to meet this
22 friend. And basically, like not even five minutes after
23 he left, the cops come to the house. And Kendra. They
24 pretty much arrived at the same time. And it was three
25 officers and I was standing there at this point in the

1 same shirt and everything, but wet now. And I'm just --
2 I'm telling them kind of hysterically that -- that
3 Raymondeze has left the house, he's walking. You know,
4 you can -- you can find him. And they -- they basically
5 tell me, well, if he comes back to give us a call. And
6 ---

7 Q. Are you visibly upset?

8 A. I'm physically upset. And Kendra is telling them
9 what's going on and why she's there. And they asked if
10 the suspect was still in the house, and I said no. And
11 they said that -- they -- they asked me how long I had
12 known him, how we met, and I told them. And then they
13 just left. They -- they didn't take any reports, they
14 didn't make any statements. I didn't even get to tell
15 them everything that happened.

16 So I got dressed and put on some jeans. Kendra took
17 me back to her house, and we called the cops again. And
18 another officer came out and took my statement, and then
19 took me to -- to get a rape kit in sex crimes.

20 Q. And did you actually give a statement, Phoebe?

21 A. Yes.

22 Q. And that was actually a very detailed statement,
23 wasn't it?

24 A. Yes.

25 Q. All right. In fact, I'm going to show you, Phoebe

1

2 MS. ADAMS: This is, Your Honor, State's
3 Exhibit 86.

4 Q. Is this the statement you gave to the police in
5 Atlanta on September 27th, 1999?

6 A. Yes.

7 Q. Phoebe, did you follow up with prosecution on this
8 case?

9 A. Yes, I -- I did press charges.

10 Q. And you actually went to the hospital and got a rape
11 kit done?

12 A. And they weren't expecting much because of the bath
13 thing, but they could collect my clothes and everything.
14 And the officer, she didn't really hide the fact that she
15 didn't believe me, but I pressed charges anyway. And the
16 prosecutor was nice, and she told me that she would
17 follow up with everything and that they would find him.
18 And you know, if they found charges, they would arrest
19 him, et cetera.

20 But then time kept passing, and I would call her and
21 ask her what's going on. And eventually, I decided to
22 study abroad, and I told her that I was going to leave in
23 January of 2001. And she said that if trial came up
24 while I was gone, that she would let me know. I didn't
25 hear from them while I was studying abroad, and that was

1 for six months.

2 Q. And Phoebe, I want to back up now. Right after you
3 gave that statement and -- which everything in that
4 statement is what happened that night ---

5 A. Right.

6 Q. --- okay?

7 A. Right.

8 Q. Did you ever go back to that apartment? Were you
9 able to go back?

10 A. No. I stayed with Kendra for a while, and I then
11 stayed with -- one of my friends was a residence -- she
12 -- she basically was a resident advisor or stayed in a
13 dorm. And she had a suite apartment in the dorm, so I
14 stayed with her the rest of the semester.

15 Q. Now, since you didn't go back to your apartment, was
16 your landlady collecting messages for you?

17 A. Yes. She -- it actually took her a while to find me
18 because, again, I didn't have a cell phone. So she -- by
19 the time she did reach me, I had numerous messages
20 waiting for me. And she gave me a telephone number that
21 I didn't recognize that had repeatedly called repeatedly.
22 So I called them back and ---

23 Q. You mean that that number had repeatedly left
24 messages at ---

25 A. Yes, with my landlord.

1 Q. Okay.

2 A. And so I called the number back, and it was
3 Raymondeze's grandmother that he told me he lived with.

4 Q. And based on that conversation, just who -- you
5 talked to Raymondeze's grandmother.

6 A. I listened mostly.

7 Q. How did you feel after you listened to what the
8 grandmother said?

9 A. I was upset because she basically was yelling at me
10 and telling me that I had made everything up and that she
11 saw the pictures from Six Flags, and she just made me
12 feel like it was my fault that everything happened.

13 Q. So Phoebe, did you ever see the Defendant again? I
14 know you had talked about the DA's office and following
15 through with prosecution. When did you see him again and
16 what happened?

17 A. I saw him again the fall of 2001.

18 Q. Was this after you'd gone overseas?

19 A. Yes, this is after -- this is after I had stayed
20 overseas for six months and then a summer at home. And
21 so I came back and I was living -- I actually moved out
22 pretty far from my school because I didn't want him to
23 have any access to me at all. But somehow he had found
24 out -- I don't know if he found out where I lived or
25 what. But he was on the bus or the train one day, and he

1 just had that same look, like that same stare. And he
2 just followed me from train to bus from bus.

3 And so finally I decided to get off of the bus at a
4 stop that was before mine, maybe three or four stops
5 before my house. And he was following me, and he was
6 yelling out that he forgave me for what I did and that he
7 loved me and that he -- he started grabbing at my book
8 bag, and so I started running. I left the book bag
9 behind.

10 And so I ran into a group of guys that were just
11 standing out on the corner, and I asked them to help me
12 because someone was following me. And one of the guys
13 went up to Raymondeze and told Raymondeze to leave me
14 alone. He basically pretended to be a boyfriend or --
15 you know, he basically told Raymondeze to leave me alone
16 and that if he saw Raymondeze again that it would be a
17 problem. He got my book bag back for me, and then the
18 guy drove me home. And then I -- that's how I found out
19 that Raymondeze was out of jail. And then I called the
20 prosecution -- prosecutor on this, and they told me that
21 the charges had been dropped while I was in Costa Rica.

22 Q. Phoebe, what did you do after that encounter in
23 2001? Were you able to stay in the same place?

24 A. I told my landlord what had happened, and I asked
25 her to put an alarm system on my house. I had contacted

1 a -- one of my friends was a lawyer, and I contacted him
2 and asked him how I could get out of my lease. So he
3 told me that I had to write a letter stating you have
4 thirty days to put an alarm on -- on the house or I'm
5 out. So I did that. And then when she had not put the
6 alarm on, I moved in thirty days.

7 Q. Phoebe, is the man that assaulted you back in
8 September of 1999 in this courtroom?

9 A. Uh-huh (affirmative).

10 Q. Can you point him out for the jury?

11 A. He's over there (indicating).

12 MS. ADAMS: Your Honor, may the record reflect
13 he's in a white shirt at the Defense table. And Your
14 Honor, at this point, I'd like to move her statement into
15 evidence, which is State's Exhibit 86.

16 MR. MCGUIRE: No objection.

17 THE COURT: All right. Without objection,
18 State's exhibit number 86 ...

19 MS. ADAMS: Yes, sir.

20 THE COURT: ... is admitted into evidence.

21 (WHEREUPON, State's Exhibit Number 86 was admitted
22 into evidence.)

23 Q. Phoebe, thank you so much. I know this has been
24 hard. It's been a long time. Please answer anything
25 that the Defense may have.

1 MR. MCGUIRE: Phoebe, you and I met in D.C.
2 And I told you it wasn't like on TV where lawyers are
3 mean to you, and I'm going to keep that promise to you.
4 I'm sorry you had to come.

5 THE WITNESS: Thank you.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: May the witness be excused?

9 MS. ADAMS: Yes, sir, Your Honor.

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: Without objection, you may be
12 excused. Thank you, ma'am.

13 All right, you may call your next witness.

14 MS. ADAMS: Your Honor, may we approach?

15 THE COURT: All right, please.

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 THE COURT: Mr. Foreman and ladies and
19 gentlemen of the jury, I apologize about the
20 inconvenience at starting late, but also we're going to
21 have to adjourn a little early today. I need to do
22 something before we proceed with the trial, and it will
23 take me about an hour. So that will be about the time we
24 break anyway. So I'm going to suggest that we adjourn
25 for the day at this time.

1 Now, what time would you like to start in the
2 morning?

3 MR. FOREMAN: Ten, Your Honor.

4 THE COURT: Ten o'clock. All right. Very
5 good. We'll start at ten o'clock in the morning. Just
6 come back to the jury room.

7 Again, do not undertake the discussion of the case
8 among yourselves or permit anybody to discuss it with
9 you.

10 Thank you very much.

11 Everyone else remain seated while the jury retires
12 from the courtroom.

13 (WHEREUPON, the jury exited the courtroom at
14 approximately 3:52 p.m.)

15 THE COURT: All right. We'll stand at ease,
16 but let's wait until the jury leaves the courthouse
17 before we exit the courtroom.

18 All right. Could I see the attorneys, please?

19 (WHEREUPON, court stood at recess for the day at
20 approximately 3:53 p.m.)

21 *** END OF VOLUME VIII ***

State of South Carolina

In the Court of General Sessions

County of Anderson

State of South Carolina,

2007-GS-04-649

Plaintiff,

-vs-

February 1 through 18, 2010

Raymondeze Rivera,

Transcript of Record

Defendant.

Volume IX of X

B E F O R E:

The Honorable Alexander Macaulay, Judge

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

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Renee H. Tollison
Circuit Court Reporter

1 FEBRUARY 16, 2010

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 10:10 a.m.)

5 (WHEREUPON, State's Exhibit Number 87 through 90
6 were marked for identification only.)

7 THE COURT: Just anything preliminarily while
8 we're waiting for the Defendant?

9 MS. ADAMS: I don't think so, Judge. Just make
10 sure that ---

11 THE COURT: From the Defendant?

12 MR. DELGADO: Your Honor, of course, we are
13 always bound by your decision in your discretion. As a
14 result of viewing the video last night -- that is Mr.
15 Rivera's testimony of February 2006 -- February 2008 --
16 would the Court reconsider its initial ruling relating to
17 the admissibility of that?

18 THE COURT: What do you say, Madam Solicitor?

19 MS. ADAMS: Your Honor, it clearly goes to his
20 character, and we feel that it is admissible. This is
21 the penalty phase of the trial. And it is clearly
22 admissible as to his character.

23 MR. DELGADO: Your Honor, as we stated before
24 you yesterday, subject to statutory -- not admissive -- I
25 believe it was § 19-50-20 as well as Rule 403 of the

1 Rules of Evidence. We would base our objection to that.
2 Of course, we're bound by the Court's decision. I just
3 wanted to see if the Court had a thought as a result of
4 seeing that § 19-11-50 I believe is the exact citation.

5 THE COURT: Well, obviously I will give the
6 jury the instruction that it cannot be considered as far
7 as guilt in this case or anything other than what it
8 might reflect as far as the character of the Defendant.
9 Again, that is as to his not so much whether it is even
10 true other than he actually made statements of that
11 nature which goes to his acceptance of such activities.

12 At this time I decline to renew my -- or at least
13 change my ruling. And I will -- of course, if you will
14 renew it at the time we get to that portion of the case,
15 of the State's case, I'll consider it then.

16 (WHEREUPON, the Defendant entered the courtroom.)

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

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

20 THE COURT: Anything from Defense?

21 MR. DELGADO: Nothing, Your Honor.

22 THE COURT: Very good.

23 Ask the jury to join us.

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

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

3 Mr. Foreman, ladies and gentlemen of the jury, does
4 anyone need to report any breach or violation of the
5 Court's order as to exposure to outside information or
6 media coverage, or do you have any other concern to bring
7 to the Court's attention at this time? If so, please --
8 if you do have something to bring to the Court's
9 attention, please raise your right hand.

10 (No response)

11 THE COURT: Very good. Let the record reflect
12 that there's no indication from the jury. All right.
13 Very good.

14 All right. We'll recognize the State for their next
15 witness.

16 MR. CAMPBELL: Your Honor, the State calls Tim
17 Lowndes to the stand.

18 TIMOTHY LOWNDES,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. CAMPBELL:

22 Q. Mr. Lowndes, where are you employed?

23 A. I work for a company called Metro P.C.S.

24 Q. Where are y'all based out of?

25 A. We're based in Richardson, Texas.

1 Q. And what type of company is metro P.C.S.?

2 A. Metro P.C.S. is an advanced pay cellular phone
3 service.

4 Q. And do y'all have coverage throughout the United
5 States?

6 A. In various metroplex areas.

7 Q. Y'all are mainly in major metropolitan areas?

8 A. That's correct.

9 Q. And how long have you been employed with Metro?

10 A. I've been employed with Metro P.C.S. since April,
11 2008.

12 Q. In what capacity or position are you employed in?

13 A. I work in the security compliance department as a
14 fraud and ethics investigator and custodian of record.

15 Q. And do you routinely testify on behalf of Metro as a
16 custodian of records?

17 A. I do.

18 Q. Approximately how many times have you testified in
19 court?

20 A. Over all my life?

21 Q. Or just -- just with Metro?

22 A. Just with Metro in the last three or four months,
23 probably thirty times.

24 Q. Now, I want to talk to you little bit about a --
25 when a person has a cell phone, a Metro P.C.S. cell

1 phone, when a person makes a call, is the information
2 that a person dials or information that a person
3 receives, is it recorded in any shape, way, or form with
4 Metro?

5 A. Yes. All activity contacting our switch is recorded
6 which records in and outbound calls and even the
7 attempted calls.

8 Q. And is this information -- was this information kept
9 in normal course of business with Metro?

10 A. Yes, it is.

11 Q. Now, back on or about December 14th, 2006, Metro
12 received an exigent request from the Anderson Police
13 Department. Do you recall what the nature of that
14 request was?

15 A. Yes. I have it here.

16 Q. And what -- what is it?

17 A. It's an affidavit requesting the phone records
18 maintained by Metro P.C.S., billing records, calling
19 records, extract information for number 941-301-0113.

20 Q. And were you able to provide records for that
21 number?

22 A. Yes, sir, we were.

23 Q. Now, I'm going to show you what's been marked
24 State's Exhibit 87 and 88 which have all been shown to
25 Defense counsel. Can you please identify what these are,

1 sir? The first one is State's Exhibit Number 87.

2 A. 87 is a subscriber detail for the account for that
3 phone number I just gave you. 88 is the call details
4 along with a tip sheet on how to decipher them.

5 Q. And these calls -- this is calls associated with the
6 6113 number; is that correct? Exhibit number 88.

7 A. Yes, it is.

8 Q. And these calls seems fairly and accurately
9 represents the information that's going from the phone
10 and to the phone, in this case, through the time period
11 of December 6th through December 15th, 2006?

12 A. That is correct.

13 Q. This is kept in your normal course of business?

14 A. Yes, it is.

15 MR. CAMPBELL: Your Honor, at this time I move
16 it into evidence, State's Exhibit 87 and 88.

17 THE COURT: Any objection?

18 MR. DELGADO: None.

19 THE COURT: Without objection, 87 and 88 ...

20 MR. CAMPBELL: Yes, sir.

21 THE COURT: ... are admitted.

22 (WHEREUPON, State's Exhibit Number 87 and 88 were
23 admitted into evidence.)

24 Q. Now, dealing with the subscriber profile, which I
25 want to show you -- I'll hand you back 87. What is the

1 name on the account dealing this one, sir?

2 A. It has the name of Raymond.

3 Q. And what address is associated with the number --
4 with the name of Raymond?

5 A. 1715 Morell Street in Sarasota, Florida.

6 Q. And this is information that would be collected or
7 taken at the time that the account was opened; is that
8 correct?

9 A. That is correct.

10 Q. Does Metro P.C.S. follow through and go back and
11 check to see if this subscriber information is correct?

12 A. No, we don't. We're an advanced pay company. There
13 is no contract with us. You pay for the service in
14 advance, so we're not allowed to require you to give
15 positive identification. We ask for it, but we can't
16 require you to give it to us.

17 Q. Basically, you get paid up front; is that right?

18 A. That is correct. It's like going to the grocery
19 store paying for your groceries. You don't have to give
20 the cashier your driver's license or identify yourself to
21 her when you pay by cash.

22 Q. This account was opened up on August 15th, 2006.

23 A. That is correct.

24 Q. And what was the ending date on this account?

25 A. The account hot-lined on December 16th, 2006.

1 Q. And what is -- when you refer to hot-line, what are
2 you talking about?

3 A. That's when the -- the phone service is not paid for
4 going beyond the date. And for a period of usually
5 thirty days you can still call 911, you can still call
6 customer service, but you cannot receive or send phone
7 calls during that period of time.

8 Q. Now, is the phone in this case, this Metro P.C.S.
9 phone, based upon this subscriber Raymond's information,
10 is that phone strictly limited to the range of the cell
11 towers that Metro P.C.S. set up in or around the Atlanta
12 area?

13 A. Or wherever we have service.

14 Q. And does your company have service in Anderson,
15 South Carolina.

16 A. Not directly. We do have a roaming agreement with
17 Verizon.

18 Q. But is that something a person has to pay for to get
19 extra and then -- and when they buy the phone?

20 A. Yes. You set up an account called travel talk, and
21 it's advance pay as well.

22 Q. And did this account have that type of feature?

23 A. No, sir.

24 Q. Now, the 941 number, where exactly is that area
25 code?

1 A. I believe that's the Tampa, Florida area.

2 Q. And based upon your knowledge, you're coming out of
3 Atlanta, how far east going toward South Carolina does
4 your cell phone towers range?

5 A. When I was driving last night, I noticed I was about
6 forty-eight miles from the court when I switched over to
7 Verizon. That was on Highway 85.

8 Q. And without that type of pre-arranged service in
9 Anderson, you wouldn't be able to talk; is that right?

10 A. That is correct.

11 Q. Now, you've had the opportunity to review State's
12 Exhibit 88, the records associated with the number -- the
13 6113 number between December 6th and December 15th, 2006.

14 A. Yes, I have.

15 Q. And on that were you able to see any type of phone
16 calls that were specifically made to a area code of 803-
17 235-9410?

18 A. Yes. Although it will take me a minute to find it
19 unless you have the date and time.

20 Q. I'm going to show you what's been marked State's
21 Exhibit 89. Please take a look at what this is, sir.

22 A. Yes, I see a call made to 864-276-9875.

23 Q. And State's Exhibit 89 is a summary of information
24 and records kept in State's Exhibit Number 88; is that
25 correct?

1 A. Yes, sir. These are the same calls.

2 Q. That's strictly dealing with the area code of 803-
3 235-9410 associated with a Asha Wiley and also 864-276-
4 9875 associated with Kwana Burns?

5 A. Yes.

6 MR. CAMPBELL: Your Honor, sir, I'm going to
7 move the summary in as a State's Exhibit Number 89.

8 MR. DELGADO: Without objection.

9 THE COURT: Without objection?

10 All right. State's Exhibit number 89 is admitted.

11 (WHEREUPON, State's Exhibit Number 89 was admitted
12 into evidence.)

13 Q. Mr. Lowndes, I'm first just going to deal with the
14 number associated with Asha Wiley that ends in 9410.
15 After -- did you -- when you reviewed these records, did
16 you have the opportunity to see how many times that phone
17 number was called?

18 A. Yes, although, I don't recall the number off the top
19 of my head.

20 Q. Would fourteen be about right?

21 A. That sounds correct.

22 Q. And looking at that, all those numbers calling --
23 that's called to Asha Wiley's number of 94 -- last
24 numbers 9410, all of them have star-67 before them; is
25 that correct?

1 A. Can you give me the date that you're referring to,
2 please.

3 Q. Starting at 12/12/06 at 10:33.07?

4 A. Yes.

5 Q. Okay. If you'll look at the summary, I think it
6 might explain it a little easier for you.

7 A. On the summary you don't show the phone numbers, you
8 have the names. I go by phone numbers.

9 Q. Sorry. But dealing with that 9410 number, all of
10 the numbers that deal -- before it start with star-67.

11 Would you please explain to the ladies and gentlemen of
12 the jury what, if anything, that means?

13 A. Star-67 is a feature in that you can put on your
14 phone -- dial into your phone when you want to withhold
15 your number on the receiving end of the call. So I'm
16 placing the call, I hit star-67, and you're receiving the
17 call. When you receive the call, my caller
18 identification does not come in through to you, but it
19 still goes through to our switch.

20 Q. So it's still recorded by Metro P.C.S. records?

21 A. Yes, it is.

22 Q. But the individual on the other end of the line will
23 not be able to see who's calling them, whose phone number
24 comes through?

25 A. That is correct.

1 Q. Now, I believe it started with that number between
2 12/12/06 and 12/15/06 ending at 14:37, twenty-eight
3 hours; is that correct?

4 A. 14:37.28.

5 Q. Now, dealing with the second number with the name of
6 Kwana Burns, which her phone number ends in 9875, were
7 you able to see if any phone calls were made from the
8 phone associated in this case with Mr. Raymond Rivera to
9 her phone number?

10 A. Yes, there are calls.

11 Q. And they are numerous, are they not?

12 A. Yes.

13 Q. And prior to December 15th, 2006, are any of those
14 calls to that number blocked by the person dialing using
15 the star-67?

16 A. I believe that they are not, but I wanted to look at
17 the record to make sure I'm being accurate.

18 Q. And that will go through December 14th, '06 at
19 23:51.33.

20 A. No, they're not being blocked. They're just been
21 dialed straight.

22 Q. So everything -- so the person on other end will
23 receive whoever's phone number is coming through at that
24 point in time up through -- up to December 15th, 2006?

25 A. That is correct.

1 Q. Now, afterwards, on this phone dealing with Kwana
2 Burns, did you see if the phone number was dialed again
3 from the 6113 number?

4 A. Yes, it was.

5 Q. And were the calls after -- or beginning on December
6 15th, 2006, were those phone numbers blocked by the
7 person who was dialing that number?

8 A. Every time, and there were a lot of them.

9 Q. I believe there were eighteen times this phone
10 number was called?

11 A. Yes, sir. That is correct.

12 Q. And that was on the day of December 15th, 2006?

13 A. Yes, sir.

14 MR. CAMPBELL: Court's indulgence, please.

15 Mr. Lowndes, I have no further questions. Please
16 answer any questions that the Defense may have.

17 THE WITNESS: Yes, sir.

18 MR. DELGADO: Mr. Lowndes, good morning, sir.

19 THE WITNESS: Good morning, sir.

20 CROSS-EXAMINATION

21 BY MR. DELGADO:

22 Q. Mr. Lowndes, you're here to tell our jury that -- if
23 you please -- if I got your numbering incorrect, please
24 correct it for me -- that from December the 12th through
25 December 15th, there were thirty-two different phone

1 calls from Raymond's number which ends in 6113 to either
2 of the two numbers, either Ms. Wiley or Ms. Burns?

