

VOLUME FIVE OF TEN
[PP 2001-2500]

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
(Capital PCR 2006-CP-23-7719)
The Honorable D Garrison Hill, Circuit Court Judge

SC Supreme Court

Kamell Delshawn Evans, #6016,

Respondent/Petitioner,

v

State of South Carolina,

Petitioner/Respondent

APPENDIX

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Dennis Bunkley - Direct Examination

1 improvement, second, satisfactory, and fourth,
2 satisfactory

3 Q And what are his grades in math?

4 A First quarter, "B", the remaining quarters, "C"

5 Q What are his grades in language?

6 A All four quarters, "D"

7 Q And what are his grades in spelling?

8 A First quarter "D" the remaining three "F's"

9 Q Now, in the social studies category, are there
10 any grades?

11 A No

12 Q What is written there instead of social studies?

13 A "Refer to Chapter 1 "

14 Q Share with us what Chapter 1 means

15 A During this time period Chapter 1 was a program
16 to similar to a special education program that deals with
17 children and remedial assistance in a particular subject,
18 and it's based on the lowest 20 percentile of a grade
19 level

20 Q Let's talk about that for a second If a student
21 is in the lowest 20 percentile of his peers, what would
22 your department do?

23 A Recommend and come up with a plan for remedial
24 help or special education assistance

25 Q And that program was designed to try and do what
Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 for a child?

2 A To try and help him recapture the missing skills
3 in terms of reading?

4 Q Instead of going to social studies, where would
5 he go?

6 A He went to a reading program

7 Q And then we look there for health, what are his
8 grades in health?

9 A First quarter "C", second quarter, "B", third
10 quarter "B", fourth quarter, "B"

11 Q Now, look down at attendance in the right-corner,
12 what was his attendance?

13 A First quarter 46 days

14 Q How many times did his parents get in late

15 A One time

16 Q How many times was he absent the second quarter?

17 A Zero times

18 Q And the third quarter?

19 A Zero times

20 Q And the fourth quarter?

21 A Zero times

22 Q Now, was there a parent/teacher conference on
23 10/8 of 1986?

24 A Yes

25 Q And the person attending that parent/teacher
Evans versus State - Day 1

Dennis Burkley - Direct Examination

1 conference was who?

2 A His mother

3 Q Would you please -- and there are several areas
4 covered, attitude towards school, emotional growth and
5 academic progress I'd like to focus your attention to
6 the academic progress

7 A Okay

8 Q Would you please publish that to the Court?

9 A "Math seems to be his greatest strength He is
10 memorizing his math facts I have seen a steady
11 improvement He now needs to work on his subtraction
12 facts Kamell's weakness is his reading ability His
13 skills are poorly developed Kamell does attend Chapter 1
14 reading therefore does not have social studies Kamell
15 must continue to strengthen reading skills this year in
16 order to pass third grade He needs to read aloud each
17 night to increase his reading fluency and vocabulary
18 This evidence will help Kamell with sight words
19 identification through various activities at home "

20 Q Now, I'd like to do a little segue here because
21 I'm going to ask you some questions in a second about that
22 paragraph At this time, please share with us a little
23 bit about what your education is

24 A I have a B S in Psychology from South Carolina
25 State, a Master's in Educational Psychology and also I
Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 children that are considered gifted, and I maintain the
2 funding for State provided grants dealing with the support
3 of the classroom

4 Q So do I understand that your position is mainly
5 administrative or do you actually have hands-on
6 interpretation or participation and evaluation of students
7 recommended for mental or disability health?

8 A It's a combination

9 Q It's a combination

10 A Yes

11 MS BROWN I have no further questions, Your
12 Honor

13 THE COURT Okay I find he's qualified as
14 an expert on special needs education

15 MR NETTLES Thank you, Your Honor

16 BY MR NETTLES

17 Q What I'd like to draw your attention to is the
18 part where it says, "Kamell must continue to strength his
19 reading skills this year in order to pass third grade "
20 And that's in the bottom right-hand corner of the
21 Cleveland City Schools parent/teacher conference for
22 10/8/1986 What does that tell you?

23 A Could you tell me where you're reading again

24 Q I'm sorry I apologize On the East Cleveland
25 City Schools date of conference 10/8 of 1986

Dennis Bunkley - Direct Examination

1 received my special certification in Psychology, and EDS
2 in People Personnel Administration from Cleveland State,
3 and I'm a Ph D candidate from the Cleveland State
4 University ADD

5 Q And you currently, as you started off at the top
6 of your direct, your current position is what?

7 A Director of Pupil Personnel Services

8 Q And Pupil Personnel Services is you provide help
9 to children on both sides of the need, that being if
10 they're gifted and aren't so gifted?

11 A Correct

12 MR NETTLES At this time I would like to
13 ask that Mr Bunkley be admitted as an expert in the field
14 addressing children's special needs

15 THE COURT Any voir dire

16 MS BROWN Just a few questions

17 THE COURT Yes, ma'am

18 VOIR DIRE

19 BY MS BROWN

20 Q Mr Bunkley, what exactly are the duties in the
21 position that you presently hold?

22 A I supervise psychological services, student data
23 information, support services and mental health programs
24 I am actually the supervisor of the Special Education
25 Department, specifically, early entrance programs,

Dennis Bunkley - Direct Examination

1 MR BROWN Excuse me just a minute Your
2 Honor, may I have just a few minutes I have a potential
3 witness who just walked in He does not know about the
4 prior order and if I could just have five minutes to make
5 sure he is in line in your order

6 MR NETTLES And I will say that there is
7 nothing that he has said that could have in any way
8 affected the prior order

9 THE COURT I appreciate that and we'll just
10 take a five minute break

11 MS BROWN And I apologize for having to
12 interrupt

13 (Whereupon, there was a brief recess)

14 THE BAILIFF Remain seated, the court will
15 come to order

16 BY MR NETTLES

17 Q We had just started finishing up -- you and I
18 were talking about the statement in here that said,
19 "Kamell must continue to strengthen his reading skills
20 this year in order to pass third grade He needs to read
21 aloud each night " The whole concept that the teacher is
22 calling into question what he needs to do to pass third
23 grade What does that tell you about where he is in terms
24 of advancement?

25 A That he is not progressing adequately?

Dennis Bunkley - Direct Examination

1 Q And what does that signify in terms of concerns
2 from the teacher?

3 A That there needs to be some type of intervention
4 to help him either catch up or make up the missing skills,
5 and that there's a possibility that the discussion of
6 retention will come up again

7 Q In other words, was it close whether he passed or
8 not?

9 A Yes

10 Q Now, we're talking about the third grade here and
11 there is another referral request that is dated 10/10 of
12 1986

13 A Yes

14 Q It's the same form but for a different year as
15 the previous year, correct?

16 A Correct

17 Q Share with me what the statement and problems and
18 reasons for referral requests were from his third grade
19 teacher?

20 A I'm hearing concerns, poor achievement in the
21 area of reading, poor achievement in the area of language
22 arts

23 Q Share with us a description of suspected
24 problems?

25 A Extreme poor reading comprehension, can not
Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 decode words, reverses order of letters in a word, very
2 little short term memory

3 Q Share with us decode words means?

4 A It means he is not able to take an approach
5 similar to findings of whole words When ne looks at a
6 word, ne can not sound through it to figure out what that
7 word is

8 Q If you look further down in comments, what does
9 the teacher say about Kamell in terms of him applying
10 himself?

11 A "Kame11 does try He becomes frustrated and
12 rushes through work instead of trying to understand
13 Mother has been very concerned for many years "

14 Q And, again, very briefly because as we discussed
15 earlier, there was a referral request done at the
16 conclusion of the second grade, what does it tell us that
17 there is a second referral request at the end of third
18 grade?

19 A The concern still exists and it's starting to
20 become consistent and an established approach tnat this
21 child needs help in that area

22 Q There is a fourth 1987 parent/teacher conference
23 -- let me put it like this, the previous document, the
24 referral request from 1986, not ever student gets one of
25 those

Dennis Bunkley - Direct Examination

1 A Correct

2 Q The next document on January 14, 1987
3 parent/teacher conference every teacher gets one of those?

4 A Yes

5 Q Share with us, if we got down to academic
6 progress on that document, what does it say about his
7 reading skills?

8 A Could you give me the date?

9 Q January 14, 1987, third grade parent/teacher half
10 way down the page

11 A And what area?

12 Q If you go down to Academic Progress Share with
13 us what his academic progress is?

14 A "Kameil's strength is in math He understands
15 the process to solve equations He does need to continue
16 to strengthen his recognition of subtraction facts
17 Kameil's weakness is in reading I have seen very little
18 improvement Kameil's comprehension is extremely low as
19 well as work and tech skills, and oral reading I am very
20 concerned about Kameil's reading ability Suggestions
21 Read aloud social studies, text, each night and discuss
22 post spelling words on cards and review every night Read
23 aloud directions on worksheets and explain what they say
24 to do Kameil's performance is not satisfactory We'll
25 refer him for testing "

Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 Q Let me ask you this, is there, based on your
2 reading of that, is there any even hint that the problems
3 that are being caused there are because Kamell isn't
4 trying

5 A No

6 Q As a matter of fact, from what you see there, was
7 Kamell trying?

8 A Yes

9 Q Now, let's go to the March 25, 1987
10 parent/teacher conference and go to Academic Progress It
11 looks just like the previous one It's a little
12 confusing It's dated March 25, 1987

13 A Okay

14 Q Got it Would it be fair to summarize just for
15 the sake of brevity, I'm going to ask take a look at the
16 Academic Progress note and I'm going to ask you whether,
17 because it's pretty much the same as the previous Academic
18 Note, I'm going to ask you to read the last sentence of
19 the Academic note in the Academic Progress section

20 A Yes, it's pretty consistent that he's making very
21 little progress

22 Q What does that last sentence say?

23 A "I have encouraged Ms Evans to continue to work
24 with Kamell "

25 Q I apologize, the last sentence above that in the
Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 Academic Progress section starting with Kamell does not
2 have

3 A "Kame11 does not nave the necessary skills to go
4 to the fourth grade

5 Q What does that tell you?

6 A That he still is not progressing and their
7 appears to be a recommendation for an evaluation

8 Q And on the next page, what happens?

9 A The evaluation, psychology evaluation, was
10 considered

11 Q What is listed as the suspected handicap?

12 A Specific learning disability

13 Q Now, again, briefly before you talk about this in
14 depth, what does this tell you?

15 A There is a concern with his processing and his
16 ability to learning and it's been consistently documented
17 over a period of three or four years

18 Q And on March 30, 1987, is there a letter from a
19 Patricia Parker to Kamell's parents?

20 A Yes

21 Q And what is that letter?

22 A To initiate testing

23 Q What sort of testing?

24 A A psychological evaluation

25 Q Why is that letter in there? Does the Statute
Evans versus State - Day 1

Dernis Bunkley - Direct Examination

1 require you to notify parents if you're going to do
2 psychological testing?

3 A Yes.

4 Q And that's notification?

5 A Yes, that's a notification

6 Q Was he promoted to the fourth grade?

7 A Yes

8 Q Now, we're going to have a fourth grade teacher
9 so let's skip over the fourth grade Let's go to the
10 fourth grade -- one more second before we go to the -- do
11 you have the records there for his fourth grade where he's
12 assigned to the fifth grade, June 9, 1988?

13 MR NETTLES May I approach the witness for
14 just a second?

15 THE COURT Sure

16 MR NETTLES So we can speed this up

17 BY MR NETTLES

18 Q What does the 3/23/88 record reflect on the
19 right-hand corner on the right-hand side?

20 A "It's unfortunate that you could not make it to
21 our last scheduled conference Kamell puts forth his best
22 effort He could not, however, work at the fourth grade
23 level P would like very much to meet with you to make
24 plans for the '88/'89 school year for Kamell "

25 Q Now, let's look at the bottom right-hand corner,
Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 what does that say

2 A "Second year in remedial reading program "

3 Q So how many years has he been in remedial
4 reading?

5 A Two years

6 Q Now, I'd like to go to the 1987-1988 individual
7 education program

8 A Okay

9 Q So this is a document entitled, "East City
10 Cleveland Schools Individual Educational Program for years
11 1987-1988 "

12 A Yes

13 Q This is kind of what you do, right?

14 A Yes

15 Q What does this document tell us?

16 A First it tells us that he would be eligible for
17 special education services, so he was evaluated and found
18 to have a deficit in a particular area, and most likely
19 specific learning disability, and as a result an
20 individualized education program was put together for him
21 to make a modification in that particular curriculum

22 Q And now, let's go to -- so that's telling us and
23 documenting an individualized program had been put in
24 place for him?

25 A Yes

Dennis Bunkley - Direct Examination

1 Q Let's go to his fifth grade report card, 1988 to
2 1989 I'm going to ask you to look at the comments Period
3 1, 2 and 3 on that

4 A All right

5 Q Share with us -- please publish Periods 1, 2 and
6 3, those comments?

7 A "Kamell's efforts are good, however, he is
8 struggling in spelling and science He still needs
9 consistent help every evening Period 2, Kamell tries
10 hard and he is making some progress however, his rate of
11 achievement makes it difficult for him to keep up with his
12 class Most of his grades are for effort "

13 Q Period 3

14 A "Period 3 It was a pleasure having Kamell in my
15 classroom Please encourage him over the summer to read
16 and use good study habits "

17 Q His grades in reading that year are what?

18 A For all four quarters "C"

19 Q Now, that year there was an SOI-LA test done on
20 him, what is that?

21 A It's a district wide achievement test

22 Q So that what some people would call standardized
23 test for the district?

24 A Yes

25 Q Every student took this test?

Evans versus State - Day 1

Dennis Bunkley - Direct Examination

1 A Yes

2 Q The next page, is there sort of a summary of the
3 results?

4 A Is this it?

5 Q Yes

6 A Yes

7 Q What is that?

8 A It's reporting the results of the test

9 Q Now, if we go to the next page in the file, there
10 was a graph done sort of summarizing his different
11 results, correct?

12 A Yes

13 Q If we could go to his -- in the fifth grade, I'm
14 looking at a document that says, "East Cleveland City
15 Schools Chapter 1 Reading," with Ms Reeves His
16 classroom teacher was Ms Reeves for the fifth grade

17 A Okay

18 Q What is that and what does it signify?

19 A It is like specifically the report card or the
20 progress note for the Chapter 1 Reading Program

21 Q Would it be fair to say that this shows how he's
22 doing with his special needs class as it relates to
23 reading?

24 A Yes

25 Q And would you read the comments at the bottom?

Dennis Bunkley - Direct Examination

1 A "Kamell has difficulty following oral and written
2 directions We need to encourage him to strengthen his
3 self-disciplining skills "

4 Q How many years has he been in remedial reading

5 A I believe this is his thrid year

6 Q Was he promoted from the sixth to the seventh
7 grade, if you go to the sixth grade report card which
8 would be '89 to '90?

9 A He was promoted

10 Q Now, in the seventh grade, when we look at his
11 grades -- let's go to the seventh grade report card right
12 there towards the back Do you see that? W East Clark
13 Middle School

14 A Yes

15 Q This is his seventh grade report card and he's
16 got two of four quarters, correct?

17 A Correct

18 Q What are his grades in english?

19 A First quarter B+, second quarter B

20 Q Math, what are his grades

21 A First quarter C, second C

22 Q Science what are his grades?

23 A First quarter B-, second C

24 Q What are his grades in social studies?

25 A First, B, second C

Dennis Bunkley - Direct Examination

1 Q What are his grades in reading?

2 A First B and second B

3 Q Now, in art what's his grade?

4 A Second B+

5 Q Now, why is there nothing in the first quarter?

6 A Because the art course may not have been offered
7 that first quarter

8 Q But if you go below that is there a grade?

9 A There's a health grade

10 Q And what was his grade in health?

11 A An A

12 Q What are his grades in physical education?

13 A An A+

14 Q What else?

15 A A B

16 Q You and I talked about this last night, what does
17 it show you between the sixth and the seventh grade, there
18 is a -- would you agree with me that there is a
19 significant shift between the sixth and seventh grade?

20 A Yes

21 Q Why?

22 A Just from going over the history and having an
23 understanding, I would say because the objective for
24 measurement changed and because this student put forth
25 effort, often these children that are in the area of

Dennis Bunkley - Direct Examination

1 specific learning disabilities, they were no longer
2 focusing on the conventional parts of language for you to
3 be able to do this So they had moved into the area of
4 learning to read to reading to learn

5 Q Talk to me about that for a little bit?

6 A Well, the primary area we focused on the
7 components of language, understanding sounds, from speech
8 to print understanding the connection of the word to
9 concepts and you are graded based on your ability to do
10 those things

11 Q Right

12 A The second part, the area of reading, you use
13 reading as information

14 Q Right

15 A So it's considered that you learn how to read and
16 now you have to access information Children that are in
17 the area of specific learning disability, the effort is
18 there and they're considered to have average abilities,
19 cognitive abilities, but their achievement is so low so
20 the teaching concepts has to be changed But something
21 else specifically learning disabled children do is that
22 they over compensate Like if he has the willing and the
23 effort, he may figure out a way to get the correct
24 answers, and unfortunately at this point because the
25 components of measurements have changed, we're not

Dennis Bunkley - Cross-Examination

1 measuring him to see if he understands the word You're
2 looking at a concept

3 Q Right

4 A So it's difficult to mask what his area of
5 disability is?

6 Q So would the better grades mean that the
7 disability was no longer there?

8 A No It would only mean that ne's beer able to
9 compensate Where in the past, he's been able to put
10 forth great effort, either he knew the skill or he did
11 not Now, when ne puts forth great effort and you're not
12 looking to see if he knows a particular skill related to
13 reading or the alphabet, he could put forth great effort
14 and then still get tne right concept

15 Q Let me ask you something, in the years between
16 2003 and 2004, were you able contacted by anybody with the
17 defense, anybody associated with defending Mr Kamel
18 Evans about what you've testified here today?

19 A No

20 Q Would you have been in the position based on
21 these records given the testimony that you gave here
22 today?

23 A Yes

24 Q You and I read and discussed this last night,
25 share with us what these records reflect having been put

Dennis Bunkley - Cross-Examination

1 forth? Share with the Court what kind of effort was put
2 forth by Kamell in school, notwithstanding his grades?

3 A Great effort consistently from him entering
4 kindergarten all the way until he exited from the seventh
5 grade He demonstrated, I would say, we were looking at
6 the report cards in terms of the effort he may have been
7 one of the students who exercised the most effort in
8 attempting to achieve

9 Q Is it uncommon to have the number of referral
10 request forms that Kamell Evans had?

11 A Yes

12 Q And what does that tell you, that sheer number of
13 referral request forms?

14 A That the presenting concern in kindergarten that
15 it never went away

16 Q Thank you

17 MR NETTLES I have no further questions

18 THE COURT Cross-examination

19 MS BROWN I just have a few questions for
20 you

CROSS-EXAMINATION

22 BY MS BROWN

23 Q I know that I speak softly so please tell me to
24 speak up or repeat the question

25 We've gone over a lot of the records that you
Evans versus State - Day 1

Dennis Bunkley - Cross-Examination

1 brought today and there are a lot of teachers' comments
2 asking for help at home and letters from parents and
3 comments from parents attempting to help Is it your
4 understanding and the position that you hold in Pupil
5 Services that it's a very positive fact for Kamell's
6 parents or for any student's parents to be so active in
7 the educational process?

8 A Yes

9 Q It's a very positive thing?

10 A Yes

11 Q The record shows that there's been a lot of
12 comments about getting this student the programs that he
13 needs or the educational services that he needs, is that
14 correct?

15 A Correct

16 Q Going back to the 1987-1988 Individualized
17 Educational Program Sheet, this is the sheet that shows
18 the evaluation team conference date of 6-8-88 Do you
19 have that before you?

20 A Yes

21 Q I believe that you told us that there was an
22 individualized education program created from this
23 conference, is that correct?

24 A Correct

25 Q Can you tell us exactly what that means? What's
Evans versus State - Day 1

Dennis Bunkley - Cross-Examination

1 an individual education program?

2 A The conference that you're speaking of is the
3 evaluation team conference and it takes place after the
4 evaluation and it's from multi disciplines where you sit
5 down and you team and you establish whether or not a child
6 is eligible for services Once you establish that a child
7 is eligible for services, then you move into the
8 development of an individualized education plan and that
9 is this document to see how you're going to implement the
10 services into the current curriculum So this document
11 stands to represent a modification of the curriculum
12 With this document, you're acknowledging that a child is
13 functioning at a deficit removed from the current level of
14 the curriculum or grade level, so this plan is
15 individualized in a manner to help him achieve or recover
16 missing gaps

17 Q And that's a positive thing just from a parent
18 involvement, correct?

19 A Yes

20 Q The second part of that same sheet, it talks
21 about specific educational services recommended What
22 does that mean that box A was selected?

23 A That this child not be placed in a specific
24 education environment

25 Q And the recommendation from the program related
 Evans versus State - Day 1

Dennis Bunkley - Cross-Examination

1 services, that's the box underneath, there is a check by
2 regular education program and there are dates beside that,
3 can you explain what that entry means?

4 A It means he's going to receive services in the
5 regular education environment Service provision is based
6 on a continuum of services which you have to adhere to the
7 least restrictive environment and I'm thinking that
8 possible, because I didn't participate in the team,
9 because of his amount of effort, they felt that he didn't
10 need to be isolated or placed in an environment that would
11 remove him from the regular educational setting The goal
12 is to always maintain the child in the regular educational
13 setting as much as possible During this period it was
14 called mainstreaming and inclusion So it's saying that
15 his area to receive services was in the regular
16 educational setting

17 Q So when it says 100 percent participation in
18 regular education programs, he was not taken out and put
19 in some special education program separate and apart?

20 A That's correct

21 Q And you'd also mentioned in your direct testimony
22 as I recall that what this special education program was a
23 program tailored to the student and that would determine
24 that the ability was there, but you had to reach him
25 differently?

Dennis Bunkley - Cross-Examination

1 A That is correct

2 Q Is that correct?

3 A That is correct?

4 Q Mr Bunkley, if I could ask you real quickly, how
5 did you go about collecting the information that you
6 brought to court today?

7 A The information in our district we sometimes over
8 a period of years we will save the information on
9 microfiche And another method is electronic compositor
10 known as guardians and we send information to them, and
11 then they chunk into computer based programs and they save
12 it for us, so it's simply accessing information

13 Q So do I understand there are separate areas where
14 information is kept within the district?

15 A Within the district and outside of the district

16 Q Do you have any knowledge of whether Kirkland
17 Middle School, which is referenced in the record, is still
18 standing?

19 A Yes, I do as a matter of fact

20 Q Can you tell us about the history of Kirkland
21 Middle School? Was it ever closed at one time, renovated
22 or anything like that?

23 A The original Kirk -- let me correct that because
24 the name was changed There was a period where the
25 building fell out of sort and the decision was it to be

Dennis Bunkley - Cross-Examination

1 torn down This was maybe about five or six years ago
2 The building was demolished and the plan was to build a
3 new middle school in its place in the same area The name
4 of the new middle school is Heritage Middle School, the
5 changed the name at that point

6 There was a period of two or three years
7 where the children, the seventh and eighth graders at
8 Kirk, were redistributed to elementary schools Where our
9 normal elementary school would go from K to 6, they went
10 to K to 7 The eighth graders were maintained in a modular
11 unit?

12 Q I see

13 MS BROWN The Court's indulgence for just a
14 moment

15 THE COURT Yes, ma'am

16 MS BROWN May I approach, Your Honor?

17 THE COURT Certainly

18 BY MS BROWN

19 Q I wonder if you could identify this letter the
20 end of that exhibit

21 A What is your question again?

22 Q Let me ask you first, do you have a copy of that
23 letter in the records that you brought with you today?

24 A I do not

25 Q Have you seen that letter at any time?

Dennis Bunkley - Cross-Examination

1 A I have not

2 Q What does that letter reflect?

3 MR NETTLES Objection

4 THE COURT What's the objection?

5 MR NETTLES The letter that he's looking at
6 he's never seen, it's not part of the record If it will
7 put her at ease, we're going to call the author of that
8 letter So if she wants to get it in through Ms Pollack,
9 you have my words that if something tragically happens to
10 her, you're going to get the opportunity to cross-examine
11 her

12 THE COURT Well, it's already in the record,
13 isn't it?

14 MS BROWN It is It's an exhibit from the
15 trial I'm just asking him to read it

16 THE COURT Okay I'll overrule the
17 objection

18 Go ahead

19 THE WITNESS You would like me to read it?

20 BY MS BROWN

21 Q What's the letterhead, if you don't mind

22 A Heritage Middle School

23 Q And that's the Middle School that you had just
24 referenced in your testimony?

25 A That's correct

Dennis Bunkley - Redirect Examination

1 Q Can you tell me who the letter is addressed to?

2 A It is addressed to Lenora Topp?

3 Q What is the substance of the letter?

4 A That as a result of contamination, the records
5 were declared contaminated at the time of the original
6 Kirk Middle School was being torn down, and they were
7 unable to retrieve those records

8 Q Are you familiar with any reports of
9 contamination in the reference?

10 A Of these files or --

11 Q No, sir, just in general from that particular
12 school

13 A Yes, that sounds familiar There were some
14 records that were contaminated

15 Q Thank you, sir Just one more quick question
16 You testified there was substantial improvement in the
17 final report cards that you have in your records today, is
18 that correct

19 A Yes

20 Q Would that be consistent with someone who has
21 benefited from the specialized detail program within the
22 regular education system that you described?

23 A Yes

24 MS BROWN Thank you I have no further
25 questions, Your Honor

Dennis Bunkley - Recross-Examination

1 THE COURT Redirect

2 REDIRECT EXAMINATION

3 BY MR NETTLES

4 Q The discussion that the records being
5 contaminated, was there ever any allegation that the
6 content of the records was in any way compromised? In
7 other words, when they said contaminated and you said it
8 sounded vaguely familiar, do you doubt that the records
9 that you have there accurately reflect what transpired
10 during Kamell's education from kindergarten through
11 seventh grade?

12 A I have no doubt there are two separate records

13 Q Share with us that

14 A These records are special education records and
15 they're kept in a separate case They're in a centralized
16 location within the district, and then at this point, I'm
17 the Director of Pupil Personnel Services

18 Q Right

19 A So the records their talking about are the
20 student's personal records and that's why it went to the
21 actual site Special Ed records were not kept at the
22 building site?

23 Q Let me ask you this, had someone with the proper
24 releases and the proper authority from the defense wanted
25 to get the special education records, would they have been

Dennis Bunkley - Recross-Examination

1 able to get those records in 2003, 2004?

2 A Yes

3 MR NETTLES Thank you

4 MS BROWN Just two questions, if I might,

5 Your Honor

6 RECROSS-EXAMINATION

7 BY MS BROWN

8 Q Just first, the records what you have before you,
9 you don't have any personal knowledge of these records
10 You're just repeating what is on the document itself with
11 the school identification, is that correct?

12 A That is correct

13 Q Is that consistent with the document that I just
14 showed you that you would be relying on the face of the
15 document, for that is a school record?

16 A Could you restate that, please?

17 Q Certainly The document that I just showed you
18 that was introduced into the criminal trial, there's the
19 heading of Heritage Middle School Does that appear to be
20 a document from Heritage Middle School

21 A Yes, it does

22 Q But you could testify to, perhaps, even the
23 substance of this because you author it and you would
24 accept that as a record from Heritage Middle School,
25 correct?

Dennis Bunkley - Recross-Examination

1 A Yes

2 Q Thank you

3 MS BROWN No further questions

4 MR NETTLES Nothing further, Your Honor

5 THE COURT Okay You may step down

6 (Whereupon, the witness leaves the witness
7 stand)

8 You may call your next witness

9 MR NETTLES Your Honor, our next witness is
10 Mr Richey, and he apparently he has walked across the
11 hall

12 (Whereupon, there was a brief break)

13 Your Honor, I apologize, we would call
14 Mr Rodney Richey

15 THE COURT Okay

16 MR NETTLES Mr Richey is ready

17 THE CLERK Place your hand on the Bible

18 RODNEY RICHEY, having been duly sworn,
19 testified as follows

20 THE COURT This packet of school information
21 from East Cleveland School, are you moving that in?

22 MR NETTLES Yes, sir We are finished with
23 that and those are your copies The copy for the record,
24 I have not touched

25 THE COURT This is Exhibit 1?
Evans versus State - Day 1

Rodney Richey - Direct Examination

1 MR NETTLES Yes

2 MS BROWN No objection

3 THE COURT Okay It's in evidence

4 (Records from the East Cleveland School

5 District marked as Petitioner's Exhibit No 1 for

6 identification was received into evidence)

7 DIRECT EXAMINATION

8 BY MR NETTLES

9 Q Good morning

10 A Good morning

11 Q Let me go through a couple of questions

12 concerning chronology with you

13 A Okay

14 Q Were you ever appointed to the case of the State

15 versus Kamell Evans?

16 A Yes, sir

17 Q Have you stated your name?

18 A Rodney Wade Richey

19 Q And, Mr Richey, what is it you do?

20 A I am a practicing attorney in Greenville

21 Q What type of law do you practice?

22 A Criminal law, some civil

23 Q And the easy civil stuff?

24 A I don't know about easy

25 Q So at some point on 6-6 of '03, did you receive
Evans versus State - Day 1

Rodney Richey - Direct Examination

1 an appointment of State versus Kamell Evars?

2 A Yes, sir, I did

3 Q So the day you received that appointment, did you
4 also receive a Notice to Seek Death?

5 A I think that was -- I may have I know I got the
6 appointment, but did I get the Notice or not, I don't know
7 if I got the Notice or not

8 Q Let me ask you this, when you got the
9 appointment, was there any doubt in your mind it was a
10 death penalty case?

11 A It was a death penalty case

12 Q So it's your memory that when you were appointed
13 it was already a death penalty case?

14 A Yes, it was already a death penalty case

15 Q You were not his lawyer when the Death Penalty
16 Notice had been served?

17 A No, sir

18 Q It had been served prior to your getting into the
19 case?

20 A That's my understanding

21 Q So you got appointed on 6-6 of '03, and on 8-12
22 of '03, did you file that document?

23 A Yes

24 MS BROWN Excuse me, could we identify the
25 document so I can follow

Evans versus State - Day 1

Rodney Richey - Direct Examination

1 MR NETTLES Yes

2 BY MR NETTLES

3 Q What is that document?

4 A This is a Motion for Discovery in this action and
5 it's sometimes referred to as a Brady Motion

6 Q Did you file any other motions in the case?

7 A I don't recall filing any other motions

8 Q If I show you these three motions that I've
9 presented to the opposing counsel, do you recognize those
10 motions?

11 A Yes, I do

12 Q You filed a motion requiring the solicitor to
13 respond in writing to each motion that is contested by the
14 State

15 A Yes, sir

16 Q You filed a Motion for an order prohibiting the
17 solicitor from assigning a police officer undercover
18 operative within the County Detention Center to contact
19 the defendant?