3 A. I believe that's correct.

4 Q. And some of those, Mr. Lowndes, occurred one right
5 after another, do they not, sir?

6 A. I believe on the 15th I did see quite a few that
7 were one after the other.

8 Q. Take your time.

9 A. Yes, that is correct.

10 Q. How many of them, would you say for our jury, sir,
11 seemed to be one right after the other?

12 A. From 11:54 in the morning on the 15th of 2006,
13 there's one, two, three, four, five, six -- six without a
14 break, just one after the other. Then there is a short
15 break of about thirty minutes and they start up again.

16 Q. A frenzy of telephone calls within ten minutes?

17 A. Yes. I can give you exact number if you need.

18 Q. But the total was, I think, at least four ...

19 A. I think it was eighteen calls.

20 Q. Eighteen phone calls.

21 A. On the 15th.

22 Q. How many did you say within just a short period of
23 time and then a break and then another?

24 A. There were six within just a minute of each other
25 and then there is a thirty-minute break. And then

1 there's another four, and then there's a break. And then
2 there's three more and a break. Then there's one and a
3 break, one and a break.

4 Q. From 11:57, when did those telephone calls end, sir?

5 A. The last one I show is at 19:22.21 -- which that's
6 military time. I'm sorry.

7 Q. Yes, sir.

8 A. That would be 7:21 in the evening.

9 Q. So from 14:57 -- that's 2:57 in afternoon? Was it
10 14:57?

11 A. Yeah, actually they started 11:54 in the morning.

12 Q. I'm sorry. So 11:54, almost noon ---

13 A. Yes.

14 Q. --- until about seven that night?

15 A. Yes.

16 Q. About right, generally. Eighteen phone calls in
17 that period of time?

18 A. That is correct.

19 MR. DELGADO: Thank you, very much, Mr.

20 Lowndes.

21 MR. CAMPBELL: Just a couple of follow-ups.

22 REDIRECT EXAMINATION

23 BY MR. CAMPBELL:

24 Q. Mr. Lowndes, when the calls were all dialed with the
25 star-67 prefix before to the two phone numbers of the two

1 girls, were any of those calls answered?

2 A. They do show that they went through. Some of them
3 are very short durations like nine seconds, sixteen
4 seconds, but it does show that it went through. But
5 going through our switch just means that the connection
6 was completed. It doesn't mean that they've talked to
7 anybody at the other end.

8 Q. And the person that dialed those numbers can still
9 listen to the voice message on the other end of the line;
10 is that correct?

11 A. If there is one to be heard, yes.

12 MR. CAMPBELL: I have no further questions.

13 MR. DELGADO: Nothing.

14 THE COURT: Any recross?

15 All right. You may step down, sir.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Witness be excused? Any objection?

18 MR. CAMPBELL: No objection.

19 THE COURT: All right. Without any objection,
20 you may be excused. Thank you, sir.

21 Have they been introducing doubles?

22 MR. CAMPBELL: Yes, sir.

23 THE COURT: Let's put them on.

24 MS. ADAMS: Not those, Your Honor.

25 THE COURT: Well, that's what I'm asking about.

1 MR. CAMPBELL: Not -- those are duplicates
2 we've already had.

3 THE COURT: But anything that has been
4 introduced, be sure that the court reporter ---

5 MR. CAMPBELL: State's 87, 88 and 89, with this
6 witness was introduced into evidence, Your Honor.

7 THE COURT: But be sure the court reporter has
8 them.

9 MR. CAMPBELL: She has them.

10 THE COURT: Got them?

11 MADAM COURT REPORTER: Yes, sir.

12 MR. CAMPBELL: Yes, sir, she has them.

13 THE COURT: Good.

14 All right. You may call your next witness.

15 MS. ADAMS: Thank you, Your Honor. The State
16 calls John Zamberlin to the stand.

17 JOHN ZAMBERLIN,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. ADAMS:

21 Q. And, John, obviously you've testified before and the
22 jury knows that you were the detective in both Asha Wiley
23 and Kwana Burn's death. But before we get into actually
24 putting all of this together for the jury, I want to ask

1 you, after Asha Wiley's trial, when the Defendant was
2 convicted of that murder, did you have an opportunity to
3 that speak to the Defendant on February 15, 2008?

4 A. Yes.

5 Q. And did he talk to you about Phoebe Kinney, the
6 victim that testified yesterday for this jury?

7 A. Yes.

8 Q. Please explain to the jury what happened.

9 A. I had a conversation with Raymondeze Rivera after
10 the first trial in his case. And he indicated to me that
11 it all started with a girl that he knew, and her first
12 name was Phoebe. I asked him what her last name was and
13 he said that he didn't know, that I should be able to
14 find out.

15 Q. So he told you it all started with Phoebe?

16 A. That's correct.

17 Q. And he wanted you to go find Phoebe and see who she
18 was?

19 A. He asked for me to find her and to get a copy of the
20 statement that she had apparently given the law
21 enforcement, and he wanted me to bring that statement to
22 him and -- and read it for him and to him.

23 Q. So you didn't know who Phoebe was then in February
24 of 2008?

25 A. I had no idea who Phoebe was.

1 Q. So obviously you found her?

2 A. We finally found Phoebe, yes.

3 Q. Okay. And how did you find her?

4 A. We looked back on Raymondeze's records and started
5 going through victims and we also put out some feelers,
6 if you will, on MySpace.com. It was really sort of a
7 significant amount of investigation that went into
8 finding somebody when you only have a first name. But
9 she did respond to us through MySpace.com. We were able
10 to speak with her. And also we were able to obtain the
11 statement that Phoebe had provided law enforcement back
12 in, I believe it was 2001.

13 Q. Okay. And John, I'm going to show you -- it's
14 already in evidence State's Exhibit 86. This is actually
15 the statement that Phoebe gave back in 1999. What did
16 you do with that statement? Did you take it back to the
17 Defendant?

18 A. Yes. I did take the statement back to the Defendant
19 upon his request, and I did read it to him.

20 Q. And that was actually a few days later. I believe
21 it was February 22nd of 2008?

22 A. I believe so, yes.

23 Q. And you went through that statement. How many pages
24 is it again? I believe it's sixteen?

25 A. I believe so, yes.

1 Q. And did you read that statement to him?

2 A. Yes, I did.

3 Q. Okay. What was he doing while you were reading it
4 to him?

5 A. He was listening to me, listening to the content of
6 the statement.

7 Q. What was his demeanor during all of that when you
8 were reading the statement?

9 A. He was calm and polite like all of my dealings have
10 been with Raymondeze.

11 Q. What did he say about that statement? What did you
12 ask him after you finished reading it?

13 A. I asked him if there was any truth in the statement
14 or was it not true. Or was parts of it true, what part
15 was true versus what part was not true? He indicated
16 that it was all true with the exception of raping Phoebe
17 Kenney. He said that he did not rape her.

18 Q. So he admitted he threatened to kill her?

19 A. Yes.

20 Q. And he admitted he used a knife?

21 A. Yes.

22 Q. He just said the sex was consensual.

23 A. He just said that the sex was consensual.

24 Q. All right. Thank you, John.

25 Now, John, let's talk about Asha Wiley and Kwana

1 Burns' murders. Let's put this together for the jury.

2 Asha was murdered Sunday night December 10th; is that

3 right?

4 A. Yes, Sunday night December the 10th.

5 Q. Okay. And her body was not found until Tuesday,

6 December the 12th?

7 A. That's correct, yes.

8 Q. And when was Kwana murdered?

9 A. The 13th. Probably the evening hours or early
10 morning hours of the 13th or the very early morning hours
11 of the 14th is when Kwana Burns was murdered.

12 Q. And Kwana -- so Asha was found on Tuesday the 12th
13 and Kwana was found Thursday the 14th?

14 A. Yes, yes.

15 Q. Okay. John, when did you realize that these two
16 murders were related -- because I know you were at the
17 scene of Kwana's murder?

18 A. The theory developed almost really immediately upon
19 us having an opportunity to be on the scene of the murder
20 of Kwana Burns because we had already and were engaged in
21 an active investigation for the murder of Asha Wiley and
22 had already received some facts in that case that were
23 similar and matched with what we were currently dealing
24 with on the scene of Kwana Burns' murder.

25 Q. And what were those facts? What did you know

1 immediately at Kwana's scene?

2 A. Well, we had similar first name of an individual
3 that had either been with her, communicated with each of
4 these young ladies. At that time, we also had a similar
5 vehicle description. Both of these young ladies had been
6 the asphyxiated to death, and that theory became a
7 reality about seventy-two hours later into the
8 investigation. But we felt like on the scene of Kwana
9 Burns' case that these two cases were connected and that
10 we were looking for a double murderer.

11 Q. Now, John, you explained in detail to the jury how
12 you tracked the Defendant to Douglasville by the use of
13 his cell phone?

14 A. Yes.

15 Q. Now, when he gave his confession regarding Kwana
16 Burns at the Douglasville jail on December 21st, did he
17 actually confess to killing both Asha and Kwana?

18 A. Yes.

19 Q. I want to show you State's Exhibit Number 6. Can
20 you please tell the jury what that is?

21 A. This is the ten-page statement that Raymondeze
22 provided me at the Douglasville County Detention Center.

23 MS. ADAMS: Your Honor, I'd ask that State's
24 Exhibit Number 6 be moved into evidence.

25 THE COURT: Any objections?

1 MR. MCGUIRE: Only a prior *Jackson Denno*
2 objection.

3 THE COURT: All right. Subject to the Court's
4 prior rulings, it will be admitted.

5 (WHEREUPON, State's Exhibit Number 6 was admitted
6 into evidence.)

7 Now, Mr. Foreman, ladies and gentlemen of the jury,
8 the Court has admitted a statement allegedly made by the
9 Defendant. However, it will be for you to determine
10 whether or not that statement was freely, voluntarily,
11 knowingly and intelligently made and even if that
12 statement was made at all. And you must make such
13 finding beyond a reasonable doubt. Moreover, you can
14 give it any or whatever weight that you see that you deem
15 appropriate.

16 All right. You may proceed.

17 MS. ADAMS: Thank you, Your Honor. At this
18 point I'd like to publish the statement to the jury.

19 Sergeant John Zamberlin has written his
20 statement for me at my request.

21 I was traveling from Washington, D.C. and
22 I was coming by Anderson, South Carolina. I
23 needed gas, so I stopped at a gas station
24 across from a Wendy's. This was on Sunday
25 December 10th, 2006. I asked somebody for

1 directions to the mall. It was still daylight.

2 I want to say about two p.m. to three p.m.

3 Then I went to the mall.

4 I walked around a little bit, then I went
5 into the store that has the men and women
6 store. I met Kwana Burns working at the
7 cosmetic counter. She gave me a business card
8 with her cell number on it. She said she was
9 single. Kwana said she got off work at 3:30.
10 She had to pick up her kids.

11 I noticed that my cell phone didn't work
12 in Anderson, so I used a phone in the store
13 Kwana works at to call Kwana. Kwana had left
14 work. I told Kwana I would call her in about
15 one hour from a pay phone. So I walked around
16 some more.

17 I met this woman close to where the bungee
18 jump was. Her name was Asha Wiley. She was
19 going into this store that I don't know the
20 name of it, but you can enter it from the
21 outside of the mall. Asha was looking at some
22 jewelry and a dress. I was talking with Asha,
23 and she told me she didn't give her number out
24 to strangers. I gave her my cell number.

25 I left and walked back over to where the

1 bungee jump was. I didn't have my keys. They
2 had fell out of my pocket.

3 I went back to Asha some more. Asha
4 picked out some jewelry and bought it. I asked
5 Asha if she wanted something to eat. Asha
6 wanted McDonald's, so I followed her in my car
7 to McDonald's. We went inside and ate. We
8 talked a little while.

9 I asked Asha to the movies. Instead of
10 driving two cars, I followed her back to her
11 apartment to drop her car off. Asha got her
12 bags out of her car, and I spilled a Sprite in
13 my car. Asha came over and asked me if
14 everything was okay.

15 I went inside. Asha asked me if I wanted
16 something to drink. I asked her if she had any
17 alcohol, and she said she had some Gray Goose.
18 Asha got it from the top of the refrigerator.
19 Asha showed me some clothes she had bought for
20 her daughter.

21 Asha said she just didn't want to drink.
22 To make it interesting we should play cards.
23 We played two-man spades. Whoever is last had
24 to drink a shot.

25 After that Asha asked me if I wanted to

1 watch a DVD movie. I looked through some of
2 her DVDs and picked out a Bruce Lee movie. She
3 put it in her PlayStation 2 downstairs.

4 We were watching the movie and I kissed
5 Asha. I was on top of her. I took her panties
6 off. Asha asked me if that's how I was going
7 to take it. We had went from the couch to the
8 floor.

9 By the time we were on the floor, I had
10 took Asha's clothes off. We had sex on the
11 floor. Asha asked me if she could go to the
12 bathroom, and I said no. So Asha peed on the
13 floor. Then we moved back to the couch and we
14 fell asleep.

15 Asha woke me up shaking. She said she
16 needed some sugar. I thought she was playing,
17 so I told her no. Asha asked me to get a
18 banana, that it was beside the microwave. I
19 told her I don't know where that was. So I
20 told her to get it.

21 Asha was crying, said I was trying to kill
22 her because I wouldn't let her get sugar. I
23 told her I didn't know she was a diabetic.

24 I told Asha I didn't want to sleep on the
25 couch anymore. I wanted to go upstairs. Asha

1 said it was messy, but I told her I didn't
2 care.

3 We went upstairs into her bedroom. We had
4 sex again on the bed, then we fell asleep
5 again.

6 Asha woke me up and told me she had to go
7 to the bathroom. I followed her to the
8 bathroom, then got back in bed. I tried to
9 have sex with her again, but she refused.

10 I went downstairs and got a knife. Asha
11 had went back to sleep. I got a small steak-
12 type knife from the kitchen.

13 I went back upstairs and put the knife to
14 her throat. Asha woke up. I told her we were
15 going to have sex. I got on top of her on the
16 bed and had sex with her.

17 Then I told Asha to put her hands behind
18 her back after the sex. I cut some cords from
19 the printer. I tied her arms and hands, then I
20 cut some more cords and tied her legs. Then I
21 put a sheet over her head. Asha asked me not
22 to kill her, that she was all her daughter had.
23 I turned the TV up.

24 One of the cords I had cut, I put it
25 around her neck and I choked her with it. Asha

1 peed on the bed again. We fell off the bed,
2 and somehow the cords broke on her legs. Asha
3 asked me to take the pillowcase off her face,
4 so I did.

5 Asha told me that her daughter was the
6 only thing she had. Asha asked me if I had a
7 daughter, and I said that I did. Asha told me
8 that I didn't have to kill her, that it was all
9 her fault and she wouldn't say anything.

10 I went downstairs, put my clothes on, then
11 I went back upstairs and put the pillowcase
12 back over Asha's face. She was crying and told
13 me that she had a friend, Joya, she had told
14 about me. Asha told me that she told Joya
15 about what kind of car I had and that I was
16 from Atlanta. That's when I put the cord
17 around her mouth, started strangling her with
18 my hands. She peed on the floor. I checked to
19 see if she was dead, and she was.

20 I cut the cords off her mouth and wrist.
21 I started wiping everything down. I found a
22 rag in the bathroom and some cleaning supplies.
23 I washed the knife. I washed the shot glasses.
24 I wiped the Gray Goose and I put it back on the
25 refrigerator. I wiped down the door. I got

1 her cell phone and erased my name. I found a
2 trash bag under the sink in the kitchen and put
3 the banana, bra, panties, the cords, the cards
4 in the bag.

5 I went back upstairs and found a douche
6 bottle and put it inside her and cleaned her.
7 I wiped her down from head to toe. Then I
8 found some underwear, a bra, some shorts and a
9 shirt and I dressed her. There was some blood
10 on the floor beside her, so I cleaned that up.

11 I went downstairs, found the car keys,
12 went out the back door. I moved Asha's car two
13 apartment buildings away, then threw the car
14 keys away in the dumpster. Then I moved my
15 car.

16 I went back in the apartment in the back
17 door and got the bag. I heard someone pull up
18 in the front in a car. I left out the back
19 door, threw the bag in the dumpster and left.

20 I drove back to Atlanta. Along the way I
21 stopped at a rest stop and called Kwana Burns
22 on the phone. We was talking. I asked her
23 what had happened to her, then I drove to a
24 friend's house in Douglasville, Georgia. My
25 friend wasn't home, so I went to a motel.

1 Next day I went to a friend's house and
2 stayed. Then I talked to Kwana again by phone.
3 We set it up where I would meet Kwana in
4 Anderson Wednesday.

5 On Wednesday I drove back to Anderson. It
6 was about seven p.m. I had looked up the
7 address on Mapquest for Tribble Street, but I
8 got lost. I stopped at a Shell gas station on
9 Mall Street in Anderson. I used the pay phone
10 to call Kwana. Kwana told me that she lived
11 just down the street.

12 Kwana came to the store and met me. She
13 had her kids with her. I followed her back to
14 her house on Tribble Street. Kwana didn't have
15 any water, so she took her son to her aunt's
16 house to take a shower. I stayed at Kwana's
17 house.

18 Kwana came back. She had her cousin and
19 her daughter with her. Kwana had a plate of
20 food. It was mashed potatoes, beans and pork
21 chops. Kwana got a Pepsi out of her van and
22 brought it in. Kwana started cleaning up.
23 Kwana asked me if I wanted to see a movie and
24 she put Poseidon movie in with Kurt Russell.
25 Some guy came by and asked Kwana when did she

1 want him to clean the oven. Kwana told him
2 about five thirty a.m. or six a.m. The guy
3 left, then shortly after Kwana's cousin left.

4 We were sitting on the couch watching a
5 movie and talking. We starting kissing. Kwana
6 asked me if that's all I came over for. Kwana
7 had moved away from me, and she asked me what
8 time I was leaving. Kwana was worried her son
9 would see me at the house. I told her I was
10 going to leave at about three thirty a.m. to
11 four a.m.

12 I asked Kwana if I could lay down on her
13 bed. She told me it was not a good idea
14 because she was still moving and the bed wasn't
15 made up. She told me I could lay on the sofa.
16 Kwana was talking loud. I didn't want to wake
17 her daughter, so I asked her if we could talk
18 in the hallway.

19 In the hallway I kissed her, and she
20 pulled away. I pushed her in the bedroom.
21 Kwana fell down. Kwana tried to hit me with
22 some kind of a pole. I think it was laying on
23 a box. I grabbed her arm and throat. I told
24 her we didn't want to wake her daughter up
25 because I would kill her daughter.

1 Kwana was trying to talk to me. I was
2 trying to get Kwana's shorts and underwear off.
3 Kwana started hollering for her daughter
4 Kamille. I grabbed Kwana by the throat. Her
5 daughter came and was crying for her mom. I
6 was going to kill her daughter, but I couldn't
7 so I strangled Kwana. She said she had asthma.
8 Kwana started peeing on herself. Kwana stopped
9 breathing.

10 I went to the dining room and got some
11 chlorine wipes, and I wiped down the bathroom.
12 I went back to the room where Kwana was at and
13 I wiped down Kwana. Then I wiped the fork down
14 I was eating with. I wiped down the two-liter
15 Pepsi. I got Kwana's cell phone. I deleted my
16 number out of it and wiped the phone down.
17 There was a tablet with my name and number on
18 it, so I tore the paper off and took it with
19 me.

20 After I had wiped down everything, I found
21 a jump rope in a box and I hogtied Kwana with
22 it. I put Kwana's hands behind her back first
23 and tied them, then tied her legs. I placed
24 her daughter on Kwana. I put the wipes in the
25 toilet, then I left.

1 I went back to my friend's house in
2 Douglasville, Georgia.

3 End of statement. This is a true and
4 voluntary statement, and I have received a copy
5 of it.

6 DIRECT EXAMINATION

7 CONTINUED BY MS. ADAMS:

8 Q. John, please remind this jury how much time you
9 spent with the Defendant when you took that statement?

10 A. Approximately four hours.

11 Q. What, if anything, did you ask him before you left
12 that day right after he gave you that statement?

13 A. Well, really the only thing that was unanswered was
14 why. And so I asked him why did he -- why did he do what
15 he had just told me he did. And he asked me two
16 questions. He asked me what his profile said, and I told
17 him that we didn't have a profile. And then he asked if
18 I thought he was a serial killer. And I said, you know,
19 I don't know. I'm asking you why. And he quoted a part
20 of a Bible verse from Job. And he told me that he had
21 been kicked out of his home state and that he wasn't
22 allowed to come back into his home state of Georgia to
23 visit his family or his children and that basically the
24 system made him do what he had done.

25 Q. And in fact, did you later find out -- in fact, the

1 jury has this -- his conviction from 2003 against Renee
2 Karls and cruelty to children and a few other things that
3 the jury will have. Was he actually banned from the
4 State of Georgia?

5 A. Yes, he was. Except for Echols County which is a
6 small County that borders the Florida line.

7 Q. So every county in Georgia but one?

8 A. Except for one.

9 Q. What did he ask you when you were leaving that room
10 that day?

11 A. He had asked me if I'll bring him the obituaries
12 from the -- either the funeral home or the newspaper and
13 ...

14 Q. What did you ask him?

15 A. I asked him if there was anything that he would want
16 me to tell the family of these two young ladies that he
17 had killed. And he asked me if I had a daughter, and I
18 told him that I did. And he said if I killed your
19 daughter, would there be anything that I can say to you
20 that would make you feel any better. And I said, no,
21 sir, there would not be. And he said, then I don't have
22 anything to say.

23 Q. And then, John, you came back to Anderson obviously
24 after that?

25 A. Yes.

1 Q. What did you do regarding the investigation of both
2 Asha and Kwana's murder based on that statement?

3 A. We started working on all the corroborative details
4 of the statement to corroborate through what we knew
5 about the scenes to verify information that was contained
6 within the statement.

7 Q. And were you able to do that?

8 A. Yes.

9 Q. If you don't mind ...

10 MS. ADAMS: Judge, may he step down?

11 THE COURT: Certainly.

12 (WHEREUPON, the witness stepped down from the
13 witness stand.)

14 Q. John, if you can get a little closer to the screen.
15 It may be easier for some jurors to watch this screen.

16 I want to show you State's Exhibit Number 74. Can
17 you please tell me what that is?

18 A. These are cut computer cables from the Asha Wiley
19 crime scene just as he described in his statement where
20 he had cut cords to tie her up.