20 A Yes, sir

21 Q And you filed a Motion of Intent to seal visitor
22 registration logs?

23 A Yes, sir

24 Q And this was your Brady Motion?

25 A Yes

Rodney Richey - Direct Examination

1 Q This is a Motion for Production and Inspection of
2 evidence and information that may lead to evidence?

3 A Yes

4 Q Do you recall how long it took you to receive
5 discovery?

6 A No, I don't

7 Q Did you receive discovery?

8 A Yes, sir

9 Q Did you receive it immediately?

10 A I don't think so

11 Q After you received the discovery, what did you
12 do? What was your next motion?

13 A I don't think I made a motion

14 Q Did you make a Motion to be Relieved?

15 A Yes

16 Q And why?

17 A Because I believed at that time there was a
18 conflict that existed between me and Mr Evans I believe
19 that motion, some of it was based on Joe Sapinoso, in
20 knowing the victim in the case I believe that's what it
21 was

22 Q What is that?

23 A This is the Motion to be Relieved

24 Q When was that filed?

25 A It doesn't have a file date, but I know there's a
Evans versus State - Day 1

Rodney Richey - Direct Examination

1 date of March 27, '04 that I prepared

2 Q Now, did you send -- you were ultimately
3 relieved

4 A Yes, sir

5 Q And who was appointed?

6 A Steven Sumner

7 Q When you were initially appointed, who was
8 appointed to the case with you?

9 A Skip Goldsmith

10 MR NETTLES May I approach, Your Honor?

11 THE COURT Yes, sir

12 BY MR NETTLES

13 Q Do you recognize that letter?

14 A Yes, sir, I do

15 Q Whose signature is that at the bottom?

16 A Mine

17 Q Whose letterhead?

18 A Mine

19 Q Did you write that letter?

20 A Yes

21 MR NETTLES Your Honor, I'd like to have
22 that letter marked Applicant's 2

23 MS BROWN No objection

24 THE COURT Admitted

25 (Rodney Richey letter marked as Applicant's
Evans versus State - Day 1

Rodney Richey - Direct Examination

1 Exhibit No 2 for identification and admitted into
2 evidence)

3 BY MR NETTLES

4 Q Mr Richey, would you please publish what's been
5 moved into evidence as Petitioner 2 to the Court, please?

6 A This' is a follow-up to the conversation ---

7 Q I'm sorry Who is it addressed to

8 A It's addressed to Steve Wayne Sumner at 114 Marly
9 Street, Greenville, South Carolina 29601-3025 It's in
10 regards to the State of South Carolina versus Kamell D
11 Evans, and it states "Dear Steve, this letter is a
12 follow-up to the conversation we had yesterday regarding
13 Mr Evans' case It is my understanding that you will be
14 substituted in as the attorney for Mr Evans It is my
15 understanding that you picked up this file from my office
16 on July 8, 2004 Also, we discussed that Judge Cullen '
17 instructed you to receive all funds that I obtained from
18 Indigent Defense Please be advised that I have forwarded
19 all funds to co-counsel, Skip Goldsmith and currently do
20 not have any funds related to this case I wish you and
21 Mr Evans the best of luck in your representation If you
22 should have any questions, please feel free to call me "

23 Q On July 8th, Steve Sumner came and got the file
24 from your office

25 A I think that's -- yeah

Evans versus State - Day 1

Rodrey Richey - Direct Examination

1 Q Right Do you have any evidence that he came any
2 sooner?

3 A No, I don't have any evidence that he came any
4 sooner I just -- I went to Mr Sumner's office for some
5 purpose about this case, but this letter -- if I wrote
6 this letter, is because he picked up the file

7 Q What date is that letter?

8 A July 9, 2004

9 Q So you wrote that letter the day after he picked
10 up the file?

11 A Yeah Apparently, I wasn't there

12 Q Now, let's talk about something When you turned
13 over the file on July 8th, what had you and Mr Goldsmith
14 done in preparation for trial?

15 A Not a whole lot in terms of preparation for trial
16 because Skip was doing the mitigation part and it was my
17 understanding from him he was having difficulty finding
18 some mitigation So in terms of this case being ready for
19 trial, this case wasn't ready for trial I didn't think
20 it was

21 Q And when you say y'all hadn't done much, what had
22 y'all done?

23 A Let me go back and I guess I can answer it this
24 way In a death penalty case, from my experience, if the
25 mitigation and those issues are not completed, the case is

Rodney Richey - Direct Examination

1 not ready for trial This is sort of like being pregnant,
2 either you are or you're aren't when you try these things
3 At that point, no, and there was a gapping hole in terms
4 of the mitigation people being in place They were not in
5 place so when I say there wasn't much done and that kind
6 of stuff, I mean the mitigation issue was not developed or
7 done at that point

8 Q And that's fair and I appreciate that Do you
9 know what had been done at that point?

10 A I basically done the guilt phase part of it and
11 that wasn't relatively difficult from my standpoint, so in
12 terms of the guilt phase, I think the case could go
13 forward, but in these cases the mitigation is a big deal
14 and it wasn't done

15 Q Would you please give me just ---

16 MR NETTLES If the Court could just give me
17 a three second break here to get something?

18 THE COURT Absolutely

19 BY MR NETTLES

20 Q Mr Richey, do you recognize that document?

21 A Yes It appears to be a letter from Bob Airial
22 to me

23 Q Would you just read it and let me ask you a
24 couple of questions about it? Look at the date, read it,
25 and I'll ask you a couple of questions about it

Rodney Richey - Direct Examination

1 A February 9, 2004

2 Q Just read it to yourself and let me ask you a few
3 questions

4 A Okay (Attorney Richey reviewing the document)

5 Q Based on that document, does that refresh your
6 recollection about when you may have received discovery?

7 A Based on this letter this is when Bob Airial said
8 he sent us discovery

9 Q When is that letter dated?

10 A February 9, 2004 It seems to me I had it before
11 then, but this is the dates on this letter and I can't
12 dispute them

13 Q Do you have any idea of how long you had
14 discovery before you moved to be relieved?

15 A I'd say at least two month, at least

16 Q Then you moved to be relieved?

17 A Yes, sir

18 Q Based on your letter to Mr Sumner, you had the
19 task of sort of managing the funds? OID would give you
20 the money to manage the trust?

21 A Yes, sir

22 Q Had you dispensed any money for experts?

23 A No

24 Q Had you retained any experts?

25 A I don't believe I may have gotten an
Evans versus State - Day 1

Rooney Richey - Direct Examination

1 investigator when I got the money Typically in my
2 practice I don't ask for money just to hold it Once I
3 ask for money, it's for a specific purpose and it's being
4 sent to me for that purpose Now, I don't recall hiring
5 anybody, but and the process of it is if you're going to
6 get money, you got to tell them you're going to do
7 something with it

8 Q And you were the person in charge of the money
9 not just for the trial phase, but also for the mitigation
10 phase as well?

11 A It's hard for me to answer that question because
12 Skip Goldsmith or Steve Sumner, if they wanted to get
13 money for something, they could apply for it and the same
14 kind of deal So I wasn't the point man for the money,
15 no

16 Q Do you have any information that any money was
17 applied for any services relating to mitigation?

18 A I don't have any recollection there was, none

19 MR NETTLES Your Honor, those motions that
20 he filed were filed under the previous trial and if you
21 want to move it in under this --

22 THE COURT That's fine

23 (Motions marked as Applicant's Exhibit No 3
24 for identification was admitted into evidence)

25 BY MR NETTLES

Evans versus State - Day 1

Rodney Richey - Direct Examination

1 Q Mr Richey, one last area During the time that
2 you represented Mr Evans, did you have an opportunity to
3 talk with his mother, his step-mother?

4 A Yes

5 Q Did she express to you some concerns that she was
6 having about the preparation of the mitigation of this
7 case?

8 A Yes

9 MS BROWN Objection, Your Honor, hearsay

10 THE STATE Overruled

11 BY MR NETTLES

12 Q Based on that conversation, what were her
13 concerns?

14 A I think the concern she expressed to me was
15 getting a hold of him ---

16 Q Who?

17 A Mr Goldsmith -- and talking to him and that kind
18 of stuff They sounded like they couldn't get a hold of
19 him

20 Q Did she feel like she was responsive to them?

21 A She didn't She didn't feel like he was being
22 responsive to her

23 Q Thanks

24 MR NETTLES No further questions

Rodney Richey - Cross-Examination

CROSS-EXAMINATION

BY MS BROWN

Q Mr Richey, I just have a few questions You mentioned in your direct testimony that Skip Goldsmith was already appointed at the time that you were appointed?

A I'm sorry I have a hard time hearing you I know you have a soft voice

Q I know I have a soft voice, excuse me I believe I understood you to say in your direct testimony that Skip Goldsmith was already appointed when you were appointed on this case, is that correct?

A I'm assuming, if I can go back and tell you the process I got a call from the Judge about being appointed on this case The Order was sent to me and at some point I realized that Skip was already appointed I don't know if it had been all done at the same time

Q Is it fair to say that when you were appointed, you worked with Skip immediately?

A Yes, ma'am

Q And I believe you said that in your opinion at the time that you were relieved from your appointment, you were not ready to go to trial if the trial had been called at that time, is that correct?

A That's correct, ma'am

Q That was probably around a year after
Evans versus State - Day 1

Rodney Richey - Cross-Examination

1 appointment, would that be fair to say?

2 A What ever the dates are, yes, ma'am

3 Q And during that time period, you did investigate
4 the matter, did you not?

5 A I investigated with what I had, yes, ma'am

6 Q You went to the jail and had conferences with
7 your client?

8 A Yes, ma'am, I went to the jail

9 Q Are you aware if Mr Goldsmith also went to the
10 jail and had conferences with your client?

11 A He went ore time with me ard I don't know what
12 other times he went, but I know he went one time with me

13 Q And I believe you mentioned that you sort of took
14 over development of the guilt phase and Mr Goldsmith sort
15 of took over development of the penalty phase, is that a
16 fair statement?

17 A That's a fair statement Skip was trying to get
18 the mitigation stuff, that's kind of a fair
19 generalization, yes ma'am

20 Q And I believe you also mentioned that for your
21 part would have been, if I understand the break down, the
22 guilt phase would have been ready in July?

23 A Yeah, but -- it would have been ready, but to me
24 the meat and potatoes was mitigation This case from what
25 I saw of it, the meat and potatoes would have been the

Rodney Richey - Cross-Examination

1 mitigation part The guilt phase that wasn't the meat and
2 potatoes of this

3 Q So in your opinion there was no reason to seek a
4 manslaughter conviction?

5 A From my experience in doing this, I think a
6 manslaughter conviction probably would not have happened,
7 probably, but I don't know, maybe a jury could have seen
8 it differently

9 Q Would you have concentrated that in the
10 development of your trial?

11 A Yeah, I would have asked for manslaughter, of
12 course

13 Q Did you have a theory that would have supported
14 that?

15 A The theory I would have had was the provocation
16 and then the issues with his girlfriend If I'm
17 remembering all this correctly, there was some issues with
18 his girlfriend that may have taken him over the top and I
19 would have to try to use something as a provocation I
20 would have had a theory but how good it would have been is
21 a different theory, but I would have had something

22 Q And in your opinion it would not have worked
23 based on the facts that you had at that particular time
24 stopping, of course, with your representation in July of
25 2004?

Rodney Richey - Cross-Examination

1 A I don't see it working

2 Q I believe you reviewed today a letter from Bob
3 Atrial, the solicitor, regarding disclosures

4 A Yes, ma'am?

5 Q Can you tell us if that solicitor's office has an
6 open file policy?

7 A Not with this case

8 Q Not with you?

9 A No, these death penalty cases, from my experience
10 doing them and I think I've done four of them with that
11 office, these are slug fests They are not the
12 traditional your guy gets charged with felony and you walk
13 up there and give them your stuff This is not that kind
14 of situation These death penalty cases is real guarded
15 on both sides really

16 Q Okay And you said that you were not really the
17 point man for the money Are you aware or would you be
18 aware if Mr Goldsmith asked for investigators during this
19 time when you were relieved? Let me say that a little
20 differently because that was a little convoluted

21 You were relieved in June of 2004, correct?

22 A If that's what the date says

23 Q A couple of months before you know you were going
24 to trial?

25 A Something like that, yes, ma'am

Rodney Richey - Cross-Examination

1 Q You didn't have access to everything that
2 Mr Goldsmith was doing, is that correct?

3 A That's a fair statement

4 Q Mr Richey, we've heard today in your Motion to
5 be Relieved you had some kind of conflict with your
6 client?

7 A Yes, ma'am

8 Q Was your client cooperative with you?

9 A He was cooperative It all depends on how you
10 define cooperative, but in terms of talking to me and
11 discussing the case, he was fine with that

12 Q There was a free flowing communication?

13 A Yeah, I think we had a decent relationship I
14 think the conflict came in, you know, when it got down to
15 it, he wanted to know my relationship with the officer
16 that go killed I was not going to tell this gentleman
17 that me and the guy had an adversarial relationship We
18 wasn't buddy buddy, but I knew the guy The guy would sit
19 behind me in death penalty cases I knew him to that
20 extent Not any kind of social relationship or none of
21 that, but I knew him from that experience And the more
22 Kamell thought about it, the more problems he was having
23 with it And when he got to the point where he was having
24 a real big issue with it, then I just felt like it was
25 time to move on

Rodney Richey - Redirect Examination

1 Q Did he ask you to be relieved from the case?

2 A Yes, I think he did at one point, but I was on
3 the same accord with him on that point because I felt like
4 it was starting the relationship some The gentleman was
5 fine with me and I didn't have any problem with the
6 gentleman, but as we started getting down to it and he
7 started questioning me about this relationship, he started
8 getting real uncomfortable with it, and I just felt like
9 in a case of this magnitude, and I felt like it was
10 legitimate, I didn't feel like I need to continue to be a
11 part of it

12 Q Now, your office is in Greenville, right?

13 A We have an office in Greenville and one in
14 Spartanburg

15 Q And do you know where Mr Goldsmith's office is?

16 A The exact location, no I know it's in
17 Traveler's Rest I've never been there, but I know it's
18 in Traveler's Rest I think he has one in North Carolina
19 as well

20 Q He would split his time between the two states

21 A Yes, ma'am

22 Q It would be difficult for you to contact him or
23 it would not be really difficult for you to contact him?

24 A Initially it was a little difficult, but I got a
25 private cell phone so I could get him pretty much any time

Rodney Richey - Redirect Examination

1 I wanted to after the initial difficulties when I first
2 got the case I got a cell phone number

3 Q Would you say that it would be easier for family
4 members in the Greenville area to contact you rather than
5 Mr Goldsmith?

6 A I don't know if I can answer that I would like
7 to say yes from a business stand point

8 Q Thank you, Mr Richey These are all the
9 questions I have for you

10 REDIRECT EXAMINATION

11 BY MR NETTLES

12 Q Let me ask you this, Mr Richey, at any point
13 during the rather brief period when y'all were co-counsel,
14 did y'all have regularly scheduled meetings?

15 A No

16 Q Was there ever a period when y'all sat down and
17 had a list that y'all went over the things that needed to
18 be done?

19 A We sat down, but we didn't have that list

20 Q You're list I'm talking about You've never
21 received a list of things to do to get ready for a death
22 penalty case?

23 A No, we didn't have a list We would basically
24 sit down and I use the word informal Skip would come
25 down say these are the things that need to be done

Rodney Richey - Redirect Examination

1 Q Would he report to you what he had done?

2 A Like he would sit down and say, hey, I'm having
3 difficulty getting this mitigation done Like I would
4 say, we need to get this mitigation done and he would
5 express to me he was having some difficulty Now, whether
6 he did or not, I don't know

7 Q But was there a time when he relayed to you
8 anybody he had retained?

9 A No

10 Q Would you disagree with me with the statement
11 that you visited Kamell Evans three times during the time
12 you represented him?

13 A I wouldn't disagree, no

14 Q Now, let me ask you this, you were in charge of
15 this trial phase, the first phase That was your focus?

16 A Yes

17 Q Did you do anything in relation to hiring a
18 pathologist, having anyone look at the pathologist report
19 that the State gave?

20 A No, I didn't do that

21 MR NETTLES I don't believe I have any
22 further questions

23 THE COURT Any recross?

24 MS BROWN Just one question, Your Honor

25

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BY MS BROWN

Q Did you have a specific reason for not going to experts?

A From my position of the case -- apparently I requested money from somebody, I don't know who it was for, but I don't have any recollection of doing it The guilt part of it was going to be pretty tough

MS BROWN No further questions

THE COURT Thank you, Mr Richey

(Witness leaves the witness stand)

MS NETTLES For brevity sake, I'm asking these to be marked for identification and we will be seeking to submit them into evidence

(East Cleveland School District record mark
as Appellate Exhibit No 4 for identification)

Your Honor, at this time, Mr Evans would call Kimberly Trammell

THE BAILIFF Raise your right hand

KIMBERLY FAYLOR TRAMMELL, having been duly sworn, testified as follows

DIRECT EXAMINATION

BY MR NETTLES

Q Ms Trammell, what do you do for a living?

A I'm a teaching in the East Cleveland City School
Evans versus State - Day 1

Kimberly Trammell - Direct Examination

1 District

2 Q What do you do for the school district?

3 A This year I'm a math coach for the past three
4 years and 18 years prior to that I was a school teacher
5 and taught fourth through sixth grade

6 Q In the years of 1987 to 1988 was that a banner
7 year for you?

8 A That was my first year teaching

9 Q And what did you teach in your first year?

10 A Fourth grade

11 Q And in your first year of teaching fourth grade,
12 did you have a student Kamell Evans?

13 A Yes

14 MR NETTLES I've had these marked for
15 identification

16 BY MR NETTLES

17 Q Do you recognize those records?

18 A Yes

19 Q And did you produce those records?

20 A Yes

21 Q And what are they?

22 A They are records regarding Kamell's academic
23 achievement, report cards, conference summaries and
24 referral requests for special services

25 Q Are those regularly kept in the order and course
Evans versus State - Day 1

Kimberly Trammell - Direct Examination

1 of business by the schools?

2 A Yes

3 Q Are you the person who made those? Do you have
4 knowledge of those notes?

5 A Yes

6 MR NETTLES Your Honor, at this time I'd
7 like to introduce Applicant's No 4 from identification
8 into evidence

9 MS BROWN No objection, Your Honor

10 THE COURT Okay

11 (East Cleveland School District records
12 marked Applicant's Exhibit No 4 for identification was
13 admitted into evidence)

14 BY MR NETTLES

15 Q Now, you said you are now working as a math
16 specialist?

17 A Yes

18 Q And you seeking to advance your education
19 otherwise?

20 A Yes, I'm working on my Doctorate in Educational
21 Leadership

22 Q And that is what you're doing now?

23 A Yes

24 Q Were you approached by someone from the defense
25 about Kamell Evans within the last two or three years?

Kimberly Trammell - Direct Examination

1 A Several months ago, Drucy

2 Q Drucy Glass came to you?

3 A Yes

4 Q And she asked you about what?

5 A If I remembered Kamell and basically what type of
6 student he was in fourth grade

7 Q When he came to your class, did you remember him?

8 A Did I remember Kamell?

9 Q Yes

10 A Yes

11 Q Share with us what you remember about him

12 A Kamell was a very sweet kid, got along with his
13 classmates, struggled with the school work I remember he
14 had a hard time with language arts His strength was
15 math, and I just remember the type of student he was I
16 just remember his work habits

17 Q And they were what?

18 A He was one of the hardest working students I've
19 had in terms of his effort

20 Q He was one of the hardest working students you've
21 had?

22 A Yes

23 Q And does that apply still today?

24 A Yes

25 Q Now, notwithstanding his hard work, could you now
Evans versus State - Day 1

Kimberly Trammell - Direct Examination

1 look at his grades Share with us what his reading grade
2 was for the four quarters that you had?

3 A He had a D the first marking period, a D the
4 second marking period, an F, and a D the fourth marking
5 period

6 Q And what were his grades in math?

7 A In math they were a C and B, a C and a B

8 Q What were his grades in english?

9 A A D, a C, an F and a C

10 Q What were his grades in spelling?

11 A In spelling, all F's on the four marking periods

12 Q And his social study grades?

13 A C, a C, an F, and a C

14 Q As we've spoke, you've got the efforts there next
15 to his grades and what do they reflect?

16 A His efforts were pretty much 1, which means he
17 had exceptional effort in terms of how hard he worked

18 Q As a matter of fact, when you look at the fourth
19 quarter, could you read his grades from the top down in
20 the fourth quarter?

21 A For effort of the letter grades?

22 Q The letter grades

23 A The letter grade he had a D, for reading and math
24 a B, english C, spelling and F, and social studies a C

25 Q But even though he got a D and a F in reading and
Evans versus State - Day 1

Kimberly Trammell - Direct Examination

1 spelling, what was his effort?

2 A He had all 1's for that marking period

3 Q And what does that mean?

4 A It means he worked hard

5 Q On 1-26-1988, that would be in the second page of
6 that file, there was a parent/teacher conference, and who
7 does it reflect was present?

8 A Myself and Kamell's mom

9 Q Please publish to the Court your comments
10 regarding his attitude?

11 A "Kamell has such a positive attitude towards
12 school learning and his classmates He puts forth such a
13 great effort in whatever he does "

14 Q Now, what about his work habits and behavior

15 A "Kamell works hard and he sincerely cares about
16 his progress and achievements Kamell does not
17 misbehavior He is very friendly, but sometimes presents
18 a problem during class and he does correct bad behavior
19 when asked to do so "

20 Q Now what presents a problem in class?

21 A Social He's very sociable, but not the type of
22 behavior or warrants referrals or intervention from
23 administrators

24 Q What did you write for his academics?

25 A "Kamell tries very hard to achieve "good" grades
Evans versus State - Day 1

Kimberly Trammell - Direct Examination

1 He puts forth his best effort "

2 Q Now, you go on there about the fact that he
3 doesn't misbehave

4 A Right

5 Q Are there instances where there are children with
6 challenges that Kamell has don't behave as well?

7 A Generally students who struggle academically are
8 or become behavior problems, discipline problems

9 Q Was there any of that for you with Kamell?

10 A No

11 Q Let's go on to the next document which I'd like
12 you to take a look at which is the referral request forms
13 which is dated 3-4-88

14 A Okay

15 Q Do you have that?

16 A Yes

17 Q Did you fill that out?

18 A Yes, I did

19 Q We've had some previous testimony so we've got a
20 little bit of background on this Share with the Court
21 why you felt it was important to fill out the referral
22 request form on Kamell?

23 A I felt it was important because despite Kamell's
24 best efforts, he was not able to achieve on a grade level
25 and he was struggling academically Generally, that's an

Kimberly Trammell - Direct Examination

1 indication that some sort of an evaluation needs to occur
2 relative to his ability to function at grade level or to
3 determine if there needs to be accommodation so that he is
4 able to perform to his full potential A request was made
5 for further interventions from a more trained specialist,
6 special ed teacher, psychologist or someone of that
7 nature

8 Q If you were a doctor, you would be like a family
9 practitioner and you were referring him to a specialist?

10 A Yes

11 Q Let me ask you this, then, could you please
12 publish for the Court your description of the expected
13 problems on that referral request forms?

14 A "Kamell's problems in reading crosses over to
15 other subjects He does not recognize sight words and has
16 difficulty decoding words "

17 Q Now, what does difficulty decoding sight words
18 mean

19 A There are basic sight words called the Dolch
20 Sight words that children retain Kamell had difficulty
21 remembering those words and those are sight words They
22 don't follow patterns, spelling patterns And decoding
23 words is being able to connect sounds with the actual
24 visual representation of the letter

25 Q In Paragraph 3, there is some discussion about
Evans versus State - Day 1

Kimberly Trammell - Direct Examination

1 what has taken place ' Please publish that for us

2 A "Karell is in Chapter 1 reading His homework
3 assignments are designed so that he would have a minimal
4 amount of reading I talk with Mrs Whitmore and showed
5 her examples of his work to learn new strategies "

6 Mrs Whitmore was, at the time, one of the specialists and
7 special ed teachers?

8 Q The fact that he was not put in a special ed
9 class, does not mean that he was no receiving special
10 education?

11 A Technically, yes

12 Q Was he receiving special education?

13 A There were some strategies that the teacher
14 suggested for me in the interim

15 Q Is Reading 1 one of those?

16 A Yes

17 Q Is that a special education intervention?

18 A Yes

19 Q Now, read your comments at the bottom

20 A "Karell tries very hard but the low level in
21 reading affects all of his work except math "

22 Q Now, on the second page of that on the top it
23 says, "Special Service Team Conference "

24 A Yes

25 Q What does that say?

Kimberly Trammell - Direct Examination

1 A "Speech and Language Evaluation "

2 Q And what does that mean?

3 A That just basically means his ability to process
4 speech patterns in words, visually Speech and hearing
5 can both be involved

6 Q Was there an evaluation requested, right below
7 that?

8 A This was headed for the summer Other than on
9 the form it says SLH

10 Q What does SLH stand for?

11 A Speech, Language, Hearing and that's a special
12 handicapped and that is checked

13 Q Now, I want you to go to the last page On
14 3-23-88 is your last note of the year What is that
15 you're referring to?

16 A The overall school year?

17 Q Right At the top it says, "East Cleveland
18 Schools Grades 1 through 6 " I just want to make sure
19 we're on the same page literally

20 A Yes

21 Q School year '87, '88

22 A Yes

23 Q And it lists his name

24 A Yes

25 Q Would you please read your notes for 3-23-88?

Kimberly Trammell - Direct Examination

1 A "It's unfortunate that you could not make it to
2 our last scheduled conference "

3 Q Let's stop there for a second Did you write
4 that

5 A Yes

6 Q What were you referring to

7 A I had set up a conference with Kamell's mom to
8 discuss his grades for the whole school year and the fact
9 that I suspected a learning disability

10 Q Okay And what happened?

11 A His mom didn't make the conference?

12 Q What do you go on to say that day?

13 A "Kamell puts forth his best efforts He could
14 not however work at fourth grade level I'd like very
15 much to meet with you to make plans for the 1988, 1989
16 school year for Kamell "

17 Q When you say, "He could not however work at
18 fourth grade level," what does that mean

19 A That means academically he was not able to work
20 at that grade level in terms of being compared to other
21 fourth grade students

22 Q In your opinion, should he have been asked to
23 repeat the fourth grade?

24 A No

25 Q Was it close?

Kimberly Trammell - Cross-Examination

1 A In my opinion he needed supplemental services
2 He needed academic enrichment He needed specialized
3 services relative to his inability to function at grade
4 level If you retain a student and don't put those in
5 place, then it becomes a cycle of failure So unless he
6 gets the special help, retaining them is ---

7 Q I understand because your what you're doing is
8 repeating what you did last year

9 A Right

10 Q Which clearly didn't work

11 A Correct

12 MR NETTLES I believe I have no further
13 questions for Ms Trammell No further questions

14 THE COURT Cross-examination

15 MR MABRY Yes, sir

16 CROSS-EXAMINATION

17 BY MR MABRY

18 Q Ms Trammell, my name is Anthony and I'm going to
19 ask you a few questions this morning It's my
20 understanding is Kameell's problems was reading
21 comprehension, is that basically what it was?

22 A Reading comprehension, processing information so
23 it went beyond just reading comprehension

24 Q And as a result of that you got some ideas from
25 other teachers and he was put in a remedial reading

Kimberly Trammell - Cross-Examination

1 program, is that correct?

2 A From special ed interventions

3 Q But he was not put in a special education class,
4 was he?

5 A At the moment that I had him, no

6 Q And he wasn't put in a special ed class for next
7 year, fifth grade, was he?

8 A I don't know

9 Q But you did put him in this remedial reading
10 program in an attempt to help him?

11 A I referred him for assessment to determining his
12 learning disability What happened after that wasn't an
13 action of me putting him in a special reading program
14 Whatever action that happened after I referred him is
15 beyond my knowledge

16 Q So you don't know about the remedial reading
17 program?

18 A Not the official one, no

19 Q And are you aware of what his grades were the
20 next grade, fifth grade?

21 A No

22 Q Are you aware of what his middle school grades
23 were?

24 A No

25 Q I'm going to hand you this document and if you
Evans versus State - Day 1

Kimberly Trammell - Cross-Examination

1 would could you tell us what Mr Evans' grades were --
2 first of all if you could find the year

3 A For the first marking year?

4 Q Yes

5 A All of them or just in reading?

6 Q Let's find what year that was

7 A 1990 to 1991

8 Q What were his grades the first quarter?

9 A B+, C, B, I believe that's a B for social studies
10 and for reading it's a B

11 Q What was the second quarter?

12 A B for english, C for math, C for science, C for
13 social studies and I believe a B for reading

14 Q And is there another quarter on there?

15 A No

16 Q He was transferred to -- looking at those
17 records, would have been an improvement from when you had
18 Kamell?

19 A If you're basing it on grades, yes

20 Q Okay Are you aware of what Kamell's grades were
21 when he came down here and went to middle school?

22 A No

23 Q Are you aware of his grades in high school?

24 A No

25 Q Are you aware that he graduated approximately the
Evans versus State - Day 1

Kimberly Trammell - Cross-Examination

1 middle of his high school class?

2 A I'm aware that his stepmother helped him very
3 intensely with assignments in terms of tutoring him and
4 providing support, so I'm sure that that played some role

5 Q I'm just asking if you were aware that he
6 graduated in the middle of his high school class at Greer
7 High School?

8 A No

9 Q Were you aware that he went to college?

10 A No

11 Q Were you aware that he had a C average at North
12 Greenville College?

13 A No

14 Q Would the fact that he's gone on to graduate in
15 the middle of his high school class, gone on and had a C
16 average in college, would that show that these remedial
17 reading classes that he had helped?

18 A Not necessarily

19 Q How was he able to go on and graduate in the
20 middle of his high school class and go on and have a C
21 average at North Greenville College?

22 A If I can go back to the middle school years and
23 the middle school teacher and left elementary and went to
24 the middle school grade level, if you have a support there
25 and I know those teachers whose records you just showed

Kimberly Trammell - Cross-Examination

1 me, if you have support there, strength there, tutoring,
2 and you go that extra mile to help a student, they can, in
3 deed, perform in terms of their grades What I'm saying
4 is I can't directly connect that improvement just to the
5 fact that it was reading remediation

6 Q Okay But he did get help at the elementary
7 school level?

8 A Elementary or middle?

9 Q Elementary school or at least you tried to help
10 him

11 A Yes

12 Q And his grades did improve when he went to middle
13 school?

14 A Correct

15 Q And as far as you know they improved in high
16 school?

17 A As far as what you've told me, yes

18 Q And he was able to go to college and pass?

19 A Correct

20 MR MABRY No further questions

21 THE COURT Redirect

22 REDIRECT EXAMINATION

23 BY MR NETTLES

24 Q Say someone later does well, does that mean they
25 didn't have a learning disability when they were young?

Kimberly Trammell - Redirect Examination

1 A Not at all

2 Q Not at all

3 A Learning disabilities don't just disappear

4 Q As a matter of fact, do the grades that he got
5 after he left you in any way speak to the condition that
6 he had when you saw him every day?

7 A No

8 Q Let's start for a second about if I remember
9 correct there was a time before we are as advanced as we
10 are, you took a special needs kid and you put them all
11 together

12 A Yes

13 Q And there was a strategy called "Alternative
14 Strategy for Special Needs Students " Share with the
15 Court what the concept of Alternative Strategy for Special
16 Needs Students

17 A It became and is now where we have students, it's
18 called inclusion, where the student remains in a regular
19 classroom but they receive supplemental services
20 Sometimes it's an intervention specialist who remains in
21 the classroom as well, and they work specifically with
22 those targeted students?

23 Q So the days of taking all the special education
24 students putting into the little short bus and making them
25 go to a little special class, we don't do that any more?

Kimberly Trammell - Recross-Examination

1 A No

2 Q So the fact that Kamell wasn't in a little short
3 bus and wasn't in a little trailer in the back, does that
4 mean he didn't have special needs?