21 Q. This is State's Exhibit 75.

22 A. This is the playing cards as described in his
23 statement that they played a game of cards on the Wiley
24 case.

25 Q. I believe all of these are going to be Asha Wiley's,

1 so the jury knows.

2 This is State's Exhibit 76?

3 A. This is the Grey Goose bottle. He had talked about
4 that they had a shot out of the Grey Goose bottle. And
5 that's a Grey Goose bottle.

6 Q. And where did you find it?

7 A. That was located on top of the refrigerator, I
8 believe, in the kitchen.

9 Q. Is that consistent with his statement as well?

10 A. Yes.

11 Q. And State's Exhibit 77, what is that? The sofa. Do
12 I have it upside down?

13 A. Well, this is where the cushions had been removed
14 off of the sofas during the crime scene.

15 Q. And what was found on those cushions?

16 A. Urine on the middle cushion.

17 Q. Is that consistent with his statement, as well?

18 A. Yes. Yes.

19 Q. And State's Exhibit 78.

20 A. This is the Playstation 2 he talked about watching a
21 movie in or was going to watch the movie in. A
22 photograph of it.

23 Q. And State's Exhibit 79?

24 A. This is the cleaning supplies. He had talked about
25 cleaning up the crime scene rather methodically. And

1 this is the cleaning supplies.

2 Q. And State's Exhibit 80. What does that depict for
3 the jury?

4 A. This is the out -- this is the outside of her
5 apartment right here.

6 Q. Asha's apartment?

7 A. Yes. Asha Wiley's apartment. That's where she
8 lived.

9 Q. And is that -- where was her car found?

10 A. It was found about three buildings away in this
11 direction. Probably down here in front of about this
12 building, but in the front. This is a picture of the
13 back yard, so to speak, of Belton Woods Apartments. But
14 it's about three apartments away.

15 Q. So was that consistent with his statement, as well?

16 A. Yes, it was.

17 Q. Thank you, John. You can have a seat.

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

19 Q. Now, also, John, did you find a credit card in the
20 Defendant's wallet?

21 A. Yes.

22 Q. And whose credit card was that?

23 A. It was a credit card in the name of a Teshara Hooks.

24 Q. And as part of your investigation, did you find out
25 who Teshara Hooks was?

1 A. I did.

2 (WHEREUPON, State's Exhibit Number 91 was marked for
3 identification only.)

4 Q. I'm going to show you State's Exhibit 91. Can you
5 please tell the jury what that is, State's Exhibit 91?

6 A. This is a photograph of Teshara Hooks' credit card.
7 Actually, it's her debit card, Visa debit card, and --
8 that was located in Raymondeze Rivera's wallet.

9 MS. ADAMS: Your Honor, I'd ask that State's
10 Exhibit 91 be moved into evidence.

11 MR. DELGADO: No objection.

12 THE COURT: Without objection, State's Exhibit
13 91 is admitted.

14 (WHEREUPON, State's Exhibit Number 91 was admitted
15 into evidence.)

16 Q. And did you find out as part of your investigation
17 where Teshara Hooks lives?

18 A. She lives in Prince George, Maryland just outside of
19 D.C.

20 Q. So that's near the Washington, D.C. area?

21 A. Yes.

22 Q. Is that consistent with his statement of where he
23 was traveling from towards Anderson?

24 A. Yes.

25 Q. And were you able to also confirm the fact through

1 this credit card that he did go to McDonald's as well?

2 A. Yes.

3 Q. John, in the Defendant's statement, he also
4 describes wiping down Asha's apartment. As part of your
5 investigation, did the Anderson Police Department attempt
6 to get fingerprints?

7 A. Yes.

8 Q. Did you find any prints on that Grey goose bottle?

9 A. No.

10 Q. How about the playing cards?

11 A. No.

12 Q. How about in Asha's car?

13 A. No.

14 Q. Did you find Asha's car keys that he said he threw
15 away?

16 A. No.

17 Q. Did you find the douche that he said he used on
18 Asha?

19 A. No.

20 Q. How about the bra, panties, banana or cut cords?

21 A. No.

22 Q. Did you attempt to find those items that he claimed
23 he threw away?

24 A. Yes.

25 Q. Please tell the jury about that?

1 A. The Defendant had told me that the -- some of those
2 items had been bagged up. And on his way out from Asha
3 Wiley's apartment, he had thrown them in a dumpster that
4 was outside. So we contacted the company that provides
5 service to those commercial dumpsters there at Belton
6 Woods Apartments. And we were able to determine that
7 that garbage was delivered to a landfill over in Georgia.
8 We contacted that landfill over in Georgia, and we
9 found out that they are a very largescale landfill and
10 that there's active bulldozing that goes on almost
11 twenty-four hours a day. And that since that trash had
12 been taken there, there has been a lot of bulldozing and
13 a lot more trash brought in. And there's numerous,
14 numerous tons of trash brought in. And it was a white
15 plastic bag, as I remember him describing it. And we
16 described that for them, it was almost insurmountable
17 odds really to try and excavate that landfill.

18 Q. So obviously, you didn't find ---

19 A. No.

20 Q. --- those items?

21 A. No.

22 Q. John, you were obviously present for the entire
23 first trial back in February of 2008; is that correct?

24 A. Yes.

25 Q. I want to show you what's been marked as State's

1 Exhibit 90. Can you please tell the jury what's on this
2 CD?

3 A. This is a ---

4 MR. MCGUIRE: Your Honor, at this point I think
5 would be a good point for me to renew my prior objection.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen of the jury, I'm going to ask you to retire for
8 a few minutes. I need to take up a matter of law with
9 the attorneys. Again, do not undertake discussion the
10 case among yourselves in anyway. If you would, please,
11 retire to the jury room.

12 (WHEREUPON, the jury exited the courtroom at
13 approximately 11:10 a.m.)

14 THE COURT: All right. Your motion?

15 MR. MCGUIRE: Judge, we would just renew our
16 motion to not allow this video to be shown to the jury
17 based on the statute § 19-1150, Rule 403 and the due
18 process clause of the Fourteenth Amendment.

19 THE COURT: Madam Solicitor, if you would
20 please give your proffer on this Exhibit Number 90.

21 MS. ADAMS: Your Honor, we were just going to
22 play the tape that, I believe ---

23 THE COURT: No. I said your proffer. How is
24 it relevant and material?

25 MS. ADAMS: Your Honor, it goes to his

1 character.

2 THE COURT: And also not violate -- not
3 violative of Section § 19-11-150.

4 MS. ADAMS: Your Honor, we're admitting it to
5 show the Defendant's character.

6 THE COURT: All right. What portion of the --
7 obviously, it's a fifty-minute video. And the Court has
8 reviewed it. But what will be the evidence you seek to
9 rely on to show character?

10 MS. ADAMS: Your Honor, the -- the entire tape
11 shows his character, his demeanor. And we have no
12 problem with the instruction before I play the tape, as
13 we have discussed earlier, that that is what the jury is
14 to consider this as.

15 THE COURT: Well, the only thing is -- and I
16 just -- having looked at it -- and in particularly with
17 the efforts of the attorney to redirect the Defendant's
18 testimony as it relates to the current case he's being
19 tried for, he insisted on going back to this case. And
20 it seems to come almost completely -- the testimony of
21 the Defendant in a criminal case shall not be afterwards
22 used against the Defendant in any other criminal case.
23 And obviously that, by your proffer, was testimony
24 elicited in the first criminal case. And this is the
25 other criminal case.

1 MS. ADAMS: Your Honor, that's why we -- we
2 didn't put this in during the guilt phase. But this is
3 -- this is the death penalty ---

4 THE COURT: This is a part of that other
5 criminal case because the first is not a sentencing
6 phase.

7 MS. ADAMS: Right. The guilt phase of Kwana
8 Burns, right. Yes, sir.

9 THE COURT: It is. This is another case. And
10 this is testimony elicited in the first case. More ---

11 MS. ADAMS: And we ---

12 THE COURT: Go ahead. That's why I'm asking.
13 I want to know what distinguishes this from Section § 11
14 -- § 19-11-150. And also, you've read into the record a
15 rather extensive confession, and I think that the
16 confession as to this case was introduced and re-
17 introduced in the sentencing phase and the guilt phase.

18 MS. ADAMS: Yes, sir. But seeing the Defendant
19 talk about it and hearing me read it, this is what goes
20 his character. That's why we feel that it is clearly
21 admissible to show his demeanor.

22 THE COURT: I understand you think it's clearly
23 admissible. But what grounds because, obviously, it's
24 also -- even if it is relevant and material, it's
25 cumulative because everything that he talks about there

1 against his attorneys' advise has been admitted into
2 evidence.

3 MS. ADAMS: But Your Honor, it's character in
4 the sense that it -- the jury is seeing him say it, how
5 he says it. It goes to his character, what he says what
6 he claims. And the Defense has actually used part of it
7 already in their opening statements when he claims to be
8 a hit-man. They have already told the jury about it and
9 actually told the jury that he took the stand in February
10 of '08 and that they ---

11 THE COURT: So it will be cumulative.

12 MS. ADAMS: Actually, Judge, I don't think it's
13 cumulative at all because it shows his character.

14 THE COURT: Well ...

15 MS. ADAMS: It's not cumulative.

16 THE COURT: What other purpose would it be for
17 if it's not to show his character? He's not going to be
18 convicted on it. That's already been decided.

19 MS. ADAMS: Right, which is why we're -- we
20 want to show it to them for their -- for his character.

21 THE COURT: All right. I'm going -- very good.
22 Anything else?

23 MS. ADAMS: No, sir.

24 THE COURT: I'm going to exclude State's
25 Exhibit -- is that 90?

1 MS. ADAMS: Yes, sir.

2 THE COURT: All right.

3 MS. ADAMS: Your Honor, may we approach?

4 THE COURT: Certainly. I'm excluding it, of
5 course, on Section § 19-11-150 that it was testimony
6 received in another separate criminal trial, and it was
7 also received over the instruction of his attorneys in
8 that case. Moreover, I do find that it is although
9 relevant, it's probative value is substantially
10 outweighed by the danger of unfair prejudice, confusion
11 of the issues, misleading and needlessly a presentation
12 of cumulative evidence, Rule 403.

13 (WHEREUPON, a bench conference was held off the
14 record.)

15 THE COURT: All right. Let's take a short
16 recess.

17 Officer, you can step down. Of course, you
18 understand that you're still under oath.

19 THE WITNESS: Yes, sir.

20 (WHEREUPON, court stood at recess for a short
21 break.)

22 THE COURT: All right. Please take your seats.
23 All right. Let's see, the witness ...

24 MS. ADAMS: Your Honor, we just ask that the
25 jury be given a curative instruction to disregard the

1 statements that Mr. Delgado made in his opening
2 regarding the fact that the Defendant claimed that he was
3 a hit-man because it's not evidence.

4 THE COURT: I beg your pardon?

5 MS. ADAMS: Mr. Delgado, in his opening
6 statement, made several references to what is on that
7 video regarding the fact that the Defendant claims to be
8 a contract killer, Circle K. I don't have my exact
9 notes, Your Honor. He talked a good bit about what
10 happened in February on that stand in his opening
11 statement. And since it is not evidence, we ask it --
12 that the jury get a curative instruction to disregard
13 what Mr. Delgado said because it is not in evidence.

14 THE COURT: Well, if it's not in evidence, he
15 made the statement. And that came in under 801(D)(2).

16 MS. ADAMS: Mr. Delgado's statements won't come
17 in. It's on that tape.

18 THE COURT: It's in.

19 MS. ADAMS: No, sir. We haven't introduced
20 anything about him being a hit-man. That's not in his
21 written statement.

22 THE COURT: No. It was a statement by a party
23 opponent through his attorney. That's admissible.
24 That's binding on the Defendant that he made that
25 statement. I don't know why you want to keep out

1 something that's already in.

2 MS. ADAMS: It's just in, Your Honor, because
3 Mr. Delgado said it. It hasn't come from the evidence.

4 THE COURT: Well, that's where 801(D)(2)
5 provides it's admissible and can be used against the
6 Defendant.

7 MS. ADAMS: May we approach?

8 THE COURT: I don't know why you want to
9 exclude evidence.

10 MS. ADAMS: Okay, Judge.

11 THE COURT: No. I am going to instruct them
12 that we've read a statement in by the Defendant. I am
13 going to instruct them of that.

14 MS. ADAMS: About the statement that I
15 published to the jury?

16 THE COURT: Yes, ma'am.

17 MS. ADAMS: Yes, sir.

18 THE COURT: What is on that -- which is the
19 same -- in essence, the same information that was on the
20 -- elicited at the first trial, or the former trial or
21 the other trial. Excuse me.

22 MS. ADAMS: Actually, Judge, there's a lot more
23 on that tape than what's in those statements. He refers
24 to a lot of things that show his character regarding
25 whether or not that was the first time he had ever

1 killed.

2 THE COURT: Well, that's why you don't use one
3 -- testimony from one trial in another trial. That's
4 what section ---

5 MS. ADAMS: No. Yes, sir. I respect your ---

6 THE COURT: Thank you. But again, I have to
7 follow the rules as well as the law.

8 MS. ADAMS: Yes, sir.

9 THE COURT: All right. Anything else?

10 MS. ADAMS: Not a thing, Judge.

11 THE COURT: Thank you very much.

12 Now, do you have anything else from this witness?

13 MS. ADAMS: Yes, sir. There's several things.

14 THE COURT: Okay. Good. I'll save my comments
15 or the curative instruction about the statement till
16 after we finish with this witness.

17 MS. ADAMS: What curative instruction are you
18 talking about?

19 THE COURT: Well, I understand that you have
20 just read into evidence a ten-page statement allegedly
21 made by the Defendant.

22 MS. ADAMS: Yes, sir. That's the statement he
23 gave at Douglasville in the very beginning.

24 THE COURT: So I'm going to have to advise the
25 jury as to what their -- how they consider statements

1 like that.

2 MS. ADAMS: Yes, sir. I thought you had
3 already did that, Judge. Right before I read it, you did
4 that, I believe.

5 THE COURT: I didn't give the complete -- no
6 ma'am. Please. Thank you.

7 All right. Is there anything else from the State
8 before we bring the jury back?

9 MS. ADAMS: No, sir.

10 THE COURT: Anything from the Defense?

11 MR. MCGUIRE: No, sir.

12 THE COURT: All right. Ask the jury to join
13 us, please.

14 (WHEREUPON, the jury entered the courtroom at
15 approximately 11:30 a.m.)

16 THE COURT: All right. You may proceed.

17 MS. ADAMS: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 CONTINUED BY MS. ADAMS:

20 Q. Now, John, after the Defendant was convicted of the
21 murder of Asha Wiley, you told the jury earlier that you
22 had a chance to speak with him in February 2008; is that
23 correct?

24 A. Yes, that's correct.

25 Q. And that's when he first told you about Phoebe

1 Kenney?

2 A. That's correct.

3 Q. Did he also -- what else did he tell you about
4 regarding whether or not he had killed before?

5 A. He confessed to ---

6 MR. MCGUIRE: Judge, I've got a matter of law
7 to take up with the Court at this point.

8 THE COURT: I will note your motion and
9 overrule it.

10 You may proceed.

11 MS. ADAMS: Thank you, Your Honor.

12 Q. What did he tell you?

13 A. He confessed to six other killings in three states.

14 Q. From the years 2000 and 2006?

15 A. 2006, yes.

16 Q. What is the status of those investigations right
17 now?

18 A. They're under investigation.

19 Q. Now, as also part of your investigation, you
20 received three letters just recently from December of
21 2009 from the victim's family; is that correct?

22 A. Yes.

23 Q. All right. I want to show you State's Exhibit 68,
24 69, and 67. Can you identify those for me, please?

25 A. These are three letters that were received by the

1 family, the immediate family, of Kwana Burns.

2 Q. And how did you find out about those letters? Did
3 you get a phone call?

4 A. On December the 15th, I received a phone call from
5 the victim's mother, Eleanor Caldwell.

6 Q. Eleanor, who goes by Jeano; is that correct?

7 A. Goes by Jeano. And she was -- she was hysterical.
8 I couldn't understand what she was saying. I didn't
9 really know what was happening, if something was
10 happening right then or what. And she was talking about
11 letters, but it was just such as hysterical phone
12 conversation that I couldn't -- I couldn't make out -- I
13 couldn't make sense on what was going on. So I
14 dispatched one of my investigators immediately to go to
15 her house. And as a result of that, we received letter
16 number one that the family had received in the mail from
17 Raymondeze Rivera.

18 Q. And then in fact, you got a couple more calls; is
19 that correct?

20 A. That is correct. December 24th, Christmas Eve ---

21 Q. Christmas Eve.

22 A. --- I got a call from Eleanor again. She was
23 hysterical again. Of course, this time I knew what
24 likely had happened, so I contacted one of my police
25 officers. I had him to go to their residence, and we

1 picked up letter number two.

2 Q. And then there was another letter?

3 A. December 30th, we received another call. And so I
4 dispatched the original investigator I'd sent to pick up
5 number -- letter number one, back over to pick up letter
6 number three.

7 MS. ADAMS: Your Honor, at this point I'd like
8 to have you read the stipulation, if you don't mind, or I
9 can, regarding that.

10 THE COURT: Right. You may read the
11 stipulation.

12 MS. ADAMS: Gaile Heath, who is currently
13 employed by SLED, was qualified during the guilt phase of
14 this trial as an expert in handwriting analysis and
15 questioned documents. State's Exhibit 67, 68, and 69
16 were examined by Gaile Heath and compared with a known
17 sample of the Defendant's handwriting. Ms. Heathe's
18 testimony would be that in her expert opinion the letters
19 marked State's Exhibit 67, 68 and 69 were written by the
20 Defendant, Raymondeze Rivera.

21 And then, Judge, I signed it and Mr. McGuire and Mr.
22 Delgado signed it as well.

23 THE COURT: Very good.

24 Q. Now, John, remind the jury, again, who Polly Hatten
25 is.

1 A. She's an aunt of Kwana Burns.

2 Q. And the letters -- two of these -- now, the first
3 letter was actually addressed to Ms. Polly Hatten?

4 A. Yes.

5 Q. And the other two letters were addressed to Ms.
6 Evelyn Gordon, who ---

7 THE COURT: Is that -- identify them by
8 exhibits, if you would, please.

9 MS. ADAMS: Oh, I'm sorry, Your Honor.

10 Q. The first one is State's Exhibit 67. It was to Ms.
11 Polly Hatten. And then 68 and 69 were addressed to Ms.
12 Evelyn Gordon.

13 A. Yes.

14 Q. Please remind the jury who Ms. Evelyn is.

15 A. That's the grandmother to the victim and ---

16 Q. So that's Jeano and Polly's mother?

17 A. Yes.

18 Q. Okay. But the actual letters themselves, the two
19 addressed to Evelyn Gordon, 68 and 69, were actually
20 written to Jeano or Eleanor?

21 A. Yes.

22 MS. ADAMS: Your Honor, at this time I'd like
23 to publish the letters to the jury.

24 THE COURT: Very well.

25 MS. ADAMS: December 29, 2009

1 Dear Eleanor, Where have you been? I've
2 searched high and low for you. I just finished
3 celebrating the death of ol' Kwana. Yes, Kwana
4 is no more. Oh, make a joyful noise. I can't
5 even tell you how happy I am. She is gone
6 forever and ever. Nobody cares anymore. Oh,
7 poor Eleanor. Your family and friends have
8 abandoned you. They say misery loves company.
9 Ha. Now you are all alone. Please do forgive
10 me if I seem just a little shallow. I must
11 admit I'm not your biggest fan. I've loved you
12 once and now no more. You have broken too many
13 hearts just like that whore of a daughter,
14 Kwana. She was born into sin. A woman needs
15 to know her place. Kwana spread her legs just
16 too many times. I came to bring judgement on
17 her. I alone was her judge and jury, and I
18 recommend death upon Kwana.

19 I look forward to seeing you again, oh,
20 beautiful Eleanor. When I am near you, I can
21 feel your presence all around me. Yes, I can
22 feel the hate, the pain, the animosity. You
23 are a worthy foe.

24 How I wish you could suffer like Kwana.
25 Maybe let Ken watch. You probably would scream

1 like your daughter and beg for me to stop. No,
2 no, no. That's too good for you. You don't
3 deserve that kind of leisure.

4 But this is what I have against you, oh,
5 Eleanor. You have been unfaithful from the
6 very beginning. You tolerated the woman Kwana
7 who calls herself a messenger of God. I gave
8 her time to repent of her sins, but she did not
9 want to turn from her immorality. She was
10 warned. And so I killed her in her own bedroom
11 where she committed adultery. I will also kill
12 her followers until they each repay according
13 to what they have done.

14 This is the message from the amen, the
15 faithful and true servant. If you do not wake
16 up, I will come like a thief in the night. I
17 alone have authority.

18 MS. ADAMS: And it is signed Raymondeze Rivera.
19 State's Exhibit 69 dated December 14th, 2009.

20 Dear Beautiful Eleanor, do you miss me
21 like I miss you? Are you aware of what today
22 is? What it signify? It's our anniversary.
23 It's the day that I put Kwana away for good.
24 How do you like that, my Eleanor? I took
25 something precious of yours. That's one of my

1 highlights. I even made Kamille watch. Ha.
2 I did your ungrateful no good daughter a huge
3 favor. The whore. Just like her damn mother.

4 Do you really want to know the truth how
5 Kwana died? Do you think you can handle it?
6 I've saved the best for last. You see, it's
7 not about Kwana. In fact, it was never about
8 Kwana. I'm so tired of hearing her fucking
9 name. This is personal and always will be. I
10 thought you knew by now.

11 And where is your family and friends? I
12 see they abandoned you too. Ha. Did you
13 really think that they cared? They don't love
14 you. And to think that I once did. Yes, you
15 were once dear to me until Ken came into your
16 life. And yet you insult me by bringing Ken to
17 the courtroom with you. You have the audacity
18 to throw him in my face. Is this just a game
19 to you, Eleanor?

20 And yet you still owe me. Remember that
21 Kamille is still alive because of me. Not for
22 anything that you done. I was the one who
23 spared Kamille's life. Every day you should be
24 kissing my feet. But you're not good enough
25 for that. I want you to suffer like I had to

1 suffer. You will always remember me no matter
2 what.

3 My beautiful Eleanor, so why does it have
4 to be like this? You were once made perfect.
5 How wise and beautiful you were. A woman of
6 virtue. You have fallen from heaven. You were
7 determined to climb to the highest of stars.

8 Behold, I come to you like a thief in the
9 night. Destruction will fall on you. You and
10 your family. You say that you have all that
11 you need, but you are naked and blind. I
12 rebuke you, daughter of redemption. Oh, great
13 Babylon, the mother of all prostitutes in the
14 world.

15 MS. ADAMS: Signed Raymondeze Rivera.

16 And State's Exhibit 67 to Ms. Polly Hatten dated
17 December 14th, 2009.

18 Dear Polly, May I ask you how you been?
19 Have you been sleeping well? I wonder do you
20 ever think of me? I never did thank you in
21 person for that wonderful dinner that you
22 cooked for me. Next time add some rice. I
23 prefer yellow rice so you will know the next
24 time

25 Oh, before I forget, do you know what

1 today is, Polly? I am celebrating the death of
2 Kwana. What a glorious day. Every time I
3 think about Kwana I get so excited. But one
4 thing is missing though, and that's Kiki. I
5 should have killed that fat, sloppy bitch.
6 Maybe that would have made you appreciate me
7 more. Ha. You know it's never too late. But
8 don't worry, Polly. I wouldn't waste my time
9 on some fat nasty bitch like Kiki.

10 Now, Kwana, that was something special. I
11 even made Kamille watch. Yeah, I wanted her to
12 see. Do you think she remembers? I really
13 hope so. Maybe she will learn not to be a
14 whore like her good-for-nothing mother. And
15 you all have the nerve to call that bitch Kwana
16 phenomenal woman. Ha. What was so phenomenal
17 about Kwana, huh? Because I couldn't tell. I
18 think you all are giving this whore way too
19 much credit. We're talking about the same damn
20 woman who spread her legs for every Tom, Dick
21 and Harry. I bet you were like that too, huh,
22 Polly? That's why no one wants you now. The
23 only thing you are good for is cooking.

24 You know, Polly, I remember you had the
25 nerves to shoot me a bird outside the court

1 parking lot. It's all good though. I know you
2 will never do that to my face.

3 It's kind of funny how you and your little
4 family got all this heart. Where did it come
5 from? All of you are weak individuals. I
6 laugh at you all. Ha, ha, ha. What do you
7 think about that?

8 You and your family can kiss my ass. Did
9 you hear that, Polly? I hope so because I look
10 forward to seeing you and your fat, sloppy, so-
11 called daughter again. Until next time.
12 Raymondeze Rivera.

13 MS. ADAMS: Please answer anything the Defense
14 has.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. MCGUIRE:

18 Q. Detective, Mr. Rivera, when he talked to you about
19 Phoebe, did he also verify his behavior of crime in given
20 her the knife? Did he say that was also true?

21 A. Yeah, after I had read his statement verbatim from
22 its entirety, as I recall, he said it was all true except
23 for he did not rape her. That's my recollection of that.

24 Q. So that would include him crying and begging
25 forgiveness?

1 A. It would, yes.

2 Q. And handing her the knife and saying that -- he --
3 that she should kill him?

4 A. Yes, that was all in the statement.

5 Q. And did he also include, when y'all were talking
6 about this, that not only in his mind was it consensual,
7 but he tried to follow her home one day saying, I forgive
8 you I love you? Did y'all talk about that part?

9 A. I don't have any particular recollection of that
10 specific part of the interview.

11 Q. Do you remember -- despite the fact that she
12 describes what's clearly a rape, did y'all talk about why
13 he was calling her still? Or did you not talk about
14 that?

15 A. No. Mr. Rivera controlled this interview.

16 Q. Now, regarding these letters, they are obviously
17 very mean.

18 A. Yes, sir.

19 Q. I'm going to ask you about the portions of the
20 letter -- the letters -- he seems to indicate that he
21 knows these people. That, for instance, someone was once
22 pure until someone came into their life and committed
23 adultery. Is there any evidence to suggest that there
24 was any relationship between anybody in the Burns family
25 and Mr. Rivera at all before December 10th?

1 A. No.

2 Q. And the religious part of the letters about daughter
3 of Babylon and that sort of thing, have you -- had you
4 had conversations with Mr. Rivera where he brings that
5 religious subjects to you?

6 A. Yes, in the first interview. Well, in the interview
7 that resulted in the ten-page statement, yes, he did
8 quote -- somewhat quote a Bible verse from Job.

9 Q. Okay. Are you're familiar with the story in Job
10 being Job was basically stripped of everything he had in
11 the world?

12 A. Yes.

13 Q. And God is testing his faith?

14 A. Yes.

15 Q. So basically making him lose everything?

16 A. Yes. That's my understanding of that --
17 interpretation of that particular verse.

18 MR. MCGUIRE: Judge, if I could have just one
19 second.

20 THE COURT: Certainly.

21 (Off record discussion)

22 Q. John, I know you're still on the case, still
23 collecting evidence as it comes in. Are you aware of an
24 incident where Mr. Rivera tried to, I guess, give or sell
25 some of his psychotic medication to somebody at the jail

1 in Anderson County?

2 A. I have heard this story. I don't have any first-
3 hand information of that.

4 Q. Okay. And when you first started talking to Mr.
5 Rivera -- I'm going way back years ago -- did he indicate
6 something to you about if you want to know how it started
7 -- he talked to you a little bit about abuse and then
8 said he wanted a man named Larry Mitchell to come to the
9 interview room?

10 A. Mr. Rivera has never mentioned to me anything about
11 abuse.. He did ask for a Larry Mitchell to be present and
12 talk with him within a trip that we had taken with Mr.
13 Rivera down to Douglasville, Georgia.

14 Q. Okay.. It's your recollection that is not tied to a
15 subject of abuse?

16 A. In the interview with me and Rivera or in the
17 interview with Larry Mitchell and Rivera?

18 Q. Your conversations with Mr. Rivera, sir.

19 A. No, he's never mentioned to me anything about abuse.
20 To me, no.

21 Q. Are you aware of his current diagnosis of bipolar
22 disorder?

23 MS. ADAMS: Objection, Your Honor.

24 THE COURT: Sustained.

25 MS. ADAMS: That is not appropriate.

1 THE COURT: It's not in the record. There is
2 nothing in the record about any sort of diagnosis.

3 MR. MCGUIRE: If I could have just one second,
4 Judge.

5 THE COURT: Certainly.

6 (Off record discussion)

7 Q. This is kind of a small point, John. But in
8 conversations with Mr. Rivera at the Anderson County
9 Detention Center, were they in the multipurpose room?

10 A. Yes, sir.

11 Q. Is that a room that's got lockers for all the
12 officers?

13 A. It could have. I remember it being more for the
14 preparation of some meals and things, but it's possible
15 there's lockers in there.

16 Q. Also, it looks kind of like a small cafeteria with
17 like a salad bar?

18 A. I think so, yes. As my recollection goes.

19 Q. And are you aware by reviewing evidence that we've
20 actually conducted interviews in the same room?

21 A. More than likely, you have.

22 MR. MCGUIRE: That's all I have. Thank you.

23 THE WITNESS: Yes, sir.

24 THE COURT: Re-examine?

25 MS. ADAMS: I have no questions, Your Honor.

1 THE COURT: Very well.

2 You may step down, sir.

3 Mr. Foreman, ladies and gentlemen of the jury,
4 while the Court generally determines the admissibility of
5 evidence, I instruct you that as regards to any alleged
6 statement made by this Defendant that you as members of
7 the jury make the ultimate determination of whether or
8 not the Defendant made the said statement, and if he did
9 make the statement, whether the statement was made by the
10 Defendant voluntarily and of his own free will and
11 accord, and finally, just what weight if any should be
12 given to any alleged statement. I charge you that you
13 must determine if the alleged statement was the product
14 of an essentially free and unconstrained choice by its
15 maker. If you determine that it was, then the burden is
16 upon the State to prove the fact, as all other facts,
17 beyond a reasonable doubt. Then you may give the
18 statement such further consideration as you deem proper.

19 If you determine that the alleged statement was not
20 the free and voluntarily willed expression of the
21 Defendant, then you should not consider the statement at
22 all. In determining whether a statement -- a defendant's
23 will was overcome in obtaining the statement, you should
24 consider both the characteristics of the accused and the
25 details of the interrogation which is referred to in the

1 law as the totality of the circumstances.

2 Some of the factors that you must consider are the
3 age of the accused, his education or lack thereof, his
4 mental ability of capacity, his IQ or intelligence, his
5 background and environment, the advice or lack thereof to
6 the accused of his constitutional rights including, but
7 not limited to, procedural safeguards known as the
8 *Miranda* warnings concerning the right to remain silent,
9 that a statement could be used against him in a court of
10 law, the right to have a lawyer present, and if he could
11 not afford a lawyer, then a lawyer will be appointed to
12 represent him without any cost, and that he could stop
13 making the statement at any time.

14 Other factors to consider are the place and length
15 of detention and the nature of the questioning. You the
16 jury must carefully scrutinize all of the surrounding
17 circumstances before you can give any weight to any
18 alleged statement. You must be satisfied beyond a
19 reasonable doubt that the statement made by the accused
20 uninfluenced by a promise of reward, threat or injury or
21 diminution of his rights.

22 The State has presented to you concerning the
23 Defendant's statements about crimes he has committed.
24 You must remember that alleged crimes that the Defendant
25 has committed may not be used as proof of statutory

1 aggravating circumstances. The previous or subsequent
2 allegations of crimes may only be considered by you in
3 reference to the character of the Defendant and no other
4 purpose.

5 The Defendant is on trial for his life, and it is
6 important that you have for your consideration all
7 pertinent information about him. This evidence may be
8 considered by you in giving whatever weight, if any, you
9 feel that it is entitled to.

10 All right, you may call your next witness.

11 MS. ADAMS: Your Honor, may we approach real
12 quick?

13 THE COURT: Certainly.

14 Mr. Foreman, ladies and gentlemen of the jury, it's
15 almost noon. Also, we're at a point where this would be
16 a good time to take the lunch break. I'm going to ask
17 you to go to lunch at this time and then come back. How
18 long do you think you might need for lunch? About an
19 hour? All right. It might be -- why don't you take a
20 little bit longer because we need to make arrangements
21 and everything for this afternoon. So let's say 1:15 --
22 is that right? Yeah, 1:15.

23 Again, do not undertake a discussion of the case
24 among yourselves or permit anybody to discuss it with
25 you.

1 All right. Everyone remain seated while the jury
2 retires from the courtroom.

3 (WHEREUPON, the jury exited the courtroom at
4 approximately 11:55 a.m.)

5 THE COURT: All right. Mr. McGuire, you can
6 put on record your motion or your matter of law. I think
7 it had to do with the other offenses. Go ahead.

8 MR. MCGUIRE: Yes, sir. Regarding the mention
9 of did the Defendant confess to six other murders -- and
10 the answer was yes, he did or he confessed to six other
11 murders and that they were under investigation.
12 Previously, Judge, I think we've proffered sort of the
13 tenuous nature of those or the fact that there's only the
14 slightest circumstantial evidence to indicate that Mr.
15 Rivera had -- well, there's really no information that
16 ties him to any of those alleged murderers other than his
17 statement.

18 You know, the statement is given by a man who is
19 diagnosed as bipolar. That's not in the record in this
20 trial yet. And he's also been diagnosed as having
21 P.T.S.D. by Donna Schwartz-Watts and not competent to
22 represent himself. You know, those -- that statement
23 when viewed in the light of everything that he's talked
24 about, including the video that you've seen, it just has
25 such little credibility and reliability to it that to

1 introduce it, the prejudicial -- the danger of that --
2 the danger of unfair prejudice clearly outweighs the
3 probative value as to prevent him from getting a fair
4 trial pursuant to the due process clause of the
5 Fourteenth Amendment.

6 And Rule 403 Rule of Evidence should also keep it
7 out. And the one thing I need to add -- I think that I'm
8 pretty covered on record there. The only thing I want to
9 add is when Detective Zamberlin testified in-camera
10 regarding the Carrollton -- the alleged murder that
11 happened in Carrollton, the information that had tied Mr.
12 Rivera to it was that a man named Keith Jordan rented a
13 car on August 13th of 2000 and that a woman was murdered
14 on the 14th of August in Carrollton.

15 And then there was a telephone call placed from the
16 rental car company on the 13th to the woman's house. And
17 we went back and replayed the interviews of Mr. Keith
18 Jordan, and it appears that Mr. Jordan's being
19 interviewed by a detective in Douglasville. And the
20 actual period of the car rental is from the 10th to the
21 14th. And there's no mention of a telephone call that we
22 can find in the interviews from the reference by the
23 detective from the rental car company to the woman's
24 house.

25 Also, just very briefly, the details are Mr. Rivera

1 just gives, I think, the name of Angel. You know, I met
2 this girl, Angel, killed her, buried her body. It's a
3 very vague statement. And all of the details of the
4 murder that is under investigation allegedly tied to Mr.
5 Rivera is the woman's name was Lucretia Crowder, so the
6 name is completely different. Her body's found in her
7 house, not buried as Mr. Rivera says. There's also a
8 second victim at the house. Mr. Rivera doesn't mention
9 any second victim whatsoever. And this whole thing about
10 the call from the rental car, it seems to be misplaced
11 based on the real evidence from Mr. Jordan's interview.

12 We tried to get in touch with Mr. Jordan. We have
13 spoken to him in the past and interviewed him. But all
14 of his telephones, all his contact information that we
15 had up to this point are now not receiving any incoming
16 calls, and we can't get in touch with him. I would move
17 to continue this trial until I can get an out-of-state
18 subpoena served on Mr. Jordan and bring him back with any
19 detective from Douglasville investigating that crime to
20 just show how there's absolutely no evidence connecting
21 Mr. Rivera to it. In fact, all of their evidence seems
22 to prove that he's not the fellow involved. And for
23 somebody to say he's confessed to six murders and they're
24 all under investigation ---

25 THE COURT: Well, let's be careful because the

1 person that said that was his attorney in the opening
2 statement. Said that he killed six other females in
3 Georgia, Ohio, and Florida. And so that -- the reason it
4 came in is because, as I say, under Rule 801(D)(2)(b)(c)
5 and (d) -- and he was sitting here when it was said. He
6 didn't disavow it, so apparently he adopted it. So it's
7 in. It's not anything the State has done. And
8 certainly, I didn't know anything about Georgia or
9 Carrollton or any of the other things that you've been
10 talking about which are not in record.

11 In fact, when you were given the opportunity in-
12 camera to -- what is it -- examine the officer about the
13 unbelievability of the statement, the officer went into,
14 I thought, rather interesting details that apparently he
15 relied upon what the Defendant had told him to the extent
16 of going to Florida, Georgia and even talked about Ohio.
17 And I think that the law enforcement agency's apparently
18 put great credibility in the statement because otherwise
19 they wouldn't have acted on it as they did. I mean, all
20 this other that you're talking obviously is collateral
21 and has nothing to do with the particular charge in this
22 case, but I will note it for the record.

23 Anything else?

24 MR. MCGUIRE: Just very briefly. I think to
25 have a situation where -- and while we did mention it, we

1 did mention in sort of the light of it just kind of
2 fantastic and not believable. But to have the officer
3 indicate that they are currently under investigation and
4 to give them that kind of meat and believability without
5 supplying us with any information regarding police
6 reports, investigative summaries or any steps taken by
7 law enforcement regarding these alleged murders would in
8 all likely be a *Brady* violation because we're not -- we
9 have to accept his word that they're under investigation.
10 And it sounds very official. It sounds very -- like they
11 are taking it very seriously, they have some meat to
12 them, but we're not able to attack them at all.

13 So I think that I need to just preserve the record
14 and just say that ---

15 THE COURT: Well, I think he obviously gave you
16 the information he had. He's not a member of the law
17 enforcement agency in Florida or Georgia or necessarily
18 in Ohio. I think he said about two or three
19 jurisdictions are involved in the Ohio case. So no, he
20 gave you what he had and you chose not to explore it any
21 further in-camera. So obviously I have nothing else to
22 go on except the statement by the Defendant's own agent.

23 MR. MCGUIRE: Sure. If could just ---

24 THE COURT: That's noted for the record. I'm
25 just saying if there's anything else I'll be glad to

1 address.

2 MR. MCGUIRE: Oh, no, sir. I was just -- that
3 was just -- my last comment was just to preserve the
4 record, I say that ---

5 THE COURT: By the way, your motion to continue
6 is also denied.

7 MR. MCGUIRE: Thank you, Judge. My final
8 comments were just to preserve the record. It would be I
9 believe there's a violation under *Brady* and *Collins*.

10 THE COURT: All right. Anything from the
11 State?

12 MS. BYFORD: Your Honor, if we may just briefly
13 address that last issue on the record?

14 THE COURT: Certainly.

15 MS. ADAMS: They were provided materials in
16 discovery regarding -- I believe there's a summary that
17 John Zamberlin did detailing essentially what was gotten
18 into on cross-examination during the in-camera hearing.
19 They were provided with that in discovery, for the
20 record.

21 THE COURT: All right, thank you: Now, Mr.
22 Delgado, I noticed that you made a ---

23 MR. MCGUIRE: Well, Judge -- hold on.

24 Keep your seat, my friend.

25 With regard to what we've been provided in

1 discovery, we have been provided with sort of a summary
2 of Detective Zamberlin's reactions with the Defendant
3 regarding his claims about the six other murders
4 including a ride around in Douglas County, that sort of
5 thing. But we don't have any police reports,
6 investigative summary, crime scene information, anything
7 about any specific murder. In fact, we didn't even know
8 the name of the victim until we were in court and
9 Detective Zamberlin testified as to her name. It's
10 referred to in our investigative summary as at one point
11 they were maybe -- they were two blocks away from a
12 homicide in Carrollton, but we were provided no details
13 beyond that.

14 THE COURT: All right. Very well.

15 Anything else from the State?

16 MS. BYFORD: No, sir.

17 MR. DELGADO: Yes, Your Honor. Thank you.

18 THE COURT: All right. Mr. Delgado?

19 MR. Delgado: Your Honor, of a completely
20 different matter. It appears that the State will now in
21 presence of the jury rest its case in aggravation. I
22 believe that there is now a legal matter that we would
23 bring up to the Court at that time. We do it now just so
24 that the Court -- the case will flow.

25 In the Defendant's case in mitigation, it may very

1 well be again, as we did during the guilt phase, that the
2 Defendant may wish to take the stand. As we did
3 previously, Mr. McGuire and I have decided professionally
4 and in keeping with our oath that we will not call him to
5 the stand. I again ask the Court to inquire, and then if
6 the court intends or allows him to be called, that the
7 Court then proffer Mr. Rivera's testimony for exactly the
8 same reasons that the Court declined in the first part of
9 the trial in the guilt phase. I'm sorry to have to bring
10 it up now. I just felt that ---

11 THE COURT: No. I think it's appropriate
12 because I want Mr. Rivera to consider not only his
13 rights, but what would be the consequences of testifying.

14 MR. DELGADO: And the reason for that, Your
15 Honor, is that if he is to testify, we would ask the
16 Court to call him as the Court's witness first, and then
17 followed by our lay witnesses and our expert witnesses.

18 THE COURT: All right. Very good. But now in-
19 camera?

20 MR. DELGADO: Your Honor, however the Court
21 wishes to take his proffer.

22 THE COURT: Well, the Court does -- whatever
23 the testimony or evidence is proffered, the Court has a
24 responsibility and duty to be sure that it is ultimately
25 admissible. So therefore, I will consider it in-camera.

1 But do you anticipate your expert witnesses to be also
2 examining him?

3 MR. DELGADO: No, sir.

4 THE COURT: Well, that's what I'm asking about.

5 MR. DELGADO: No, sir. I'm sorry. Just the
6 one witness, and that may be Mr. Rivera.

7 THE COURT: No. What I'll do is same thing
8 that I did ..

9 Mr. Rivera, listen to this because you've been
10 through it before. I'll give you the same opportunity to
11 proffer the testimony that you would proffer if you
12 decided to exercise your right to testify and not
13 exercise your right not to testify. But I will have to
14 know what the essence of your testimony will be to
15 determine whether or not it does meet our procedures and
16 rules of evidence which both the Defendant and the State
17 must observe. If you would please, raise your right
18 hand.

19 **RAYMONDEZE RIVERA,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE COURT: Very good. Thank you.

22 Mr. Rivera, at this time I am going to explain to
23 you certain of your rights. If you do not understand
24 anything I say, please let me know. If you want me to
25 explain anything in more in detail, please let me know.

1 Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: We have now reached the stage of
4 the trial where you may present your defense. You have
5 the right to claim the protections given to you by the
6 Fifth Amendment of the Constitution of the United States.
7 This amendment in part says, no person shall be compelled
8 in any criminal case to be a witness against himself.
9 This means that you cannot be required to testify in this
10 case. You have the right to testify on your own behalf.
11 However, no one can make you testify. This is a personal
12 right, and no one can waive this right except you.

13 If you decide to testify, you will be subject to the
14 same rules that govern other witnesses and you may be
15 examined and cross-examined on any relevant issues in
16 this case. In addition, if you have any convictions
17 involving dishonesty or false statement or for crimes
18 punishable by imprisonment for more than one year and
19 this Court determines that the probative value of
20 admitting this evidence outweighs its prejudicial effect
21 to you, the Solicitor will be able to introduce your
22 record to attack your credibility.

23 If you decide to testify, the decision on your part
24 must be freely voluntarily, knowingly, and intelligently
25 made with knowledge of the protection given to you by the

1 Fifth Amendment and the consequences of your decision to
2 testify. If you decide not to testify, I will instruct
3 the jurors they cannot give the fact that you did not
4 testify any consideration whatsoever and that there is to
5 be absolutely no prejudice to you because you did not
6 testify.

7 You may talk with your attorney or anyone else that
8 you may, but the final decision will be left totally up
9 to you.

10 Now, do you understand what I have explained to you?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Also, please understand that in the
13 exercise of your right to testify, you are required as is
14 the State to comply all established rules of procedures
15 and evidence designed to assure fairness and reliability
16 in the ascertainment of guilt and innocence. Do you
17 understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. I'm going to permit you
20 over the lunch to consider what your decision will be.
21 Consult with Mr. Day and anyone else that you might have
22 the opportunity to do so. But I will want to know if you
23 wish to testify at the commencement of the Defense case.
24 Do you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Very good. All right. Thank you.