5 A No May I also address the letter grades?

6 Q Sure

7 A The letter grades most districts in the State of
8 Ohio are moving from letter grades because they are not
9 indicative of the students capabilities, their potential
10 Value Added has now been implemented in state testing
11 Value Added Assessment measures a students growth in terms
12 of what they, themselves, are capable of doing So even
13 though I assigned letter grades back then, that practice
14 now we are moving away from those because it does not show
15 an accurate picture of what a student can and can not do
16 And it is not fair to compare Kamell to other students in
17 terms of letter grades and what they can do It's a
18 snapshot in time It does not really reflect what they
19 are doing nor does it reflect the reasoning process

20 Q But these grades, what were they reflective of in
21 terms of Kamell?

22 A In terms of Kamell at that point in time, they
23 were reflective of what he did as compared to the other
24 students in that grade level at that time

25 Q And was there evidence that he was having
Evans versus State - Day 1

Kimberly Trammell - Recross-Examination

1 problems?

2 A Most definitely

3 MR NETTLES That's all I have Thank you
4 very much

5 RECROSS-EXAMINATION

6 BY MR MABRY

7 Q Just briefly, ma'am The fact that he was able
8 to go from middle school to high school, get better grades
9 and go on to college, does that not show he had overcome
10 his disability?

11 A It could also show that he was able to achieve in
12 spite of his disability

13 MR ANTHONY No further questions

14 THE COURT All right Thank you You may
15 step down

16 Ladies and gentleman, we're going to take a
17 lunch recess and we'll reconvene at 2 15 Thank you

18 (Whereupon, there was a lunch recess)

19 THE BAILIFF All rise

20 THE COURT Keep your seats

21 MR NETTLES At this time, Kamell Evans
22 would call Bruce Coffee

23 THE BAILIFF Please raise your right hand

24 BRUCE COFFEE, having been duly sworn,

25 testified as follows

Evans versus State - Day 1

Bruce Coffee - Direct Examination

1 DIRECT EXAMINATION

2 BY MR NETTLES

3 Q That witness box just got a little bit smaller
4 Could you state your name for the record

5 A My name is Bruce Coffee, Sr , Security
6 Coordinator for the East Cleveland Schools?

7 Q Your Security Coordinator for East Cleveland
8 Schools?

9 A Yes

10 Q What does that mean?

11 A I'm basically a liaison between all the schools
12 in the district Any security check problems, any type of
13 issues that's beyond school administration, they would
14 call me and I'd help get it resolved

15 Q What else do you do in conjunction with the East
16 Cleveland School District?

17 A I coach three sports

18 Q What are those three sports?

19 A Football, track, and basketball, all boys sports

20 Q We're going to get to that in a minute, but for
21 right now we're going to talk about how long it is you've
22 been a security -- when did you start working at the East
23 Cleveland School District?

24 A September 23, 1982

25 Q And where did you work then?

Bruce Coffee - Direct Examination

1 A I was hired at Kirk Middle School

2 Q What else did you do at Kirk Middle School?

3 A Outside of security, coach, basically whatever
4 was necessary

5 Q Let's talk about what the security officer does
6 In what years were you at Kirk Middle School?

7 A I was at Kirk from 1982 through 2002 when they
8 tore the building down

9 Q Were you the security officer while Kamell Evans
10 was at Kirk Middle School?

11 A Yes, I was

12 Q Do you remember Kamell Evans?

13 A Yes, I do

14 Q As part of your job as security officer at Kirk
15 Middle School while Kamell was there, what were your job
16 specifically as it relates to that school?

17 A To maintain a safe environment for the students

18 Q Would part of that job entail knowing what was
19 going on with the kids?

20 A I was always informed as to what was going on

21 Q Did you know the presence of any gangs at the
22 Kirk Middle School while Kamell was there?

23 A Not at that time, no

24 Q There were none?

25 A No

Bruce Coffee - Direct Examination

1 Q Has that situation changed?

2 A Yes

3 Q Does it sometimes comes to your attention who may
4 be in a gang in the school system?

5 A Yes

6 Q Is that something you keep track of?

7 A I have to because being a coach as well as
8 working there, being a coach, gang involvement doesn't mix
9 with what I'm trying to do

10 Q Why is that?

11 A You can't afford to do them both, you can't,
12 there's no way We demand a lot from our athletes being
13 students first, and the sports aspect we just don't -- if
14 we find out about it, don't get me wrong -- we will
15 express to them they have to make a decision If they
16 make that decision and do what they do, then that's fine

17 Q You said do what they do, what do you mean?

18 A If they make a decision to continue with gangs,
19 that's fine I'm speaking now in terms of ---

20 Q That's fine, but are there consequences

21 A There are consequences as far as our program is
22 concerned

23 Q What would happen if you found out that a person
24 who was a member of a gang was also playing sports?

25 A They would get kicked off the team

Bruce Coffee - Direct Examination

1 Q Now, what high school did you graduate from?

2 A Shaw High School

3 Q And that is in what school district?

4 A East Cleveland School District

5 Q So you sort of went to school in East Cleveland
6 School District and you work in the East Cleveland School
7 District?

8 A Yes

9 Q Now, when did you meet Kamell Evans?

10 A I met Kamell Evans in the summer of 1990 before
11 he entered

12 Q And why did you meet him?

13 A He was friends with my nephew

14 Q Who is your nephew?

15 A My nephew's name is Kevin Coffee

16 Q And Kevin Coffee played for who?

17 A Kevin Coffee played for Kirk Middle School --
18 from Caledonia Elementary School through Kirk Middle
19 School through (inaudible) High School to University of
20 Virginia

21 Q He played at the University of Virginia?

22 A Yes

23 Q And now what does he do?

24 A He is now athletic director and head girls high
25 school in Richmond

Bruce Coffee - Direct Examination

1 Q When you met Kamell, what was Kamell's
2 relationship with Kevin Coffee, your nephew?

3 A They were athletes and friends from school

4 Q So now my understanding in talking with you is
5 that the Kirk Middle School had a fairly aggressive
6 football program?

7 A Yes

8 Q Share with us a little bit about that?

9 A Well, up until -- this time I've returned to
10 Kirk Well, it's Heritage now I coached 14 years at
11 Kirk and we lost three in those 14 years

12 Q Was Kamell in those three games?

13 A Kamell played for us in 1990

14 Q So you came back to Kirk?

15 A Yes

16 Q And who was getting ready to come to Kirk?

17 A Speaking of?

18 Q To play Was Kamell and Kevin ---

19 A Yeah, I was still at Kirk They were coming in
20 to play sports

21 Q So were there different grades -- did you play
22 football according to your grade?

23 A Yes

24 Q Did Kamell?

25 A No

Bruce Coffee - Direct Examination

1 Q Why not?

2 A Kamell was kind of an early achiever He was one
3 of the few seventh graders that play with me

4 Q Was Kamell in a gang?

5 A No

6 Q How can you say that?

7 A All I can say is he didn't have time

8 Q Why is that

9 A We practiced after school from 4 00 to almost
10 7 00 And then after that, they go home, they have
11 homework or whatever We could tell kids who weren't
12 doing their home work, who weren't keeping up with their
13 grades because we keep biweekly grade reports on the kids

14 Q And what happens if a child's biweekly grades
15 become substandard?

16 A He can't play

17 Q He can't play?

18 A Right

19 Q So in other words, in order to keep your grades
20 up, you have to go to football, come home, do your
21 homeworks to maintain your school work because if didn't
22 keep your grades up, you couldn't play football?

23 A Right

24 Q Now, let me ask you this Do you remember
25 coaching Kamell?

Bruce Coffee - Direct Examination

1 A Yes

2 Q Why?

3 A He was a good enough athlete that he would
4 definitely stick in your mind

5 Q It's unclear partially because of my clumsy
6 question, when you were coaching Kamell, you were his
7 football coach?

8 A Yes

9 Q At the school where he was?

10 A Yes

11 Q So you would see him from the time he got there
12 in the morning until he left practice?

13 A Yes

14 Q On 120th of Thorn Hill, were there any Crips?

15 MR MABRY Objection It's outside of his
16 knowledge

17 THE COURT Overruled

18 BY MR NETTLES

19 Q Where there?

20 A No

21 Q Where there any Bloods?

22 A No

23 Q Tell the Judge what 120th and Thorn Hill was?

24 A 120th and Thorn Hill is a street that -- Thorn

25 Hill runs from East Cleveland across to 120th and it

Bruce Coffee - Direct Examination

1 becomes Cleveland Now there are gangs prevalent in that
2 area, but at that time there wasn't

3 Q At that time being the time that Kamell was ---

4 A Yes

5 Q Let's talk for a second about the area where
6 Kamell grew up, East Cleveland, I'm afraid that many of us
7 that grew up in basically rural areas have a
8 misconception Tell the Court what the neighborhood was
9 like in East Cleveland where Kamell grew up?

10 A Well, it was a predominantly black neighborhood,
11 but we were definitely strong in athletics

12 Q Right

13 A We had one high school, one middle school, five
14 elementary school emptied in the one middle school and we
15 were very strong as far as winning We were very
16 competitive and the parents and the whole community was
17 behind us as far as the strong record that we had

18 Q At the time that Kamell was living there, what
19 was the social economic background for the vast majority
20 of the people who went to that school?

21 A It was rough, it was always rough, but it was
22 definitely not as bad as it is now

23 Q Was it an inner city school

24 A Definitely an inner city school I might as
25 well say a government based school and we went without a

Bruce Coffee - Direct Examination

1 lot of things

2 Q In your capacity as a security officer, do you
3 term false flagging?

4 A Yes

5 Q What is false flagging?

6 A False flagging is claiming to be something that
7 you're not It could be a gang or it could be anything
8 that you're not You know, that's basically a term that's
9 used in the inner city

10 Q As it relates to gang activity, what does false
11 flagging mean?

12 A It means that you are pretending to be in a gang

13 Q Does that happen?

14 A Yeah, it does happen

15 Q Why?

16 A Survival Kids want to survive It's a rough
17 neighborhood and it's only a little over three miles in
18 diameter, but some kids have to walk through areas where
19 they maybe are not familiar with and sometimes that may
20 occur

21 Q In your experience, what effect does sports have
22 on any community on gang membership?

23 A Well, it has a large effect on gang membership

24 Q Share with us what you mean by that?

25 A It gives them a sense of accomplishment ---

Bruce Coffee - Direct Examination

1 Q Sports or gangs?

2 A Sports does It gives them a sense of
3 accomplishment something that they prove that they can do
4 You know, that's as brief as I can be with that

5 Q You can be as long as you want

6 A It's not that I don't want to say anything else,
7 that's just all that I can say Sports in that area I can
8 only speak of my area

9 Q That's all I'm asking

10 A It dominates what goes on on Friday nights It
11 means a lot to that neighborhood We're a small
12 neighborhood, and the success that they show -- and I'm
13 using Friday night football as an example -- the success
14 that they show, they're very proud about the younger kids
15 seeing them play on a Friday night and that means a lot to
16 the kids So that is something that they more or less
17 strive for when they're younger, to get older play for the
18 junior high school, play for the high school so they can
19 be seen on a Friday night It's very important

20 The ones who choose not to, they choose not
21 to It's not really -- it would be a conflict of interest
22 if they tried to do them both because they can't do them
23 both

24 MR NETTLES That's all I have, I believe,
25 Your Honor

Bruce Coffee - Cross-Examination

1 THE COURT Okay

2 CROSS-EXAMINATION

3 BY MR MABRY

4 Q Good afternoon, Mr Coffee, my name is Anthony
5 Mabry and we appreciate you being here I just got a few
6 question for you

7 Let me understand and get some parameters
8 here, when is the last time you coached for Kamell Evans?
9 How old was he when you coached him?

10 A Thirteen

11 Q Seventh grade?

12 A Seventh grade

13 Q And you said he excelled in athletics so that he
14 played on the eighth grade football team?

15 A Yes

16 Q And, I believe, you may not have testified to
17 this, but I believe there some records that show he played
18 both ways offense and defense?

19 A Yes

20 Q And did he have any trouble grasping the game of
21 football?

22 A Not, no, no

23 Q Have any trouble learning the plays?

24 A No

25 Q What positions did he play?

Bruce Coffee - Cross-Examination

1 A He played running back and defensive back

2 Q So running back, he had to know what the plays
3 were y'all were going to run, right?

4 A Yes

5 Q Now, did he play any other sports with you
6 besides football?

7 A No, we were starting basketball when I think he
8 left

9 Q So he played on football?

10 A Only football

11 Q And tell us when the season was for football?

12 A Football season goes from August from November

13 Q So from August through November is when you say
14 Kamell Evans up to 7 00 on the night you had games, is
15 that correct?

16 A Yes

17 Q You don't know where Kamell was after 7 00 at
18 night, do you?

19 A No

20 Q Were you aware that he moved down here to be with
21 his father?

22 A I was made aware of that when we had our banquet
23 and he wasn't there that's when I heard he moved and his
24 father came to get his trophies that year

25 Q Are you aware that one reason he came down here
Evans versus State - Day 1

Bruce Coffee - Cross-Examination

/

1 to live with his father is because he wasn't having any
2 supervision in Cleveland from his mother?

3 A I wasn't aware of that, no

4 Q Are you aware that he, at least from the time he
5 left football practice and even not in football season,
6 there was nobody at his home?

7 A No

8 Q So you don't know what he was doing during those
9 time periods, do you?

10 A No

11 Q There is a 120th Street?

12 A Yes

13 Q And this is an inner city area of Cleveland,
14 correct?

15 A Yes

16 Q I'll show you some photographs that were in
17 evidence that were made of Mr Evans Would you tell the
18 Court what that tattoo says?

19 A That tattoo says "120th Crips "

20 Q Here's two additional photographs of Mr Evans
21 Can you tell us what are in those photographs

22 A "Crips," and "For Life," with a dog tattoo

23 Q I'll show you two more photographs of Mr Evans'
24 hands What does it say on his hands?

25 A "Crip World "

Bruce Coffee - Cross-Examination

1 Q Have you seen gang members with tattoos on them

2 A I have before, yes

3 Q You see those initials tattooed on his neck

4 A "CRE "

5 Q You don't know what those mean though, do you

6 A No, I don't

7 Q And you lost contact not through your own effort

8 but you lost contact with Kamell when he was about 13 or

9 14 years old, correct?

10 A Correct

11 Q And you said false flagging is when somebody

12 wants others to believe that may be they're in a gang is

13 that right?

14 A Right

15 Q So also real flagging is when you are in a gang,

16 isn't it?

17 A Yes

18 Q As I understand your testimony, there is

19 definitely gang activity in that area right now?

20 A Oh, definitely now, yes

21 Q And back when you were coaching Kamell, you

22 didn't work for the Cleveland Police Department, did you?

23 A No

24 Q Or the County Police in the Cleveland area?

25 A No, no police

Bruce Coffee - Redirect Examination

1 Q And did you ever see Kamell when he came home in
2 the summers to see his mother after he moved down here?

3 A No

4 Q So you don't know what his activities were when
5 he came home in the summers?

6 A No

7 Q When he was 17 or 18 years old?

8 A No

9 MR MABRY No further questions

10 REDIRECT EXAMINATION

11 BY MR NETTLES

12 Q You got any evidence here that he went home to
13 see his mother?

14 A No

15 Q Let me ask you this, did Kamell have a gang
16 mentality?

17 A Not at that time, no

18 MR NETTLES That's all I have

19 MR MABRY No further questions

20 THE COURT Thank you, Mr Coffee

21 (Witness leaves the witness stand)

22 THE BAILIFF Place your left hand on the
23 Bible and raise your right hand

24 ROBERT NANCE, having been duly sworn,
25 testified as follows

Evans versus State - Day 1

Robert Nance - Direct Examination

1 DIRECT EXAMINATION

2 BY MR NETTLES

3 Q Tell us who you are, sir

4 A I'm Robert Nance I live in Cleveland, Ohio?

5 Q And what do you do in Cleveland, Ohio?

6 A I work a lot

7 Q I know I work a lot Let's talk about that, what
8 are your jobs?9 A I'm a full time husband, full time father I'm
10 47 years old

11 Q Full time father

12 A Yes

13 Q Do you have any jobs that you get paid for?

14 A Yes

15 Q What are those?

16 A I work for the Oak City Water Department

17 Q What do you do for the Oak City Water Department?

18 A I'm a store keeper

19 Q What is that?

20 A Whoever needs supplies, I furnish them with
21 supplies

22 Q The Water Department for the City of Cleveland?

23 A Water Department

24 Q What hours do you do that?

25 A 1 00 to 9 30 on the weekdays

Robert Nance - Direct Examination

1 Q 1 00 in the morning or tne afternoon?

2 A Afternoon

3 Q Until 9 30 at night?

4 A Yes

5 Q Do you do anyth_ng in the morning?

6 A In the morning I do pest control

7 Q What control?

8 A Pest control

9 Q Do you also have anything to do with sports?

10 A Yes

11 Q Share with me what you do as it relates to
12 sports?

13 A I have my own academy called the Bob Nance
14 Basketball Academy

15 Q Now, we only have one of these so I'm going to
16 ask that we use it as demonstrative

17 A Okay

18 Q Is that your pamphlet?

19 A Yes

20 MR NETTLES I'd ask to mark that just for
21 demonstrative purposes

22 THE COURT Okay

23 (Pamphlet marked as Exhibit No 1 for
24 demonstrative purposes only)

25

Robert Nance - Direct Examination

1 BY MR NETTLES

2 Q Tell us a little bit about Bob Nance Basketball

3 A Well, we train a lot of kids from two years old
4 on up to college, boys and girls

5 Q Are you in any way married to -- are you a family
6 member of Kamell's?

7 A Yes

8 Q How is that?

9 A I'm married to Kamell's aunt

10 Q So you're married to Kamell's daddy's sister?

11 A Yes

12 Q Did you ever know Kamell's dad?

13 A Yes

14 Q Well, so let me ask you this, when did you meet
15 her?

16 A Sandra, my wife, in 1986

17 Q When did you meet Kamell?

18 A The later part of 1986

19 Q All right And how did you meet Kamell?

20 A I used to play in inner city games

21 Q Inner city --

22 A Leagues and I had seen Kamell a few times I
23 didn't know him then?

24 Q Who was playing?

25 A I was and Kamell used to be with his auntie and
Evans versus State - Day 1

Robert Nance - Direct Examination

1 his uncle

2 Q And what was your impression of him?

3 A Just an energetic kid always smiling

4 Q Okay Tell us about -- were you involved in
5 Kamell's life?

6 A Yes, I got involved in Kamell's life after I had
7 seen him over my wife's house and he was a kid a lot of
8 energy, loved to play, always run, very intense all the
9 time, and I used to have him with me and my two sons I
10 have two sons, a 27 and a 26 year old, and Kamell used to
11 hang out with us and go to play ball, train, practice not
12 only in basketball, baseball or football When we go to a
13 game, high school game, depending on whatever was going on
14 I always gave him an invitation to come with us

15 Q This relationship between you and Kamell, as far
16 as you're concerned in terms of how close you are, did he
17 ever ask you to do anything for him?

18 A He asked me, the closer I got with my finance,
19 the closer I got with Kamell -- we used to go up the
20 street and play at the playgrounds, and the more and more
21 we got closer with family, we had a little family
22 gathering and he asked his mom if I could be his
23 godfather A guy named Ernie Moon, that's my brother-in-
24 law, he was a little closer to Kamell than I was and it
25 was strange that Kamell asked me to be his godfather A

Robert Nance - Direct Examination

1 | godfather is someone you almost want to make your uncle or
2 | your big brother

3 | Q Right Let me ask you this, did there come a
4 | time when Kamell's dad left Cleveland?

5 | A Yes I didn't know him then

6 | Q You didn't know him then?

7 | A No

8 | Q You didn't know Kamell's dad while he was married
9 | to Kamell's mom?

10 | A No, I did

11 | Q You only met Kamell after his dad had already
12 | left?

13 | A Yes

14 | Q Okay So did Kamell -- tell me a little bit
15 | about how often -- did Kamell play basketball?

16 | A Yes

17 | Q Was he any good?

18 | A Very intense athletic kid, high energy, always
19 | played hard

20 | Q Did he ever play with James Posey?

21 | A Yes A local inner city kid, didn't have much,
22 | just a hard worker and he and Kamell made what they call
23 | the City League All Star game and we used to call him
24 | little Mickey

25 | Q Call who little Mickey?

Robert Nance - Direct Examination

1 A James Posey

2 Q Kamell played with him?

3 A Yes An James Posey won two NBA championships,
4 one with Miami Heat and one with the Boston Celtic last
5 year

6 Q Now, Kamell's life from the time you met him in
7 1986 -- do you remember when he left Cleveland?

8 A Yes, it was the later part of the seventh grade

9 Q How did that make you feel when he left?

10 A I didn't want him to leave because I didn't know
11 what it was going to be like where ever he goes, but
12 Kamell was with me all the time because I worked in
13 Cleveland Heights where he stayed and I used to go by
14 after he get out of school and check in on him I would
15 stop at McDonalds because I always know that he loved to
16 eat so I would always carry extra stuff for him and
17 Shatima, just being an uncle and just being close to the
18 family

19 Q There's been some discussion about 120th and
20 Thorn Hill, is that in Kamell's neighborhood?

21 A No, it's not

22 Q Where did Kamell live?

23 A In Cleveland Heights

24 Q Tell us a little bit about Cleveland Heights?

25 A Cleveland Heights is a suburbs of Cleveland, nice
Evans versus State - Day 1

Robert Nance - Direct Examination

1 homes, very educated schools, everything is clean You
2 have a clean atmosphere

3 Q That's in Cleveland Heights?

4 A That's in Cleveland Heights

5 Q So from the time that you met him in '86 until
6 the time he left, how much of his free time was spent with
7 you?

8 A A lot You're talking about when he was growing
9 up?

10 Q When he was growing up?

11 A I usually get off around 3 00, 3 30 and I go by
12 and see him and I make sure he done his homework or
13 whatever he had to do, pick him up or stay in the yard,
14 dribble with him, play catch with him This guy played
15 sports and he loved sports

16 Q Was he involved in your basketball camp?

17 A Whenever I had camps, he always -- the invitation
18 was always there He didn't have to ask

19 Q Did he take you up on those?

20 A Yeah

21 Q So you're involved with children who are from
22 that area?

23 A Yes, the midwest

24 Q Do you have young adults who decide that they
25 don't want to do athletics and rather be involved in gang

Robert Nance - Direct Examination

1 activity?

2 A You can kind of -- they show signs They dress
3 different They're body language is different, everything
4 is "I," and we don't say, "I " We don't use the word,
5 "I "

6 Q Is there performance in athletics begin to
7 suffer

8 A Yes, skills just drop To be a high intense
9 player like he was working, you couldn't be in no other
10 kind of other activities

11 Q Was Kamell in a gang?

12 A No, Kamell wasn't in no gang

13 Q Were you ever contacted in 2002, 2003 by anybody
14 from the defense as either a family member or somebody who
15 had mentored Kamell?

16 A No

17 Q Would you have come to South Carolina had you
18 been asked?

19 A Yes

20 Q Has anybody other than somebody who worked for me
21 contacted you about Kamell Evans?

22 A No

23 MR NETTLES Thank you

24 CROSS-EXAMINATION

25 BY MR MABRY

Evans versus State - Day 1

Robert Nance - Cross-Examination

1 Q Mr Nance, were you married to Kamell's aunt when
2 he was tried for these charges?

3 A Yes, sir

4 Q And you are aware that the trial was going on?

5 A Yes, sir

6 Q And did you come down here for the trial?

7 A No, I didn't

8 Q And why was that?

9 A I just didn't come down here for the trial

10 Q But you were aware it was going on?

11 A Yes, sir

12 Q Did you ever call his lawyers and speak to them
13 on the telephone?

14 A I never met his lawyers

15 Q Did you ever call them or the phone and tell them
16 what you could testify to?

17 A No, I didn't

18 Q Forgive me for asking this question, Mr Nance,
19 and I've got a reason for asking any, have any of Kamell's
20 cousins or relatives that you know of been in a gang?

21 A No

22 Q Any uncles ever been in a gang?

23 A No

24 Q Do you know of any reason why Kamell would have
25 told his attorneys that he had cousins or uncles in a

Robert Nance - Cross-Examination

1 gang?

2 A I have no idea

3 Q Now, when did you lose contact really with
4 Kamell? What age was it that he left?

5 A We never lost contact I would either talk to
6 him on the phone

7 Q When did he leave?

8 A I think it was the later part of the seventh
9 grade

10 Q I guess he was 13 or 14?

11 A I'm not sure It was after the seventh grade

12 Q Did you see him 24 hours a day when he lived in
13 Cleveland?

14 A No, not 24 hours, no

15 Q And you said there were times when you would go
16 by there and would you take him something to eat if he
17 needed something to eat?

18 A No, he never asked

19 Q He never asked

20 A No, he never asked for something to eat I would
21 stop at McDonalds because I worked in Cleveland Heights,
22 that's where my office is at, and then I picked me some
23 McDonalds up and I make sure I -- if I get myself
24 something, I'd get him something?

25 Q Why were you getting Kamell something as opposed
Evans versus State - Day 1

Robert Nance - Cross-Examination

1 to your other nephews?

2 A I was in Cleveland Heights, they don't stay in
3 Cleveland Heights

4 Q So you live in a different part of time?

5 A Yes I worked in Cleveland Heights

6 Q Now, was there a period of time when Kamell lived
7 in Cleveland and he was basically a latchkey kid?

8 A You say he lived in Cleveland?

9 Q When he lived in Cleveland Heights in Ohio

10 A Cleveland Heights is different Cleveland One is
11 the suburbs and one is the inner city so I never knew he
12 stayed in Cleveland

13 Q Was there ever a period of time when he would
14 have to come home from school and his mother wasn't there?

15 A She had a job, but I was coming by there just for
16 a few minutes or whatever and stayed as long as I wanted
17 to I always had an invitation

18 Q I understand What I'm asking you is, was there
19 a period of time when he would come home from school and
20 there was nobody there to supervise him?

21 A I'm not sure If I didn't go in the house, I
22 wouldn't know who was in the house because it wasn't for
23 me to go in the house and check on who was in there

24 Q Why don't you tell the Court why did he move from
25 Cleveland to move down and stay with his father?

Robert Nance - Cross-Examinat_or

1 MR NETTLES He didn't live in Cleveland

2 BY MR MABRY

3 Q Why did he move from Ohio to South Carolina?

4 A I guess that was a family decision

5 Q Do you know why he moved?

6 A No, I don't

7 Q Were you aware that one of the reasons is because
8 there was no supervision by his mother?

9 A I don't know about that, sir I just I didn't
10 want him to leave Cleveland

11 Q You didn't know who he was with 24 hours a day,
12 do you?

13 A No My daughter is somewhere right now I'm not
14 with them 24 hours

15 Q You came down here to see Kamell on one occasion
16 and he offered to give you some money?

17 A Yes

18 Q How old was he then?

19 A I'm not sure of his age

20 Q Was he grown?

21 A Yeah, he was grown

22 Q And he offered to give you some money in an
23 envelope?

24 A He offered me some money, yes

25 Q Was it in an envelope?

Evans versus State - Day 1

Robert Nance - Redirect Examination

1 A It could have been in an envelope

2 Q Do you remember giving a statement to Ms Drucy
3 Glass that he offered to give you some cash in an
4 envelope?

5 A Yes, that's just Kamell, an appreciative person

6 Q And you turned the money down, didn't you?

7 A Yes

8 Q Do you know where he got the money?

9 A No, I don't know where nobody get money from

10 MR MABRY No further questions

11 THE COURT Any redirect

12 MR NETTLES Let's clear up this mystery

13 REDIRECT EXAMINATION

14 BY MR NETTLES

15 Q Why did he offer to give you some money?

16 A Because I been nice to him all of his life I
17 drove down

18 Q You drove down?

19 A Yes

20 Q Why did he say he wanted to give you some money?

21 A I guess because I've always been the good in his
22 life and he wanted to give me something to go back home
23 with some gas

24 Q You had to spend money for gas to get down here?

25 A Yes

Robert Nance - Recross-Examination

1 Q That's why he gave you money?

2 A That's why he offered me money

3 Q He offered you gas money?

4 A Yes

5 MR NETTLES Thank you

6 RECROSS-EXAMINATION

7 BY MR MABRY

8 Q And you turned the money down?

9 A Yes

10 Q Were you aware that he was arrested for drugs
11 down here?

12 A I don't know what you're talking about

13 Q I'm asking you were you aware ---

14 MR NETTLES He answered the questions,
15 Judge

16 THE COURT Go ahead

17 BY MR MABRY

18 Q Were you aware that he was arrested down here
19 with intent to distribute marijuana?

20 A I had no idea I don't know

21 MR MABRY Thank you

22 THE COURT Thank you, Mr Nance

23 (Witness leaves the witness stand)

24 MR NETTLES Your Honor, Mr Evans would
25 call Johnathan Landingham

Evans versus State - Day 1

Johnathan Landingham - Direct Examination

1 THE BAILIFF Please your left hand on the
2 Bible and raise your right hand

3 JOHNATHAN LANDINGHAM, having been duly sworn,
4 testified as follows

DIRECT EXAMINATION

5 BY MR NETTLES

6 Q Tell us who you are?

7 A My name is Johnathan Landingham

8 Q You have to speak up a little bit

9 A All right?

10 Q So what do you do?

11 A I have my own shop

12 Q Your own shop doing what?

13 A Detailing and car washing in 1010

14 Q And where is that?

15 A Cleveland, Ohio

16 Q Do you know Kamell Evans?

17 A Yes

18 Q How do you know Kamell Evans?

19 A A lived right a house away from him growing up

20 Q Where

21 A In Cleveland Heights

22 Q Let's be clear about this, is there a difference
23 between Cleveland Heights and Cleveland?
24

25 A Yes

Johnathar Landigham - Direct Examination

- 1 Q What's the difference?
- 2 A It's like considered like a suburb
- 3 Q Cleveland Heights is considered a suburb?
- 4 A Yean, like a suburb
- 5 Q How did you know Kamell Evans?
- 6 A He was a neighbor
- 7 Q How long did you know him?
- 8 A Two years
- 9 Q Let's put it in context, do you remember when he
- 10 left?
- 11 A Vaguely left
- 12 Q Were you a friend when he left?
- 13 A Yeah
- 14 Q I'm not asking you the actual event of him
- 15 leaving, but when he left, were you a friend of his?
- 16 A Yes
- 17 Q And you were a friend of his two years before
- 18 that?
- 19 A Yes
- 20 Q Is there a difference in your ages?
- 21 A Yes
- 22 Q What's the difference?
- 23 A I'm 34, I think there's a two-year difference
- 24 Q Whose older?
- 25 A I'm older

Evans versus State - Day 1

Johnathan Landigham - Direct Examination

1 Q By two years?

2 A Yes

3 Q Now, tell me during the two years that you know
4 Kamell, was his mother around much?

5 A Some of the time, yes

6 Q What was her situation?

7 A She was bowling and stuff like that

8 Q Did she work?

9 A Yes

10 Q Did she work full time?

11 A Yes

12 Q Was Kamell's dad there for those two years?

13 A No, I never met him

14 Q You met his dad?

15 A No

16 Q So tell us how far did you go in school?

17 A I went to Shaw

18 Q So you were in the ninth grade when Kamell was in
19 seventh

20 A Right

21 Q Tell me a little bit about what y'all would do
22 together during the two years when you were friends?

23 A Hang out, go to the mall, talk to girls and stuff
24 like that

25 Q Did Kamell play sports?

Johnathan Landigham - Direct Examination

1 A We use to play football, basketball, stuff like
2 that

3 Q Who was better, you or him?

4 A He was a little bit better, but I gave him some
5 competition

6 Q I understand Let me ask you this, how good a
7 friend would you consider Kamell of yours for the last two
8 years he lived in Cleveland Heights

9 A Good friends I mean I was mostly at his house
10 after school

11 Q Was Kamell in a gang?

12 A No

13 Q Are you sure?

14 A I'm sure

15 Q Did y'all sell drugs?

16 A No

17 Q Did y'all get tattoos?

18 A No

19 Q Now, Kamell has tattoos now Did he have them
20 back then?

21 A No

22 Q Did Kamell have tattoos when he lived in
23 Cleveland?

24 A No

25 Q Did he ever go to Juvenile Detention?

Johrathan Landigham - Direct Examination

1 A No

2 Q Did you ever get arrested?

3 A No

4 Q Did Kamell get arrested?

5 A No

6 Q Did the police ever have to bring you home?

7 A No

8 Q Did he ever get kicked out of school?

9 A No

10 Q Let me ask you this, to your knowledge, was there
11 ever any gang initiation involved in Cleveland on 120th?

12 A As far as I know, no

13 Q The neighborhood that you grew up in, that being
14 Thorn Street which was in Cleveland Heights, share with
15 the Judge a little bit about what kind of neighborhood
16 that was?

17 A It was a nice neighborhood We left East
18 Cleveland, Cleveland and moved up to Cleveland Heights
19 My mom wanted us to have a better life in a better
20 neighborhood It was nice and quiet Some older folks
21 lived on the street so we were respectful to them and they
22 respected us That's how it was

23 Q Let me ask you this, do you know people that are
24 in gangs or claim to be in gangs?

25 A Claim to be, yes

Johnathan Landingham - Cross-Examination

1 Q I just wanted to set that up In other words,
2 you're not ignorant to the whole concept of some people
3 being in gangs?

4 A Yes

5 Q Was being the person that was clearly one of
6 Karell's better friends if not best friends the last two
7 years he was in Cleveland, were you contacted by anybody
8 who represented him from his first trial?

9 A No

10 Q Any investigators or anybody contact you?

11 A No

12 Q Who did find you?

13 A One of the lawyers here

14 Q The lady back here in the black and white?

15 A Yes

16 Q Her name is Drucy Glass?

17 A That's her

18 MR NETTLES I have no further questions

19 CROSS-EXAMINATION

20 BY MR MABRY

21 Q Is it Landingham?

22 A Landingham

23 Q Mr Landingham, you are two years older than
24 Kamell or three?

25 A I believe two years

Johrathan Landigham - Cross-Examination

1 Q And what year did you graduate from high school?

2 A '93

3 Q And what year did he graduate from high school?

4 A I'm not sure I think it was '96

5 Q So there was some age difference between the two
6 of y'all?

7 A Yes

8 Q Did you spend ever minute with Kamell?

9 A After school, we played a lot of sports and
10 stuff

11 Q My question was, did you spend ever minute with
12 Kamell every day?

13 A Yeah, you can say that

14 Q So you didn't go home to your house after school?

15 A I was mostly over there

16 Q When did you go home to your house?

17 A Probably later on that evening

18 Q Where was his mother at?

19 A She was there some of the time and then most of
20 the time she would bowl and then come back home

21 Q Where is 120th Street from where Kamell lived?

22 A That's kind of far

23 Q What's kind of far?

24 A It's not around the corner, per say It's maybe
25 a couple of miles

Johnathan Landigham - Cross-Examination

1 Q A couple of miles It's walking distance, right

2 A Being young you could walk it

3 Q Was there anybody in Kamell's family who didn't
4 want him hanging around you?

5 A No

6 Q An aunt or any other relative who didn't want him
7 hanging around you?

8 A No

9 Q Now, when did you last see Kameil in Cleveland?

10 A Before he left -- not right before he left -- a
11 day before he left or something like that

12 Q How old was he then?

13 A I remember off the top of my head

14 Q Thirteen or 14?

15 A Yeah, right around then

16 Q So you were 15 or 16?

17 A Yes

18 Q And did you have contact with him after he moved
19 down here?

20 A No

21 Q Did you see him when he came back to Cleveland to
22 visit his mother?

23 A No, I had moved since then

24 Q Where did you move to?

25 A I moved to East Cleveland

Johnathan Landigham - Redirect/Recross-Examination

1 Q You testified on the record that you knew people
2 in gangs, is that right?

3 A What's that?

4 Q I believe you testified on the record that you
5 knew people who claimed to be in gangs Do you know
6 anybody who is in a gang

7 A Yes

8 Q Do you know what the colors are that Crips wear?

9 A (No response)

10 Q The people that you know who are in gangs, how do
11 you know they are in gangs? Did they tell you that

12 A When we were in school we had like a group of
13 guys called the Tribe and stuff like that

14 Q My question was how do you know? Do you they
15 just tell you that or do you just know?

16 A They told me that

17 Q And you just took their word for it?

18 A Yes

19 MR MABRY No further questions

20 REDIRECT EXAMINATION

21 BY MR NETTLES

22 Q If Kamell told you he was in a gang, would you
23 believe him?

24 A If he told me that, no

25 MR NETTLES Thank you
Evans versus State - Day 1

Virginia Golden - Direct Examination

1 RECROSS-EXAMINATION

2 BY MR MABRY

3 Q But you hadn't seen him since he was 13 or 14

4 A Yes, sir

5 Q And you don't know what he did from the time he
6 was 13 or 14 until he was 27 years old?

7 A No, sir

8 MR MABRY No further questions

9 THE COURT Thank you, Mr Landingham

10 (Witness leaves the witness stand)

11 MR NETTLES Mr Evans would call Virginia
12 Golden13 THE BAILIFF Place your left hand on the
14 Bible and raise your right15 VIRGINIA GOLDEN, having been duly sworn,
16 testified as follows

17 DIRECT EXAMINATION

18 BY MR NETTLES

19 Q Tell us your name

20 A My name is Virginia Golden and I live Streets
21 Borough, Ohio which is right outside of Cleveland, Ohio

22 Q Are you in any way related to Kamell Evans?

23 A I am

24 Q In what way?

25 A I am his aunt I'm the sister of Renee Evans,
Evans versus State - Day 1

Virginia Golden - Direct Examination

1 his mother

2 Q Your his mother's sister?

3 A Yes

4 Q Ms Golden, share with us what you do for a
5 living?

6 A I'm a middle school principal in Bedford, Ohio at
7 Heskett (ph) Middle School which is located for the Bedford
8 City School District

9 Q How far is that from Cleveland?

10 A I would say from downtown Cleveland probably 20
11 30 miles

12 Q And how far is it from Cleveland Heights?

13 A Cleveland Heights probably 15 miles maybe

14 Q I want to talk to you a little bit about -- what
15 we're going to talk about is you and your sister, and
16 we're going to talk about, if you don't mind, her
17 relationship with Barry Evans Who is Barry Evans?

18 A Barry Evans is my ex-brother-in-law

19 Q Your sister's ex husband?

20 A Yes

21 Q Tell me a little bit about their relationship
22 When did it begin

23 A My sister started dating him when they were in
24 High School We went to Glennville High School around
25 1972 They met and they dated

Virginia Golden - Direct Examination

1 Q What was that like?

2 A Back then I think it was a fun relationship It
3 was a typical teenage relationship in love one day and
4 fight the next day and making up the next day, going out
5 and going to -- they both were very actively involved so
6 they went to football games and homecoming Barry was an
7 athlete so whatever that entailed, pep rallies, and
8 after school, before school and during school

9 Q Was there an event that in your mind sort of
10 changed the way their relationship worked?

11 A Yes

12 Q What was that about?

13 A When Renee was a senior and Barry, they both were
14 in the same class of '72, Renee got pregnant They got
15 pregnant I guess when he found out about the pregnancy,
16 he was very upset about it

17 Q Why do you think that?

18 A One of the things that he said at least twice is
19 that he felt that that ruined his life He had recently
20 gotten a scholarship to go to Whittenburg University to
21 play football, full scholarship He felt that because
22 Renee was pregnant and was going to have the baby, that
23 this was going to impede his plans for his future impact
24 whether or not he was able to go to college or not

25 Q Did you ever witness any violence between the two
Evans versus State - Day 1

Virginia Golden - Direct Examination

1 of them?

2 A Yes

3 Q Tell me about the first time?

4 A Well, the first time I believe was when we went
5 to the Cincinnati Jazz Festival

6 Q Was there a time in high school?

7 A Yes

8 Q Share with us what happened in high school?

9 A Okay When I was coming down the main hall on
10 the first floor, a friend of ours came up and said that
11 Barry was beating the shit out of Renee on the third
12 floor

13 Q What did you do?

14 A I immediately ran to my brother I knew he had a
15 class around the corner so I ran to that classroom, got
16 his attention from the doorway, asked him to come up, and
17 his teacher wouldn't let him come out So I wound up
18 running into the classroom and said that Barry is on the
19 third floor beating the shit out of Renee So my brother
20 ran out of the classroom and we went around -- you can go
21 up the stairs either this way or that way so we went this
22 way so that was right by the gym So he stopped there and
23 picked up a bat And we went to the third floor, and even
24 though Renee and Barry were no longer there, we didn't
25 find Barry, we didn't find Renee, there were people up

Virginia Golden - Direct Examination

1 there to tell us that they were just right around the
2 corner and yes, he was up there beating on her

3 MR MABRY Objection, Your Honor, hearsay

4 THE COURT Sustained

5 BY MR NETTLES

6 Q When was the next time you saw violence?

7 A I witnessed her being hit at the Cincinnati Jazz
8 Festival

9 Q Please share with us a little bit about him
10 beating up Renee, your sister, at the Cincinnati Jazz
11 Festival?

12 A Barry and Renee and my boyfriend at the time went
13 to the Cincinnati Jazz Festival and we were staying with
14 my aunt and uncle who lived in Dayton, Ohio When we got
15 the Jazz Festival we were sitting in our seats and I was
16 sitting here and my boyfriend was sitting here, Renee was
17 sitting next to him and Barry was sitting next to Renee
18 And they got into some kind of argument about something
19 I'm not sure what that was about, and Barry ended up
20 hitting Renee right there in the concert while we were
21 sitting there watching the time and caused her to have a
22 black eye When we got back to the car, he continued to
23 hit her My boyfriend tried to stop Barry and Barry said
24 he didn't have anything to do with this and to stay the
25 hell out of it

Virginia Golden - Direct Examination

1 Q Did he hit her?

2 A He did And then we went to our aunt and uncle's
3 because that's the way we were going and we were going to
4 stay the night there, but because Barry had physically
5 harmed Renee, my uncle and aunt wouldn't allow Barry to
6 stay there, which meant Renee wasn't going to stay there,
7 which meant we all had to come back home and cut our plans
8 short It was a two-day concert so we ended up going back
9 to Cleveland because of the abuse that I witnessed

10 Q Let me ask you this, as their marriage went on,
11 what did you see in relation to Barry's drinking?

12 A I witnessed it from Barry being a social drinker
13 to Barry being an alcoholic

14 Q Tell us about that?

15 A Well, first of all, back then Barry was a great
16 guy We really enjoyed his company He was very social,
17 he had a great personality He could work the run so to
18 speak So we watched him start as a social drinker --
19 like -- if you were having a party, you'd want him to
20 come, that type of guy -- to drinking more and more He
21 started not coming straight home from work He frequently
22 to the Master Plan after work

23 Q What's the Master Plan?

24 A It's a neighborhood bar where they lived in
25 Cleveland He would go there after work and stay there

Virginia Golden - Direct Examination

1 until closing He started doing that more and more and
2 eventually, I guess he just starting drinking more and
3 more and because an alcoholic

4 Q How did that affect his interaction with your
5 sister?

6 A It had a terrible effect

7 Q Tell us about that?

8 A One of the things that he demanded from Renee was
9 that she had to have a full course meal I call it a
10 Sunday meal

11 Q Right

12 A A Sunday meal prepared for him almost every day
13 One of the things that he demanded from her was that that
14 meal had to be hot, it had to be warm So every day my
15 sister didn't know what time he was coming home and she
16 knew he wasn't coming straight home, that he was going to
17 go by Master Plan But whenever he got home, he had to
18 have his meal and she had to make it a full course meal --
19 not a full course as you know it, six or seven courses --
20 but a meal that looked to us like a Sunday meal

21 Q Right, I see

22 A And it needed to be warm So that when he would
23 go drinking and then he would come home and that wasn't
24 the case, either the meal wasn't hot or it wasn't ---

25 MR MABRY I'm going to object This
Evans versus State - Day 1

Virginia Golden - Direct Examination

1 witness, as I understand it, she didn't live with them
2 The only way she could know this is if she was told this
3 and that's hearsay

4 MR NETTLES Okay

5 BY MR NETTLES

6 Q We'll talk about this with you sister Let's
7 talk about how many times -- would you ever have to go
8 over there and get her?

9 A Yes

10 Q Why?

11 A Because Barry was beating her

12 Q About how many times do you think you had to do
13 that?

14 A Probably about 12 times

15 Q And what would that entail?

16 A Well, they would have a fight, Barry would beat
17 her and then she would call us to come to rescue her

18 Q What would you do?

19 A It depending on if I got the call If I got the
20 call, I would tell my brother and my mother and my step
21 father, and then we would rally together, get in our cars
22 and go over there We would, at that -- there was
23 different situations Sometimes we would go over there
24 and the police were already there and they had already
25 separated Renee and Barry They would try to calm Barry

Evans versus State - Day 1

Virginia Golden - Direct Examination

1 down Then we would go in and we would get Renee and we
2 would take a lot of her things We would get the children
3 and we would get their clothes or whatever, and we would
4 bring Renee back home with us

5 Q Now, did y'all have street clubs?

6 A Yes

7 Q Well, y'all had a social club, didn't you?

8 A We had a street club and we also had a family
9 social club

10 Q Did you witness any violence during one of your
11 social club events?

12 A Yes

13 Q Share with us what you witnessed then?

14 A We had a lot of cabarets and this particular time
15 when I actually saw Barry hitting Renee, the restrooms
16 were located in like a far away place from the dance
17 floor, and so as I was coming out of the restroom, Barry
18 had Renee cornered in one of the corners aside from the
19 restrooms, and he was pushing her around and hitting her
20 I tried to figure out what it was about I couldn't hear
21 them, I could just see it When I went over, of course,
22 he stopped Later when I spoke to Renee it was because
23 she was dancing with another guy

24 Q Did you witness any violence in the backyard
25 during a cookout one night?

Virginia Golden - Direct Examination

1 A Yes

2 Q Tell us what you witnessed then?

3 A I was in the kitchen at the sink and I heard this
4 loud noise talking, whatever, yelling and screaming,
5 shouting I went to the back door and just as I went to
6 the back door, Barry was pushing her around where we had
7 the grill and I witnessed him hitting her in the back

8 Q Did you witness some abuse involving a Christmas
9 tree?

10 A Yes

11 Q Share with us about the abuse at Christmas?

12 A He had had too much to drink in my opinion and
13 our Christmas tree was located in front of the picture
14 window which was right by the door, so as he was trying to
15 leave out he ended up falling into the Christmas tree,
16 knocked the Christmas tree down, destroyed or smashed a
17 lot of the gifts and he couldn't get up because he was
18 drunk Well, Renee went to aid him in getting him up and
19 he told her to, you know, get your "mf" hands off of me,
20 don't touch me, I'm okay or whatever And then my
21 stepfather and Mr Fisher came and got him up out of the
22 tree

23 Q Let's be clear, when Renee got pregnant in high
24 school, that resulted in the birth of who?

25 A Shatima

Virginia Golden - Direct Examination

1 Q Shatima is who?

2 A Shatima is my niece

3 Q That's Kamell's sister?

4 A Shatima and Kamell are children of Renee and
5 Barry Shatima is the oldest and Kamell is the youngest

6 Q Now, share with us about a time whenever Barry
7 came to get Shatima when Renee had left the house?

8 A Well, we were at home in the dining room ---

9 Q Well, let's set it up first Why was she there,
10 Renee and Shatima

11 A Well, at this particular time they were just
12 visiting and I can not remember is they had moved back or
13 if they were just there visiting They visited all the
14 time

15 Q Was there a time when they had moved back home?

16 A Yeah We would go and get them and bring them
17 back, they would stay with us a few days and then Barry
18 would come back and get them He would talk his way in
19 and they would go back with him all the time But anyway
20 they were home with us on Thornhill and the way the house
21 is situated, it's a duplex so you have one side is kind of
22 narrow, long, and the other side is long So the kitchen
23 door is right in line with the front door and so we were
24 sitting here on the floor and all of a sudden I hear Renee
25 screaming at us, don't let him take Shatima, he's coming

Virginia Golden - Direct Examination

1 through the door, Barry is trying to take Shatima Well,
2 when I turned around where Shatima was sitting behind me
3 play, I looked up and Barry had her and was walking out
4 the door

5 So my grandmother and I, we jumped up, joined
6 Renee who was already in motion to go the front door and
7 Renee got there first and grabbed Shatima, and Barry had
8 Shatima and they were pulling her They were just going
9 back and forth and tried to help, I tried to help As a
10 matter of fact, my grand mother tried to pry Barry's hands
11 off of Shatima The whole time this was going on, Barry
12 was punching Renee trying to get Shatima

13 So how this all ended, I grabbed a trophy and
14 started to hit Barry with the trophy He let go of
15 Shatima, we went back in the house and closed the door

16 The other thing that was strange about that
17 is Barry ended up coming back -- I don't know if the
18 cousin was already in the car or if he went and got the
19 cousin and came back because before we knew anything, he
20 was sitting out in front of our house on the car with his
21 cousin and they did that for a couple of hours to try to
22 intimidate Renee in my opinion

23 Q Let me ask you something

24 MR NETTLES I've got two pictures that I'd
25 like to mark for identification

Virginia Golden - Direct Examination

1 (Photographs marked as Applicant's Exhibit
2 No 5 and 6 for identification)

3 BY MR NETTLES

4 Q Do you recognize either one of those pictures?

5 A I do

6 Q Do you recognize both of them?

7 A I do not recognize this one I recognize this
8 one

9 Q Okay That is Appellant's Exhibit 6 What is
10 that?

11 A This is the house on ---

12 Q What is it?

13 A This is the house that's located on Thorn,
14 Cleveland Heights

15 Q Does that fairly and accurately depict the way
16 the house looked when Kamell was there?

17 A You mean as far as the ---

18 Q Yeah, just outside, grass and all that

19 A Yeah

20 MR NETTLES At this time, I would move
21 Appellant's Exhibit 5 & 6 for identification into the
22 evidence

23 MR MABRY No objection, Your Honor

24 (Photograph marked as Applicant's Exhibit
25 Nos 5 & 6 for identification was admitted into evidence)
Evans versus State - Day 1

Virginia Golder - Direct Examination

1 BY MR NETTLES

2 Q Who lived in that house?

3 A Renee, Barry, Snatima and Kamell, and they had a
4 dog

5 Q And do you remember when they left that house?

6 A Well, they each left at different times for
7 different reasons

8 Q When Kamell was living with his mom and left to
9 come to South Carolina, was that the house that he left
10 from?

11 A Yes

12 Q So that would have been the last house that
13 Kamell lived in in Cleveland?

14 A Yes, that is correct

15 Q And just in a word -- two more things If you
16 were asked to describe the last -- certainly the years
17 that Kamell was living with Barry and Renee, now would you
18 describe that family -- the relationship between Barry and
19 Renee during the time Kamell was with them?

20 A If I had to choose two words ---

21 Q You can choose as many words as you want to

22 A I would say abusive and violent?

23 Q Do you remember whenever Barry left, not the
24 actual time, but do you remember when Barry left?

25 A I remember when he left, yes

Virginia Golden - Direct Examination

1 Q I mean you weren't there when he packed up?

2 A No, I was nome

3 Q Now, were you present for the first trial?

4 A Yes, I was

5 Q Were you ever contacted prior to the first trial?

6 A No, I was not

7 Q But you came for the trial

8 A I did

9 Q Did anybody from the defense seek to talk to you?

10 A No

11 Q Did you seek to talk to the defense?

12 A Yes

13 Q When?

14 A I can't remember the entire trial, but at some
15 point I thought they should have been objecting at some
16 things and they should have been asking us to come up here
17 and dispute some of the things that the prosecutors were
18 depicting I just thought it would have been a great idea
19 to call us up there because we could talk probably more
20 accurately about some of that stuff

21 Q What stuff?

22 A About like the relations that Kamell had with the
23 120th Street and may be why he used that tattoo, why he
24 was in a gang or not, you know, we could directly about
25 that How he grew up as a kid, about his personality,

Virginia Golden - Cross-Examination

1 about some of the things we interacted with him I could
2 talk a great deal about that

3 Q Did you offer to do that?

4 A Yeah, after we collectively as a family asked the
5 lawyers to talk with us because we wanted to share that
6 information And they said, this is not the fight that
7 we're trying to win, we're trying to save his life in the
8 sentencing phase, and that's when we'll do a little more
9 of the objecting and that's when we will call our
10 witnesses

11 Q Right

12 A That they were the professionals, they did this
13 for a living and they had to believe and trust them?

14 Q Well, let me ask you this then, do you remember
15 when the sentencing phase came around?

16 A I do remember

17 Q Did they call you for that?

18 A They did not

19 Q Did they ask you to come up to the witness stand?

20 A They did not

21 MR NETTLES I have no further questions

22 CROSS-EXAMINATION

23 BY MR MABRY

24 Q Ms Golden, I believe you testified on direct, I
25 wrote it down, you said that there were times when Barry
Evans versus State - Day 1

Virginia Golden - Cross-Examination

1 left and there were times when your sister left and they
2 left at different times for different reasons from the
3 house

4 A Eventually when they left to leave this house for
5 good?

6 Q Well, you testified that they both left at
7 different times for different reasons Were there times
8 when Barry would leave the house and there were times when
9 your sister would leave the house?

10 A Well, when I said that I meant they eventually
11 they all left and they left for different reasons at
12 different times For example, my niece went to college so
13 she left

14 Q You said one time you went over there and you had
15 to separate Barry and your sister, is that correct?

16 A I may have When they argued -- I used to do
17 that often when they argued I used to do that a lot

18 Q And, in fact, there were times when your sister
19 hit Barry, correct?

20 A You know what surprisingly no She was afraid of
21 him and she didn't fight back Is always told Barry that
22 he married the right one because Renee was so afraid of
23 him so she barely did fight back In fact, I can't ever
24 remember because she was too busy dodging and ducking

25 Q My question is, did you ever witness your sister

Virginia Golden - Cross-Examination

1 hit him or did she ever tell you that she hit him?

2 A I never witnessed my sister hit him, no

3 Q The occasion about Snatima where Barry came in
4 the house and grabbed Shatima and y'all were pulling back
5 and forth

6 A Yes

7 Q In fact, that occurred before Kamell was even
8 born, isn't that correct?

9 A Yes That is correct

10 Q And the incident, of course, in high school which
11 you referred to, that occurred before Kamell was even
12 born, is that correct?

13 A That is correct

14 Q And, in fact, several of the incidents that you
15 referred to here today Kamell was not even born?

16 A But most of them, he was For example, the abuse
17 that I witnessed on Thorn and Taylor, yes, Kamell was
18 there

19 Q My question was, several of incidents that you
20 testified here today, Kamell was not even born?

21 A Can you be more specific

22 Q I'm just asking ---

23 A I'm not sure which ones you're referring to
24 because I can specifically address each of those if you
25 want to be specific

Virginia Golden - Cross-Examination

1 Q Can you explained to me why we have received no
2 incident reports from Cleveland that dorestic violence
3 occurred in the home?

4 A I can not explain that You'll have to ask
5 Renee

6 Q Well, you witnessed it, didn't you?

7 A I don't know why there were no police reports I
8 don't know, you'll have to ask Renee

9 Q Did you call the police?

10 A I did not Wher I got there, generally, they
11 were there I did testify to that earlier

12 Q My question is, your testimony is your sister was
13 repeatedly abused by this man and are you telling this
14 Court that you never called the police?

15 A No, I didn't call the police because when I got
16 there, they were there so somebody called the police

17 Q But you did not?

18 A I didn't have to When I got there, they were
19 already there

20 Q Have you seen any police reports or have you
21 provided any police reports to anyone?

22 A I have not seen a police report and I've never
23 asked to look at one

24 Q Did your sister ever have to go to the hospital
25 for any of these alleged abusive acts?

Virginia Golder - Cross-Examination

1 A I'm not sure I can't remember if she did or
2 not, I don't know

3 Q Have you ever told anyone from the defense team
4 that she ever went to the hospital because of any of these
5 incidents?

6 A No, I never discussed my sister's business with
7 anyone

8 Q Now, you talked about the prosecutor depicting
9 things about the 120th Street and you think that was in
10 the guilt phase of the trial?

11 A I can't remember I just remember that it came
12 up and they didn't see 120th associated with the street
13 120th

14 Q Ms Golden, do you remember giving a statement to
15 Ms Drucy Glass from the defense team in this case?

16 A A statement?

17 Q Do you remember her interviewing you ---

18 A I didn't give her a statement

19 Q Do you remember her interviewing you on February
20 6, 2009

21 A I remember her interviewing me a lot I'm not
22 sure of the dates I didn't write them down

23 Q How many times did she interview you?

24 A Several

25 Q How many is several?

Virginia Golden - Cross-Examination

1 A Several times, and I don't want to specific
2 because if I say three and it was four, then you'll come
3 back with another thing so several times I spoke with
4 Ms Glass

5 Q More than two?

6 A More than two, yes

7 Q Well, I'm looking at -- I've been provided with
8 two statements, the one I'm looking at is February 6, 2009
9 and on that occasion you said that you could provide a
10 detailed description of 120th Street and how it becomes
11 Thornhill Street at the end of the block which your mother
12 lived on, is that correct?

13 A That is correct

14 Q Thornhill turns into 120th Street, is that
15 correct?

16 A That is correct

17 Q And that's down the street from where your mother
18 lives?

19 A That is correct

20 Q Kamell's grandmother?

21 A Use to live

22 Q Kamell's grandmother?

23 A And me I lived there too

24 Q Was there a time when after Barry left, after
25 Mr Evans left and moved to South Carolina, was there a
 Evans versus State - Day 1

Virginia Golden - Cross-Examination

1 time when you sister began to live out a single lifestyle
2 and leave Kamell there at home after school and at night?

3 A I don't know I mean I'm not sure about ---

4 Q So you don't know

5 A I'm not sure

6 Q Did your family resent -- was there some
7 resentment for Kamell for leaving your sister and moving
8 to South Carolina?

9 A Yes

10 Q Tell me about that, why was there resentment?

11 A Well, we always believed that Barry took Kamell
12 because Kamell -- Renee had custody of Kamell and when he
13 left, Renee didn't really know where he was

14 Q Did you find out later that Kamell had called his
15 father and told him to come and get him?

16 A As a matter of fact the last few weeks I had
17 found that out and I didn't know that prior to that

18 Q And are you aware that Kamell called his father
19 because there basically was no supervision at his house in
20 Cleveland?

21 A No, I was not aware of that And so there were
22 times when I didn't know what he was doing and there were
23 other times when I knew exactly what he was doing when he
24 was visiting in our home, so I mean I wouldn't be able to
25 account for everything that Kamell did But there were

Virginia Golden - Redirect Examination

1 times that I can say that I knew what he was doing?

2 Q Did he come home and visit your family in the
3 summer time?

4 A You mean after he moved nere?

5 Q After he moved to South Carolina

6 A He visited a couple of times Particularly he
7 came to my house

8 Q He did

9 A When he lived to South Carolina, he would come
10 home and visited me twice at my house

11 Q And you know he came and visited your sister as
12 well He did go and see his mother ---

13 A Well, I don't know You would really have to ask
14 her that

15 Q So he did, some time after he left -- he would
16 have left Cleveland a 13 or 14 year old, some time in his
17 teenage years he came back up to Cleveland in the summer
18 time or Christmas or whenever?

19 A Yes

20 Q You don't know what he was doing the whole time
21 he was up in Cleveland, do you?

22 A Not the whole time he was up in Cleveland, no

23 MR MABRY Just one moment, please

24 BY MR MABRY

25 Q When he came back up to Cleveland to visit y'all
Evans versus State - Day 1

Virginia Golden - Redirect Examination

1 in the summertime, which house did he stay in?

2 A I don't know I just know when he came to visit
3 me He came to visit me twice and he did spend the night
4 at my house

5 Q He had to be spending the night somewhere?

6 A Yeah, but he didn't spend the night with me

7 Q Where was your house?

8 A We lived at that time in South Hugley

9 Q So he would have had to stay with you ---

10 A I'm not sure who he stayed with There are
11 several people he could have stayed with He could have
12 stayed with Renee, he could have stayed with his other
13 grandparents, he could have stayed with my mom I'm not
14 sure where he stayed? /

15 MR MABRY That's all I have, Your Honor

16 THE COURT Any redirect

17 REDIRECT EXAMINATION

18 BY MR NETTLES

19 Q In addition to physical abuse, was there
20 emotional abuse?

21 A Yes

22 MR MABRY Objection, that's not proper
23 reply I didn't ask anything about any emotional abuse

24 THE COURT Overruled

25 BY MR NETTLES

Evans versus State - Day 1

Tyrone Jonnson - Direct Examination

1 Q Share with us the emotional abuse?

2 A Well, Barry would call he stupid, dumb

3 Q Every now and then or --

4 A All the time and he would do that in front of
5 many many people

6 Q Did he do that in front of the children?

7 A Yes, he did The other thing is that when Renee
8 was pregnant, there was something going on with Renee and
9 Barry We didn't find out she was pregnant until she was
10 seven months pregnant, but she cried every night she was
11 pregnant We lived in the attic of my mom and my
12 grand mom's home, and I slept in the next room and she
13 cried every single night She and Barry would argue on
14 the phone and she would cry every night

15 Q The State said something about you making a
16 statement Did you write out any statement for us?

17 A I did not

18 Q You didn't write out anything and sign?

19 A I did not

20 Q Ms Glass may have taken notes and done a report,
21 which I think I showed you, but did you ever do a
22 statement?

23 A I did not

24 Q I know you said that twice Kamell came to see
25 you To your knowledge, did Kamell come spend the summer
Evans versus State - Day 1

Tyrone Johnson - Direct Examination

1 in Cleveland?

2 A I don't think so When he came to visit -- I
3 can't remember I think when he came to visit, it was
4 short term I don't think he was there for the whole
5 summer Plus if he was there for the whole summer, I
6 think I would probably know that

7 MR NETTLES Thank you very much

8 MR MABRY No questions

9 THE COURT Thank you, ma'am

10 (Witness leaves witness stand)

11 THE BAILIFF Raise your right hand

12 TYRONE JOHNSON, having been duly sworn,
13 testified as follows

14 DIRECT EXAMINATION

15 BY MR NETTLES

16 Q I'm going to have to ask you to identify yourself
17 for the record

18 A My name is Tyrone Johnson I used to be the head
19 football coach of the South Carolina Seminals Professional
20 Minor League Football Team?

21 Q Where was that Professional Minor League Football
22 Team headquartered?

23 A In Greenville, South Carolina

24 Q And a lot of us can't understand exactly what a
25 minor league football team is so if you don't mind tell us

Tyrone Johnson - Direct Examination

1 what a professional minor league football team is?