2 We'll stand in recess until 1:15.

3 (WHEREUPON, court stood at recess for the lunch
4 break.)

5 THE COURT: All right. As I understand before
6 the break for lunch that the State was going to rest?

7 MS. ADAMS: Yes, sir, Your Honor.

8 THE COURT: We'll rest before the jury;
9 however, the State has rested. Is there anything else
10 you have before I ask if there are any motions?

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

12 THE COURT: All right. Very good.

13 All right. Anything from the Defense?

14 MR. DELGADO: Your Honor, after we note a
15 directed verdict motion on the record, does the Court
16 then -- will the Court then inquire of Mr. Rivera, or
17 would the Court want to do that now, I guess as a -- to
18 save the Court's time and the jury's time. The reason
19 for that is ---

20 THE COURT: Yes, sir.

21 MR. DELGADO: I'm just thinking, if he was to
22 testify, we wish for him to testify first.

23 THE COURT: No. I'm going to ask him out of
24 the presence of the jury whether or not, of course, he
25 wishes to ---

1 MR. DELGADO: Right.

2 THE COURT: --- exercise his rights.

3 All right. So you have noted your motion for a
4 directed verdict?

5 MR. DELGADO: Your Honor, if it was not clearly
6 placed, at this time, the Defendant notes a motion for a
7 directed verdict of acquittal and for relating punishment
8 under Rule 29 of the Rules of Criminal Procedure.

9 THE COURT: All right. Very good. I'll note
10 the motion for the record, but I will reserve argument on
11 it at a later time. As I say, continue the motion --
12 consideration for motion.

13 All right. Mr. Rivera, again it's been mentioned
14 prior to the lunch recess. I inquired as to your -- or
15 advised you of your rights under the Constitution to
16 either testify or not testify. Do you have any questions
17 about what we discussed before lunch?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Have you discussed with your lawyer
20 whether you should -- should or should not testify?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you need any more time to talk
23 to your lawyer?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Do you wish to testify

1 in this case?

2 THE DEFENDANT: No, Your Honor. My guardian is
3 here. He can testify for me.

4 THE COURT: You decline to testify? You
5 exercise your right not to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. I find that the
8 Defendant knowingly, intelligently, freely, and
9 voluntarily exercises his right not to testify. And I'll
10 so instruct the jury that that is not something to be
11 considered in this matter in the trial of this case in
12 anyway.

13 All right. Anything further from the State?

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

15 THE COURT: From the Defense?

16 MR. DELGADO: No, Your Honor.

17 THE COURT: All right, if you would please, ask
18 the jury to join us.

19 MR. MCGUIRE: Judge, if I could just ---

20 THE COURT: Oh, just a moment. I'm sorry.

21 MR. MCGUIRE: I just wanted to put a couple of
22 words on the record. I preserved an objection regarding
23 Detective Zamberlin's testimony regarding the six other
24 murders, and I indicated there would be sort of a
25 discovery, Brady, Collins violation. And I just wanted

1 to put on the record that I'm satisfied that the
2 discovery violation, if any, is not the cause of Mr.
3 Campbell, who's sort of in charge of discovery, I
4 understand it. But that where the error lies is for ---

5 THE COURT: If there's any error?

6 MR. MCGUIRE: Sir?

7 THE COURT: If there is any error?

8 MR. MCGUIRE: If there's any ---

9 THE COURT: The error, if any?

10 MR. MCGUIRE: The error, if any, ---

11 THE COURT: Very good.

12 MR. MCGUIRE: --- Judge, would be allowing
13 police departments to give oral information to Detective
14 Zamberlin where he can come in and put some meat on these
15 allegations without handing over the file and then,
16 therefore, handing it to us so we can attack it. That's
17 just what I wanted to clarify.

18 THE COURT: Very well.

19 Anything, Mr. Campbell?

20 MR. CAMPBELL: No, Your Honor.

21 THE COURT: All right. Very good. Noted for
22 the record.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. Anything else from the
25 State?

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

2 THE COURT: From the Defense?

3 MR. MCGUIRE: No, sir.

4 THE COURT: All right. Once they are seated,
5 if you would announce that you rest. Now, I'm going to
6 proceed with the Defense case. I will make no statement
7 about the Defendant one way or the other, but at the
8 appropriate time, I will instruct the jury that they
9 cannot consider for any reason a failure -- or the right
10 to exercise his right.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: All right. Very good.

13 (WHEREUPON, the jury entered the courtroom at
14 approximately 1:48 p.m.)

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

17 Mr. Foreman and ladies and gentlemen of the jury, I
18 apologize about the delay in reconvening, but I took up
19 some matters with the attorneys. Hopefully, we can move
20 forward perhaps even a little more efficiently this
21 afternoon. And that's not theirs. That was my inquiry
22 to see if there was something we could do.

23 I recognize the Solicitor.

24 MS. ADAMS: Thank you, Your Honor. The State
25 rests.

1 THE COURT: All right.

2 Mr. Foreman and ladies and gentlemen of the jury,
3 that completes the case-in-chief by the State in the
4 sentencing phase. We will now proceed with the Defense.

5 I recognize Mr. McGuire.

6 MR. MCGUIRE: Thank you, Your Honor. Defense
7 would call Denise Rivera.

8 DENISE MARIA RIVERA,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. MCGUIRE:

12 Q. Denise, are you related to Mr. Raymondeze Rivera?

13 A. Yes, I am.

14 Q. And how are you related?

15 A. I am his auntie. His -- my brother was his father.

16 Q. Okay. Stanley Rivera was Mr. Rivera's father?

17 A. Correct.

18 Q. And Stanley Rivera was also your brother?

19 A. Right.

20 Q. Okay. What I'm going to ask you now, Denise, is
21 just a little bit about your family background. Who was
22 your mother?

23 A. Elizabeth Rivera.

24 Q. And did physical abuse run in your mom's family?

25 A. In our family, yes, it did. My mother was very

1 abusive, you know. I just remember the incident where my
2 brother, Stanley, had did something wrong. And he was
3 always getting into trouble. And this particular time --
4 my mother was the kind of person who, when we did
5 something, whatever she had around her, that's what she
6 would use against us. At this particular time, Stanley
7 had did something, and he was running, and she had -- was
8 peeling something on the sofa. And when Stanley ran --
9 and he was going through the door, she threw the knife
10 and -- and stuck him in his back. And then she brought
11 him back in the house and patched him back up. She never
12 took him to the hospital, you know. I just remember, you
13 know, several incidents. If we did something wrong, my
14 mama would straddle us and just choke us.

15 MS. ADAMS: Your Honor, I'm going to object. I
16 don't see how this is relevant to Mr. Rivera in this case
17 -- what happened to his father.

18 THE COURT: All right, I'm going to permit a
19 limited examination.

20 You may proceed.

21 MR. MCGUIRE: Thank you, Your Honor.

22 Q. If you would, just continue with what you were
23 saying.

24 A. Well, we just had -- several things would happen in
25 the, you know -- my mother was, you know, was left with

1 five kids. And I guess it was -- it was a big strain on
2 her. You know, we just -- you know, we -- you know, when
3 we did something wrong, you know, I guess when she was
4 tired, at her worst point, that's when, you know, things
5 would come out when she went into doing stuff to us.

6 Q. And the -- the incident with the knife sticks out in
7 your memory, but she was generally physically abusive --
8 with all the children?

9 A. Yeah.

10 Q. And when she threw the knife at Stanley, Mr.
11 Rivera's father, did -- did the tip of the knife actually
12 go into him and injure him?

13 A. Yes, it went to his shoulder blade. And I just
14 remember a whole bunch of blood and him -- and she
15 bringing him back in and told him to stop crying and shut
16 up. And she just kept on because he kept crying the
17 whole time. And she just patched him up and just told
18 him to shut up.

19 Q. And did your grandmother -- did your mother, Mr.
20 Rivera's grandmother, also physically abuse Mr. Rivera,
21 Mr. Raymondeze Rivera?

22 A. Yes. When he was -- I remember him when he was a
23 little toddler. What happened was right after Raymondeze
24 was abandoned in the -- his mother had left him in the
25 house for several days. And the court awarded the

1 children to my mother. And we had Raymondeze and
2 Juantonio at the time. And Raymondeze had gotten into
3 something. And I don't know what he did, but when we got
4 home, she had beat him all in his face and his whole face
5 was swollen when he was a little baby. And then that's
6 when my brother came and she took -- took Raymondeze and
7 Juantonio away.

8 Q. And Juantonio is Mr. Rivera's brother?

9 A. Correct.

10 Q. And you're also familiar with incidents regarding
11 Mr. Rivera's mother and how she took care of the boys; is
12 that right?

13 A. Well, I -- you know, Sheena was the mother, but
14 Sheena abandoned them, you know. They -- they were
15 turned over to the ward of the court. You know, she had
16 lost custody of them. And that's because she had left
17 Raymondeze and Juantonio in the house, and they had been
18 eating out of the garbage can. I guess they -- they were
19 in there for over a week. And they hadn't had anything
20 to eat, so they were eating out of the garbage can in
21 order to survive. And the neighbor next door heard them
22 in there, so she had called the police and ---

23 MS. ADAMS: Your Honor, objection, hearsay.
24 She's talking about the neighbor.

25 THE COURT: I'm not sure she's offering it for

1 the truth as much as that that was the state of mind.

2 All right. You may -- you may proceed.

3 Q. So the neighbors discovered the boys inside the
4 house?

5 A. Yes, and -- and called the police. And they took
6 Raymondeze right away. He was dehydrated, and they took
7 him to the hospital. And that's when my mother and I
8 came up there, when he was in the hospital from
9 dehydration. He was just a small -- he was just -- had
10 just started walking around then. He was real small
11 then.

12 Q. And then, Denise, was there -- was there a time
13 where Stanley, your brother and Mr. Rivera's father --
14 was there a time where he, Stanley, kept the boys from
15 your side of the family?

16 A. Yeah. Anytime we had any events, we would always
17 invite them, Stanley and Elaine and the boys. You know,
18 but for some odd reason, they would never bring them, you
19 know. For my mother's birthday party or Mother's Day or
20 we had planned a barbecue, stuff like that. You know, he
21 never brought them around, you know. You know, even on
22 Christmas, you know, when we had Christmas stuff, he --
23 they wouldn't bring them. You know, they would invite us
24 over, but the atmosphere at the house where they stayed,
25 it was just so cold that, you know, I just never felt

1 comfortable going over there.

2 Q. At Stanley's house?

3 A. Yeah, at my brother's house.

4 Q. Okay. Later in life, did you see Raymondeze walking
5 from the -- in church?

6 A. Well, you know, when he had gotten older, he had
7 come to stay with me and my mother at her house. And
8 Raymondeze stayed there and was -- because we all
9 attended -- we attended church every Sunday, you know,
10 and Bible studies on Wednesday, you know. And you know,
11 he went to church then. He was a happy person, loving,
12 very affectionate, you know. Did stuff around the house
13 for my mom and everything and, you know, plant flowers,
14 did everything, you know.

15 MR. MCGUIRE: Judge, if I could have just one
16 second.

17 (Off record discussion)

18 Q. Denise, that's all I have for you. Thank you.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. ADAMS:

22 Q. Ms. Rivera, when you were talking about Stanley and
23 how he grew up ---

24 A. Uh-huh (affirmative). Yes, ma'am.

25 Q. --- Raymondeze was not born at that point, was he?

1 A. No, he wasn't.

2 Q. Okay. So that incident with the knife all happened
3 prior to Raymondeze being born when Stanley was young.

4 A. Right.

5 Q. Is that right?

6 A. Yes, ma'am.

7 Q. Okay. Did you ever witness Stanley beat Raymondeze?

8 A. No.

9 Q. Okay. So you just heard about it?

10 A. About Stanley beating Raymondeze?

11 Q. Uh-huh (affirmative).

12 A. I never witnessed it.

13 Q. You never witnessed it?

14 A. Uh-huh (affirmative).

15 Q. And you never heard about it at the time that he was
16 supposedly beating him?

17 A. No, I didn't.

18 Q. Okay. Did you ever see any bruises on Raymondeze
19 from Stanley beating him?

20 A. Well, I never seen -- after Raymondeze left -- when
21 he came over -- and the State awarded my mother. They
22 were taken -- my brother ended up taking them for full
23 custody. And after that, we didn't see Raymondeze
24 anymore, you know, and Juan Antonio. Neither one of them we
25 seen anymore.

- 1 Q. You didn't see Raymondeze or Juantonio?
- 2 A. Right.
- 3 Q. Okay.
- 4 A. You know.
- 5 Q. So you don't know if he was beaten or not back then?
- 6 A. No, I don't. I didn't physically see it.
- 7 Q. But Raymondeze and Juantonio were together at
- 8 Stanley's house?
- 9 A. Yes.
- 10 Q. Okay.
- 11 A. I just know up to when -- when they had -- when
- 12 Stanley and Sheena were together, when they were living
- 13 in the apartment? Okay?
- 14 Q. And they split when the boys were very little, like
- 15 around two, is that right?
- 16 A. Well ---
- 17 Q. Two or three?
- 18 A. --- at that particular time when Raymondeze and
- 19 Juantonio were babies, they were together. Stanley was
- 20 working, and Sheena wasn't working at the time. She was
- 21 supposed to be home with the kids. Okay. I just
- 22 remember because they didn't stay that far from me, you
- 23 know.
- 24 Q. And now, Raymondeze and Juantonio are just eleven
- 25 months apart, is that right, in age?

1 A. Right. Uh-huh (affirmative).

2 Q. Okay. And Juantonio is in the military now with
3 top-secret clearance; is that correct?

4 A. I know Juantonio's in the military. I don't know
5 other, you know, other than that.

6 Q. He's doing very well, isn't he?

7 A. Yes.

8 Q. Okay. When did Raymondeze start going to church?

9 A. Well, he went to church with us, you know, in our --
10 mama -- in my mama's household you have to go to church.

11 There's no such thing as, you know, people staying in the
12 bed on Sunday. You have to go to church.

13 Q. Right. So ---

14 A. So everybody went to church.

15 Q. All right. So your mother Elizabeth wanted to do
16 the best she could for y'all?

17 A. Right.

18 Q. And she -- you grew up in the church?

19 A. Yes, I grew up in the church.

20 Q. And when Raymondeze was staying with Elizabeth, he
21 went to church, too, and basically grew up in the church
22 as well.

23 A. Yes. And when -- when he got -- I guess he had
24 gotten into some trouble. That's the reason why he was
25 staying with us for a while ---

1 Q. Okay.

2 A. --- you know.

3 Q. So he was going to church regularly up until
4 probably 2006; is that right?

5 A. I can't remember the year. I can't recall the year.
6 You know, I just recall that -- that short period of time
7 when he was with us, when he stayed with us.

8 Q. But as far as you know, he grew up in the church and
9 Elizabeth took you to church when you were growing up in
10 her house?

11 A. Yes, we went to church.

12 Q. Okay. Thank you very much, Ms. Rivera.

13 MR. MCGUIRE: Nothing further, Your Honor.

14 THE COURT: All right. You may step down.

15 Thank you, ma'am.

16 MR. DELGADO: Your Honor, we call Ms. Teresa
17 Rivera, please.

18 **TERESA RIVERA,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. DELGADO:

22 Q. Ms. Rivera, turn your chair a little bit this way.
23 I want you to speak to these folks. Introduce yourself
24 to them by telling them who you are, where you live, and
25 how you are related to Raymondeze Rivera.

1 A. My name is Teresa Rivera. I live in Atlanta and I'm
2 related to Raymondeze. Raymondeze is my nephew by my
3 brother, Stanley Rivera. It's his father, my brother.

4 Q. You are the sister of the lady that just testified?

5 A. Yes. Me and Denise and Stanley are sisters and
6 brothers.

7 Q. Mr. Stanley Rivera has passed away, correct?

8 A. Yes. Yes, he has passed away.

9 Q. When did he die?

10 A. March 26 -- I think it was 2006.

11 Q. Right. Stanley Rivera has passed away?

12 A. Yes.

13 Q. Tell these folks that on -- on his death bed --
14 since the Solicitor just went into that, tell them what
15 Stanley Rivera told you, dear.

16 A. Well, on his death ---

17 MS. ADAMS: Objection, Judge, hearsay. I
18 didn't go into ---

19 MR. DELGADO: State of mind, Your Honor.

20 MS. ADAMS: --- Stanley ---

21 MR. DELGADO: Not saying for the truth of the
22 matter. And Your Honor ---

23 MS. ADAMS: If it's not for the truth, Judge

24 ...

25 MR. DELGADO: I didn't say that. I said also

1 the ---

2 THE COURT: Again, let's let the Court do its
3 job. I'm going to overrule the objection.

4 You may answer the question.

5 A. Well, on his deathbed, Stanley would -- had already
6 had nine heart attacks, so he would know he wasn't --
7 that he didn't have no more chances. He -- if he was
8 still having heart pains and stuff like that, and when
9 Raymondeze had came in -- before Raymondeze came into
10 town, me and Stanley would talk every day. And Stanley
11 would -- you know, we would talk about God and
12 everything. And I told Stanley before it's time for him
13 to go, he needed to confess and ask for forgiveness from
14 his sons for what he has -- you know, what he has done
15 because he was telling me that he used to beat
16 Raymondeze, and more Raymondeze that 'Tonio, but sometime
17 'Tonio, but more Raymondeze when he was acting out. He
18 used to beat them when he come home drunk when Elaine
19 tell him what he done done and stuff in school and
20 mischievous around the house. And one time he told me he
21 kicked Raymondeze down the steps and boxed him up in his
22 face and stuff. So you know, I was just telling him
23 that, you know, while you're living, God let you live
24 this long -- so you need -- before you die, you can ask
25 for forgiveness for what you have done to your child.

1 And then when Raymondeze came in town, he came to visit
2 me. And he wanted to see his cousins and everything. He
3 wasn't thinking about seeing his father. And I told him,
4 Raymondeze, please to go see your daddy, because I know
5 he wasn't going to live long, because I knew my brother
6 wanted to talk to Raymondeze and to ask for forgiveness
7 for what he has done -- done to him when he was a child.
8 I don't know if my brother ever did, but I know he told
9 me what he -- what he has done to Raymondeze.

10 Q. Teresa, let's back up and tell these folks about --
11 Stanley had a problem, did he not, ma'am?

12 A. Well, Stanley had a problem with drinking all the
13 time. He would get -- he would drink profusely.
14 Drinking runs in my family. My father was a drunk, and
15 then my brother, he just grew up. And he -- when he gets
16 off from work he just drink, drink, drink until he get
17 intoxicated. Stanley had done been in several car
18 accidents, I.U.D. [sic]. I think the bottom line was,
19 the last accident he had put him in the hospital and he
20 almost died. And then he couldn't drive anymore. His
21 license got revoked. So Elaine, his wife, had to take
22 him everywhere he had to go. So that -- that was the --
23 almost the last of his drinking. If he could get to
24 something to drink, he would, you know. And he was still
25 -- when he was drinking, he was very abusive.

1 Q. Teresa, I want you to explain to these folks the
2 sort of environment in which Raymondeze grew up with
3 Stanley, with Raymondeze's mother Sheena Rivera while
4 they lived in Atlanta, and then after Raymondeze moved to
5 Douglasville, Georgia. Will you explain that to the
6 jury?

7 A. Well, when they lived in Atlanta, I know they lived
8 up in some apartments off Boatrock. Like Denise said,
9 she didn't live far from Denise because Denise lived in
10 Boatrock. But I remember that Sheena would leave.
11 Sheena had left after, I guess, Stanley and her either
12 broke up or was arguing. She left the kids in the
13 apartment for several days -- could have been close to a
14 week, but several days -- and somebody had found them and
15 got -- you know, called the police and then they took
16 them to the hospital, and Raymondeze was dehydrated and
17 had to stay in the hospital. I think about that time the
18 court awarded them to my mother.

19 My mother had them from that time on until Stanley
20 took them after Raymondeze -- Raymondeze did something
21 mischievous around the house and the mama ended up
22 beating him. I wasn't there when that happened, but I
23 know Stanley came back and got them. And not long from
24 then, he met Elaine, and then they got married and moved
25 into the house in Douglasville. And then once I got to

1 the house in Douglasville, they stayed there for a while.

2 I met Elaine, but she's the -- she's the -- a type of

3 person that she was not really affectionate.

4 Q. Hold on a second. Slow down. It's okay. Elaine is

5 -- how is Elaine related to Raymondeze Rivera?

6 A. Elaine is Raymondeze's stepmother.

7 Q. Stanley remarried after Sheena?

8 A. Stanley remarried after Sheena.

9 Q. All right.

10 A. Uh-huh (affirmative).

11 Q. The environment there at Douglasville, from what you

12 know, what was that like for Raymondeze?

13 A. Well, I didn't really know the environment that was

14 going on there until really after Stanley, my brother,

15 was on his deathbed. But I know when Raymondeze came to

16 my house once or twice and, you know, he plays with my

17 son, he's a very active, rambunctious child, like my son

18 was, getting -- or was getting into things. They used to

19 flip off the top of my roof and everything.

20 But when time for Raymondeze to go home, Raymondeze

21 would holler and cling to my legs and he didn't want to

22 go home. But he was such a small child, you would think

23 he was just having so much fun that he just didn't want

24 to leave, you know.

25 And then I know later on in life, Raymondeze used to

1 get in a little -- a lot of trouble like my brother -- my
2 son did, Elkenno. And I was telling him how some of the
3 programs that I went through trying to get my son some
4 help. And I asked my brother, I said, well, Stanley, you
5 need to get Raymondeze some help because he's doing all
6 these things and acting out. He needs some -- you know,
7 he needs some attention. I don't think he ever got over
8 that his mother leave him and getting the attention that
9 his -- that he really wanted.

10 So -- but I figured, you know, all the time -- my
11 brother was the type of person that's really
12 communicative, you know. If -- he didn't really talk
13 things out when he got mad, he'd just get angry and want
14 to beat them and box up them all the time. So I was
15 trying to get my brother to put Raymondeze in some type
16 of -- because my son went to psychologists and some
17 psychiatrists, and eventually he went to a wilderness
18 camp. And I was trying to get Stanley to do the same
19 thing for Raymondeze, but he refused to. He said he --
20 he was a man and he could handle his self, that he didn't
21 need no help.