2 A A professional minor league football team is an
3 organization who goes out and gets their own funding and
4 pays for a facility to show case the talents of some
5 locals and some out-of-state athletes that's looking for a
6 second chance to either go to college or high school or
7 another form of football to make an income

8 Q And one of the things you said is very important
9 is that y'all are sort of self-funded

10 A That's correct

11 Q Being self-funded, what does that entail?

12 A That meant that we had to do fundraisers We had
13 to knock on individual business doors, corporations, ask
14 for sponsorship to fund the team to get equipment,
15 uniforms, enough money to pay for medical, insurance stuff
16 and anything as far as traveling expenses, eating expenses
17 so that the team could go from state to state to
18 participate in football

19 Q Now, who owned the Carolina Seminals?

20 A My wife and myself

21 Q Who was the owner?

22 A My owner was my wife Laurie Johnson

23 Q And who was the head coach?

24 A Myself, Tyrone Johnson

25 Q And were you also the recruiter?

Evans versus State - Day 1

Tyrone Johnson - Direct Examination

1 A Yes, sir

2 Q It sounded like you did mostly everything, right?

3 A Yes

4 Q Let's get the chronology down What was the
5 season for the professional minor -- when did preseason
6 begin?

7 A Preseason started in January, which was a
8 voluntary situation and then we had a ---

9 Q And that went until when

10 A That went to, I would say, Easter weekend

11 Q And then after Easter, what would happen?

12 A You would have a little time off and then we
13 would get ready for the try outs

14 Q The try outs would start when?

15 A The try outs would start the first week of May

16 Q Can we say May 10th?

17 A May 10th would be excellent

18 Q And then try outs would go from May 10th until
19 when?

20 A Until the end of May

21 Q And what would happen in June?

22 A June, we would start practicing We would weed
23 out and bring in the athletes that we thought would make
24 the team

25 Q So in June, how long would the practice go before
Evans versus State - Day 1

Tyrone Johnson - Direct Examination

1 the season actually start?

2 A Approximately about 45 days before the actually
3 kickoff

4 Q The kickoff would start when?

5 A Kickoff would start last weekerd in July, first
6 weekend in August

7 Q So June to August is sort of practice Then what
8 happened in August?

9 A August, we would start the regular season

10 Q And that would last until when?

11 A Right before the week before Thanksgiving

12 Q And then the week before Thanksgiving, was there
13 anything post regular season?

14 A That would be -- you'd have your championship and
15 then you'd have your time off from there

16 Q When was the championship?

17 A The championship was normally the second week of
18 November

19 Q So the season would go from August through
20 basically Thanksgiving?

21 A Yes

22 Q Now, did you meet Kamell Evans?

23 A Yes

24 Q Wnen did you meet Kamell Evans?

25 A I met him on the 4th of July
Evans versus State - Day 1

Tyrone Johnson - Direct Examination

1 Q 4th of July of what year?

2 A Of '01

3 Q Where did you meet him?

4 A I met him in my complex

5 Q By complex, what do you mean?

6 A The same apartment complex

7 Q So you met him July 4th of 2001?

8 A Yes

9 Q Where?

10 A We were at the swimming pool in the complex

11 Q What was it about him that struck sort of your
12 fancy? Why were you interested in him in a heterosexual
13 way?

14 A You kind of visualize a football guy and we got
15 to talking and I told him who I was as I was introduced to
16 him He said, yeah, I used to play and we still got the
17 opportunity for you to come out and play if you're
18 interested

19 Q So y'all talked about football?

20 A All the time

21 Q As a result of that conversation about football
22 in July of 2001, what happened?

23 A We invited him to come out to a practice on
24 Monday and we've been together ever since

25 Q So that would have been Monday around the
Evans versus State - Day 1

Tyrone Johnson - Direct Examination

1 beginning of July 2001?

2 A Yes, sir

3 Q And that continued through April of 2003?

4 A Yes, sir

5 Q So he joined the season a little bit late?

6 A Yes

7 Q He joined six weeks into the season?

8 A Yes

9 Q Did he make the team?

10 A Yes, sir

11 Q Did he play for you in the year of the season of
12 2001?

13 A Yes, sir

14 Q And did he play with you until Thanksgiving?

15 A Yes, sir

16 Q Then in 2002, the following year, did he play for
17 you again?

18 A No

19 Q Why not?

20 A I really couldn't say His work schedule had
21 changed and the time we weren't going to allow -- if one
22 person is going to miss practice because you had to work,
23 you got to work to make your money We can't allow
24 somebody to do it and somebody else not do it So it
25 would break the rules and it would cause a problem

Tyrone Johnson - Direct Examination

1 Q were y'all still friends?

2 A Most definitely He talked to me like I was his
3 father

4 Q What kind of quantity of time?

5 A I would see him at least four or five times a
6 week

7 Q And during 2001-2002 did it hold through until
8 April 2003?

9 A Yep We still kept in contact

10 Q Constant contact?

11 A Yeah

12 Q Let me ask you this -- he was probably living in
13 what town?

14 A Greenville, South Carolina

15 Q Was Kamell in a gang?

16 A No

17 Q How do you know that?

18 A He couldn't have been a gang because he didn't
19 have enough time to be in a gang, and no person would be
20 allowed to play on our football team We just wouldn't
21 allow it

22 Q How about after he got off the team in 2002-2003,
23 is it possible he was in a gang then?

24 A No

25 Q How do you know?

Tyrone Johnson - Direct Examination

1 A It wasn't him He was not a gang person It's
2 no way it could be

3 Q Let me ask you this, did you notice Kamell having
4 tattoos?

5 A Yes

6 Q Anything about those tattoos make you think he
7 was in a gang?

8 A No

9 Q Was there a particular artist that Kamell liked?

10 A Yes

11 Q Who?

12 A Tupac Shakur

13 Q And is Tupac Shakur is consider by many to be
14 what in terms of rap music? He was a pretty big deal

15 A He was high figure as far as in the rap industry,
16 yeah

17 Q Now, on the night of April 2, 2003, the night
18 that all this horrible crime took place Where were you?

19 A I was at home

20 Q And what happened?

21 A I was sitting back reviewing a tape of what was
22 to come, and upcoming team that we were going to play and
23 I got a knock on the door and it was an officer'

24 Q What time of night was it, I'm sorry?

25 A Somewhere between 12 30 and 1 00

Tyrone Johnson - Direct Examination

1 Q In the morning?

2 A Yes

3 Q And it was an officer?

4 A Yes, sir

5 Q Before we got there, let me stop for just a
6 second What was the highlight of Kamell's professional
7 minor league football career with you? Did y'all win
8 anything really big?

9 A Well, we won the championship We had beat a
10 team that was in existence since 1975, which was pretty
11 hard nose

12 Q Where did y'all play that game?

13 A We played in Greer, South Carolina in a stadium
14 where the high school used to play and it's where Kamell
15 played at at Greer High School

16 Q I'm going to show you what's been previously
17 marked at Applicant's Exhibit No 7 I'm going to show you
18 that picture

19 A Yes, sir

20 Q What is that a picture of?

21 A That is a picture of the team getting ready to
22 celebrate the championship game

23 Q You had already won?

24 A Yeah, we had already won

25 Q And is Kamell in that picture?

Tyrone Johnson - Cross-Examination

1 A Yes

2 Q Does that accurately depict the group after they
3 had won their championship?

4 A That's some of the 65 that we had

5 MR NETTLES At this time I would like to
6 ask Applicant's Exhibit No 7 admitted into evidence

7 MR MABRY No objection

8 (Photograph marked as Applicant's Exhibit No
9 7 was admitted into evidence)

10 (WHEREUPON, DUE TO TECHNICAL DIFFICULTY THIS PORTION
11 CAN NOT BE TRANSCRIBED)

12 (Whereupon, there was a brief break)

13 THE COURT Yes, sir You may continue

14 BY MR MABRY

15 Q Coach Johnson, Mr Evans was convicted in
16 November 22, 2000 of possession with intent to distribute
17 marijuana and sentenced to probation -- two years
18 probation I believe, at least, he was on probation when
19 he played for you in 2001, 2002, were you aware of that?

20 A No, sir

21 Q He did not tell you that?

22 A No, sir

23 Q And if you had known that, would he be allowed to
24 play with your team?

25 A We would have had to go through a process We
Evans versus State - Day 1

Tyrone Johnson - Cross-Examination

1 would have had to talk to the probation of some sort We
2 would have had to talk to them first because we travelled,
3 he might not have been able to leave the state We've had
4 that come across before where we've had people not
5 participate because they couldn't go to Tennessee or
6 Georgia

7 Q And did you visit Mr Kamela Evans at the
8 Greenville County Detention Center after these murders
9 were committed?

10 A No, I did After that night, that was it

11 Q You didn't want to have anything to do with him?

12 A No, nobody told me anything Nobody came and
13 said anything There was times that I wanted to go down
14 to the police department I was only one exit away I
15 wanted to go down and see what was going on and I didn't
16 go and say who can I talk to about this guy or that guy
17 I didn't do it

18 Q You didn't go to the jail and visit him after the
19 murders and at the time of the trial?

20 A I didn't know where he was at

21 Q Have you visited him in prison?

22 A No, this is the first time I've seen him since
23 that night

24 Q So you didn't go forward and volunteer and be a
25 witness for him for his defense?

Tyrone Johnson - Cross-Examination

1 A No, sir

2 Q I'm going to show you a photograph, State's
3 Exhibit LLLL Do you recognize the person in that
4 photograph?

5 A Yes, sir

6 Q Could you tell the Court who that is?

7 A That's Kamell Evans

8 Q Had you ever seen this poster before?

9 A No, sir

10 Q When you were in his apartment, did you ever see
11 it?

12 A No, I seen, I think it was Tupac Shakur, but not
13 that

14 Q Had you ever seen these guns, the two guns that
15 were in Mr Evans' hands when you were in his apartment or
16 when he was in your presence?

17 A No

18 Q One of his experts at Mr Evans' trial testify
19 that he also carried his guns with him Did you ever see
20 Mr Evans with any pistols or firearms?

21 A No, sir

22 Q I'm going to show you this photograph as well,
23 State's Exhibit MMMM from the trial, do you recognize the
24 person in that poster or photograph?

25 A I guess it's Kamell
Evans versus State - Day 1

Tyrone Johnson - Redirect Examination

1 Q Had you ever seen this in his apartment?

2 A No, sir

3 Q If you were aware that he was doing anything like
4 this, would you have allowed him to be on your football
5 team?

6 A We would have had to talk about it and I don't
7 think so I don't think my wife would have put up with
8 that I just don't think so

9 MR MABRY That's all the questions I have
10 (Newspaper clipping marked Applicant's
11 Exhibit No 8 for identification and admitted into
12 evidence)

13 REDIRECT EXAMINATION

14 BY MR NETTLES

15 Q There's been some talk about him having an
16 arrest If he had had an arrest for marijuana and you
17 talked to his probation officer and everything was okay
18 and he could travel, he could still be on the football
19 team, couldn't he?

20 MR MABRY Objection, leading

21 THE COURT Sustained

22 BY MR NETTLES

23 Q Could he have still been on the football team?

24 A Yes, sir

25 MR MABRY Move to strike that answer, Your
Evans versus State - Day 1

Tyrone Johnson - Redirect Examination

1 Honor

2 THE COURT Why don't you just ask him in a
3 different way

4 BY MR NETTLES

5 Q What would it have done to Kamell's ability to be
6 on the football team if he had he conviction that they
7 talked about, and everything was okay that he could leave
8 the State?

9 A He would have been on the football team

10 Q All of these pictures they showed here, they said
11 if you had seen these and asked you if he had been on the
12 team or not, right First of all, who did that look like?
13 What popular artist did that look like?

14 A Tupac Shakur

15 Q The same person you talked about before?

16 A Yes, sir

17 Q Now, the guns that are in the picture, had you
18 ever seen those guns?

19 A No, sir

20 Q What if he had said to you, look, I was just
21 goofing around, would he may have still been on the
22 football team?

23 A Yeah People take all kinds of pictures

24 Q Was this the sort of thing that was prominently
25 displayed all over his house?

John Mauldin - Direct Examination

1 A Listen, when -- first of all I was not one to go
2 to his apartment because he had them dogs I wasn't going
3 to go down into that apartment with them dogs I did not
4 visit him inside his apartment that often You can count
5 it on my hands I know I was in his apartment for a very
6 brief time when my son passed because when he found out
7 when my son passed, he went and got some dressed pants on
8 At the time I was checking on him and he told me to come
9 downstairs, and I went downstairs and talked to him With
10 football, you can be the father figure, you can be the
11 coach, but you don't hang out

12 Q But my question is, did you ever see this in his
13 house?

14 A No

RECROSS-EXAMINATION

16 BY MR MABRY

17 Q If you knew he was on probation, possession with
18 intent to distribute marijuana, and also knew he was in
19 possession of firearms, would you have allowed him to play
20 on the team?

21 A If he had pistols, I probably would have
22 questioned him about papers and things like that, that
23 would have led to one thing And with probation, if he
24 couldn't leave the State, it wouldn't make sense in what
25 he did because he couldn't go You can't play at the home

John Mauldin - Direct Examination

1 games and have a substitution for the away games I mean,
2 if he was hurt or something, that's one thing, but that
3 person would have to be at home games and away games

4 MR MABRY No further questions

5 THE COURT Thank you, Mr Johnson

6 (Witness leaves the witness stand)

7 MR NETTLES Next, Mr Evans calls John
8 Mauldin

9 JOHN MAULDIN, having been duly sworn,
10 testified as follows

DIRECT EXAMINATION

11 BY MR NETTLES

12 Q How are you doing?

13 A Fine

14 Q Tell us who you are?

15 A John Mauldin

16 Q And where are you employed, Mr Mauldin?

17 A The Thirteenth Circuit Public Defender's Office
18 The main office is in Greenville

19 Q And your position there is what?

20 A I'm the Thirteenth Circuit Public Defender for
21 Greenville and Pickens County

22 Q Are you the Chief Public Defender?

23 A I am

24 Q Now, did you, at some point, in 2003 get
25 Evans versus State - Day 1

John Mauldin - Direct Examination

1 appointed to the case of the State versus Kamell Evans?

2 A Yes, sir

3 Q Did you know either one of the victims in this
4 case?

5 A I did I knew Joe

6 Q What was Joe's job?

7 A The contact I had with Joe is when he worked with
8 the security detail for the Greenville County Courthouse
9 He was one -- I don't know how many they've got --
10 probably eight or ten deputies that worked that detail,
11 and so I got to know him during the time he was working
12 there, which was some months prior the incident in
13 Mr Evans' case

14 Q What was his job there as part of security
15 detail?

16 A I don't know whether I'm describing it correctly,
17 but he was one of the deputies that was in charge of
18 security for the courthouse in that he would do the
19 screening as people would come in and out of the
20 courthouse He would work the courtrooms as security for
21 the courtroom itself He worked back in the back area
22 where the attorneys meet with their clients who are
23 incarcerated So the particular roles that those security
24 people have I don't know how they get assigned, but I
25 remember working a good number of roles at the courthouse
Evans versus State - Day 1

John Mauldin - Direct Examination

1 Q How often did you see him?

2 A Well, I saw him every day during the week If he
3 was working like at the front door, when parked my car I
4 went through that area to get over where my office is, so
5 I would pass him or see him there I would see him in the
6 courtroom if we had court going on There was a chance
7 that I would see him every work day

8 Q Where is your office?

9 A It's located in the old Greenville County
10 Courthouse that was converted to an office building when
11 the judicial wing of that complex was built I think in '95
12 or '96

13 Q They're connected?

14 A Yes

15 Q So you would consider it to be in the courthouse

16 A It's essentially under the same roof for all
17 intents and purposes

18 Q So in some respects then would it be fair to say
19 that Joe was in some way responsible for your security?

20 A He was

21 Q Did that have any impact on your decision that
22 you needed to be relieved?

23 A It did

24 Q Why is that?

25 A Well, not only Joe individually but that entire
Evans versus State - Day 1

John Mauldin - Direct Examination

1 operation my office staff is dependent upon the security
2 detail during their job with regard to the safety of the
3 workplace, so every day And we get to know those people
4 very well We work with them constantly on the movement
5 of clients back and forth within the courthouse I
6 personally work after hours most every day, and the
7 security detail, on occasion, will come through the
8 courthouse checking on the offices So we see them all
9 the time and very dependent upon them to do the job for
10 our safety

11 Q And would any lawyer who regularly practiced in
12 the courthouse be dependent on them for their safety,
13 anybody that's in the courthouse on a regular basis?
14 They're the only security for the courthouse?

15 A Yes

16 Q Now, as a result of that --

17 MR NETTLES Your Honor, I've provided a
18 copy to the State

19 Can I get these marked?

20 (Email marked as Applicant's Exhibit Nos 11
21 and 12 for identification)

22 I think there's a matter we need to take up

23 THE COURT Go ahead

24 MR NETTLES I can lay a little foundation,
25 but I don't think it's a foundational argument

John Mauldin - Direct Examination

1 MS BROWN Your Honor, what's been
2 pre-marked Plaintiff's Exhibit 12 and 11 They appear to
3 be emails but I've never seen them They weren't
4 disclosed in discovery and I haven't had time to
5 investigate so I would ask that they not be moved into
6 today simply because I have no way to verify them or
7 respond to them

8 MR NETTLES That's fine We'll bring them
9 in through another witness

10 THE COURT Thank you

11 BY MR NETTLES

12 Q Mr Mauldin, I'm showing you what's been
13 previously marked Applicant 9 for ID only Do you
14 recognize that document?

15 A I recognize it but I haven't had a chance to
16 actually review it

17 Q That's okay Take all the time you want

18 A I do recognize it

19 Q And what it is?

20 A The top page it looks to be a file copy of an
21 April 21st letter that I hand-delivered to Judge Kitredge
22 It has attached to it a notice of Motion for Substitution
23 of Counsel that appears to have been filed on May 29, 2003
24 and bares my signature on that document and ther an
25 Affidavit of Service where I served that Motion on the
Evans versus State - Day 1

John Mauldin - Direct Examination

1 Solicitor

2 Q When did you serve that on the Solicitor?

3 A It was May 29, 2003

4 Q While that file copy is not signed, did you send
5 a letter signed to that effect?

6 A I would certainly suspect that I did I don't
7 have independent recollection, but that's what that
8 appears to be

9 MR NETTLES I'd like to introduce
10 Applicant's Exhibit No 9 which is a file copy and a
11 clocked copy of a Motion for Substitution of Counsel

12 MS BROWN I have no objection

13 THE COURT It's in evidence

14 (File copy and Motion for Substitution of
15 Counsel marked as Applicant's Exhibit No 9 for
16 identification was admitted into evidence)

17 BY MR NETTLES

18 Q Could you publish that letter for the Court?

19 A It has Judge Kitredge's location It has a
20 reference, State versus Kamell D Evans It's dated April
21 21st and it indicated it'd be hand-delivered

22 "Dear Judge Kitredge, I write to you
23 regarding the above defendant and as a follow-up to our
24 chambers conference April 7, 2003 As anticipated I was
25 appointed the next day to represent Mr Evans and our
Evans versus State - Day 1

John Mauldin - Direct Examination

1 meeting was solely for the purpose of considering
2 substitute counsel I have discussed this matter with two
3 excellent, Rock Wise," phone number, "of Greenwood and
4 Rick V," phone number, "of Spartarburg Both are very
5 competent and further more qualified to serve if and when
6 the State chooses to seek the death penalty in this case
7 Neither of these fine attorneys wants to be involved, but
8 both are willing to follow the Court's wishes I request
9 that the substitution of counsel be resolved without
10 delay, and will be more than happy to submit a proposed
11 order on your instructions if additional steps are
12 necessary, please let me know John Mauldin " And then I
13 have a copy to Rock Wise and Rick V

14 Q What's the date on that

15 A That was dated April 21, 2003

16 Q The attached motion is your Motion for
17 Substitution of Counsel?

18 A The attached motion was signed by me on May 29,
19 2003 It was clocked in the Clerk's Office looks like
20 3 50, but it's definitely May the 29th, and the Affidavit
21 of Service is that same day

22 Q When did you serve it on the Solicitor's Office?

23 A The Motion for Substitution of Counsel

24 Q Did you receive a response from the Solicitor's
25 Office for your Motion for Substitution of Counsel?

John Mauldin - Direct Examination

1 A Looks like I did

2 Q When was that document clocked?

3 A This is Plaintiff's Exhibit No 10 for ID and
4 it's a response for defendant's Motion for Substitution of
5 Counsel and it's clocked on June 4, 2003

6 MR NETTLES I would move that into evidence
7 as a Court's Exhibit It's been clocked

8 MS BROWN I have no objection, Your Honor

9 THE COURT It's in evidence

10 (Response to the Motion for Substitution of
11 Counsel marked as Applicant's Exhibit No 10 for
12 identification was admitted into evidence)

13 BY MR NETTLES

14 Q What date did Solicitor Aerial sign that?

15 A I can only say what the face of the document
16 indicates and it appears to have signed it on June 4th,
17 and he signed a Certificate of Service and that it was
18 served on me June 4, 2003

19 Q Do you remember what date you were relieved as
20 counsel?

21 A In preparation for this appearance, I ran a copy
22 of the card in our office that shows when the file was
23 opened and when the file was closed

24 Q Right

25 A I do not have recollection of the date that the
Evans versus State - Day 1

John Mauldin - Direct Examination

1 Judge actually substituted counsel for me, but it was
2 sometime after June 4th

3 Q It was not before June 4th?

4 A I wouldn't think so because had it been that
5 response wouldn't have made any sense

6 Q What did you do to prepare this case for trial
7 prior to June 4, 2003?

8 A My attention was essentially two things First
9 of all I wanted to make sure that the client knew that he
10 had a lawyer and he should not speak without me being
11 present, he should not statements or letters or phone
12 calls while I was his lawyer So I tried to basically
13 make sure that the client realized that he had a lawyer
14 and he should not be speaking of his case to anyone except
15 his lawyer

16 Q Right

17 A And the second thing is I concentrated on having
18 our office relieved regarding the representation

19 Q I understard My question to you, though, is
20 when you were relieved from this case, did you have any
21 discovery?

22 A I would not think so I don't recall making any
23 effort to get discovery I suspect, Mr Nettles, that I
24 likely requested a preliminary hearing because there's a
25 time deadline for that, but I don't know whether or not we

John Mauldin - Cross-Examination

1 filed any request for discovery I just was not focused
2 of the merits of the preparation

3 Q The lawyers who took the case after you, did you
4 give them -- had you retained any experts?

5 A I would suspect not I don't recall talking to
6 any experts about Kamell's case, and so I would not think
7 that I would have provided them with any guidance in that
8 area, and I certainly wouldn't have provided them with any
9 materials in that area

10 Q Had you begun to gather any records during the
11 time that you represented him?

12 A I would think not And, again, it's been six
13 years now so I really can't say that I -- whatever I had
14 in the file I would have given to them, so whatever their
15 recollection is ---

16 Q Let me ask you this, if you had hired any experts
17 begun any efforts to gather records, any of the typical
18 pretrial mitigation investigation, would you have shared
19 any benefit of any motion or any movement that you would
20 have had or any grounds that you covered with the lawyers
21 who took the case from you

22 A They would have been provided our entire file
23 We would have retained the appointment sheet I would
24 suspect I would have retained a copy of this letter dated
25 April 21st I may have retained some notes from my

John Mauldin - Cross-Examination

1 meeting with Judge Kitridge or April 7th, but everything
2 in the file would have been turned over to his lawyers as
3 soon as they were appointed

4 Q If you had been forced to stay on this case,
5 would you have made a change of venue motion?

6 MS BROWN Objection, calls for speculation
7 He said he didn't investigate or have any files

8 THE COURT Overruled Go ahead

9 BY MR NETTLES

10 Q Would you have filed a Change of Venue Motion?

11 A Yes

12 MR NETTLES I have no further questions

13 THE COURT Cross-examination

14 CROSS-EXAMINATION

15 BY MS BROWN

16 Q Mr Mauldin, do you know if a Change of Venue
17 Motion was filed after the case was developed?

18 A I do not I don't recall any motion being filed,
19 but I really had not looked at the file so I don't know
20 what was or wasn't filed regarding venue

21 Q Just for clarity sake then, you really don't know
22 how this case was developed after it left your hands?

23 A Well, I'm really not sure if I agree with that
24 statement

25 Q You're available for consultations to any
Evans versus State - Day 1

John Mauldin - Cross-Examination

1 attorney, right?

2 A I was available for general consultation I
3 would have had some difficulty had it been specific direct
4 action on the case, if that makes sense And what I mean
5 by that had the lawyer who had been appointed to
6 substitute for me come to me with specific fact-based
7 questions, I would have felt uncomfortable Because I had
8 gotten out of the case because I felt uncomfortable

9 Q I see

10 A With regard to specific fact oriented
11 consultation, I would have been reluctant I do not
12 recall that ever happening, but I would have been
13 reluctant With regard to general suggestions or advise,
14 I'm not mistaken, I did get a call or two about that So
15 I have to answer it in somewhat of a round about way, I
16 guess

17 Q I understand In the State's response to
18 defendant's Motion for Substitution of Counsel, do you
19 have that still with you?

20 A Applicant's Exhibit No 10?

21 Q Mine's not marked, but this would have been the
22 document filed by Solicitor Atrial signed June 4th

23 A I have what I was given as Exhibit No 10

24 Q This response simply states, if you'll review
25 with me, that State agrees that you would be competent and

John Mauldin - Redirect Examination

1 you would render excellent representation if you would
2 stay in the case?

3 A I hadn't had a chance ---

4 Q You might specifically want to refer to 4, 5, 6
5 paragraphs, and 7

6 A I've read those and what was your question?

7 Q Simply that it asserts that you would have
8 rendered effective assistance of counsel Specifically
9 agrees and would further add that, "Mr Mauldin has always
10 provided to his client's not merely effective
11 representation, but exceptional representation "

12 A Well, that's what he said, and I appreciate
13 whatever Mr Airial kind to say about me, but -- and I
14 will take issue, for example, Madam Attorney General, in
15 Paragraph No 6, "Because counsel may have known the
16 victim or may have even interacted with him on a small
17 basis during the course of their professions does not
18 create conflict " I just simply disagree I don't think
19 it was a small basis Joe would come by my office and
20 talk to me about what we did and the respect we had for
21 each other and I just felt very strongly about, not only
22 me personally, but our office being taken out of this
23 case Had I been required to continue to represent
24 Kamell, then I hopefully I would have done as well as
25 Mr Airial seems to think I am capable of But the fact
Evans versus State - Day 1

John Mauldin - Redirect Examination

1 of the matter was it was clearly, in my opinion, a
2 conflict and the Judge agreed with me He wanted to keep
3 me on the case for some reason, which I didn't think was
4 fair at all In fact, if I'm not mistaken, when I filed
5 my Motion for Substitution of Counsel I had talked to
6 Kamell about it and he agreed that he felt like probably I
7 was not the lawyer for him because of my connection with
8 the victim

9 Q And I appreciate those comments, but my question
10 is going to be a little bit more narrow and it goes to
11 representation In Paragraph 5, Solicitor Airial
12 references the Richard Wood case, and I believe you were
13 counsel on Richard Wood, is that correct?

14 A John Richard Wood

15 Q Effective assistance of counsel, allegations were
16 leveled against you at one point, too?

17 A In the John Wood case, right

18 MS BROWN That complete's my questions
19 Thank you, Mr Mauldin

REDIRECT EXAMINATION

21 BY MR NETTLES

22 Q We talked about the conflict issue Would there
23 have been an appearance of impropriety, in your opinion,
24 for you to be representing Kamell Evans given the
25 accusations against him?

John Mauldin - Redirect Examination

1 A I thought not only was there an appearance of
2 impropriety, but there was impropriety I told Kameel at
3 the jail when I went down -- I talk to Judge Kitridge -- I
4 don't know what date this crime occurred

5 Q It was April, 2003

6 A I had a conversation with Judge Kitridge on April
7 7th and I just simply told the Judge that I just did not
8 have the necessary independence and the necessary distance
9 that I felt like compelling in a case of this nature and
10 required So I really didn't think it was an appearance
11 of impropriety, I thought it was flat improper, period

12 Q Was it beyond an appearance of impropriety?

13 A You've got appearances of impropriety and you've
14 got impropriety, at least, in my opinion and I felt it was
15 improper I felt like the client was entitled to know it
16 and I talked to him and he can testify for him, but I
17 believe he agreed I described for him the victim impact
18 testimony in a capital case and I felt that I was
19 literally and it was possibly that I could have actually
20 been a witness Now, it never happened, I'm glad it
21 didn't But I felt that sure what I was doing that our
22 office did not participate in the case

23 MR NETTLES Nothing further

24 MS BROWN No further questions Thank you,

25 Mr Mauldin

John Mauldin - Redirect Examination

1 THE COURT Thank you, Mr Mauldin

2 (Witness leaves witness stand)

3 MR NETTLES That's our case for today, Your

4 Honor

5 THE COURT All right I've got one matter

6 in Greenville in the morning I'm going to start at

7 10 15

8 --END OF TRANSCRIPT RECORD FOR THE DAY OF JUNE 2, 2009--

Kamell Evans versus The State

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 1st day of June, 2009

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto

11
12 July 30 2010

13 

14 Caroline Hiskell
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Vol 2

1 STATE OF SOUTH CAROLINA)
2) COURT OF COMMON PLEAS
3)
4)
5 Kamell Evans) TRANSCRIPT OF RECORD
6)
7 -vs-)
8 State of South Carolina)
9)
10 -----)

June 2, 2009
Spartanburg, South Carolina

B E F O R E

THE HONORABLE GARRISON HILL, Juage

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Circuit Court Reporter

Kamell Evans versus The State

I N D E X (Day 2)

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James Goldsmith	195	242	257			
Steve Sumner	260	---	---			

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James Goldsmith - Direct Examination

P R O C E E D I N G S

(Evans versus State continued from previous day)

THE BAILIFF All rise, court will come to order

THE COURT Thank you, keep your seats

MR NETTLES Your Honor, at this time we would call Mr Skip Goldsmith

THE BAILIFF Please raise your right hand

JAMES ALEC GOLDSMITH JR , having been duly sworn, testified as follows

MR NETTLES Your Honor, before we get started, yesterday we provided the government with a stack of documents that we anticipate moving in either through Mr Goldsmith or Mr Sumner We've come in and we've previously marked Applicant's 14 through 30 With the Court's permission, I'd like to put that stack of documents in front of Mr Goldsmith I don't think he's going to be able to introduce many of them I'd like to ask him if he recognizes them and if he does, I'll move them in through him and if he doesn't, I won't and I'll move them in through Mr Sumner

THE COURT What's the State's position on that?

MS BROWN Your Honor, if I could look through the stack I think we're talking about the same Evans versus State - Day 2

James Goldsmith - Direct Examination

1 ones

2 MR NETTLES To save time, I won't move any
3 of them in through Mr Goldsmith I'll move them all in
4 through Mr Sumner All go ahead and give them all to him
5 now and maybe he can look them over

6 THE COURT That's fine

7 DIRECT EXAMINATION

8 BY MR NETTLES

9 Q Good morning

10 A Good morning

11 Q Tell us who you are?

12 A James Alec Goldsmith, Jr , but I've always been
13 known by Skip Please call me that if you like

14 Q You mind if I call you Skip?

15 A That's perfectly fine

16 Q You have offices where?

17 A I have a very small office in Greenville My
18 primary office is in Hendersonville, North Carolina,
19 licensed in both states

20 Q And you're licensed in the practice of what?

21 A Law

22 Q Do you have any sub specialities?

23 A I started out doing public defender work and that
24 has basically been the predominant area of law that I
25 practiced I do some other things on occasion, but I'd

James Golasmith - Direct Examination

1 say 90 to 95 percent of what I do is criminal defense
2 work

3 Q Were you at some point in 2003 appointed to
4 represent Kamell Evans

5 A I was

6 Q Who was your co-counsel at that time?

7 A Initially it was Rodney Richey He was
8 originally appointed

9 Q Do you remember being appointed on that case?

10 A Yes, I do

11 Q Do you remember when you were appointed?

12 A I'm not exactly sure of the date I got a call
13 from John Kitredge and I talked to him over the phone and
14 basically on that conversation, he appointed me

15 Q Would it have been sometime after April, 2003?

16 A I think so I think that's the time frame when
17 it was determined it would be a capital case

18 Q Was death notice served fairly quickly?

19 A My recollection was John Mauldin was originally
20 pointed and he had a conflict One of the victims,
21 Mr Sapinoso, was a courthouse security and Mr Mauldin
22 was conflicted out and just about every other attorney was
23 conflicted out, and since I didn't know Mr Sapinoso and
24 was some distance removed although I had some limited
25 practice in Greenville, that's how I got the appointment
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 Q Now, at some point did Mr Richey get relieved?

2 A He did He asked the Court to allow him to
3 withdraw and he was allowed to do that

4 Q I guess there's one of three ways this could have
5 happened A, you were appointed first and then Mr Richey
6 were appointed B, y'all were appointed together, and then
7 C, Mr Richey was appointed first and then you were
8 appointed Do you remember which of those permutations
9 happened?

10 A I believe I was appointed first but very shortly
11 thereafter Mr Richey was appointed as well

12 Q So did you and Mr Richey divide up the duties in
13 terms of preparation for trial?

14 A We did

15 Q What was that division?

16 A Well, since he was in Greenville and had an
17 office in Greenville and Kamell was in the LEC in
18 Greenville, the case ---

19 Q You said LLC?

20 A Greenville Law Enforcement Center, the jail

21 Q The jail

22 A It was as a matter of convenience it was agreed
23 that Rodney would hit up a lot of the detail work, the
24 building of the evidence and things like that I was
25 involved with it but being 45, 50 miles away was a little

James Goldsmith - Direct Examination

1 more difficult It just seemed to work better if he would
2 do a lot of the day to day work on the thing?

3 Q What would have been your task in the preparation
4 of the trial?

5 A Well, to work with Rodney Obviously we worked
6 very closely together to my recollection, lining up
7 experts and folks to assist us We had a lot of
8 difficulty with that in getting people to do that I
9 called on some of my contacts in North Carolina Rodney
10 had some contacts in South Carolina That was the first
11 hurdle we faced just to line up people to help us as far
12 as experts, and my recollection is that we were, during
13 the time that Rodney was with me, we were not able to
14 secure the services of any of the folks we subsequently
15 got to help us

16 Q And I appreciate you sharing that with us and
17 just so we have sort of a touch stone in time in terms of
18 time, the next sort of major event would have been
19 Mr Richey being relieved from the case

20 A Yes,

21 Q From the time that y'all got appointed and filed
22 discovery -- do you remember how long it took you to get
23 discovery?

24 A I don't remember

25 Q From the time y'all got appointed until the time
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 that Mr Richey got out, share with us what services what
2 y'all were able to secure in terms of experts?

3 A In terms of experts, I don't believe we were able
4 to secure any at that point

5 Q What is your memory of when Mr Sumner was
6 brought into the case and Mr Richey was let out?

7 A Mr Richey had a conflict I don't remember the
8 substance basis of his withdrawal When that was granted,
9 I believe Judge Cole had mentioned Steve Steve and I had
10 been friends for a long long time, shared offices

11 together, worked well together, and Steve had done some
12 death penalty work in South Carolina and had some good
13 contacts, and did not have a conflict Those are the
14 things that passed the test and his willingness to do it

15 Q Let me ask you this then, do you remember about
16 what time of the year it was that Mr Richey got out and
17 Mr Sumner got in?

18 A I'm thinking maybe late spring, first part of the
19 summer

20 Q Late spring, first part of summer comes in and at
21 this point y'all have got discovery from the State, but
22 you don't have any experts for either the trial or the
23 penalty phase

24 A That's correct

25 Q So late spring, early summer, who was the first
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 person you hired to help you with the preparation of this
2 case?

3 A I believe Lenora Topp, the mitigation specialist

4 Q Is it possible that it was Dale Davis?

5 A Could be, yes

6 Q And ther Ms Davis was released and then you
7 hired Ms Topp?

8 A Yes, I think that is the sequence

9 Q Let's be clear about something, in late spring,
10 early summer when y'all started this case, at that point,
11 you had not begun to gather -- what records of Kamell
12 Evans had y'all begun to gather?

13 A Well, at that point, I'm not sure that -- Dale
14 may have accumulated some and then passed them to Lenora

15 Q I'm talking about before Dale Davis

16 A At that point I believe we had worked pretty much
17 exclusively on the guilt phase, the discovery that we got
18 from the State, the facts of that part, the guilt or
19 innocence part, to get thoroughly familiar with those and
20 to talk to Kamell about those while we were trying all the
21 time to get someone to assist us on the mitigation side of
22 it?

23 Q Would be it be fair to say that when you and
24 Mr Sumner began y'all effort in the defense, at that
25 time, the primary effort had been placed on the guilt

James Goldsmith - Direct Examination

1 phase?

2 A Yes

3 Q So whenever Mr Sumner inherited the case and you
4 took on a different co-counsel, what records of Kameel
5 Evans had been gathered?

6 A I'm not sure that any had As far as mitigation
7 things?

8 Q Right

9 A My recollection is that when Steve got in, he and
10 I had a very long and thorough discussion about the guilt
11 phase and the evidence that we had at that point through
12 the discovery, our discussions with Kameel, and of course,
13 we had that decision that I think you make at every death
14 penalty case, you're not going to win in the guilt phase
15 what can you do in the guilt phase to prep for the
16 mitigation My recollection is that when Steve got in, we
17 really rapped it up as far as the mitigation part of the
18 case And that's what we focused on exclusively from that
19 point until trial

20 Q So then it would be fair to say that the
21 mitigation preparation of this case began when Steve
22 Sumner got into the case?

23 A I would say it began in earnest We really
24 revved it up at that point Steve had the contacts and we
25 were able to secure mitigation experts at that point

James Goldsmith - Direct Examination

1 Q Once you had Dale Davis and then you got Lenora
2 Topp to do your mitigation investigation phase

3 A Yes

4 Q was there ever any discussion, to your memory,
5 about the possibility of Kamell Evans when he was a child
6 suffering from lead poisoning?

7 A My recollection was that, and looking over my
8 file notes, Kamell's sister, and I can't remember her
9 name, the house that she lived in in Cleveland had lead
10 paint and perhaps she remember whether Kamell had maybe
11 had congested a flake or two of that It was one of those
12 types of situations that there was a possibility that that
13 occurred when Kamell was very very young still living in
14 Cleveland obviously before he had moved to Greenville to
15 live with his father

16 Q Understanding that there was that possibility,
17 what steps did you take to either include or exclude that
18 as a possible source of mitigation?

19 A Well, we wanted to see if there were some record,
20 maybe some medical records available and we're talking
21 about several years passed in Cleveland We asked for
22 some assistance for the family, first of all, in trying to
23 locate those records if there may have been some treatment
24 and who the doctor or hospital was My recollection is
25 that Kamell's mother who, I think at the time, still lived

James Goldsmith - Direct Examination

1 in Cleveland was very uncooperative whosoever and did not
2 assist us in that matter at all

3 Our second part was -- by that time we had
4 Dr Berg and Dr Evans as our experts assisting us,
5 conducting tests to see if they found anything that would
6 indicate a problem They did not find anything or
7 certainly didn't indicate to us, hey, there's a problem
8 with some possible lead poisoning We weren't able to get
9 any records and so we didn't pursue that avenue

10 Q What steps did you take to get any of these
11 records?

12 A Well, we asked for assistance from the mother

13 Q When did you do that?

14 A I can't remember, but I think Lenora Topp was in
15 contact with her She was living in Cleveland She was
16 trying to find an address for the house, trying to find
17 any doctor who may have treated Kamell in his younger
18 years, hospitals To the best of my recollection, Lenora
19 was not able to get any information from Kamell's mother
20 She was very very uncooperative

21 Q So who reported this information to you that
22 Kamell's mother was uncooperative about the lead
23 poisoning?

24 A I believe Lenora Topp may have indicated that to
25 Steve and of course Steve may have copied it to me or in
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 the course of a conversation that Kamell's mother was
2 completely uncooperative with us in that regard

3 Q You are aware he had a father

4 A Yes

5 Q What efforts were made to talk to his father
6 about lead poisoning?

7 A I think we asked or somebody on our team asked
8 him and my recollection is he did not have any
9 recollection of that

10 Q You are aware that Kamell has an older sister?

11 A Yes

12 Q That lives in Greer, South Carolina?

13 A Yes

14 Q Did you make any efforts to ask her about
15 possible lead poisoning?

16 A I think I didn't talk with her personally,
17 somebody on our team did I'm not sure that she had any
18 more specific -- she may have been the sister who told us
19 originally Kamell may have ingested some paint chips when
20 he was very very young back in Cleveland But my
21 recollection she was not able to give us any indication or
22 any more specifics than that

23 Q Were there any attempts -- were there any medical
24 releases even obtained for Kamell?

25 A I believe Lerora Topp was able to obtain those

James Golosmith - Direct Examination

1 from Kamell That would have been very easy to do I do
2 recall something about a substantial number of records
3 being destroyed in Cleveland for whatever reason They
4 had been stored in a place, and it seems like there was
5 some asbestos -- there was an issue of destroyed school
6 records and things like that

7 Q You understand we're talking about medical
8 records?

9 A I understand, yes

10 Q Was there any attempt to send medical releases to
11 the hospitals in the neighborhoods where Kamell lived?

12 A Not sure we knew where those hospitals were, but
13 I don't believe we did

14 Q Would you agree with me that with a medical
15 release from an adult that you would not need the mother
16 or the father's permission to get the medical records?

17 A I would agree, but we had no idea, no indication
18 of what, if any, hospital had treated him, what if any
19 doctor had treated him We were unsure as to who to send
20 the releases to at that point

21 Q As you said earlier, Kamell lived in Cleveland

22 A Yes?

23 Q Did anybody from the defense team, investigator
24 or lawyer, anybody go to the Cleveland?

25 A No

James Goldsmith - Direct Examination

1 Q So when y'all started the trial, Mr Sumrer and
2 you got started late spring, early summer, and y'all went
3 to trial on September 15th?

4 A That's correct

5 Q Of the same year?

6 A Yes

7 Q So at the time that y'all went to trial on the
8 15th, no one from the defense had gone to Cleveland?

9 A To my recollection, no one had gone

10 Q At the time that you started trial on the 15th,
11 had any of the lawyers -- how many times had you met with
12 Kamell?

13 A I would have to look at the file and see I'm
14 thinking maybe five or six times I'm not sure

15 Q If I told you three times, does that sound about
16 right?

17 A Possibly so, yes

18 Q If I told you that there were three visits over
19 15 months, does that sound about right?

20 A From me personally, probably so, yes

21 Q If I told you over 15 months totally about 3 68
22 hours, does that sound about right?

23 A For me, I would think that probably would

24 Q During those 3 68 hours that you met with Kamell,
25 do you feel that you were able to get a complete family

James Goldsmith - Direct Examination

1 history from him?

2 A Well, I think that I know Lenora met with him
3 primarily as well as Steve and we were sharing
4 information I feel like we had a good family background
5 and understanding of their situation

6 Q What was your understanding of the importance of
7 sports played in his life?

8 A Very important Hugely important

9 Q Was it your understanding that sports played an
10 important part in his life when he lived in Cleveland?

11 A I don't believe My recollection is he moved at
12 a very young age from Cleveland and I would think that
13 most of his sports activities would have been after he
14 moved to Greer with his father

15 Q So your understanding based on your 3 68 hours
16 that you spent with him was that ---

17 MS BROWN I'm going to object As I
18 understand the testimony, that's a mischaracterization,
19 because the gentleman said he worked with the team and he
20 had other background So it would be just that if we're
21 basing it on his testimony

22 THE COURT Overruled

23 BY MR NETTLES

24 Q Let's put it this way Based on everything you
25 knew and seen from all the people that were feeding you

James Goldsmith - Direct Examination

1 information, and all the 3 68 hours you spent with him, it
2 was your understanding that sports were not important to
3 him when he was living in Cleveland?

4 A I wouldn't say they weren't important to him As
5 a father of two children, when you're playing t-ball, when
6 you're three and four, it's not as important as when
7 you're sixteen and playing for the State championship I
8 assumed it was important I assumed that he basis and
9 love of sports began when he was young, but mostly I think
10 it came to fruition when he was a little bit older, middle
11 school, high school

12 Q Six, seventh grade?

13 A Probably up around there

14 Q So the years of sixth, seventh, and eighth grade
15 years, those might have been years, as your understanding
16 sports became very important to him?

17 A I would think so that the later years were very
18 important Just the general knowledge of my life and the
19 lives of my children, that's generally what happens that
20 later in life the sports become more important to you

21 Q That's fair So you sort of focused your
22 efforts, at least as it related to sports, on the people
23 who would have been involved in his sports around the
24 years of sixth, seventh, eighth grade

25 A It's high school years Coach Holcombe, we
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James Goldsmith - Direct Examination

1 talked with Coach Holcombe, his football coach, the
2 basketball coach I can't remember his name I believe
3 somebody talked with some folks at North Greenville,
4 although I don't think we called anybody from North
5 Greenville College?

6 Q How about his professional minor league football
7 coach?

8 A I feel certain we didn't call him I would have
9 expected somebody might have talked to him or somebody
10 from our team might have talked to him

11 Q Who?

12 A I don't recall I did not talk to him

13 Q Do you have any record of ever speaking with him?

14 A The professional ---

15 Q The minor league football coach?

16 A I'm going on recollection, I don't think so

17 Q When is the first time that you met Mr Evans?

18 A The first time would have been right after I was
19 appointed

20 Q When was the second time?

21 A Without looking at my notes I can't recall I'm
22 not sure

23 Q How many times did you meet with him between when
24 you were appointed and the start of the trial?

25 A As I said, my recollection is four or five times,
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 maybe six times

2 Q Where did you meet with him?

3 A At the jail

4 Q I'm sorry I'm talking about Barry Evans I
5 apologize

6 A The father?

7 Q Let me go back Barry Evans When was the first
8 time you met Barry Evans, his dad?

9 A It would have been some time after I was
10 appointed I'm not sure It may have been two or three
11 months

12 Q Between the first time you met him and trial, how
13 many times had you meet with him?

14 A Perhaps maybe three, four times

15 Q Did you ever ask him about the violence in the
16 household?

17 A I'm not sure if I asked him specifically about
18 that We talked about the circumstances of his divorce of
19 Kamell leaving in Cleveland with the mother and then
20 subsequently moving to Greer with Barry Evans

21 Q Did you obtain a copy of the divorce papers?

22 A I'm not sure of Lenora did that or not I did
23 not personally

24 Q If you were talking to him about the
25 circumstances of his divorce, do you think it would have
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 been a good idea to obtain the court file that contained
2 documentation about the divorce?

3 A It may have been of some value, yes

4 Q What value may it have been?

5 A Just -- I'm not sure I'm really not sure It
6 would depend on the divorce or whatever

7 Q As you sit here today, do you ever remember
8 seeing a copy of the divorce decree?

9 A No, I don't believe I did

10 Q Let me ask you this, then Did you ever receive
11 any information from anybody about the possibility of
12 there being violence in the household when Kamell was
13 growing up?

14 A I would not have gotten any of that information
15 from Kamell's mother Like I said, she was basically
16 uncooperative with any of our efforts, so I did not talk
17 to her And in my recollection, I'm not sure that Barry
18 and I talked about that I'm not sure In hindsight, it
19 was probably something he would have to bring up

20 Q You would have never brought it up?

21 A Unless I had some indication there was a problem
22 there, and there was certainly no indication it was a
23 serious problem I knew they were divorced so I assumed
24 it wasn't necessarily a happy marriage

25 Q When you say there was no indication there was a
Evans versus State - Day 2

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1 problem, what do you base that statement on?

2 A My view of Kamell was that his father had done
3 very well His father lived very well as a good
4 comfortable upper-middle class live, had brought Kamell
5 down to live with him so Kamell could avail himself of
6 some of those situations, get out of that situation in
7 Cleveland, and that Kamell had done very well during his
8 time in Greer He had done well, certainly, in sports
9 My conversations with Kamell and my interaction with him
10 was one that didn't lead me to believe that he had a lot
11 of mental problems or anything like that

12 Q I'm not talking about mental problems We'll
13 talk about some of that later What I'm talking about now
14 is, I'm asking you, you said that if there had been
15 violence in the household, you were looking at Barry to
16 bring that up, and I asked you if you asked him And my
17 understanding is you said you didn't see any reason to ask
18 him So what I'm now asking is, I want you to give me all
19 the reasons that you ruled out violence in a household as
20 being a plausible line of questioning of Mr Barry Evans?

21 A I didn't see from my own personal interaction
22 with Kamell and I'm certain Dr Berg and Dr Evans didn't
23 see in their evaluation of him, any indication that he was
24 suffering from any effects of domestic violence or
25 whatever And so it did not seem to me, and we rely on

James Goldsmith - Direct Examination

1 our experts, that there was no manifestation in his life
2 later that he had been exposed to anything that would
3 cause problems So relying on our expert and relying on
4 my perception I didn't see that that was an issue or a
5 problem

6 Q Who provided the information to the experts that
7 they used to based their opinion?

8 A My recollection is they met with Kamell, but
9 Lenora did a lot of the fact gathering, the background,
10 the mitigation work and she would have forwarded
11 information to them

12 Q Did Lenora Topp in gathering this information to
13 forwarding them to the experts, did she interview any of
14 Kamell's family members, aunts, uncles, neighbors, from
15 Cleveland?

16 A I'm assuming that she did, but I don't recall

17 Q Why are you assuming that she did?

18 A Well, that's what her role on our team was to do
19 the fact gathering She's a mitigation expert and that's
20 what she was hired to do to compile all of this
21 information and put it together in usable form, work with
22 our experts, Dr Berg and Dr Evans That would have been
23 something that I would have expected her to do

24 Q And share with us why it was important for her to
25 do that?

James Goldsmith - Direct Examination

1 A Well, just get some background We were looking
2 to know more about this young man, his background, just as
3 in preparation for the mitigation phase We needed to
4 know as much about him as we possibly could, then we could
5 attach whatever relevance it might have in the mitigation
6 phase, but it's just basic fact-gathering at that point

7 Q And what significance would you put on the
8 ability -- and let's say we're talking about Barry Evans,
9 what significance would you put on the ability whenever
10 you talk to Mr Barry Evans, to say, look, we have spoken
11 to the following family members and they say the following
12 about violence, how much significance would you put in
13 that in terms of your ability to get him to be truthful
14 with you?

15 A I mean it would have been an area that we would
16 have questioned him Keep in mind, there was a lot of
17 uncooperativeness on the part of some of the members of
18 the family I guess perhaps residual resentment over the
19 divorce or whatever, but it certainly would have been
20 something we would have asked him about just as basic fact
21 gathering But again, I did not see, and I don't think
22 any of our experts saw any manifestation of these sort of
23 problems in Kamell's life

24 Q And one of the reasons you didn't see any of
25 these manifestations is because you look to the experts

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1 with the assumption that -- the people on your team with
2 the assumption that they had in fact spoken to the family
3 members to possibly route out the source of domestic
4 violence?

5 A At least Lenora had to the extent that they would
6 talk with her We were constantly having resentments and
7 running into problems in that particular area

8 Q I understand You've done enough criminal
9 domestic violence work and stuff to know that, would you
10 agree with me, that often domestic violence is something
11 that most people aren't willing to walk out on the street
12 corner and talk about?

13 A Especially something that happened many years
14 ago, people want to forget it, yes

15 Q Had you received information that there was
16 domestic violence, would you have explored it?

17 A Absolutely, yes

18 Q Why?

19 A Well, again, I can't say where it would have led
20 us

21 Q Right

22 A And we may have discovered any number of facts
23 about that, that we would have used or perhaps not used,
24 but we certainly would have explored it We would have
25 explored every avenue along those lines or the lead paint

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1 or whatever But again what we didn't see a manifestation
2 of any of that in Kamell's life Just the opposite, we
3 saw a rather healthy, well-adjusted, middle-class young
4 man

5 Q Right

6 A But we weren't going to foreclose any avenue of
7 looking into what may explain some of his behavior be that
8 domestic violence or mental illness or drug abuse or
9 whatever?

10 Q What significance would you assign to the
11 government's case the allegations that Kamell was in a
12 gang?

13 A I think that the State used that fairly
14 effectively I think we were able to counteract it some,
15 but the gang issue was a difficult one to have to deal
16 with In the guilt phase, the evidence against for this
17 was so overwhelming the gang issue would have turned it
18 one way or the other There was an overwhelming amount of
19 evidence of guilt separate and apart from any gang
20 membership at the guilt phase

21 Q Let's talk about the penalty phase In the
22 penalty phase, would you have been better or worse off, as
23 a trial lawyer, with or without the gang evidence in the
24 case?

25 A In the guilt phase?

James Goldsmith - Direct Examination

1 Q The penalty phase

2 A Yeah, we would have been much better off if we
3 hadn't had that

4 Q To your memory, when did the evidence of gang
5 activity come into the case?

6 A Well, we knew that they had a picture that Kamell
7 had made of himself that was potentially coming in
8 Kamell, himself, had told us repeatedly and insisted he
9 was a member of a gang, and I think Steve Sumner did a lot
10 of counseling him on that When we spoke to him about it,
11 he insisted that he was a member of a gang and instructed
12 us not to do anything that would counteract that

13 Q Did you believe he was in a gang

14 A No

15 Q Why?

16 A I think he was believing he was in a gang The
17 young lady, the Sapinoso daughter who was the girlfriend,
18 clearly was in a gang, and I think that he somewhat
19 devised this idea initially to ingratiate himself to her
20 to make himself more attractive to her, or maybe she had
21 wanted him to do some of that I just don't think
22 anything that he really said -- I don't think he was a
23 member of a gang It may have given him some comfort to
24 think that he was in a gang I'm not sure what the
25 genesis of all that is, but he was very insistent that he

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1 was in a gang He was insistent that we were not to
2 introduce any evidence to counteract that, but no, I don't
3 believe he was in a gang?

4 Q As a criminal defense lawyer, can you understand
5 why since he had all this gang stuff all over him and he
6 was getting ready to go to a place, pretty much
7 indisputably, he's getting ready to go to a place where
8 there's gangs that it would be in his best interest to at
9 least maintain the image of being in a gang?

10 A Certainly, I'm pretty sure at that point and
11 fairly early on we knew that the best case scenario he was
12 getting a life without parole situation, he was going to
13 do a substantial amount of time, and I suppose, like I
14 said, that was some comfort to him to maintain that
15 persona We advised him, and Steve advised him
16 specifically on a couple of times, that that would be a
17 problem for us in the penalty stage that the State would
18 utilize that

19 Q Let me ask you this, then, in your opinion as a
20 trial lawyer, would the penalty phase case -- I asked you
21 previously if it would have been better or worse without
22 the gang activity entered, right?

23 A Yes

24 Q And your answer was that the case would be better
25 in the penalty phase without gang activity?

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1 A Absolutely, yes

2 Q And so, could we extrapolate from that that the
3 chance of him getting a life sentence, in your opinion, in
4 front of a jury, would have been better without the
5 evidence of gang activity?

6 A Perhaps it would have been better I'm not sure
7 We had our own photographs that show that he wasn't a gang
8 member

9 Q That's what I'm asking What I'm asking is had
10 the State not introduced evidence of gang activity or not
11 been allowed to introduce evidence of gang activity, what
12 effect do you believe that would have had on the
13 possibility of him getting a life sentence in his trial?

14 A Obviously it would have been better, but my
15 recollection at the time as I look back on it, we felt
16 like it was coming in and we needed to deal with it rather
17 than put our eggs all in one basket Hey, this is not
18 coming in, let's not worry about it Obviously there are
19 a lot of things that come in at a trial that you'd rather
20 not come in, but they come in and you best be ready to
21 deal with him rather than hope and pray that they don't
22 come in

23 Q I understand What did you do in an effort to
24 exclude the evidence of gang activity?

25 A I believe that was one of the objections that
Evans versus State - Day 2

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1 Steve had made to exclude that

2 Q When?

3 A I'm not sure I don't recall when that was

4 Q Was that done pretrial

5 A I believe that it was

6 Q Did you file a Brief on that?

7 A I don't believe that we did

8 Q Were you involved in any way in the discussion
9 about what to do about gang evidence?

10 A Yes, absolutely

11 Q What was your involvement in it?

12 A Well, basically how we handle it We felt like
13 clearly it was coming in We could make an objection, but
14 we felt like it was coming in

15 Q Is your memory then there was a pretrial motion
16 to exclude gang activity?

17 A I believe so I am not sure of that Steve
18 handled all of the pretrial motions

19 Q Do you think that would have been a prudent
20 motion to make?

21 A Well, yes

22 Q What could be the possible down side?

23 A No down side to making the motion

24 Q So there's no down side to making a pretrial
25 motion to exclude the evidence of gang activity?

James Goldsmith - Direct Examination

1 A No down side

2 Q And on September 15 when this trial started, you
3 knew they were going to try to move in evidence of gang
4 activity?

5 A Yes

6 Q Knowing that, and we're operating off of your
7 recollection and that's what Mr Sumner is going to handle
8 and understanding you were involved in the discussions,
9 what did y'all do to counter the evidence of gang
10 activity?

11 A When you say counter, you mean what did we do to
12 try to exclude it?

13 Q We already talked about that Steve tried to do
14 it pretrial

15 A Exactly

16 Q When the evidence was coming in at trial, you
17 remember who it came in through

18 A Mr O'Cain

19 Q Was there an objection prior to Mr O'Cain's
20 testimony?

21 A I don't believe there was

22 Q Why?

23 A We felt like, and this may be an extended answer,
24 forgive me, we looked at this case and we tried to look at
25 it objectively, what is coming in and what we think is

James Goldsmith - Direct Examination

1 coming in, what do we think we have a realistic chance of
2 getting out, and our focus -- my focus was how do we
3 counteract this With respect to Mr O'Cain, we had our
4 witness, George Martin as I recall, who I felt was a
5 stronger witness and was an effective witness for us To
6 be honest both lines I think not just tiptoed over the
7 line, but there was a lot there, opinion, as to what you
8 could expect future conditions to be, but we felt like
9 that George Martin was an effective counteracting witness
10 to Mr O'Cain

11 Our theory of the case, and this is where I
12 did most of the work, was that Kamell lived a very good
13 middle-class life, was successful in some things He won
14 a State championship in basketball and maybe football, but
15 he was very successful, and I developed the strategy of
16 the case that there were two Kamells You had the Kamell
17 posing for this picture of this gang member, but you also
18 had the Kamell in his basketball jersey holding his little
19 sister after they won the State championship And my
20 argument to the jury was, consistent with the theory, you
21 want to kill this guy with the gang, but if you do, you
22 kill this other guy as well

23 And we wanted to say from the beginning
24 because we didn't have a lot of evidence that, oh, he has
25 some mental illness, he has these problems Our strategy

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1 was to say there's something redeemable about this guy and
2 you don't have to give him the death penalty to punish
3 him Life without the possibility of parole will punish
4 him and he'll die in prison when God chooses, and that's a
5 line we always use That was our focus, our theory of the
6 case

7 We didn't have a lot of evidence that there
8 were bad things that happened to him, that he had kind of
9 gone off the deep end in his early life, and we just felt
10 like if we offered a lot of that or some of that -- I've
11 talked to hundreds of jurors over a period of my career
12 and these folks are lay people They don't want to hear
13 excuses

14 What we felt like, and what I felt like very
15 strongly, is what they wanted was a reason to spare this
16 guy and we felt that was the reason that there was
17 something good in him, something redeemable in him Yes,
18 he had done a bad thing, a horribly bad thing, but that
19 didn't define his entire life There was something good,
20 something redeemable in him that you should spare his
21 life That's what we were geared to do That was our
22 theory of the case That was our narrative to the jury

23 Q But this was my question

24 A Yes

25 Q Why didn't you object to O'Cain's testimony when
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1 it came in

2 A I didn't think it was particularly effective I
3 didn't know -- you look back five years later, why do you
4 object, why did you not object, that's a battlefield
5 decision You've got to make it as is it hurting you, is
6 it going to come in anyway, does it send a message to a
7 jury that maybe this is more important than it really is,
8 does it send a message to the jury that, boy, we're really
9 getting hurt with this testimony You way all of those
10 things and you make a decision basically at the moment I
11 don't think this is hurting us and we've got a witness
12 when can counteract it

13 Q Let me ask you this, then, let's assume that
14 you're correct that Mr Sumner made a pretrial motion to
15 exclude the gang activity and the fact that Mr O'Cain is
16 on the stand, what can we assume was a result of that
17 pretrial ruling?

18 A It's coming in

19 Q Are you aware that under the law of South
20 Carolina that unless to it -- all pretrial rulings -- that
21 unless you object to it at trial are waived?

22 A Yes

23 Q So whenever y'all decided not to object to
24 Mr O'Cain's testimony, did you know that you were waiving
25 any previous ruling that you had on the admissibility of

James Goldsmith - Direct Examination

1 it?

2 A Yes, we would have known that

3 Q And you made that conscience decision?

4 A Yes

5 Q Had you spoken to Mr O'Cain prior to trial?

6 A I did not, no

7 Q Had anybody from your team spoken to Mr O'Cain
8 prior to trial?

9 A I don't believe anybody had

10 Q Was there a report from Mr O'Cain?

11 A I don't believe there was

12 Q So you had not spoken with Mr O'Cair, you don't
13 have any memory of Mr Sumner speaking to Mr O'Cain?

14 A I don't believe so, but I don't want to speak for
15 him He may have at some point

16 Q I'm not asking if he did or not, I'm just asking
17 if you have any memory of it?

18 A I don't have any memory that he did, not

19 Q Did you mitigation phase investigator speak with
20 Mr O'Cain?

21 A My recollection is they did not

22 Q At the pre-trial hearing you believe was held
23 about the admissibility of Mr O'Cain's testimony, was
24 Mr O'Cain required to make a proper pre-trial on the
25 admissibility of the testimony?

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1 A No, he was not

2 Q So, then, today you're telling us that there was
3 a decision not to object is because you felt like your
4 witness, Mr Martin's testimony, was stronger than
5 Mr O'Cain's?