22 Q. Why do you say that Raymondeze didn't get what he
23 needed from his mama?

24 A. Because he needed that nurturing and that love and
25 that time. I mean, Elaine was in the house, so she was a

1 mother. She'd just do -- do the stuff in the house, but
2 she was never that mothering type. And then my brother
3 worked constantly, putting in sixteen hours to twenty
4 hours or more. And by the time he got home from the
5 twenty hours or whatever he worked, then he went
6 somewhere and drink, and then he'd come home drunk. And
7 then when he get home to Elaine, you know, Elaine would
8 tell him all the mischievy (phonic) things that he'd
9 done, he picked on Teresa or did anything, then Elaine
10 tells Stanley, and then he and Raymondeze end up getting
11 -- he used to beat Raymondeze so bad till he just -- till
12 he was just plain exhausted and couldn't beat him no
13 more.

14 Q. The last time -- let's move to the period
15 Thanksgiving -- between Thanksgiving and December --
16 between Thanksgiving and the first part of December 2006.
17 I want you to tell our jury, please, did you see
18 Raymondeze? Where did you see him? And what was -- what
19 was going on with him as you evaluated him?

20 A. Are you referring to the time when he came in town
21 and wanted ---

22 Q. Yes, ma'am.

23 A. Okay. When he came in town and wanted to see me ---

24 Q. Slow. Wait a minute. Slow down.

25 A. When he came in town and wanted -- and he came to my

1 house to see me, he asked to see his cousins and
2 everything. Raymondeze was -- the way he sound was like
3 he was making his last goodbyes, like we weren't going to
4 see him or he was either -- you know how you feel
5 somebody going to make the last goodbye, they're going to
6 commit suicide or kill their self or stuff like that, you
7 know. And I got this vibe that something just was wrong
8 with his spirit. But then he says, well, auntie, I'm
9 going to be back to visit you. He wanted to see my -- my
10 children, his cousins, Teresa. He wanted to see Keisha
11 and all his cousins and everything. But he wanted to see
12 everybody when he came in town. He asked to see
13 everybody but his father and Elaine.

14 So I told him -- he said he was going to come back
15 the next day and take me to -- out to eat, but I never
16 got to see him the next day. Just that -- it just seemed
17 the desperation in his voice that he needed to see
18 everybody in the family and meet them and tell them he
19 love them, like it was his last time, you know, people
20 trying to -- trying to get everything together before
21 their last words. So I just leaned over and I hugged and
22 kissed him and he -- Raymondeze is very affectionate, and
23 he is a very kind person. But I couldn't see what was
24 wrong. He wasn't really saying a whole lot, but he
25 wanted to see his family and he loved them and everything

1 like that.

2 Q. Teresa, the next time you heard -- a couple weeks
3 later, you heard about these incidents here in South
4 Carolina?

5 A. Well, I didn't hear about the incidents. But the
6 next day when he came to my house, I didn't hear
7 anything. The day or two after that, I heard that he got
8 picked up in Douglas County. I don't know if it was,
9 either for his tags, or it was at a gas station, he
10 didn't pay for the gas or something. And then we heard
11 that he -- he murdered a -- some -- two girls, two girls
12 in Anderson. And I'm like okay, I don't believe this
13 happened because this is not the Raymondeze that I know,
14 you know. I don't know what led up to it, but when we
15 heard -- when I heard about it, we were just -- it was
16 just shocking because the Raymondeze that I know and our
17 family know, he was always so kind and loving and go out
18 of his way to do things for people. So I -- you know, I
19 don't know whether he just snapped or what had happened.
20 But, you know, it was just -- it was a shock. It was
21 really a shock because it was really out of his
22 character. It's really out of his character.

23 Q. Teresa, I want you to answer anything that the
24 prosecutor may have for you.

25 A. I just think ---

1 Q. Hold on, now. I'm sorry. Go right ahead.

2 A. All this stuff that led up to this, that I believe
3 Raymondeze had snapped. I think he -- what really got to
4 him is that he never got the love from his mother that he
5 really needed and that he was angry at his mother when he
6 did this to these girls. I just don't see this in
7 Raymondeze. But I'm just sad that it happened and it'll
8 just weigh me that if he could have got the help that he
9 needed, that it wouldn't have led up to what he has done.

10 Q. Teresa, answer anything the Solicitor may have.

11 CROSS-EXAMINATION

12 BY MS. ADAMS:

13 Q. Ms. Rivera, I'll be brief. You never saw your
14 brother, Stanley, beat Raymondeze, did you?

15 A. No, ma'am.

16 Q. Okay. In fact, the first time you said you heard
17 about it was on Stanley's deathbed when he told you about
18 it?

19 A. Yes, because he -- Raymondeze -- like I told you
20 when he came over to the house, Raymondeze would never
21 say what was going on at home. He just did not want to
22 leave. You know how when children are having fun, they
23 don't want to leave?

24 Q. He wanted to play with his cousins ---

25 A. Yeah.

1 Q. --- your son?

2 A. Yes.

3 Q. Okay. So he had fun at your house?

4 A. Yeah, he just had fun. Uh-huh (affirmative).

5 Q. And you ---

6 A. And he was a playful, rambunctious child, yes.

7 Q. And you let him stay and you were part of his life?

8 A. Yeah. Yeah. Go home and tell Stanley, you know,

9 one -- why Raymondeze was getting in so much trouble, he
10 got -- he was getting punished a lot. So Stanley said,
11 well then, he is not able -- he's not going to be able to
12 come over because he's under punishment. Every time you
13 turn around, you ask, you know, could we get, you know,
14 Raymondeze or the boys. It was always -- they were
15 always under punishment for something, one thing or
16 another. And we really got -- you know, had no more
17 contact with them. You know, no family events, nothing.
18 We invite them, but they just never bothered.

19 Q. But you never witnessed any beatings ---

20 A. No ---

21 Q. --- from Stanley?

22 A. --- I never witnessed. Actually, I would have never
23 known if Stanley wasn't confessing this on his deathbed
24 because he wanted to come clean for what all he has done
25 before he died.

1 Q. And in fact, didn't -- your mother Elizabeth was
2 actually in the military as well; is that right?

3 A. Yes, she was in the Air Force.

4 Q. So you grew up in a strict household. Basically,
5 you needed to follow the rules.

6 A. Oh, yeah. We followed the rules. A certain way you
7 make the bed, hang the clothes, iron, yes. We followed
8 -- we had a lot of rules and regulations.

9 Q. And you have rules in your house as well?

10 A. Yes, ma'am.

11 Q. Okay. And Stanley had rules in his house ---

12 A. Yes.

13 Q. --- I'm sure ---

14 A. Uh-huh (affirmative).

15 Q. --- because that's how he was raised?

16 A. Uh-huh (affirmative).

17 Q. Thank you, Ms. Rivera.

18 MR. DELGADO: Nothing more, Your Honor.

19 THE COURT: All right. You may step down.

20 Thank you, ma'am.

21 MR. MCGUIRE: Your Honor, the Defense calls
22 Olivia Cumberlander.

23 OLIVIA CUMBERLANDER,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MR. MCGUIRE:

2 Q. Miss Olivia, where do you live?

3 A. I live in Atlanta, Georgia.

4 Q. And what do you do for a living?

5 A. I'm a teacher.

6 Q. And do you know Mr. Raymondeze Rivera?

7 A. Yes, I do.

8 Q. And how do you know him?

9 A. He was a student at my -- in the middle grades at my
10 school, Chapel Hills Middle School. He was a regular ed
11 student. I'm a special educator, but I've worked with
12 him in a collaborative setting. That's a setting where
13 you have a regular ed teacher and a special ed teacher.

14 Q. Okay. And was he also friends with your children?

15 A. Yes, he was. He -- he was about the age of my
16 oldest son, and he did spend time -- you know, several
17 times he visited my home, you know, sleep-overs with
18 about -- probably about six or seven boys. And he would
19 spend -- they would spend the night, and then they would
20 go home.

21 Q. Tell me what you remember of Raymondeze when he was
22 a child and you were his teacher.

23 A. He was a bright young man. He was mannerable
24 (phonic), and he never -- I mean, I never had any
25 problems with him. I have no negative recollections of

1 Raymondeze. He tried to please, and he was pretty good
2 at, you know, completing his assignments that were given.
3 And now, he did get into some trouble with some peers,
4 but he was not a bully. He was the one that, you know,
5 he would stand his ground. If somebody did something to
6 him, he would of course, you know, defend himself. And
7 so he did get into some trouble in the -- in the school
8 in terms of I.S.S., but it was sort of like, you know,
9 normal type things that kids, you know, get into during
10 school. So I didn't see it as anything, you know,
11 unusual.

12 Q. So when he was a student and you knew him, he wasn't
13 a bully or mean?

14 A. No, he was not mean at all. He was -- you know,
15 really tried to please. You know, he was a easygoing
16 student.

17 Q. Okay.

18 A. And he was accepted by his peers, too.

19 Q. Now, there was an incident where his father came
20 down to the school. Do you remember hearing about that?

21 A. I did hear about it. It was some talk at the school
22 about his parent came up and -- and he beat the child at
23 the school before, you know, anybody knew what he was
24 going to do. And so that was some talk about it. Now,
25 as far as the name, he was not a student, so I was not

1 directly involved in the meeting. But it did occur.

2 Q. And then you later learned through your child that
3 Raymondeze was ---

4 A. It was Raymondeze.

5 Q. --- that he was beaten by his father at the school?

6 A. Yes. I also remember a time when they went on a
7 field trip and he ran away. He didn't get back on the
8 bus to come home, and the kids were talking about that.
9 And they said that he knew he was going to get a beating
10 when he got home, and so he was, you know, trying to get
11 away.

12 Q. And he ran away from home?

13 A. He ran away, yes.

14 Q. To escape his father?

15 A. That's the understanding that I had from the kids.
16 That's what they said.

17 Q. And sometimes kids laugh about kids and their
18 problems at home. Do kids, including your kids, did they
19 laugh about Raymondeze getting beat by his dad or ---

20 A. No, they didn't. In fact, it was like it was
21 embarrassing, you know. And they -- they didn't -- it
22 was not something they talked about it and was laughing
23 about. They just kind of said it happened and they --
24 they say he beat him a lot, so -- but, like I said, that
25 was based on his peers. They -- they talked about it.

1 Q. But Raymondeze never confided in you or told you
2 what was going on in his home?

3 A. He never did. He was, you know -- from my
4 understanding, the way he was around me, he was looking
5 for, you know, acceptance. Like, if -- if I told
6 somebody to take the trash out, he would be one to
7 volunteer. You know, because it seemed -- he seemed like
8 he wanted to please. He never gave me any trouble. And
9 I had rules. You know, I wouldn't allow them to -- even
10 to horse play or anything like that. There was no
11 violence. I raised my kids like that and I treated the
12 boys that came over pretty much the same way I did my
13 kids. So he didn't give me any trouble at all. And I
14 have -- I was surprised as well, you know.

15 Q. When you heard about ---

16 A. When I heard about this, I just -- it's not the
17 Raymondeze I remember, you know. But then he was a child
18 at the time. I don't know what happened afterwards.

19 Q. Sure. Miss Olivia, I think that's all I've got for
20 you. If you would, answer any questions that the
21 Prosecutor might have for you.

22 A. Okay.

23 CROSS-EXAMINATION

24 BY MS. ADAMS:

25 Q. Ms. Cumberlander, you -- like you said, you never

1 saw Stanley beat Raymondeze, did you?

2 A. No, I did not.

3 Q. Okay. And you never saw any bruises on Raymondeze
4 either, did you?

5 A. I don't remember any bruises on him, but then I was
6 not -- you know, he was in a collaborative class and he
7 pretty much -- unless something was just like on the face
8 or something, then, you know, I wouldn't notice it. So
9 ...

10 Q. But this is just what the kids told you had
11 happened?

12 A. Yes. And Raymondeze was very good at, you know --
13 he appeared to be like everybody else, you know. It
14 seems like he'd made a effort to be that way. And I was
15 surprised later on to find out some of the things that
16 were going on because he never revealed anything and he
17 never confided. You know, he was just a regular kid with
18 all the other boys.

19 Q. But he would come to your house and you treated him
20 like you treated your boys?

21 A. Yes, I did. It was just -- when we went out, went
22 to -- we went shopping, went to the movies, you know, and
23 -- and he was just another one of the boys.

24 Q. And you gave him the love like you gave your boys?

25 A. I sure did.

1 Q. Thank you so much.

2 A. All right.

3 THE COURT: Any redirect?

4 MR. MCGUIRE: No further questions.

5 THE COURT: All right. You may step down.

6 Thank you, ma'am.

7 MR. DELGADO: Your Honor, we call Ms. Sonja
8 McDowell, please.

9 SONJA MARIE McDOWELL,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. DELGADO:

13 Q. Ms. McDowell, I want you to introduce yourself to
14 the members of our jury by telling them where you live
15 and your family background, please, ma'am.

16 A. My name is Sonja McDowell. I live in Cincinnati,
17 Ohio, and I was once the fiancé of Raymondeze Rivera. I
18 am currently a schoolteacher of middle school and high
19 school students in the subject of math.

20 Q. You are married?

21 A. Yes, I am.

22 Q. And you have twenty-one-month-old twins; is that
23 right?

24 A. Yes, I do. A boy and a girl.

25 Q. Ms. McDowell, how did you come to meet Raymondeze

1 Rivera and over what period of time, and how did that
2 develop?

3 A. I met Raymondeze in 2005. A girlfriend and myself
4 went to Atlanta just to get away for a weekend because we
5 had a Monday off. So we like to travel, so Atlanta was
6 not too far, so we went down there. And she had family
7 members. And then we just went out. I actually met
8 Raymondeze at a club that we had went to that weekend.
9 And as time transpired, at the end of the night, we
10 exchanged numbers and we continued to keep in contact
11 with each other.

12 Q. When was the next time you saw him, or when was the
13 next time you heard from him?

14 A. We actually talked almost every day. It seemed that
15 we kicked it off really well. And things that he liked
16 was things that I liked, so our conversation was good and
17 we found ourselves talking on the phone for hours and
18 hours and hours because we had so much in common.

19 The next time we probably hooked back up or actually
20 saw each other -- visited each other again was, I think,
21 maybe a couple months. My time frame might be a little
22 off. But it was pretty close after we met the first time
23 because we were both so eager to see each other again.

24 Q. And you did come back down South or at least to
25 Atlanta?

1 A. Yes. We actually met in Atlanta that -- the next
2 weekend that I came.

3 Q. Tell the jury, please, about a time that you went
4 from Cincinnati down to Tampa, Florida, to meet him and
5 what he was doing in Tampa.

6 A. When I made the trip to Tampa, Florida, I went to go
7 visit Raymondeze. And me and him had made arrangements
8 that we were to stay at his mom's house when I came down
9 there to visit. And when I got into the City, it was --
10 and we were actually at her house, she told him that I
11 could not stay there because she had made other plans to
12 keep the daughter. So I actually had to make
13 arrangements to stay somewhere else. And this was all in
14 the time that I got down there. You know, I didn't have
15 any prior notice or anything. I was expecting to stay at
16 his mom's house even though I was a little, I guess,
17 intimidated or scared to stay since that was my first
18 time.

19 And I was like okay, well, it's his mom, so we'll
20 make the best of it. But I was really heartbroken at the
21 fact that when I got down there I was not allowed to stay
22 there. And I had to -- we actually had to make
23 arrangements to stay somewhere else. And once I actually
24 did talk to her when she came out my first impression of
25 her -- I was pretty, I guess, disappointed in the fact of

1 the impression that I got. She was really dry to me when
2 I spoke to her, and I thought she would be excited or
3 happy or -- I mean, at least I come from a family
4 background that is really friendly. And you know, I just
5 was like wow, okay, hello.

6 So I was kind of quiet and to myself. And I
7 remember that Raymondeze and her had got into an argument
8 about some thing really petty. And I was really bothered
9 by that, so I actually left out of the house and went
10 back into the car, you know. And he stayed in there and
11 then he came out, and I politely told him please do not
12 bring me back to your mother's house again because I
13 really felt uncomfortable, and I did not like the first
14 impression that I received from her. So we left and we
15 went and found a hotel, and that's where I spent the
16 weekend.

17 Q. After that, your relationship with Raymondeze
18 deepened?

19 A. Yes.

20 Q. And the two of you all got engaged?

21 A. Correct.

22 Q. As a result of that, where did Raymondeze travel and
23 from we're did he come?

24 A. He came from Florida to Cincinnati, which is where I
25 lived. And we were going to live there. He didn't want

1 to stay in Florida, and I didn't want to leave Cincinnati
2 because my family are really close. And he didn't have
3 any reason to stay in Tampa. So he said that I wouldn't
4 have a problem with coming to Cincinnati. So that's
5 where he came.

6 Q. When he came, from the time he came and to the time
7 he left, how long a period transpired?

8 A. Maybe about -- forgive me on my time frame.

9 Q. That's all right, just generally.

10 A. Six months.

11 Q. I'm sorry?

12 A. Six to seven months maybe.

13 Q. All right. During that period of time, tell the
14 jury about the routine that you and he settled into,
15 whether Raymondeze worked, whether Raymondeze took part
16 in your family life, all of that.

17 A. Okay. Well, the time that he was there, I was still
18 working, so, of course, every day I left to go teach.
19 And he was actually at home with my mom. He actually
20 stayed at my sister's house who lived five minutes away
21 from me and my mom because, you know, we were brought up
22 in the church, as well. And she didn't believe that
23 people of the opposite sex should live together before
24 marriage, so he stayed over there.

25 But he would come over to the house and my mom would

1 actually help him to get on the Internet, show him things
2 around, and find him a job. He actually had a job within
3 about two weeks. But the daily routines that we had is
4 once I came home from work, we would all come over to my
5 mom's house and we'd have dinner. We would laugh, we
6 would talk about the Bible, and we definitely played
7 cards, which is something that my mom and Raymondeze
8 loved so dearly. And this happened -- I mean, we
9 actually spent more time in the house than we did out.
10 We both are family people. He loved to be around my mom,
11 and, you know, we spent most of our time playing games in
12 the house and -- and doing things.

13 Now, occasionally we got out. We might have went to
14 a jazz club or to a movie or something, but we spent the
15 majority of our time in.

16 Q. Did he become -- without being a blood relative, did
17 he become a member of your family?

18 A. Yes. My mom -- he actually took really well to my
19 mom. And my mom is the type of person that, you know,
20 she can see, based on a person's -- I guess, they -- you
21 say, their presence, on what type of person they are,
22 because there's been times where she would say, I don't
23 think you should date him. I didn't like his first
24 impression. Or he seems a little weird. Are you sure?
25 So I would always bring my boyfriends around my mom so I

1 could get that final step, like, okay, is this the right
2 one?

3 So she had nothing but positive things to say about
4 Raymondeze. I mean, and she loved him. She called him
5 son. He called her Mama Helen, and they clicked. She
6 actually would do more for him than she would for me.
7 And I'm like, wait a minute, hold up now. I'm the real
8 daughter. He's just adopted in, so I should get first
9 precedence over him. But she treated him as well as me
10 or sometimes better. You know, and she just loved him.

11 Q. Sonja, during the time that he worked in Cincinnati,
12 did you and he have time to be able to talk about his
13 background and his upbringing?

14 A. Yes. In the beginning Raymondeze was pretty to his
15 self. And just one thing that I was explaining to him
16 about relationships is one good thing is communication.
17 You know, and one way that we got to learn about each
18 other was to talk about our childhood and our upbringing.
19 It kind of took him a minute, but when he finally did
20 open up, you could tell he was not saying everything. He
21 wouldn't tell me everything about his self. But I did
22 know that he was mentally and physically abused as a
23 child, and he was also -- I don't know exactly what
24 family member it was. But that he was molested as a
25 child, you know. And that just bothered me to the fact

1 that I was like, wow, because in my childhood, I didn't
2 have anything bad to say except my dad passed away at
3 twelve. And even still, my mother made it so that -- I
4 mean, I missed him, but it wasn't really something
5 traumatic because I was able to deal with it. And the
6 love that I missed from him, she doubled it up. So that
7 was the only experience as a child that I had to deal
8 with.

9 Q. What caused the relationship to break up? What did
10 Raymondeze do?

11 A. Well, our relationship broke up when -- when he
12 left, he didn't tell his mom where he was going, and she
13 eventually found him. And I noticed that he got a phone
14 call from her. And after that phone call, she had said
15 that she was going to turn him in for probation. And I
16 knew that once he left and I wasn't going to Florida that
17 our relationship probably was going to be over. So at
18 that point, we kind of severed our ties. But we still
19 remained friends and in contact with each other. But, I
20 mean, we were both very upset and disappointed, but that
21 was just the outcome of what it had to be.

22 Q. During the period of time he was in Cincinnati,
23 would you tell our jury please, as you related it to Bill
24 and myself, about a friend of yours or a friend of the
25 family had some young children -- young boys, I think,

1 that he ---

2 A. Yes. I have a friend, and she's really close to the
3 family. We call each other cousins. Her name is Aunt
4 Keisha. And she would actually would help spend -- you
5 know, showing him around. And he loved her boys. He
6 always wanted to -- whenever he came into the City, the
7 first thing he said was, I need to see Keisha and the
8 boys. I need to see the boys. And he liked spending
9 time with them. They loved him. They treated him like
10 he was one of the family members, too. Anytime I went
11 over there, the conversation was, hey, when is Raymondeze
12 coming back? We like him, we have fun with him. So --
13 and he treated them they were one of the family as well.

14 Q. Raymondeze explained to you that he had a couple of
15 children at that time; is that correct?

16 A. Yes. He had a son and a daughter, and the son was
17 the oldest.

18 Q. Tell -- tell the jury the son's name ---

19 A. The son's name is ---

20 Q. --- and where that boy lives.

21 A. --- Justice, and he lives in Atlanta.

22 Q. How old would Justice have been around 2006, if you
23 know?

24 A. I think it was around three maybe. He was pretty
25 young.

1 Q. All right. You know, either at that time or you
2 know now, that Raymondeze was on probation in the state
3 of Georgia, but that had been transferred to Florida.