6 A That was primarily the reason, yes

7 Q How could you make that decision not knowing what
8 Mr O'Cain's testimony was going to be?

9 A Well, we assume that he was the State's witness
10 how he would Also, keep in mind we were under an
11 instruction from our client regarding what we could and
12 could not do concerning his gang activity On his gang
13 activity he had basically put us in a box, Kamell had We
14 knew pretty much what he was going to say I don't think
15 anything he said was that much of a surprise

16 Q So it wasn't a surprise to you when he said
17 essentially if you give him death I'll keep him out of the
18 gang?

19 A No, that didn't surprise me I'll bet he
20 testifies to that at every trial

21 Q Do you have transcripts to that?

22 A Of prior trials, no

23 Q Do you know how many times he had testified?

24 A No

25 Q What information did you use to come to the

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1 conclusion about just what Mr O'Cain was going to say and
2 how strong it was going to be?

3 A As I said we knew the picture was there We knew
4 that Mr O'Cain was a State's witness and we felt like he
5 was going to basically promote the State line that he's in
6 a gang and it's a bad situation, he'll rise to the top
7 It's kind of like the police officer making a stop, you
8 know, there are routine things that they say every time
9 We anticipated he would say that We anticipated it would
10 be strong evidence for the State, yes

11 Q What did Mr Martin say about Kamell's gang
12 activity?

13 A I'm going on memory that I think George's
14 testimony was that they could control that, doing the life
15 without the possibility of parole he'd be locked up 23 out
16 of 24 hours a day The one hour that he would be out,
17 he'd have very little contact with other folks He may
18 have been in a member of a gang, but due to the severity
19 of his punishment in the lockup, he wouldn't be able to
20 exercise that That's my recollection of what George had
21 said

22 I'm not sure if he was specific on gangs as
23 much as he was specific on that life without parole is not
24 walk in the park punishment

25 Q Hold that thought, we're going to come back to
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 that We're almost finished

2 A Sure

3 Q Let me ask you this, what instructions did you
4 give Mr Martin about discussing Kamell's gang activity?

5 A I think I instructed in keeping with the
6 instructions that Kamell had given us was that even though
7 he was a member of a gang, what was his life -- allegedly
8 a member or whatever -- even so, what was his life in
9 prison be like were he given the sentence of life in
10 prison without parole What was that like I think
11 that's what Mr Martin was called upon ---

12 Q But O'Cain testified before Mr Martin

13 A Right

14 Q So Mr O'Cain talked about gang activity and gang
15 activity in prison, his beliefs in terms of Kamell's gang
16 membership, right?

17 A Uh-hum

18 Q What instruction did y'all give Martin about his
19 parameters to discuss gang activity during his testimony
20 and Kamell's membership therein?

21 A Basically the same thing I told you, there was a
22 picture that was probably going to come in of him and a
23 gang posing with some gang emblems, had told us he was
24 member of a gang, that we did not believe he was a member
25 of a gang, but that he instructed us not to present any

James Goldsmith - Direct Examination

1 evidence to the contrary That was the same parameters we
2 were all working under

3 Q So what we've got is O'Cain's testimony coming in
4 unobjected to about gang activity, your counter is an
5 expert that you have instructed, Mr Martin -- let's be
6 clear what was he called as? What was his specialty?

7 A He was a warden

8 Q Mr Martin was called to discuss what?

9 A What life without parole would mean, the prison
10 system and how folks are handled in the prison system

11 Q And what he believed about Kamell's adaptability?

12 A Yes

13 Q So we've got O'Cain talks about gangs, makes some
14 statements about what he believes is going to happen with
15 Kamell because he believes he's in a gang, right?

16 A Yes

17 Q And then we've got your counter to that was an
18 expert that you had instructed not to talk about gangs?

19 A Pretty much Per our client's instruction to us
20 not to introduce evidence to the contrary or not to
21 contradict that

22 Q Was there any other way that y'all -- did you
23 talk to any of his friends about his gang activities?

24 A Kamell's?

25 Q Yes

James Goldsmith - Direct Examination

1 A I did not I'm not sure if he did I don't
2 believe his family members thought he was in a gang The
3 family members are the ones I suspect we would have the
4 contact with

5 Q Let me ask you this question, other than Kamell
6 and the prosecution and the witness for the prosecution,
7 was there anybody else you talked to that thought he was
8 in a gang?

9 A I seem to recall the sister that you referred to
10 earlier She was the one who indicated that the Sapinosa
11 daughter was in a gang

12 Q We've kind of agreed not to talk about her Just
13 so you know, we've agreed not to talk about that

14 A Right

15 Q I'm asking anybody that you or somebody on your
16 team spoke to that said other than Kamell, Bob Airial's
17 office, and Mr O'Cain from the South Carolina Department
18 of Corrections, was there anybody that you spoke to that
19 said Kamell was in a gang?

20 A I don't believe so Perhaps the sister, but ---

21 Q Which sister?

22 A It seems my recollection was that she was of the
23 same opinion that we were, that Kamell thought he was in a
24 gang, but she didn't believe he was in a gang Other than
25 that, no

James Goldsmith - Direct Examination

1 Q Would you recognize the ABA Guidelines on capital
2 litigation that were promulgated in 10/20 of 2003 as being
3 a learned treatises or the investigation of capital cases?

4 A Would I recognize it as a learned treatises?

5 Q Yes

6 A I supposed it would be

7 Q Can you think of any other one?

8 A Well, if you're asking me what sort of
9 significance I would attach to that having done public
10 defender and indigent defense work most of my career,
11 there are specific ABA Guidelines as to how many cases you
12 can handle, which are routinely ignored in our State and
13 every other state that I'm aware of So, yes, it may be a
14 good guideline same as the case load This is what you
15 investigate, but I would not acknowledge that somebody
16 could right down a formula for it It's different in
17 every case I would say You've got to have some latitude
18 in each case to investigate where you need to investigate
19 So as a learned treatises, perhaps so, but what's the
20 significance of it, in this case, I'm not sure

21 MR NETTLES At this time I'd like to ask
22 the Court to recognize the ABA Guidelines as a learned
23 treatises

24 MS BROWN Your Honor, I have no objection
25 to that being a publication on guidelines I do object to
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 any consideration of that being adopted by our State as
2 specific reasonable performance guidelines That has
3 never been adopted by any capital case that I'm aware of
4 in our United States Supreme Court or our State Supreme
5 Court, although the guidelines are referenced for general
6 guidelines

7 In fact, in Strickland versus Washington, the
8 United States Supreme Court said there maybe guidelines
9 and they are guidelines, but that counsel has to retain
10 his own individual strategy decisions

11 MR NETTLES I'd ask that they be introquced
12 as Exception to Hearsay Rule as learned treaties I'd ask
13 the Court to recogriize the ABA Guidelines as a learned
14 treaties I'm certainly not the Legislature I can't
15 legislate that they be standard, but I do think they are a
16 learned treaties to be considered in making decisions

17 And I'll tell where I'm going specifically
18 There is Guideline 10 7 which under Investigation, 10 7a2
19 says, "Investigation regarding penalty should be conducted
20 regardless of any statement by the client that evidence
21 bearing upon penalty is not to be collected and
22 presented " I'm under the impression that the United
23 States Supreme Court case is right on point with that
24 where there was an individual who said I don't want y'all
25 putting up any evidence of my bad background or any of

James Goldsmith - Direct Examination

1 that and the lawyers can in and said, well, we didn't do
2 it because he told us not to The United States Supreme
3 Court said, look, you've got an obligation to do that

4 MS BROWN Your Honor, if I may address
5 that, there is a case Rompilla, a United States Supreme
6 Court case actually from the Third Circuit The original
7 circuit case found no error in counsel's representation
8 and oddly enough that opinion was written by now Judge
9 Alito But that case essentially goes over investigation,
10 but the holding references only investigation of
11 circumstances of aggravation So there may be so dicta
12 about that in that United States Supreme Court case, but
13 that is not the holding, and that would be Rompilla

14 MR NETTLES My point is this, if the
15 argument for not acknowledging ABA Guidelines is not a
16 learned treatise because then all of a sudden the who
17 State -- you will be -- I think it's something to be
18 considered in making the decision, which is all I'm
19 asking, and specifically as it relates to this We're not
20 arguing the pretrial briefs yet, but pretty clearly
21 there's an argument to be made that not only is this the
22 ABA Guideline that was in place prior to this case going
23 to trial, but there is Supreme Court precedent for the
24 application of this guideline in any capital case

25 MS BROWN Your Honor, in Rompilla, that's
Evans versus State - Day 2

James Goldsmith - Direct Examination

1 not what they said

2 THE COURT Is there any objection to it as a
3 foundation issue under Rule 803 18?

4 MS BROWN No, sir I don't object to it
5 being a publication, just that it be extrapolated into
6 guidelines that are mandatory

7 THE COURT It's in evidence under the rules
8 (ABA Guidelines marked Applicant's Exhibit
9 No 11 for identification and admitted into evidence)

10 BY MR NETTLES

11 Q Mr Goldsmith, I'd like you to publish Guideline
12 10 7(a)2 to the Court

13 A 10 7?

14 Q 10 7(a)2 of the ABA Guidelines for capital
15 investigation

16 A "The investigation regarding penalty should be
17 conducted regardless of any statement that the client of
18 evidence bearing upon penalty is not to be collected or
19 presented "

20 Q Had you ever read the ABA Guidelines?

21 A I'm sure I have at some point, yes

22 Q On capital litigation?

23 A Yes

24 Q I'm going to show you a copy of George Martin's
25 testimony and then I'm going to ask you a couple of

James Goldsmith - Direct Examination

1 questions about it

2 A Okay

3 Q This is from the trial transcript It's the
4 testimony of George Martin He was examined by Mr Sumner
5 and I believe he was cross-examined by Mr Bob Airial, and
6 the transcript begins at Page 1624 of the trial
7 transcript The portion I'm asking him to look at begins
8 at 1635, Line 16 and goes through 1636, Line 2

9 A Okay

10 Q You would agree with me Mr Sumner asked what's
11 his opinion on his adjustability, right?

12 A Yes

13 Q And that Mr Martin says, "I think it's probably
14 safe to assume that based on his talk, and frankly I think
15 it's entirely talk of his gang interest that the tattoos
16 and all of that he, Mr Evans, could expect a long
17 difficult incarceration in the South Carolina Department
18 of Corrections "

19 A Yes

20 Q So there he says it's just talk

21 A Yes, he did

22 Q That's what Martin said What did Martin say
23 that he thought of Kamell's gang activity?

24 A From that he said it was just talk, but the point
25 that I think was made by Mr Martin at that point that

James Goldsmith - Direct Examination

1 even assuming the gang membership, that will increase the
2 severity of his punishment and not necessarily make it
3 easier That was what I would glean from that and my
4 recollection of his testimony along those lines

5 Q But wouldn't that be under the assumption that he
6 gets life?

7 A Yes I mean even if he got a 30 year sentence,
8 I'm assuming that those things went with it

9 Q That's fair So that is something he gets
10 something less than death

11 A Yes

12 Q That the gang activity would only make his life
13 worse is assuming that he gets something less than death

14 A Yes

15 Q Since Mr Martin had said he thought it was only
16 talk, and he is an expert, what did he say about his
17 belief was in a gang?

18 A He didn't believe Kamell was in a gang

19 Q Is there anything else that y'all did to try to
20 counter that Kamell was in a gang?

21 A None

22 Q *Let's go back to the trial phase for a second*

23 A *Certainly*

24 Q *What did you do to challenge the pathologist's*
25 *testimony?*

James Goldsmith - Direct Examination

1 A I don't believe we did anything to challenge the
2 pathologist

3 Q Unlike Mr O'Cain, the pathologist got a report

4 A Yes

5 Q And in that report what was in there?

6 A A pathology report in general?

7 Q Yes, right

8 A Nothing out of the ordinary, basically cause of
9 death, angle of the wound, position of the body, those
10 sort of things

11 Q Those sort of things, angle of wound, were those
12 things used to buttress or refute Kamell's account of what
13 happened?

14 A I'm not sure that either to be honest with you
15 It came in Kamell had basically said that he had done it
16 and there was no self-defense in that area We felt like
17 that's coming in and it is what it is

18 Q I understand I'm not talking about
19 challenging it I'm talking about was there any attempt
20 to get someone to take a look at it to see if the
21 conclusions that were reached by the pathologist were
22 correct

23 A An expert to review this expert?

24 Q Yes

25 A No, we didn't do that

James Goldsmith - Direct Examination

1 Q So y'all didn't retain the services of any expert
2 to take a look at the pathologist to see if there was
3 another way that this could have been interpreted

4 A No

5 Q Now, as for the aggravator of the cop -- just so
6 we're on the same page, one of the aggravators was police
7 officer killed in the line of duty

8 A Yes

9 Q Did you do anything about that issue?

10 A As I recollect, we reviewed what case law or
11 statutory law there was We felt like based on that that
12 Mr Sapinoso was still in uniform, was on his way home,
13 had not reached his home, had been on duty Sheriff's
14 deputy is on duty 24/7 We found nothing, no case, and I
15 don't know of a case today that says in that particular
16 case, he's not a police officer on duty Without
17 something to challenge that, without something to point
18 to, we did not feel we could challenge that Just to make
19 it up out of thin air, no

20 Q What quality of research did y'all do on that
21 issue?

22 A I would think the standard legal research Is
23 there a case that says in facts and situations similar to
24 this a police officer is not a police officer is not on
25 duty, and we found nothing

James Goldsmith - Direct Examination

1 Q Had you been able to construct an argument that
2 was plausible, what would have been the appropriate thing
3 to do?

4 A Well, first the plausibility of contingent upon
5 finding a case ---

6 Q Here's what I'm getting at If you had an
7 argument that you felt was plausible, would there be any
8 strategic reason for not making it

9 A No, if we had some plausibility We had not
10 plausibility at that point and felt like that's what we --
11 obviously, if we had a case of some sort of plausible
12 argument to make, we would have made it

13 Q When would have been an appropriate time to have
14 made that objection?

15 A I suppose pretrial motion

16 Q Would that have been something done out of the
17 presence of the jury?

18 A Yes

19 Q You wouldn't have to worry about upsetting
20 anybody

21 A Would not have

22 MR NETTLES I believe that's it, Your
23 Honor

24 THE COURT What page were you referencing?

25 MR NETTLES 1624 The question I
Evans versus State - Day 2

James Goldsmith -Cross-examination

1 specifically looked at was, I think, 16 ---

2 THE COURT When you find it, let me know

3 MR NETTLES Okay, Your Honor

4 MS BROWN If I've written it down

5 correctly, it was 1635

6 MR NETTLES 1635

7 Your Honor, if I have just a minute I

8 realize I said I was done, but a few more questions

9 THE COURT Go ahead

10 BY MR NETTLES

11 Q As it relates to the police officer act, what
12 information did you gather relating to policies from the
13 police department?

14 A Well, it's actually Sheriff's Department
15 Basically, there's a provision in the code They're
16 police officers 24/7, 365 As far as policies, we did not
17 review any policies of the Sheriff's Department

18 Q If I may, let's just kind of look at what you did
19 look at it

20 A We looked at factually he had his uniform on He
21 had worked at evening security at a county counsel
22 meeting He was on his way home He had not gotten home
23 yet He was outside, maybe a block or so away, when
24 Kameel surprised him, held him hostage and brought him
25 into the home He was driving his police cruiser, I

James Goldsmith -Cross-examination

1 believe And then the statutory provision that sheriff's
2 deputies are sheriff's deputies 24/7 and we found no case
3 law to say otherwise to support with any plausibility that
4 this victim was not a sheriff's deputy in the line of his
5 duty?

6 Q Was there anything else you relied on?

7 A No, I think that's probably it

8 MR NETTLES Thank you

9 THE COURT Cross-examination

10 MS BROWN Thank you, Your Honor

11 CROSS-EXAMINATION

12 BY MS BROWN

13 Q Mr Goldsmith, when we started your examination I
14 believe you mentioned that an estimate would be that you
15 have 90 to 95 criminal defense work in your practice,
16 correct?

17 A Yes

18 Q What about death penalty or capital cases
19 specifically, what's your background in capital cases and
20 how many have you worked on?

21 A I am certified by the Supreme Court to be lead
22 counsel in death penalty cases Kamell's case was the
23 first case in South Carolina that I was appointed to and
24 handled North Carolina does not certify although there
25 is a list It is somewhat of a certification process I
Evans versus State - Day 2

James Golasmith -Cross-examination

1 have been appointed on four cases in North Carolina that
2 were first degree murder All four of those subsequently
3 were allowed to plead and did not go forward as a capital
4 case

5 Q Did you handle those cases before or after this
6 case?

7 A Before

8 Q Had you made any connections in North Carolina
9 for forensic services or any kind of investigative help?

10 A Some through the trial lawyers association that
11 publishes lists

12 Q And I believe you testified on direct that you
13 don't remember exactly how long it took to get discovery
14 Do you remember receiving discovery?

15 A We received discovery and it would come in
16 batches and that's pretty typical that we would get a
17 batch of discovery initially and then we would get
18 discovery as the case progressed My recollection is if
19 we needed to see anything we would call Betty Strum,
20 Deputy Solicitor And if we needed to see something, we
21 could come over and look at it, get copies of it That's
22 the way we coordinated our discovery Betty headed that
23 up for the Solicitor's Office I can not remember a time
24 during the whole process that they said, no, you can't
25 have that It was basically an open file

James Goldsmith -Cross-examination

1 Q And I believe you also mentioned on direct that
2 you hired a team

3 A Yes

4 Q Do you remember the members of your team
5 off-hand?

6 A Dr Berg, Dr Evars, initially Dale Davis was our
7 mitigation expert I think at some point there was a
8 conflict and Lenora Topp was subsequently substituted as
9 our mitigation expert We had Scott Peterman as our
10 investigator

11 Q And what did Mr Peterman do to investigate?

12 A He basically worked with Steve as fact gathering
13 and pulling all the facts together If we needed things,
14 we would do that I think he interviewed some witnesses

15 Q Do you know what his background was, do you
16 recall?

17 A I think he's a former city police officer

18 Q Going back to Dale Davis and Lenora Topp for a
19 minute, who did you ultimately retain for your team?

20 A Lenora Topp

21 Q So Ms Davis was not involved in the remainder of
22 the time She might have been initially involved, but do
23 I understand she was not involved in the entire process

24 A No, she was very briefly involved I'm not sure
25 if she had a conflict or could not take on additional case

James Goldsmith -Cross-examination

1 load?

2 Q I believe you said you first were appointed, you
3 were appointed with Mr Richey or Mr Ricney was appointed
4 with you and you worked together

5 A Yes

6 Q And you together went over the discovery as it
7 pertained to the guilt portion of this trial?

8 A Yes

9 Q So by the time that Mr Sumner joined the team,
10 he was appointed co-counsel, had you pretty much completed
11 the first part?

12 A The guilt phase, yes, we had completed all of
13 that work We had all of the reports and pretty much had
14 everything that the State had and had done the work, the
15 foundation work for that, for the guilt phase

16 Q And you had completed discovery as well so you
17 had a basis

18 A Yes And we had begun thinking and forecasting
19 how we would like to go with the mitigation

20 Q So I understand that the time that Mr Sumner
21 came on, you guys were focused entirely on mitigation?

22 A By the time he came on, yes He and I got up to
23 speed real quick on the discovery Regarding the guilt
24 phase and went over that, but his efforts and my efforts
25 from that point on were strictly mitigation

James Goldsmith -Cross-examination

1 Q And you had team conferences or how did that
2 work? How did y'all share information?

3 A We would share information sometimes emails My
4 conversations basically with Steve would be either over
5 the phone or visiting him there at his office I think
6 maybe a couple of times he might even have come up to my
7 office to do that But there was a lot of sharing of
8 information between us -- obviously between Steve and I --
9 but between the other members of the team as well

10 Q They would work independently that you may not
11 have records of?

12 A Perhaps so, yes, I think so Sometimes I was out
13 of the loop I trust Steve completely and it wasn't a
14 situation where I was first chair and he was second chair
15 It was more like co-counsel I trust what he does In my
16 opinion he is a very detailed oriented person and I'm not
17 so much a detailed oriented person, and that's the way we
18 sort of divided up things up But we would talk three and
19 four times during the course of a week

20 Q Well, I noticed in your direct testimony you
21 referenced our file notes Do you have an independent
22 file?

23 A No We shared the same file

24 Q And you had access to that file and you used that
25 file as your own?

James Goldsmith -Cross-examination

1 A Yes, it was my file as well as his I had
2 complete access to it Just for purposes of it being in
3 Greenville, it was better to keep it at Steve's office,
4 but I had access to all of that

5 Q And, I think we probably gone over this, but
6 Mr Sumner's office is in Greenville?

7 A Yes, it is

8 Q And would you expect the same kind of dynamics as
9 far as family contact in that I believe you said with
10 Mr Richey, you thought that Mr Richey being in
11 Greenville, he would probably have the most contact and
12 you being in North Carolina? Did that breakdown along the
13 same lines with Mr Sumner?

14 A Yes, it did Yes

15 Q Did you tell any member of your team to withhold
16 any information with regard to lead poisoning to any other
17 expert that you may have retained?

18 A Never

19 Q Do you have any individual recollection of
20 whether the idea of lead poisoning was given to the team
21 members so they could look at it, investigate it, give it
22 to experts, anything about that?

23 A There was no concrete evidence The only thing
24 we had was a statement by the sister that Kamell may have
25 lived in a house in Cleveland that had lead paint and may

James Goldsmith -Cross-examination

1 have, when he was very young, ingested a flake or two
2 That was all we had and we shared that with everybody in
3 the team Everybody knew about that, but it was no more
4 concrete It was very highly speculative, no dates, no
5 locations We tried to obtain that information from
6 Kamell's mother who still lived in the area and got no
7 cooperation whatsoever

8 Q I do understand that he asked your experts to
9 look specifically for any kind of results of lead
10 poisoning?

11 A Yes, or anything else in there We wanted them
12 to be, and we instructed them, be as thorough and leave no
13 stone unturned We're not experts, Steve and I, no in the
14 medical or psychiatric We rely on them pretty much very
15 heavily

16 Q To your recollection, do you ever recall telling
17 any expert that you would not seek funding for any request
18 or not deliver any materials that you had to them for
19 their consideration?

20 A No If they needed something, we would have
21 asked for it, petitioned the court, done whatever we
22 needed to do to get anything that they thought was
23 important and we were going to follow up on it

24 Q I believe you said about the joint file that you
25 had reviewed that file in anticipation of this litigation,

James Goldsmith -Cross-examination

1 is that correct?

2 A Several times, yes

3 Q I'd like to show you a memorandum and see if you
4 can recognize it Do you recognize that document?

5 A Yes, ma'am

6 Q Can you tell us what that is?

7 A This is an interview by Lenora Topp with Barry
8 Evans, Kamell's father, September 7th, 2004

9 Q Is there a portion on there on that first page --
10 I take it it's a multi-paged document?

11 A Yes, four or five pages

12 Q On the first page is there some indication of
13 importance on that page?

14 A Barry indicates that he will testify that there
15 was physical violence between him and his first wife

16 Q Do you recall ever seeing that document?

17 A I'm not sure that I have I would have talked
18 with Lenora about it and gotten the gist of it

19 Q That would have been something that Lenora would
20 have given to you?

21 A Well, she should have, yeah In connection with
22 her work, yes

23 Q And you haven't found anything that -- this maybe
24 a difficult question -- she didn't tell you about in your
25 review of the file since completion of the trial?

James Goldsmith -Cross-examination

1 A No, there are things that she had emphasized more
2 than others but there's nothing I can specifically point
3 to

4 Q Let's go back to the gang information Now, you
5 said that your client instructed you not to challenge the
6 information?

7 A His instructions to us was he was a member of a
8 gang and that we were not to contest that fact or to offer
9 any evidence to contradict the fact that he was in a gang

10 Q Mr Goldsmith, you read earlier a statement by
11 your expert Mr Martin that essentially said he wasn't
12 convinced that he wasn't a member of a gang Did that run
13 a bit counter to your defendant's statement to you?

14 A Well, it did and we weren't able to completely
15 hold the line on all the witnesses and I think that was
16 probably something -- I mean George, he wasn't bound as
17 much as we were in the course of testimony He opined
18 that he wasn't a member of a gang

19 Q Is it fair to say to that you took your client at
20 his words, that you took his statement into consideration,
21 his directive into consideration, but you also presented
22 the best case you could?

23 A Absolutely He had instructed us in this area
24 I didn't believe him I would tell you there's a lot of
25 times my clients tell me things I don't believe, but I go

James Goldsmith -Cross-examination

1 ahead and do the best that I can under the situation
2 within the parameters that they frame He's the client
3 and I think we did that in this case, but it was somewhat
4 difficult for us He put us in a box with those
5 instructions

6 Q I have in my notes, and correct me if it's wrong,
7 but I believe you agree with PCR counsel that the case
8 would be better without the gang activity evidence?

9 A Certainly

10 Q Perhaps better, I believe, is what I've written
11 down Well, isn't it also true that if there were not
12 multiple blue bandanna left on the scene that your case
13 would have been better?

14 A Much better

15 Q Is it not true that your case would have been
16 better if Deputy Sapinoso would have not been shot four
17 times in the back of the head?

18 A Much better, yes

19 Q Wouldn't it have been better if there were not
20 three shots to the other victim in this case?

21 A It would have been better for us, yes

22 Q Anything that would prejudice you if it was left
23 out would be better, right?

24 A Absolutely You take the facts as you have them,
25 not as you want them

James Goldsmith -Cross-examination

1 Q And the facts in your case, you didn't have
2 simply your client's admission, did you?

3 A No As far as the guilt phase, the evidence was
4 overwhelming against him The physical evidence, the
5 testimony, his testimony, was overwhelming evidence

6 Q And as far as gang membership, it wasn't simply
7 that he expressed interest in a gang, was it?

8 A No He indicated he was a gang member

9 Q And it wasn't simply that he was wearing a color
10 that was normally associated with a gang was it in support
11 of his assertion?

12 A No

13 Q And, in fact, he didn't have just one tattoo that
14 read Crips on his body?

15 A He has numerous tattoos referencing gang
16 activities

17 Q And they're not small tattoos are they

18 A No, they're not ,

19 Q And they are permanent, are they not?

20 A I would say so

21 Q This would not have been something applied as a
22 protective device in prison if one would go to prison?

23 A No, he had had those for some period of time well
24 before this incident

25 Q I believe you were asked earlier about a possible
Evans versus State - Day 2

James Goldsmith -Cross-examination

1 motion to exclude that activity evidence in the penalty
2 phase What basis would you have to exclude it?

3 A Well, we could have -- it would have been a very
4 difficult argument, I think, to make Not that we didn't
5 consider it given the fact of his instruction to us, but
6 there was a picture I had made the argument what you're
7 really saying judge, this is going to be very detrimental
8 to us, and I don't see anything that we could have made a
9 motion to exclude that I'm not sure that I still see if
10 there is any basis to do that given the tie in with the
11 girl and those sorts of things It would have been a very
12 thin evidence to support that motion

13 Q I'm going now to the on-duty aggravated
14 circumstance As I recall your testimony, you said you
15 looked at case law and statutes Did you also investigate
16 any other way? For instance, did you discuss it with
17 anyone?

18 A I think Steve might have, I'm not really sure
19 If I discussed it, it may have been -- I can't recall I
20 have many friends in law enforcement If I did, it was
21 something just in passing I think, from my review of the
22 research, a fairly settled issue I didn't find any case
23 that I could stand up in front of Judge Cole that says
24 here's a case that holds what we're asking you to do that
25 he's not a police officer There just was not a case and

James Goldsmith -Cross-examination

1 I'm not aware of one

2 Q But, again, you and Steve both worked on this?

3 A Yeah, we did

4 Q Now, as far as investigating the facts, you said
5 that he not -- and I'm talking about the deputy -- the
6 deputy had not made it home yet?

7 A Had not made it home, yes

8 Q That was your understanding?

9 A Yes

10 Q Do you recall the written confession that your
11 client signed?

12 A I do

13 Q Do you recall in that confession that he actually
14 said the deputy was getting out of the car in the
15 driveway, he was not out of the car?

16 A Yes

17 Q Is that something that you would have considered?

18 A Those are the factual things that we thought
19 would support the fact that he's in his uniform, he's
20 driving his squad car, he's partially in the car,
21 partially out, all of those underlying factual things led
22 us to believe that he was not a police officer in his
23 duties, there's no basis for it

24 MS BROWN Court's indulgence

25 THE COURT Certainly We'll take a break
Evans versus State - Day 2

James Goldsmith -Cross-examination

1 and be back at 12 00

2 (Whereupon, there was a brief break)

3 (Cross-examination by Ms Brown continues)

4 BY MS BROWN

5 Q Just a few more questions I'd like to turn
6 specifically to family contact, your client's father Do
7 you recall have any discussions with your client whether
8 his father should testify at trial?

9 A I don't believe -- I'm trying to think -- I don't
10 believe we had any conversations about whether he should
11 testify or not I don't recollect that

12 Q Do you recall Mr Barry Evans testifying at that
13 time?

14 A I believe he did

15 Q Can I have you look again as you did previous
16 record Page 1669, Lines 12 through 25, and if you would
17 identify for us who is testifying and just briefly read
18 those lines in to the record

19 A "Kamell has a positive influence on whatever he
20 is around He's a joy to be around He's been a joy to
21 be around and I just -- I can't stress -- I am not up here
22 speaking from a father's point, I am speaking from sitting
23 back other people deal with another person, my son I
24 watched him I saw him grow up since he was 11 years old
25 I mean I have been in constant contact with him and he was

James Goldsmith - Cross-examination

1 a good kid He's a good person and I am not saying that
2 just because I'm his father I am saying it because of
3 the effect that he had on people and has on people and an
4 have on people, and not just from a father's view point, I
5 am saying it from a friendship view point He still is my
6 friend He always will be my friend "

7 Q Did you consider that strong testimony from
8 Mr Barry Evans in the penalty phase?

9 A I did My recollection of his testimony was very
10 strong and that he was a good witness in the penalty
11 phase, yes

12 Q Now, there's been some testimony earlier today
13 about family strife before the divorce, possible abuse
14 allegations Did it enter your consideration if you
15 brought that kind of testimony in, you wouldn't be able to
16 use Mr Barry Evans in that fashion?

17 A Well, that would certainly render what he said
18 here questionable or at least subject to some cross-
19 examination by the State for certain it would be?

20 Q So would it be fair to say it would have
21 negatively effected his credibility?

22 A Yes

23 Q And it would have lessened the impact of a
24 father's plea?

25 A I think so I think it would have, yes

James Goldsmith -Redirect Examination

1 MS BROWN Thank you, Mr Goldsmith That's
2 all the questions I have, Your Honor

3 (Interview marked as Applicant's Exhibit No
4 12 for identification and admitted into evidence)

REDIRECT EXAMINATION

6 BY MR NETTLES

7 Q Ms Brown, just on direct asked you about
8 interviews that were done by Ms Lenora Topp

9 A Yes

10 Q Ms Lenora Topp is who?

11 A She was our mitigation expert

12 Q I'm going to show you and ask you, did you ever
13 see this memo?

14 A I'm not sure that I seen this memo before

15 Q That's fine That's fair enough This is a memo
16 entitled, "Interview Ron Platt, State v Kamell Evans,"
17 taken by Lenora Topp on August 19, 2004

18 A Yes

19 Q Did you ever see that memo?

20 A I'm not sure Perhaps, I did, I can't remember
21 I know the gist of it This is Coach Parker, one of his
22 coaches

23 Q Do you remember that Coach Parker have anything
24 to say about his gang activity?

25 A I don't believe he did

James Goldsmith -Redirect Examination

1 Q Do you remember if Coach Parker had any
2 information about Kamell, not what he testified to, but
3 did he say anything to y'all about Kamell's being in a
4 gang or not being in a gang?