4 A. Yes, I did know that.

5 Q. And it was improper and illegal for him to leave the
6 state of Florida, correct?

7 A. Yes. And I tried to convince him to stay. He did
8 actually, a couple times, tried to fill out paperwork to
9 get the probation transferred because I knew that if he
10 left without permission, that he would be in trouble. He
11 said that he did it a couple times and he didn't get an
12 answer. But he was eager to get away from the life in
13 Florida and bring it -- leave it behind him and come to
14 Cincinnati and start a new one. I insisted on him
15 staying, but he didn't. So I just said that I would have
16 to support him. And I explained to him, did you know the
17 consequences that would happen afterwards. And he was
18 willing to take the chance because he didn't want to
19 stay.

20 Q. His mother is the one that called and said that she
21 was going to turn him in?

22 A. Yes, sir.

23 Q. As a result of that, he left. He left what? His
24 relationship with you, the family environment in
25 Cincinnati and came back to Florida?

1 A. Yes, sir.

2 Q. Sonja, if you'll answer anything the Prosecutor may
3 have.

4 A. Okay.

5 MS. ADAMS: Sonja, I have no questions.

6 THE WITNESS: Okay.

7 MR. DELGADO: Your Honor, I have nothing else
8 to ask but that the witness be excused from the stand.

9 THE COURT: All right. Any objection?

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

11 THE COURT: Very well. Thank you ma'am, and
12 you may be excused.

13 THE WITNESS: You're welcomed.

14 MR. MCGUIRE: Your Honor, the Defense would
15 call Helen McDowell, Helen Allen McDowell.

16 **HELEN McDOWELL ALLEN,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. MCGUIRE:

20 Q. Ms. Allen, where do you live?

21 A. I live in Cincinnati, Ohio.

22 Q. And you're the mother of Sonja McDowell who just
23 testified?

24 A. I'm her mother and I'm also a minister at New
25 Commandment Christian Fellowship in Cincinnati, Ohio.

1 Q. And you knew Mr. Raymondeze Rivera?

2 A. Yes, sir.

3 Q. How do you know him?

4 A. I know him from the relationship between he and my
5 daughter, and I knew him when he came to Cincinnati. I
6 didn't know him before then, but the Raymondeze that
7 they're talking about now, that's not the young man that
8 I knew. That's a different person.

9 Q. Well, that's -- that's what I'm going to ask you
10 about. The Raymondeze Rivera that you knew that was in
11 your home, that lived with your other daughter, tell the
12 jury about -- about him. What was he like?

13 A. Well, when he came to Cincinnati -- as my daughter
14 has already stated, I don't believe in living together
15 before you're married. So he stayed with my other
16 daughter. Her name is Shawna McDowell. And she's a
17 principal in an elementary school in Cincinnati. And she
18 gave him a key to the house. He was living downstairs,
19 and she was upstairs. But he had the run of the house
20 and he had a key. He could come and go when he got
21 ready. And -- but you know what, that was the real
22 Raymondeze that I knew because when he came there, as my
23 daughter forestated (phonic) again, he would go to my
24 other -- well, spiritual daughter's house, and he would
25 always, always spend time with her two boys because she

1 and her husband were divorced. And he would stay around
2 me, and he even sent me a Bible because he had a Bible.
3 And we were reading the Bible. And the Bible, in the
4 footnotes, it had an explanation of the scriptures. And
5 I didn't have a Bible like that, so he saw that my
6 daughter brought me a Bible back when she came down here
7 to see him.

8 Q. Ms. Allen, slow down a little bit. You don't have
9 to do it all in one sentence.

10 A. Yes, sir.

11 Q. When Mr. Rivera met Sonja, you were talking about a
12 Bible. He sent a present home to you through Sonja?

13 A. Yes, sir.

14 Q. And that was the Bible?

15 A. Yes, sir.

16 Q. And when he came up to Cincinnati to live -- again,
17 you said you were not going to condone him living with
18 Sonja, obviously.

19 A. Yes, sir.

20 Q. And he lived with your other daughter?

21 A. Yes, sir.

22 Q. And what was their relationship like? Did they get
23 along well?

24 A. Like sisters and brothers. And when we heard --
25 well, my daughter, Sonja, called me and she was telling

1 me about the things, you know, that had happened with
2 Raymondeze, I said it couldn't be, Sonja, because that's
3 not the young man that I knew. You know, I said it -- it
4 just couldn't be.

5 And -- and I still don't believe it. It wasn't the
6 Mondeze (phonic) that I knew. It might have been another
7 split person -- a split personality. You know, people
8 that have split personalities, they are this way, and
9 then something happened that they are another way.

10 But the Mondeze that they are talking about today is
11 not the young man that I knew because he was kind, he was
12 gentle. And he and I would laugh about things, and I
13 think sometimes Sonja would get upset because I was so
14 close to him.

15 And I treated him as if he was my own son. And I
16 desired for him to be my son-in-law. And I thought about
17 the beautiful children that they would have. And when
18 all of this came up, it really, really -- and I'm still -
19 - I'm really hurt because I just can't believe that
20 that's him. I just can't believe it. It has to be
21 something wrong, you know.

22 I just believe that there's something going on in
23 his head that one time you might -- you know how people
24 have just -- when you're going through stuff or stuff
25 that you've gone through in your life. And it just comes

1 up at a certain time like there was a split moment, and
2 the person that you are, you're not that person. But you
3 are that person that's trying to get revenge for the life
4 that you had as a child. This is my belief. Do you all
5 hear what I'm saying? This ---

6 MS. ADAMS: Your Honor ---

7 A. --- is my belief.

8 MS. ADAMS: --- I object. This ---

9 THE COURT: Just ---

10 THE WITNESS: I'm sorry.

11 MS. ADAMS: --- is kind of unresponsive to the
12 question.

13 THE WITNESS: I'm sorry, ma'am.

14 Q. Ms. Allen, obviously, as we discussed last night
15 when I met you for the first time ---

16 A. Yes, sir.

17 Q. --- this is your only opportunity to address this
18 jury with regard to whether they should have mercy on ---

19 MS. ADAMS: Objection, Your Honor. That's not
20 ---

21 MR. MCGUIRE: That's -- it's a question coming.

22 MS. ADAMS: Yes.

23 THE COURT: State your question.

24 MR. MCGUIRE: Sure.

25 THE COURT: Just a moment. Don't answer until

1 I hear the question, please.

2 Q. And this is your -- this is your only opportunity.

3 And I understand you want to rush everything. But just
4 take your time, if you would. Just tell the jury, in
5 your view, do you want them to have mercy on Mr. Rivera?

6 A. Jury, in my heart I am -- I feel so sorry for the
7 families that lost their daughters. But that I also
8 would love for you to have mercy over Mondeze because
9 it's not just him that committed the crime.

10 You know, if it was my daughters, I know I would be
11 going through some stuff, and I know I would be hurt.
12 And this is why I feel for the families of this young
13 man. Has children that's going to have to live through
14 this, if he ---

15 MS. ADAMS: Your Honor ---

16 A. --- get the ---

17 MS. ADAMS: --- I object.

18 A. --- death penalty.

19 MS. ADAMS: This is not appropriate testimony
20 for this witness.

21 THE COURT: Overruled.

22 Go ahead, finish your statement.

23 A. This -- his children, they have to live through
24 this. So I'm begging you, please, please have mercy.

25 And to the family, I know you're hurt and I feel

1 sorry about your daughters. But it has happened. It has
2 happened. And I know, you know, we want revenge. But
3 God is going to revenge everything in the end. So please
4 think of it that way. Have mercy on him.

5 Q. Ms. Allen, that's all I have for you. If you would,
6 answer any questions that Ms. Adams ---

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MS. ADAMS:

10 Q. Ms. Allen, he was with you in 2005; is that correct?
11 Was it 2005? Is that the year?

12 A. 2005? Yes, sir -- yes, ma'am, I think it was in
13 2006. Summer of 2006, I think. I'm -- I can't
14 recollect. You know, I'm seventy-seven years old. Don't
15 forget that.

16 Q. That's okay.

17 A. I can't -- I can't ---

18 Q. That's okay.

19 A. --- recollect the exact time.

20 Q. I understand. But it was around 2005, 2006?

21 A. Yes, ma'am.

22 Q. Is that fair to say?

23 A. Yes, ma'am.

24 Q. And when he was at your house, you gave him a lot of
25 love and support.

1 A. A whole lot of love, yes, ma'am.

2 Q. And he was just fine at your house, wasn't he?

3 A. Yes, ma'am.

4 Q. Thank you so much.

5 MR. MCGUIRE: Nothing further for this witness,
6 Judge.

7 THE COURT: Very well.

8 You may step down. Thank you, ma'am.

9 THE WITNESS: You're welcomed, sir.

10 MR. DELGADO: Your Honor, we call Ms. Canessa
11 Thomas, please.

12 Your Honor, excuse me for one second. It may be
13 closer to time, as well, and the Solicitor has objections
14 to some matters we intend to produce.

15 THE COURT: All right. Certainly.

16 Mr. Foreman, ladies and gentlemen of the jury, why
17 don't you take a very short break. And when you're ready
18 to come back, just knock on the door and we'll receive
19 you at that time.

20 Again, do not undertake the discussion of the case
21 among yourselves in any way.

22 (WHEREUPON, the jury exited the courtroom at
23 approximately 2:49 p.m.)

24 THE COURT: Need a break? Oh, we -- yes, I
25 understand.

1 MR. DAY: Why don't we do it now while there's
2 a break?

3 THE COURT: All right. Let's -- we'll take a
4 short break while the jury's out.

5 (WHEREUPON, court stood at recess for a short
6 break.)

7 MR. DELGADO: Your Honor, we're going to move,
8 as we noted at the sidebar, we will move three different
9 pieces of evidence through the testimony of Ms. Canessa
10 ---

11 THE COURT: All right. Two letters, or a
12 letter, a note and a photograph.

13 MR. DELGADO: That is correct, sir.

14 THE COURT: Any objection to the longer letter?

15 MS. ADAMS: Your Honor, there's -- there's two
16 different -- that I haven't had an opportunity to
17 completely ---

18 THE COURT: All right. I'm going to say it
19 again. As I saw, there was a letter with a short note,
20 with a hand print on it, and a photograph?

21 MS. ADAMS: Yes, sir.

22 THE COURT: All right.

23 MS. ADAMS: We object to the hand-print letter.

24 THE COURT: Why?

25 MS. ADAMS: It says, I know you don't want to

1 live the rest of your life behind bars, but Dravan should
2 be able to hear your voice when he is old enough to know
3 who you are. Much love, Canessa and Drav. Don't give up
4 your life. This is your hand -- what ...

5 What is that?

6 THE COURT: Well, let me -- regardless of what
7 it says, what's the objection to it?

8 MS. ADAMS: Well, Your Honor, the objection is
9 that it's talking about life and sentencing and -- it's
10 not appropriate for the jury.

11 THE COURT: Based on?

12 MS. ADAMS: Your Honor, just the same -- we
13 feel that it just goes outside the general plea of mercy
14 because it is, don't give up on your life, we want -- I
15 mean, Canessa can testify to that her relationship with
16 the Defendant and the Defendant's relationship with
17 Dravan.

18 THE COURT: What do you say, Mr. Delgado? You
19 going to do this witness?

20 MR. DELGADO: The statute says the Defendant
21 has the right to present any evidence in mitigation for
22 extenuation of the death penalty. We have a right to be
23 able to bring in family impact testimony. We have a
24 right to show his loving, caring relationship for his
25 children. We have a right to be able to talk about how

1 he wants the very best for his children and what's -- in
2 this letter, and we have a right ---

3 THE COURT: All right. I understand. I'm
4 going to overrule your objection. So let's have the
5 exhibits marked for identification at least.

6 MR. DELGADO: I'm sorry, Judge?

7 THE COURT: Have the exhibits marked ---

8 MR. DELGADO: Yes, sir.

9 THE COURT: --- for identification, so I can
10 take up -- now, what's the next one? How about the
11 letter? Any objection to the letter?

12 MS. ADAMS: Your Honor, I haven't read the
13 entire letter. I'm sorry.

14 MR. DELGADO: They were both included in
15 discovery, Your Honor. They didn't ---

16 MS. ADAMS: Well, I didn't --- just didn't know
17 which letter it was. Your Honor, we have no objection.

18 (WHEREUPON, Defendant's Exhibits Number 4, 5 and 6
19 were marked for identification only.)

20 THE COURT: All right. Would Counsel approach?

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 THE COURT: All right. Let's go -- now, the
24 letter that I think it's dark penmanship or whatever?

25 MR. DELGADO: Yes, Your Honor. This has been

1 marked. Is this is the one, Your Honor?

2 THE COURT: All right. Now, that one I think
3 I've admitted. What's the number on it?

4 MR. DELGADO: 4.

5 THE COURT: That's the hand print.

6 MR. DELGADO: That's 4.

7 THE COURT: 4 has been admitted over the
8 objection of the State.

9 (WHEREUPON, Defendant's Exhibit Number 4 was
10 admitted into evidence.)

11 MR. DELGADO: 5 is the letter from Mr. Rivera
12 dated December the 16th, 2008, to Canessa Thomas.

13 THE COURT: Any objection?

14 MS. ADAMS: No, sir.

15 THE COURT: All right. Without objection ---

16 MR. DELGADO: That's Number 5.

17 THE COURT: --- 5.

18 (WHEREUPON, Defendant's Exhibit Number 5 was
19 admitted into evidence.)

20 MR. DELGADO: Number 6 is a photograph showing
21 Ms. Canessa Thomas with ---

22 THE COURT: Objection?

23 MS. ADAMS: Judge, let it in. No objection.

24 THE COURT: Well, I think there would be -- the
25 Court would find that it is a picture of a unit which

1 includes, apparently, a child by the Defendant as well as
2 stepchildren or other children.

3 MS. ADAMS: Yes, sir. He -- Dravan does live
4 ---

5 THE COURT: All right. So I think that's --
6 that would be admissible as well.

7 (WHEREUPON, Defendant's Exhibit Number 6 was
8 admitted into evidence.)

9 THE COURT: So that's what, 5, 6, and 7?

10 MR. DELGADO: I think it's 4, 5, and 6, Your
11 Honor.

12 THE COURT: 4, 5, and 6. Defense's 4, 5, and 6
13 are admitted.

14 All right. Anything else from the State?

15 MS. ADAMS: No, sir.

16 THE COURT: Anything from the Defense?

17 MR. DELGADO: No, sir.

18 THE COURT: All right. When they come out, I
19 will read the question to them, and then I'll give them
20 my instruction.

21 (WHEREUPON, Court's Exhibit Number 14 was marked for
22 identification only.)

23 THE BAILIFF: They're ready, Your Honor.

24 THE COURT: All right. Ask them to join us,
25 please.

1 Anything from the State before we ask the jury to
2 join us?

3 MS. ADAMS: No, sir, Your Honor

4 THE COURT: From the Defense?

5 MR. DELGADO: No, sir.

6 THE COURT: Ask the jury to join us.

7 (WHEREUPON, the jury entered the courtroom at
8 approximately 3:11 p.m.)

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

11 Mr. Foreman, ladies and gentlemen of the jury, I've
12 been provided a question. Please clarify whether
13 Defendant was abandoned by mother at hospital or just
14 left in the home with his brother until neighbors found
15 him.

16 This is a question about a factual issue that you
17 will have to determine. You must make that determination
18 upon the evidence and the testimony and the exhibits that
19 are admitted during the trial of the case. But I have
20 read it into the record, so that's -- that's a matter
21 that you will have to resolve, based on what you --
22 what's presented by the parties.

23 All right. Anything from the State?

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

25 THE COURT: From the Defense?

1 MR. MCGUIRE: Nothing, Your Honor.

2 THE COURT: All right. Very good.

3 MR. DELGADO: Your Honor, we now call Ms.
4 Canessa Thomas, please.

5 CANESSA THOMAS,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. DELGADO:

9 Q. Canessa, I want you to see if you can pull the chair
10 a little bit closer and maybe tilt that -- there you go.
11 Tilt that microphone down -- that's right. You have a
12 soft voice. That's good. Okay.

13 You are Ms. Canessa Thomas and you live in Sarasota,
14 Florida; is that correct?

15 A. Correct.

16 Q. Canessa, I want you to speak so that everyone here
17 in the jury box can hear you. Tell them a little of your
18 background, how old you are, how long you've lived there
19 in Sarasota in Florida, and then how you came to know and
20 meet Raymondeze Rivera.

21 A. I'm thirty-two. I reside in Sarasota, Florida.
22 I've been there six years. I met Ray and his wife, I
23 called him because that's what he introduced his self to
24 me as when we were fifteen or fourteen years old back in
25 Tampa, Florida. We met in church, and we kind of formed

1 a -- somewhat of a friendship. And as time went on, we
2 had a boyfriend and a girlfriend teenage relationship
3 that lasted pretty much during the course of the time
4 that he was in Tampa as a teenager until he left and went
5 back to Atlanta.

6 Q. All right. So for a period of time when you were in
7 your teenage years, he lived in Tampa and you lived in
8 Tampa and y'all met through church?

9 A. Correct.

10 Q. There was a period of time then that he left Tampa
11 and moved back to Atlanta?

12 A. Correct.

13 Q. All right. Approximately how old was he then -- and
14 you don't have to give exactly. But just generally, if
15 you can recall.

16 A. Maybe sixteen.

17 Q. All right. Did you then, sometime after he returned
18 from Florida, find out that -- and when you say Ray,
19 you're talking about Raymondeze Rivera, correct?

20 A. Correct.

21 Q. Sometimes you know him by Ray or Raymond, or even
22 Mon, M-O-N, which is the middle?

23 A. Correct.

24 Q. All right. The same fellow we're talking about,
25 right?

1 A. Back then it was just Ray.

2 Q. Just Ray. All right. He came back into your life
3 when you were sometime older, maybe twenty, twenty-one;
4 is that correct?

5 A. He came back in my life as -- our son is four --
6 twenty-eight or twenty-seven.

7 Q. All right. I'm sorry. I misjudged that. When you
8 were twenty-eight or twenty-nine?

9 A. Uh-huh (affirmative).

10 Q. How -- would you explain to us how that happened?

11 A. I had got off from work that day -- because my
12 family is primarily from Tampa, I traveled back and forth
13 from Sarasota to Tampa. I had got off from work and
14 heard a knock at my door. And because the only person
15 that live in Sarasota is my father, I really don't have
16 visitors. I opened the door, and there he was. He was
17 like, hey, I don't get no hug? And I hugged him and he
18 was like, I came to pick you up to take you back to
19 Tampa. And I was like ok. And we spent my weekend
20 there, and my mom took me back on Sunday.

21 Q. Did that start a more active relationship with
22 Raymond in your life?

23 A. Shortly after that night, I found out I was
24 pregnant. We would talk on the phone back and forth just
25 about old times, our church, and different people in the

1 church, and my life in Sarasota, and my kids and stuff.

2 We never really decided on a relationship. It was

3 basically catching up and, you know, the I-miss-yous and

4 stuff.

5 Q. Was there a period of time that Raymondeze came to

6 live with you and your children?

7 A. Yes. After I had my son -- I think Dravan was about

8 six or seven months old when he came and stayed.

9 Q. Dravan is spelled D-R-E-V-A-N, correct?

10 A. D-R-A-V-A-N.

11 Q. I'm so sorry. D-R-A-V-A-N, Dravan.

12 A. Yes.

13 Q. Dravan's father is Raymondeze?

14 A. Correct.

15 Q. Is that correct? All right. After the child was

16 born, he came to live with you at your home in Sarasota;

17 is that correct?

18 A. Correct.

19 Q. Tell these folks what your father does and what role

20 he played in Raymondeze's life and how that led to

21 employment for Raymondeze.

22 A. My father is a minister and the director of a men's

23 home. It is primarily for the weak, the broken and the

24 addicted. And me and Ray went to church, and I

25 introduced him to my father. And I pulled my father

1 aside and I told him I'd known Ray half my life. Come
2 over, take him in under your arm, pick him up and bring
3 him to some of the men's meetings. And he reached out to
4 him and he helped Ray get a job transporting -- I forget
5 what -- labor workers, day laborers. He would pick them
6 up from the ---

7 Q. This is Raymondeze?

8 A. Yes, Raymondeze. He would pick them up from the job
9 site and drop them off to the different jobs.

10 Q. During that period of time, you and Raymondeze and
11 your children, including Dravan, lived together as a
12 family; is that right?

13 A. Correct.

14 Q. Would you tell our jury, please, how that evolved,
15 what that consisted of, what that was like, and how he
16 related to that?

17 A. Ray wanted a family. He ---

18 Q. Canessa ...

19 A. Oh, sorry.

20 Q. I want you to say that again louder.

21 A. Ray wanted a family. We both have previous kids --
22 two from different people, and this is our third son. He
23 didn't want any other children from no other person, so
24 he really wanted a family with our son and my two kids.
25 He wanted us to go to movies together, have family plans

1 as far as like picnics or going to the beach or going
2 like to Busch Gardens or Disney World. He wanted us to
3 really be a family. And he tried.

4 When both of us was working, I would come home,
5 dinner would be ready. Food would be on the table. He
6 would fix the kids' plates, my plate and his plate. And
7 we would sit down as a family. And he -- he would say
8 this is the way it should always be. And that's what he
9 wanted. That's what he was striving for for us.

10 Q. Did that last?

11 A. No.

12 Q. Why?

13 A. Ray would catch like small attitudes when I didn't
14 express my love for him as much as he wanted me to, so it
15 would cause some arguments. And if I would have known
16 what he had been through, I would have been so much more
17 understanding and patient with him, because I wasn't. I
18 just thought he was being demanding and he just wanted
19 things to go his way. And I broke up with him. I told
20 him he had to leave. And he asked why, what did he do,
21 what could he do to make it right. I told him nothing.
22 He had to go.

23 And he called my dad to see if he could have a bed,
24 because he was like, you know, I'm going to lose my job.
25 What am I going to do? I told him I didn't care. He had

1 to go. And he stayed at the Salvation Army.

2 He would still come over and see our son. One night
3 he missed curfew and he asked could he spend the night.
4 He slept on the sofa, got his stuff, and went to work the
5 next day.

6 Q. You know that he has now been convicted for two
7 different crimes that occurred here and Anderson in
8 December of 2006, correct, ma'am?

9 A. Correct.

10 Q. And you know that since his arrest in Douglasville,
11 Georgia on or about the 16th of December, he's been in
12 confinement, he's been in jail, correct?

13 A. Correct.

14 Q. During that period of time, ma'am, has he written
15 you and have you written back to him?

16 A. Yes.

17 Q. Ma'am, I want to hand you what has been previously
18 identified and marked into evidence as Defendant's
19 Exhibit Number 4.

20 MR. DELGADO: Your Honor, with the Court's
21 permission, may I have the witness step down so that she
22 can explain this as well as read it?

23 THE COURT: Yes. Certainly.

24 (WHEREUPON, the witness stepped down from the
25 witness stand.)

1 Q. I want you to read this, and then I want you to show
2 to the jury what this outline on the letter is. Well,
3 first let's do this. On the second page of Defense
4 Exhibit 4, to whom is that addressed?

5 A. Raymondeze Rivera.

6 Q. And he is at where?

7 A. 4460 Broad River Road, Columbia, South Carolina.

8 Q. And that's a correctional institution, correct?

9 A. Correct.

10 Q. I want -- this is your handwriting?

11 A. Correct.

12 Q. Read this to the jury and then turn this around and
13 show them what this hand print is. It's okay, ma'am.

14 Take your time.

15 A. I wrote, Don't give up on life. This is our hands

16 ---

17 Q. Start up here at the very top.

18 A. Oh, okay.

19 Q. It's okay.

20 A. At the top I wrote, I know you don't want to live
21 the rest of your life behind bars, but Dravan should be able
22 to hear your voice when he is old enough to know who you
23 are. I put, much love, Canessa. And I wrote at the
24 bottom, Don't give up on life. This is our hands
25 holding onto yours.

1 Q. And whose hand is that?

2 A. Mine and Dravan's.

3 Q. And you traced Dravan's hand on that letter?

4 A. Yes. I put my hand on top and I asked him to come
5 here and put his hand on top of mine and I drew his hand
6 over mine as if we're holding on to Ray's.

7 Q. Okay. Why don't you take your seat back up there.

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

9 Q. Canessa, I want to also now hand to you what's been
10 identified and marked into evidence as the Defendant's
11 Exhibit Number 5. And I want to see if you can tell us
12 to whom that's addressed and from whom it was sent.

13 A. It's addressed to me, Canessa. And it's from
14 Raymondeze, Justice and Janiah -- Janiah. I'm sorry.

15 Q. It's all right.

16 MR. DELGADO: Your Honor, permission to publish
17 it to the jury?

18 THE COURT: Certainly.

19 MR. DELGADO: Ladies and gentlemen, this is
20 Defendant's Exhibit Number 5. It's dated ---

21 THE COURT: Let's speak up a little bit.

22 MR. DELGADO: I'm sorry. I apologize, Your
23 Honor.

24 This is -- this is Defendant's Exhibit
25 Number 5. It's dated December the 16th, 2008.

1 Dear Canessa, It's always good to hear from
2 you. I've been kind of worried because I
3 didn't hear from you for a whole month, but I
4 guess you have been busy with your hands full.

5 I am glad to hear that you have decided to
6 go back to school. I always knew you had a lot
7 of potential to do great things. In my
8 opinion, you could sell yourself short -- you
9 used to sell yourself short even with me. You
10 have everything going for yourself. You just
11 have to claim your breakthrough. Just continue
12 to trust in the Lord and believe what he said
13 he was going to do in your life, and he will
14 reward you.

15 God has called you for his purpose, so
16 seek him. And when you seek him with all your
17 heart, you will find him. I know you know how
18 to call on the Lord. I don't believe that God
19 has ever stopped loving you. You was chosen
20 from the beginning. He has your name written
21 in his book. Don't allow the devil to rob your
22 joy.

23 When I look to myself for encouragement, I
24 fail. When I look to others for encouragement,
25 they fail me. But when I put my hope in God,

1 he supplies all of my needs. I know that I am
2 by -- I am not by far perfect, but I serve a
3 God who is. I know that not I am by far
4 perfect, but I serve a God who is.

5 Canessa, you are like family to me. I
6 thank God for giving me the opportunity to be
7 in your life and to share our son with you. I
8 love Dravan, and Janessa (phonic), and Keevey
9 (phonic) all the same. They are as march [sic]
10 a part of me as you are. I am very grateful to
11 have them. I just hope that they won't forget
12 about me.

13 I wish you and the kids a happy Christmas.
14 I am pretty sure you're going to do a lot of
15 running around. Please be extra safe out there
16 and write me when you can. Remember, quote, I
17 never seen the righteous forsaken, end quote.

18 Happy holidays, Raymondeze, Justice, and Janiah

19 Q. Canessa, you have three children in all, correct,
20 ma'am?

21 A. Four.

22 Q. I want to hand you what's been now marked as
23 Defendant's Exhibit Number 6. Can you identify that as
24 well, please?

25 A. Our son, Dravan, my baby Janessa, and my son,

1 Jakeevi ---

2 Q. Dravan is the young man in blue to the far left?

3 A. Uh-huh (affirmative).

4 Q. How old is Dravan now?

5 A. He turned four January 5th.

6 Q. How old was he approximately when that picture was
7 taken; if you know?

8 A. Maybe two.

9 Q. Much bigger boy than he is here now, right?

10 A. He's still small.

11 Q. Canessa, answer anything that the Prosecutor may
12 have for you.

13 THE COURT: Cross-examination.

14 MS. ADAMS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. ADAMS:

17 Q. Canessa, it's good to see you. You were very kind
18 to let us into your home in Florida. And I know this is
19 difficult for you, and I just have a few questions, okay?

20 You said you've known the Defendant since he was
21 about fifteen -- fourteen or fifteen?

22 A. Correct.

23 Q. Okay. And he was out of your life for a period of
24 time; is that right?

25 A. Correct.

1 Q. Now, you never knew of any abuse that the Defendant
2 suffered?

3 A. He never shared or talked about it.

4 Q. Never told you anything about that?

5 A. No.

6 Q. All right. Your father is Anthony Tucker; is that
7 ---

8 A. Right.

9 Q. --- correct? Okay. And he actually was aware that
10 the Defendant, Ray, as you call him, had some serious
11 anger issues and tried to help him, didn't he?

12 A. Yes, because we had got into a fight.

13 Q. Okay. And he actually tried to help him in the
14 church as well, didn't he?

15 A. Correct.

16 Q. Okay. And in fact, that fight -- because I want to
17 make sure that the jury understands the time frame.

18 Dravan was born in January of '06; right?

19 A. Correct.

20 Q. Okay. And then the Defendant came back to live with
21 you when he was, you said, about six or seven months old?

22 A. In April, I believe it was.

23 Q. In April. Okay. And that fight you're talking
24 about, actually it was July 1 of 2006, when you actually
25 called the police to come to your house.

1 A. Correct.

2 Q. And you had him arrested because you told them he
3 became angry and punched me in the face with his fist and
4 grabbed me and pushed me up against the wall.

5 A. Up against the sofa.

6 Q. And you called the police on him?

7 A. Right.

8 Q. Okay. And your dad tried to help him, didn't he?

9 A. Even after that, correct.

10 Q. Thank you, Canessa.

11 A. You're welcomed.

12 REDIRECT EXAMINATION

13 BY MR. DELGADO:

14 Q. Canessa, relating to that occurrence in July, tell
15 our jury who was at least half at fault in that.

16 A. Me.

17 Q. Why, dear?

18 A. He asked me to let it go because he came in late.
19 It was like after three. And we had went to the movies
20 and to one of -- to a job function before that. He
21 turned his cell phone off in the movies. And when he
22 left, I would -- kept calling and calling and calling.
23 He didn't answer. I got scared and nervous because he
24 didn't know anyone in Sarasota that I knew of.

25 And when he came home, he laid down on the sofa.

1 And I turned on the lights, and I asked him where were
2 you. And he was like I'll tell you in the morning. I
3 said no, I need an answer now. He said, like I was out.
4 I said, out where. You don't know anyone here. Where
5 were you out at? Just drop it. I'll tell you in the
6 morning. I said no, you're in my house. What I say go.
7 You're going to have to tell me where you were. He was
8 like I was out, I think at -- he said he went to -- it
9 was a club in Sarasota called Heat. It's now closed
10 down. I was like really. How did you find out about
11 that place? He's like from my coworkers. I was like,
12 hmmm. And he laid back down. He was like I'm tired, I
13 just really want to go to sleep.

14 And he was laying on my sofa. And I stood over him
15 and said, the only person who's going to walk in this
16 house at three o'clock in the morning is me. If it's not
17 me, it's both of us. You don't walk in and out my house
18 like that. I pay the cost to be the boss here, and
19 you're going to do what I say or you're going to leave.
20 He was like, just leave it alone. I was like, you know
21 what, you got to go. Get your crap, get out my house.
22 He was like, I didn't do nothing. I said, yeah, you did.
23 He was like, Canessa, I didn't do nothing. I said uh-uh,
24 get your stuff and go.

25 And I stood up. And I think he pushed me. And when

1 he pushed me, I don't think he expected me to hit him
2 back. And we started fighting, and he pushed me on the
3 sofa. And he was like, I'm sorry, I'm so sorry. I
4 didn't mean to hurt you. I don't want to hurt you and I
5 didn't mean to hit you. I'm sorry. I said, well, it's
6 too late now. I said, when you let me go, I'm going to
7 kill you. He was like, Canessa, I'm sorry. Please, I'm
8 sorry. I said no, get off of me. I said yeah, go on
9 ahead and let me up. He was like, Canessa, I'm sorry,
10 I'm sorry. I love you. I'm sorry. And he let me up. I
11 ran in the room. I grabbed my phone, but he thought I
12 was going to get my gun. And he ran out the door and
13 went back to Tampa.

14 Q. And that's what July, that incident, consisted of?

15 A. Yes.

16 Q. One last thing. This young man, Dravan, he's been
17 up to see his dad a couple times while he's been in
18 prison, hasn't he?

19 A. Twice, correct.

20 Q. Did he like seeing his daddy?

21 A. Yes.

22 Q. That's all. Thank you, ma'am.

23 THE COURT: Any recross?

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

25 THE COURT: All right. You may step down.

1 Thank you, ma'am.

2 MR. MCGUIRE: Judge, could we approach?

3 THE COURT: Certainly.

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: Mr. Foreman and ladies and
7 gentlemen of the jury, the next witness is going to take
8 some time, so I'm going to have to ask you to take
9 another short break. And then we'll come back and start
10 our testimony.

11 All right. Again, do not undertake the discussion
12 of the case among yourselves in any way.

13 (WHEREUPON, the jury exited the courtroom at
14 approximately 3:38 p.m. after which court stood at
15 recess for a short break.)

16 THE COURT: Is the jury ready to come back?

17 THE BAILIFF: Yes, sir.

18 THE COURT: All right. They're saying the
19 jury's ready to come back. Anything from the State
20 before the jury returns?

21 MS. BYFORD: No, sir, Your Honor.

22 THE COURT: Anything from the Defense?

23 MR. MCGUIRE: No, sir.

24 THE COURT: Ask the jury to join us, please.

25 (WHEREUPON, the jury entered the courtroom at

1 approximately 3:53 p.m.)

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

4 All right. You may proceed.

5 MR. MCGUIRE: Thank you, Your Honor. The
6 Defense calls Dr. Arlene Andrews.

7 ARLENE BOWERS ANDREWS,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. MCGUIRE:

11 Q. Dr. Andrews, if you would, tell the jury how you're
12 employed -- or where are you employed?

13 A. I'm employed at the University of South Carolina in
14 Columbia at the graduate school in the College of Social
15 Work.

16 Q. And what do you teach?

17 A. I teach social work. I teach research. I teach
18 courses on how -- particularly how to intervene through
19 community systems levels of intervention. I've taught
20 electives on child abuse and neglect and victimization
21 and survivor services.

22 Q. If you would, tell the Court and the jury a summary
23 of your educational background.

24 A. I have a Bachelors degree from Duke University, a
25 Master of Social Work from the University of South

1 Carolina, and a Ph.D., a doctorate, in clinical community
2 psychology also from the University of South Carolina.

3 Q. And have you testified in court before?

4 A. I have.

5 Q. And in what capacity?

6 A. I've served as an expert witness in cases requiring
7 testimony with regard to family history. I've also been
8 an expert in cases involving child abuse when there's
9 been a lawsuit regarding the treatment of children in the
10 child welfare system.

11 Q. And about how many times have you testified as an
12 expert in that field?

13 A. I've consulted on at least twenty cases. I actually
14 testified in court maybe ten times.

15 MR. MCGUIRE: Your Honor, at this time we would
16 offer Dr. Andrews as an expert in the field of family
17 history assessment.

18 THE COURT: Any voir dire?

19 MS. BYFORD: No, sir, Your Honor.

20 THE COURT: All right.

21 Mr. Foreman, ladies and gentlemen of the jury, I
22 find that the witness is qualified as an expert in family
23 history assessments ...

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: ... and will be able to testify as

1 to her opinion in that particular area. Of course, any
2 expert's testimony is like any other testimony, for your
3 evaluation.

4 Very good. Thank you ma'am.

5 MR. MCGUIRE: Thank you, Your Honor.

6 Q. Now, Dr. Andrews, did I ask you to do a social
7 history assessment regarding Mr. Raymondeze Rivera?

8 A. Yes, you did.

9 Q. And tell the jury, if you would, exactly what a
10 social history is.

11 A. Well, basically, it's a basic tool that social
12 workers use that involve assessing how a person functions
13 in social relationships. That starts primarily with the
14 relationship within families, usually with the mother-
15 child, father-child, child-to-child sibling
16 relationships, the extended family, their peer
17 relationships with their social networks, schools, work
18 -- as they get older -- or work with the parents for very
19 young children. How a community can influence a child,
20 or a neighborhood. And we even look broadly at social
21 influences, social norms, the kinds of attitudes people
22 have and how that might influence a person's behavior.
23 Social policies.

24 So we look very broadly in doing the assessment and
25 basically look at the facts. And then we take theory

1 based on research that's been done in social science to
2 try to understand and interpret the facts that we found
3 when we look at a history. And from that, we form an
4 opinion.

5 Social history assessments are used in a lot of
6 settings. I first learned to do them when I was working
7 at a center that works with children who have
8 developmental disabilities. And we would use the
9 assessments to form opinions with regard to
10 recommendations for treatment. They're done at nursing
11 homes. They're done in a variety of different settings
12 and this is one case in which they're done.

13 Q. And what sources do you look to to form a social
14 history assessment?

15 A. It depends on the setting. In this particular case,
16 I did a very comprehensive assessment. The -- I
17 interviewed a number of people who have been known --
18 Raymondeze Rivera has known throughout his life,
19 including his birth mother Sheena, his stepmother Elaine,
20 his brother Juan Antonio who is a year older than he is, his
21 stepsister Teresa, his brother Duan -- his half-brother,
22 Duan Chaney. I interviewed several aunts, uncles. I
23 talked to some neighbors and former teachers. The --
24 some of the people that you've heard from today. So I
25 have a list of sources that I did.

1 In addition to the interviews, I also reviewed a
2 large number of records. I looked at records related to
3 early family history, things like his birth certificate,
4 some records involving his father and his mother, their
5 divorce records. I looked at some records involving
6 himself related to child support. I looked at some
7 family records on medical history. I looked at some
8 medical records regarding him, his educational records,
9 all of his grades in school, I've reviewed those. A
10 report from the job corps. I looked at Social Security
11 records regarding the jobs he's had and some other
12 employment records. And then I looked at a variety of
13 records related to the -- his father's involvement in the
14 criminal justice system and his own criminal record
15 history.

16 Q. If you would, give the jury a summary of what you
17 found.

18 A. And I'm going to look to my notes for this because
19 it's a fairly complicated case. But for the most part --
20 and I'll talk about the summary, and then I'm going to go
21 back and talk about some of the facts on which I
22 developed this summary.

23 But basically, I found evidence that Raymondeze has
24 suffered from a very serious emotional and behavioral
25 disturbance, and that this was evident even when he was a

1 tiny child. It's evolved into a mental disorder that's
2 been exacerbated, or increased, by the fact that he
3 experienced extreme physical abuse and very persistent
4 psychological abuse throughout his developmental years.
5 And I'll be telling the story of how some of that
6 occurred.

7 Some of the problems that he experienced include --
8 started with early attachment problems. Bonding is one
9 of the most important things that humans need. As soon
10 as they're born, they need to be connected to at least
11 one parent. Preferably two is what we say in
12 developmental psychology, at least two parents. It might
13 be a mother-grandmother, mother-father, but every child
14 needs to have someone they can count on.

15 But there were serious early attachment problems in
16 the first four years of Raymondeze's life. There were
17 early problems that he showed with hyperactivity and
18 attention deficit, which is not a problem. Well, it's a
19 bio neurological problem that some children have. And
20 everyone agrees that he was one of the most active
21 children that they knew.

22 There was severe physical abuse that started at a
23 really young age and became very persistent and pervasive
24 throughout his life starting at about age four, although
25 there were some acts of physical abuse prior to that. It

1 was -- there was a very profound pattern of psychological
2 abuse including abandonment. And I'll be talking about
3 the answer to the question of -- that there were several
4 different occasions of abandonment. He was terrorized by
5 anticipating beatings from his father who was drunk a lot
6 and did the beatings while he was drunk.

7 He was put down a lot. His family was criticized.
8 His identity was criticized. He was singled out for
9 worse treatment than other children. He was what we call
10 scape-goated. He was treated differently than other
11 people.

12 He was publicly humiliated. He was isolated and
13 kept away from other children. And he was denied
14 emotional responsiveness. In research about child
15 development, one of the things we find that predicts how
16 children do is a factor called warmth. Is there
17 emotional warmth somewhere? Is there someone who's
18 showing warmth toward the child and caring towards the
19 child? And there was a pretty pervasive pattern of his
20 being cut off from emotional warmth. There was also some
21 corruption in terms of his early exposure to his father's
22 use of pornography.

23 So he also comes from a family that has a pattern of
24 some serious mental illness problems, particularly around
25 the ability to handle stress and anxiety. And so there's

1 a lot of evidence to show that he was at very high risk
2 for developing a mental illness, and he also was at high
3 risk for developing lifelong attachment problems.

4 Q. And did I also ask you to prepare a genogram, or
5 family tree, to show the jury his family ---

6 A. You did.

7 Q. --- and his placement in that?

8 MR. MCGUIRE: Judge, if I could get the court
9 reporter to mark, as for I.D. only at this point.

10 (WHEREUPON, Defendant's Exhibit Number 7 was marked
11 for identification only.)

12 MS. BYFORD: Your Honor, at this time, I've
13 reviewed this and we don't have any objection to this
14 coming in.

15 THE COURT: All right. Very well. It will be
16 admitted without objection.

17 MS. BYFORD: If that speeds things up.

18 MR. MCGUIRE: Thank you, Your Honor.

19 THE COURT: What's the -- is it 7?

20 MR. MCGUIRE: Let me see, Judge. It is Defense
21 Exhibit Number 7.

22 THE COURT: All right. Admitted without
23 objection.

24 (WHEREUPON, Defense Exhibit Number 7 was admitted
25 into evidence.)

1 Q. Dr. Andrews, if you could for the jury, place
2 Raymondeze in his family tree, so to speak.

3 A. Well, just a little introduction to the way we set
4 up these family trees. Thank you, sir. The squares are
5 round and the -- well, normally they are -- the --
6 Raymondeze is here in the yellow, and we've got the key
7 players marked in larger boxes. The smaller boxes are
8 people who are members of his family, but with whom who
9 he spent a little bit less time. So I'm going to kind of
10 introduce you, and then I'll explain those bright colors
11 in a minute.

12 But for the most part, Raymondeze is the son of
13 Stanley, and he's connected to one family here through
14 Stanley, his father.

15 Q. That's the Rivera family?

16 A. That's the Rivera family. And Sheena is his birth
17 mother, and he's connected to the family of Katherine
18 Cousins, his grandmother, through his mother Sheena.
19 He's also connected to his stepmother's family. This is
20 Elaine Rivera.

21 So there's one family here, one family here, and one
22 family over here. He has an older half-brother, Duan
23 Chaney, who he really didn't grow up with. He would see
24 -- he particularly saw him some when he was a teenager.
25 He would occasionally see them, but he didn't spend a lot

1 of time with Duan because he was being raised by his
2 birth father.

3 Juantonio is his brother, who is about one year
4 older, and they were together for a good part of their
5 upbringing. And Teresa is his stepsister who came into
6 the family when his father married Elaine. Stanley is
7 the son of Elizabeth Rivera and Amundo Rivera, who is
8 deceased. And he's -- you heard from his sister, Denise,
9 and his sister, Teresa, today. There's another sister,
10 Anita, and a brother, Arnoldo.

11 Q. And Stanley is now deceased.

12 A. He is. On his mother's side, she's married or was
13 married to Edward Scott, and they have a daughter,
14 Clarissa Scott who is his half-sister who's younger. And
15 then he has several uncles in the family up here.

16 He also has three -- he's connected to three
17 families because he has three children. His oldest is
18 Justice Rivera. His mother is Renee Karls. His middle
19 child is Janiah Jones. She's the daughter of Keisha
20 Greenwade. And his youngest son you just heard about,
21 Dravan, who is the son of Canessa Thomas. So you'll hear
22 these names mentioned as I talk about his history.

23 Q. And can you explain what these -- the colors are on
24 the charts?

25 A. I will. I'm going to be talking -- it's a very

1 complicated life history. But I'm going to be talking
2 about some of the themes that occurred in the history,
3 and I've marked these for the generation that's above
4 Raymondeze. And there may be other cases. These are
5 just the ones around about which I had records or that I
6 gathered information.

7 You'll hear about abuse that started, or that we
8 know of, in his grandmother's generation. And there were
9 acts of abuse committed against all the children in that
10 family. You'll hear about mental illness, particularly
11 in the form of depression and anxiety problems, although
12 one male direct uncle has schizophrenia. You'll hear
13 about alcoholism, which here is marked in green, and
14 broken attachments between parents and children, which is
15 marked in orange. So you'll -- these will be things I'll
16 be talking about as I tell the life story.

17 Q. And with regard to Stanley, how does Stanley fit in
18 with the themes of abuse, mental illness, alcoholism?

19 A. He was abused as a child. He had a very serious
20 case of alcoholism, and his relationship with his own
21 father was broken very suddenly when his father just
22 left. His father was also an alcoholic.

23 Q. Okay. And Dr. Andrews, if we could, go into more
24 detail with -- about Mr. Rivera, sort of in his
25 developmental stages or life kind of starting from around