5 A I don't believe he made any reference to gang
6 whatsoever

7 Q Not what he testified to, but in interviews

8 A In interviews, I don't believe he did

9 Q That's Coach Parker, the coach who coached him at
10 Greer High School

11 A Yes

12 Q The Coach Parker at Greer High School, let's be
13 clear, never said anything to anybody about gang activity?

14 A That's correct He never said anything

15 Q What am I showing you there? Have you ever seen
16 that memo

17 A Again, my recollection is I was aware of gist of
18 it, but I'm not sure if I had seen it specifically I may
19 have I'm not sure It would have been typical for me to
20 see it I say that because, upon reflection, I don't
21 think I've seen the Barry Evars memo when it was shown to
22 me

23 Q I'm just trying to figure out which ones you saw
24 and which ones you didn't If you say you didn't see it,
25 that's fair I just need to know

James Goldsmith -Redirect Examination

1 A I'm not sure if I saw the memo itself, but the
2 gist of it ---

3 Q What was the gist of the April 22, 2004 interview
4 of Terry Peden, that was conducted by Lenora Topp?

5 A The main thing there is that was a friend of
6 Kamell's giving an opinion that Kamell was not in any
7 gang, that they had ridden motorcycles or something or the
8 other, but he was a friend of Kamell's

9 Q Did you ever see this memo?

10 A Again, I'm not sure that I have No, I can't say
11 that I have seen it

12 Q So you can't say that you saw the document that
13 purports to be the interview of Benjamin Young, State vs
14 Kamell Evans taken by Lenora Topp?

15 A Can't say I may have, I may not have

16 Q Have you ever seen that memo?

17 A I believe so This interview is of Shatima
18 Evans, Kamell's sister

19 Q Taken on what date?

20 A September 7, 2004

21 Q And have you ever seen this memo?

22 A I can not say with certainty that I have

23 MR NETTLES I have no further questions

24 Thank you

25 THE COURT Recross
 Evans versus State - Day 2

Steve Sumner - Direct Examination

1 MS BROWN Just briefly, Your Honor

2 RECROSS-EXAMINATION

3 BY MS BROWN

4 Q I believe you just testified in regard to at
5 least two of those memorandums that you were just shown
6 that you knew the "gist" of it?

7 A Yes

8 Q Do I understand that you had a lot of email
9 communication given that Mr Sumner was in Greenville and
10 you were in North Carolina in a different state?

11 A Email and telephone communications, yes

12 Q So you might not have necessarily seen every
13 piece of paper to recall at this point, but you had open
14 communication?

15 A Yes, we had open communication

16 Q And you were also asked about information about
17 gangs for Coach Parker interview?

18 A Yes

19 Q And I believe there was a suggestion that says he
20 is not in a gang?

21 A I believe so, yes

22 Q Do you know anyway of a master list of Crip
23 membership that you could have gone to to make sure that
24 he was a member of a certain gang at a certain time?

25 A There's absolutely no way unless he told us

Steve Sumner - Direct Examination

1 himself, Kamell told us himself There is no membership
2 roles, I'm sure of that

3 Q And he was consistent in his declaration of being
4 in a gang to you?

5 A Never waivered he was

6 MS BROWN Thank you That's all I have

7 MR NETTLES Nothing further

8 THE COURT Thank you, Mr Goldsmith

9 (Witness leaves the witness stand)

10 MR NETTLES Our next witness is going to be
11 long I'll do whatever the Court wants me to do

12 THE COURT Well, let's go ahead and get
13 started and we'll break around 1 00

14 MR NETTLES Okay

15 THE CLERK Place your right hand on the
16 Bible

17 STEVE SUMNER, after having been duly sworn,
18 testified as follows

19 DIRECT EXAMINATION

20 BY MR NETTLES

21 Q Please share with us your name

22 A Steve Sumner?

23 Q And where is it that you live?

24 A I live in Greenville Count

25 Q Now, what do you do for a living?

Evans versus State - Day 2

Steve Sumner - Direct Examination

1 A I practice law

2 Q Do you regularly practice in the Greenville
3 County Courthouse?

4 A I do

5 Q How much of your practice is criminal?

6 A I would say 90 percent

7 Q Do you have offices anywhere other than
8 Greenville County?

9 A I do not

10 Q Did you know Joe Sapinoso?

11 A Very casually I know that he was a deputy with
12 Greenville County and he spoke and he knew my name and I
13 knew his name, but that was probably about it

14 Q When were you appointed to this case?

15 A I would like back at my file to see the back
16 date

17 Q Let me ask you this question, do you remember
18 when you picked up the discovery?

19 A I remember that Rodney Richey, an attorney in
20 Greenville previously had been appointed, and I got the
21 discovery or what discovery he had from him I want to say
22 it was June or July of '04 is when this crime occurred, is
23 that correct?

24 Q Let me ask you this, did you take a look at
25 what's been previously marked Applicant 13? If you just
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 leave those in order, it would be better for you

2 A I will?

3 Q Applicant 13 for ID purposes did you receive a
4 copy of that letter?

5 A I did

6 Q Did you place that letter in your file?

7 A Yes, I did

8 Q Did you hold on to that letter as a part of this
9 trial?

10 A Yes

11 MR NETTLES At this time we would like to
12 introduce Applicant's Exhibit 13 into evidence

13 MS BROWN No objection

14 THE COURT It's in evidence

15 (Letter marked as Exhibit Applicant's No 13
16 for identification was admitted into evidence)

17 BY MR NETTLES

18 Q Essentially, does that letter document you
19 receiving the discovery?

20 A Yes, it does

21 Q And when does that reflect that you received the
22 discovery?

23 A On July 8th of 2004

24 Q Now, prior to July 8th of 2004 receiving
25 discovery, had you done anything in preparation for this

Steve Sumner - Direct Examination

1 case?

2 A Nothing significant, no

3 Q What had you done?

4 A I think the only thing I had done was have
5 conversations with Skip Goldsmith I think I had several
6 conversations with Judge Cole as to whether I could come
7 into the case so other than that, no

8 Q Would it be fair to say that most of your
9 conversations revolved around getting appointment squared
10 away?

11 A Yes, that would be correct

12 Q When you received the file on July 8th, what was
13 in the file that had not been produced by the State as a
14 result of a discovery request?

15 A Not that I can remember

16 Q What was included in the file that had been
17 produced by the defense?

18 A Nothing that I can remember I recall, if I can
19 expand on that just a little bit, it was two, I believe,
20 grey or white notebooks that had been put together by
21 Mr Richey and I don't recall anything being in there that
22 wasn't State discovery I think there also were some
23 cassette tapes or some video tapes, I believe, to my
24 recollection, but that would have been everything

25 Q Those cassette tapes, those video tapes were of
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 what?

2 A I believe they were video tapes, I'm going
3 totally from memory now, Judge, I believe that the video
4 tapes were of the crime scene I can not recall if they
5 were of the outside of the home where the incident had
6 occurred Totally from memory, Mr Nettles, they were of
7 the inside of the home, crime scene, and I believe that
8 the cassette tapes were of recorded conversations that
9 occurred that evening between Mr Evans and various other
10 parties

11 Q Fair enough Now, at some point, did you sign a
12 consent order to try this case on September 15th?

13 A I do not recall that, but if it is a part of the
14 file, I would not disagree with that

15 Q Do you agree -- what was the date that the trial
16 started?

17 A Without looking at my file, it's tough to say
18 It was some time mid to late September, I believe of 2004

19 Q Does the 15th sound right?

20 A That sounds right to me

21 Q So you were appointed on July the 8th of 2004?

22 A Yes, sir

23 Q And you went to trial on September 15th?

24 A I think I was -- I'm going to make one

25 correction I think I might have been appointed prior to
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 July 8th, but it would not have been more than a week or
2 two at the most I think you know what I'm saying I was
3 verbally instructed by Judge Cole that I would be in the
4 case, but nothing significant had happened until this
5 date, July 8th, and then it went to trial the date you
6 mentioned Yes, sir

7 Q And that date July 15th was of the same year you
8 were appointed?

9 A It was of the same year It would have been
10 early July of 2004 and the trial was in mid to late
11 September of 2004

12 Q If I showed you the trial transcript --
13 Mr Sumner, I'm showing you Volume 1 of 4 of the trial
14 transcript

15 A I'm holding it now

16 Q If you went back two pages ---

17 A From the beginning?

18 Q Yes, sir Take a look at that and see if that
19 will help you determine what date the trial started

20 A Sure If you'll give me just a moment
21 September 13th of 2004

22 Q So the trial started September 13th of 2004

23 A Yes, sir

24 Q While you may have gotten appointed a week or two
25 before on July 8th, what was done between the time you

Steve Sumner - Direct Examination

1 were appointed and the time of preparation of trial that
2 you picked up the discovery on July 8th?

3 A Mr Nettles, the only thing I remember was I
4 believe that I made a list of potential people who would
5 help me with the trial, and again, totally from my
6 recollection, I believe I began making phone calls to
7 various doctors and or mitigation specialists and/or
8 social workers regarding their availability I believe I
9 did that, but I can't be for sure on that

10 Q Well, let me ask you this, how many days was it
11 from the time you got the discovery until the time you
12 went to trial?

13 A It would have been from July 18th of 2004 until
14 September 13th of 2004

15 Q When you picked up the file on July 8th, what
16 investigators had been retained in preparation for the
17 trial of this case?

18 A I don't recall that any had been retained at that
19 point

20 Q When you picked up the file on July 8th, what
21 school records had been obtained in preparation for trial?

22 A I don't believe or recall that any had been

23 Q When you picked up the file on July 8th, what
24 health records belonging to Kamell Evans had been
25 obtained?

Steve Sumner - Direct Examination

1 A I don't recall that any had been

2 Q What, if any, do you assign to a complete set of
3 health records of a individual charged in a capital case?

4 A I would say that it is important if a
5 determination or if I have received any indication from --
6 I'm assuming that I'm the attorney on the case, Judge, I
7 would say that health records had been important to me
8 when and if I had felt that there were any issues in that
9 area of mental or physical health

10 Q Let me make sure I got this straight, in your
11 mind what you do is you find out if there are any sort of
12 health issues either mentally or physically, and then once
13 you make a decision that that may or may not be or that
14 may or may not exist, then you go out and get the health
15 records?

16 A That would be correct and that would be the way
17 that I approached Mr Evans case

18 Q So you wouldn't view the health records as a way
19 to determine whether there may be health issues either
20 mentally or physically?

21 A No I would say no, but I'd like to expand on
22 that I probably would, typically, Judge, in a case like
23 that look to see some indication that a person had a
24 physical or mention, emotional difficulty before I would
25 think to get the health records or mental health records

Steve Sumner - Direct Examination

1 Q What psychologists had been retained as of July
2 8th?

3 A None that I can recall

4 Q What mental health professional had been retained
5 as of July the 8th?

6 A None that I was aware of or can recall

7 Q Had a psychologist been obtained as of July 8th?

8 A No, sir I don't believe anybody that you had
9 mentioned had been retained at this point

10 Q Had a pathologist, according to the record, been
11 obtained as of July 8th?

12 A No, sir

13 Q Did you retain anybody?

14 A Prior to the trial of the case?

15 Q Yes

16 A Yes, sir, I did

17 (Fax from the Solicitor's Office marked as
18 Applicant's Exhibit No 14 for identification)

19 Q Did you receive what's been marked for
20 identification purposes Petitioner's 14, for ID purposes
21 at this time? Did you receive this fax from the
22 Solicitor's Office?

23 A I believe that I did I don't have an direct
24 recollection of it, but I think so The fax cover sheet
25 is to me and the Order underneath it is to me so I would

Steve Sumner - Direct Examination

1 say, yes

2 Q Did you sign that Order?

3 A I do not recall at this moment if I signed it or
4 not, but if I could see the Order, I would ---

5 Q This is what we've got You're holding what
6 we've got This came out of your file

7 A Okay I don't recall whether or not,
8 Mr Nettles, I signed this Would it be a part of the
9 records, if ---

10 Q We don't have that, that's why I was asking you
11 if you signed it We'll just leave that as ID

12 A Okay

13 Q So if you'll just put that on the left side so we
14 don't get it mixed up

15 A Sure

16 Q You did hire some experts to help you with this
17 trial

18 A Yes?

19 Q Who would have been the first one you hired?

20 A I will go from memory now at this point I have
21 files regarding, I believe, the experts that were retained
22 in my file I don't remember the specific order, if that
23 is important I can look and see Let's see here, from
24 memory, it would have been, I believe, a lady by the name
25 of Dale Davis, I believe was the first person I got

Steve Sumner - Direct Examination

1 involved I think Ultimately Ms Davis -- we parted
2 ways and she got out of the case I believe she was the
3 first one

4 Q Would you take a look at, please, Appellate for
5 ID 15?

6 A Yes, sir, I received that letter

7 Q You received that letter and you read that
8 letter

9 A I did

10 MR NETTLES Your Honor, at this time I
11 would introduce Appellate's Exhibit 15 into evidence which
12 is a letter to Steve Sumner from Ms Dale Davis

13 MS BROWN I have no objection

14 THE COURT I never did hear what Appellate's
15 14 was

16 MR NETTLES Well, he didn't sign it so I
17 didn't move it into evidence

18 (Letter from Ms Dale Davis marked as
19 Applicant's Exhibit No 15 for identification was admitted
20 into evidence)

21 BY MR NETTLES

22 Q You received this letter?

23 A I received this letter

24 Q And what is the date of that letter?

25 A July 21st of 2004

Steve Sumner - Direct Examination

1 Q You don't have to read that whole letter --
2 actually, do Would you please publish that letter to the
3 Court

4 A I'd be happy to It's addressed to me and it's
5 regarding the State versus Kamell Evans and it's dated
6 July 21, 2004 It's from Dale M Davis, Criminal
7 Mitigation Services, which is what she apparently does
8 business as "Dear Steve, I enjoyed talking to you today
9 about Kamell's case and I am sending the requested
10 information My resume and affidavit are enclosed The
11 proper preparation of the mitigation in a death penalty
12 case requires a thorough social investigation of the
13 defendant's background All records of any type i e
14 birth, school, medical, jail, mental health, etc related
15 to his past must be collected and reviewed Interviews of
16 multiple family members, friends, teachers, employers,
17 must be conducted Based on the information gained from
18 these sources, additional investigation and the need for
19 expert consultation is a possibility A case of this type
20 generally requires 300 to 400 hours to complete
21 discounting traveling time My hourly fee is \$50, plus
22 mileage and expenses (postage, long distance, calls, copy
23 fees, office supplies, unless provided by the attorney,
24 etc) I just completed work on a case here in Charleston
25 that resulted to a plea to life last week I have four

Steve Sumner - Direct Examination

1 other death penalty cases pending, one in South Carolina
2 and three in Georgia One of the Georgia cases is
3 scheduled go to go trial on October 4, 2004, and it will
4 not be continued None of the other cases have trial
5 dates right now As we discussed, I will see Kamell at
6 the jail on Thursday and then we will cortact each other
7 after the visit I look forward to meeting you With
8 warmest regards, Dale M Davis, Capital Mitigation
9 Specialist "

10 I do recall this letter, Judge Hill, and I do
11 recall her resume and affidavit were enclosed with it, and
12 I believe it was signed and the one in my file had been
13 signed?

14 Q What's your understanding then of the duties of a
15 mitigation investigator?

16 A The duties of the mitigation investigator,
17 Mr Nettles, as I understand them, would be as defined
18 primarily in Ms Davis' letter I would agree with the
19 letter in terms of it would be the mitigation specialist
20 role to collect any of this type of information and to
21 interview family members and friends and teacher, so I
22 feel that Ms Davis at this time in 2004 stated what a
23 mitigation specialist would do

24 Q At this point she starts on July 21st and
25 according to that letter is going to go see Kamell Evans

Steve Sumner - Direct Examination

1 the next day?

2 A That is correct, Mr Nettles, going totally from
3 recollection, that she might have begun work earlier than
4 that maybe like around the 15th or somewhere in that
5 neighborhood We had reached a verbal agreement regarding
6 her entering the case and she might have begun roughly a
7 week earlier, but it would have been close to this date

8 Q The 22nd is the first time she goes to see Kamell
9 and until the date of the trial, that was 53 days before
10 the trial started?

11 A I'm going to go with your math I would feel
12 like that's correct

13 Q Now, between July the 8th and the July 22nd when
14 Ms Davis went to go see Mr Evans, what school records of
15 Kamell's had you gotten

16 A I do not recall that any had been gathered at
17 that point I believe that the school records going
18 totally from memory were actually gathered by another lady
19 that succeeded Ms Davis and Ms Lenora Topp I don't
20 recall any that I gathered I may have been in the
21 process of gathering them or requesting them I'm just
22 not sure

23 Q What medical records had you gathered between
24 July 8th and July the 21st?

25 A None that I can remember

Steve Sumner - Direct Examination

1 Q What criminal records of Kamell had you gathered
2 between July 8th and July 21st?

3 A You're talking about criminal history?

4 Q Yeah

5 A I believe his criminal history had been included
6 in the discovery of Mr Richey and I had reviewed that

7 Q What family members had you spoken with of Kamell
8 Evans between July 8th and July 31st?

9 A I'm reflecting I believe I had spoken with his
10 father and a sibling All around that time from my
11 recollection it was happening very fast, almost
12 concurrently I believe around that time or before the
13 21st or right around that time I had spoken with his
14 father and I believe his sister

15 Q Is it possible that meeting took place on the
16 23rd?

17 A Yes

18 Q On the 23rd, did you meet with his mother and his
19 father, Dr Evans, Dale Davis, the investigator, and
20 George Martin at one time in your office?

21 A I don't remember

22 Q Well, at any rate you do know that on the 22nd,
23 Ms Davis went to see Mr Evans for the first time

24 A I do believe, yes?

25 Q On the 23rd, you can't remember whether or not
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 y'all had sort of an omnibus meeting?

2 A I don't remember

3 Q That's fair Now, let me ask you this, after
4 Ms Dale Davis went to go meet Kameil Evans, do you
5 remember what, if anything, she shared with you about
6 possible mitigators?

7 A No, I do not

8 (Email marked as Applicant's Exhibit No 15
9 for identification)

10 BY MR NETTLES

11 Q I'm going to show you what's been marked as
12 Applicant's 16 for ID

13 A I have it

14 Q Do you recognize that email?

15 A Give me just one second

16 Q Sure

17 A I believe that I received this It is marked as
18 being from Dale Davis at BellSouth net to me, Steve
19 Sumner, BellSouth net, and I believe -- I can't recall
20 actually viewing it, but I believe that I did

21 Q It has your heading up there and it's printed out
22 at your office

23 A It appears to come from my office, yes, sir In
24 fact, it appears to come from my file

25 MR NETTLES Your Honor, at this time I'd
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 move with no objection Appellate's 16 from ID into
2 evidence

3 MS BROWN No objection

4 (Email from Dale Davis marked Applicant's
5 Exhibit No 16 for identification was admitted into
6 evidence)

7 BY MR NETTLES

8 Q This email was sent to you on July 18th?

9 A Yes, sir

10 Q And, certainly if want you to, you can publish
11 the whole thing, but I would like you look at the second
12 paragraph and publish the second paragraph

13 A Sure

14 Q And this is from Ms Dale Davis

15 A That is correct / This is an email marked as
16 Plaintiff's Exhibit A-16 from Dale Davis, and email to me
17 It was sent on Wednesday, July 28th at 7 03 p m , that
18 would be 2004 When I received it, I presume, would be
19 the next day

20 "I very much want to work on Kamell's case as
21 I enjoyed meeting him and his sister and to a lesser
22 degree his dad I believe there are multiple issues of
23 mitigation to investigate, possible low IQ, abusive
24 father, neglectful mother, poverty, neighborhood
25 conditions, and of particular interest the lead poisoning

Evans versus State - Day 2

Steve Sumner - Direct Examination

1 as a toddler and the treatment he received for it It
2 will take some time and skill to flush those records out,
3 but I believe that its somewhere in Ohio's environmental
4 records related to this issue There have been many
5 lawsuits in resulting databases of addresses of children
6 related to lead The exposure to lead in infancy related
7 to children is critical It can relate to many problems
8 There's a mountain of research demonstrating relating
9 problems "

10 Q Let me ask you this, did you forward this email
11 to your co-counsel?

12 A I do not recall doing that

13 Q What did you know about the possibility of lead
14 poisoning on either the 28th or the 29th of July of 2004?

15 A Nothing other than what was referenced herein

16 Q Based on this would you believe that that was an
17 issue that needed to be developed for the proper
18 mitigation in this case?

19 A At that point I left all those type issues to
20 Lenora Topp who was the succeeding person to Dale Davis

21 Q When was Lenora Topp hired?

22 A I do not recall specifically You may know from
23 your review of the file, Mr Nettles It would have been
24 sometime in either, I'm thinking, late July or early
25 August

Steve Sumner - Direct Examination

1 Q Let me ask you this, too Would you go down to
2 the fifth paragraph that begins with, "It seems
3 unconscionable "

4 A Yes, sir

5 Q And read that paragraph

6 A "It seems unconscionable to me that a judge would
7 expect you to be ready for trial in such a brief time when
8 you have just gotten into the case You have a private
9 practice with many dates already scheduled You can not
10 simply ignore the rest of your clients to prepare for a
11 death penalty case The issues in these cases are so
12 complex, it requires some specialized training Surely he
13 will allow time for you to better familiarize yourself
14 with the case in preparation for trial as well as do a
15 complete and thorough mitigation investigation as required
16 by Wiggins Can you make a motion setting out those
17 issues At least that would be in the record for the PCR
18 that will surely come later "

19 Q Now, was a continuance discussed at that time
20 around the 28th, 29th, 30th?

21 A Between who?

22 Q You and anybody

23 A I believe from my recollection that it was
24 discussed between myself and Mr Goldsmith I believe it
25 was discussed between myself and Ms Davis

Steve Sumner - Direct Examination

1 Q What was decision did that culminate -- was there
2 a decision?

3 A I do not believe that the case was continued by
4 Judge Cole

5 Q Did you ask?

6 A Yes

7 Q You asked for a continuance

8 A I did I asked for a continuance As I was
9 looking through the file for the past few weeks and there
10 is a motion for a continuance, but I do not recall exactly
11 when it was argued or when it was presented

12 Q Give me one second, Your Honor

13 A There was a motion -- can I continue with my
14 answer?

15 Q Sure, go ahead

16 A There was a motion -- Judge Hill, there was a
17 motion for continuance that was filed on September 3rd,
18 2004 I can't read the stamp-date on it, but it appears
19 to me to be September 3rd, 2004 at 2 29 p m is when it
20 was clocked in?

21 Q This is a portion of the trial transcript and if
22 you look there at the bottom The trial transcript I'm
23 referring to is 987 Would you be kind of enough, and
24 start at the bottom with you first motion is in the trial

25 A Yes, sir It starts at the bottom of Page 985,
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 Judge You want me to publish it?

2 Q Publish it

3 A This is me speaking to Judge Cole

4 "MR SUMNER The first motion is for a
5 continuance It is not numbered It was filed on
6 September 3rd and served upon the State That
7 tentatively, Your Honor, that motion was filed at the
8 request of the defendant As an officer of the Court, I
9 can not tell you that I'm not ready to proceed I cannot
10 tell you that Mr Goldsmith would say that either I did
11 file the motion and I did want to bring it to the Court's
12 attention Mr Evans did ask if I filed it and I did

13 "THE COURT All right You're representing
14 to the Court that you have done all the preliminary
15 investigation and preparation that you need to do and that
16 you are prepared -- you and Mr Goldsmith are prepared to
17 defend the case and to present a case that Mr Evans
18 wishes to present

19 "MR SUMNER Yes, sir

20 "THE COURT All right Motion for a
21 Continuance is denied "

22 Q So let's go back then, on the day that you said
23 that to the Court ---

24 A Okay

25 Q Let's go back to the letter that Lerora Topp
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 wrote you

2 A You mean Dale Davis?

3 Q Dale Davis

4 A Is that who you're referring to?

5 Q I'm talking about Appellate 15 that's in
6 evidence

7 A It was from Dale Davis

8 Q When you made the representation to the Court on
9 the first day of trial that you were ready, and previously
10 you discussed that the letter that Dale Davis wrote,
11 Appellate 15, contained what needed to be done for a
12 proper representation, correct?

13 A Yes, from the mitigation specialist I believe
14 those are the topics that a mitigation specialist would
15 cover

16 Q When you started the trial on the 15th and made
17 this representation to the Court, did you have as Ms Dale
18 Davis says in her July 21st letter, did you have all of
19 his birth records on that date on the 13th when you
20 started trial?

21 A Every record from the time of his birth?

22 Q Yes, his birth records

23 A Are you talking about like his birth certificate?

24 Q I'm talking about his birth records, his
25 childhood health records, all of his medical records

Steve Sumner - Direct Examination

1 A No, I don't believe so

2 Q When you made that representation on the 13th,
3 did you have all of his school records?

4 A I recall having the school records, I believe,
5 from junior High school, and high school and college

6 Q When you made that representation on the 13th
7 that you were ready to go to trial, did you have the
8 school records from junior high school and below?

9 A I believe I had a portion of junior high school
10 I can't recall right now, Mr Nettles, but I did not have
11 elementary school records

12 Q When you made that representation on the 13th
13 that you were ready, did you have a complete set of his
14 medical records?

15 A I do not believe so

16 Q When you made that representation on the 13th
17 that you were ready, did you have interviews of multiple
18 family members?

19 A Yes

20 Q Had anybody attempted to interview his teachers
21 in Cleveland, Ohio?

22 A I believe Ms Topp had interviewed some people
23 I can not recall right now She would send things to the
24 file of who she had interviewed and who she had spoken
25 with I can't remember if she interviewed anybody from up

Steve Sumner - Direct Examination

1 there or not

2 Q Do you ever remember her asking to go to
3 Cleveland, Ohio?

4 A I do not remember her asking to go to Cleveland,
5 Ohio Specifically, I would probably have to defer to her
6 recollection, Mr Nettles, on that I think there was at
7 some point some discussion of her going to Cleveland,
8 maybe, but it's been five years ago and I just can't
9 recall

10 Q Do you think it would be a good idea for a
11 mitigation investigator to go to Cleveland, Ohio in
12 anticipation for a capital case assuming the child had
13 lived there through the seventh grade?

14 A No

15 Q You don't think it'd be a good idea?

16 A Would anything be a good idea -- could you have
17 done more preparation, yes I did not see any reason, in
18 my representation or interaction with Mr Evans, that that
19 would be necessary to do

20 Q What would trigger your thinking it would be
21 necessary?

22 A Probably if I'd have any difficulty communicating
23 with him or if I had been told, I guess, anything that I
24 felt like was significant Then, again, this is five
25 years ago I'm having difficulty remembering everything

Steve Sumner - Direct Examination

1 that went on, but it never really occurred to me as one of
2 the attorneys that records from the elementary school
3 would be critical

4 If I could just say one other thing This
5 letter from Ms Davis, I don't know -- I'd have to get her
6 testimony -- It struck me as kind of a form letter type
7 communication to me regarding, "all records must be
8 examined, people must be interviewed, things of that
9 nature " Again, I felt like -- I guess to answer your
10 question, I believe Ms Topp had done a lot of the work
11 I did not feel that the elementary school records were
12 necessary

13 Q You didn't feel it was necessary to send anybody
14 up there to talk to family members?

15 A You know, Mr Nettles, I don't think so because I
16 believe that a good portion of those folks had come to
17 Greenville or had been on the phone with Ms Topp I
18 believe that she had a lot of interactions -- some
19 interactions with his mother and his sister, and I can not
20 recall what other people that she spoke with I believe
21 she spoke with them on the phone on frequent occasions

22 THE COURT I'll tell you what Let's just
23 break for lunch and we'll reconvene at 2 15

24 (Whereupon, there was a lunch break)

25 THE BAILIFF All rise, the court will come
 Evans versus State - Day 2

Steve Sumner - Direct Examination

1 to order Please be seated

2 THE COURT Thank you I apologize for
3 running behind Can I see the lawyers up here for just
4 one second

5 (Whereupon, there was a bench conference)

6 (Sumner reply marked as Applicant's Exhibit
7 No 17 for identification)

8 Okay, Mr Nettles

9 BY MR NETTLES

10 Q Mr Sumner, I believe one of the things we were
11 talking about was you had received an email from, which
12 would have been Applicant 16 from Ms Dale Davis from you
13 sort of laying out some -- why don't you just go to
14 Applicant's 17

15 A Okay I believe we did review Applicant's 16 and
16 I have Applicant's 17

17 Q Okay

18 A In my hands now

19 Q Applicant's 17 for id purposes, is the bottom
20 part of that the exhibit of Applicant 16? It's an email

21 A It's my reply to Applicant's 16

22 Q So you wrote the top part of that?

23 A That is correct

24 Q Did you CC anyone else on that email?

25 A It does not appear to me, no, it does not
Evans versus The State - Day 2

Steve Sumner - Direct Examination

1 Q You did not CC your co-counsel?

2 A That's correct

3 MR NETTLES At this time, the Applicant
4 would move what's previously marked as Applicant's 17 for
5 id into evidence

6 MS BROWN No objection, Your Honor

7 THE COURT It's in evidence

8 (Sumner reply marked as Applicant's Exhibit
9 No 17 marked for identification was admitted into
10 evidence)

11 BY MR NETTLES

12 Q Just to summarize, the bottom part of the email
13 of 16 was her laying out what her essentially what she
14 thought needed to be done and she felt there might needed
15 to be a continuance?

16 A Yes

17 Q Is that a fair assessment?

18 A Yes, that's a fair assessment

19 Q Please publish for the Court your response to
20 that

21 A My response was, "Thank you for your letter,
22 Dale I made need an affidavit from you on this point I
23 have alerted the prosecutor to his problem I will be in
24 touch when I have more info Steve "

25 Q And that email was sent on what day?

Steve Sumner - Direct Examination

1 10 46 a m

2 (Letter dated July 30, 2004 marked as
3 Applicant's Exhibit No 18 for identification)

4 BY MR NETTLES

5 Q Now, would you please look at what's previously
6 been marked for ID purposes as Applicant's 18 Do you
7 recognize that letter?

8 A I do

9 Q Did you receive this letter?

10 A I did

11 Q Did you place it in your file?

12 A I believe that I did, yes

13 Q To make sure you and I are looking at the same
14 thing, its' a letter from Lenora Top to you?

15 A Yes

16 Q Dated July 30th, 2004?

17 A Correct

18 MR NETTLES The applicart would move what's
19 previously been marked for identification purposes 18 into
20 evidence as Applicant 18

21 MS BROWN No objection

22 THE COLRT So noted

23 (Letter marked as Appellate Exhibit No 18
24 for identification was admitted into evidence)

25 BY MR NETTLES

Evans versus State - Day 2

Steve Sumner - Direct Examination

1 Q Who is Lenora Topp?

2 A She is a mitigation specialist who, I believe,
3 practices out of Asneville, North Carolina She was
4 referred to me I can not recall who referred her to me
5 It might have been Mr Goldsmith, but that's what she
6 does

7 Q Is she a mitigation specialist?

8 A To my knowledge, yes

9 Q She was taking -- on this time was she an
10 addition to or to replace Dale Davis?

11 A To replace her

12 Q Please publish for the Court the letter July
13 30th, which is Applicant 18

14 A Sure "Dear Steve, thank you for taking the time
15 this morning to speak with me regarding Kamell Evan's
16 case My resume is enclosed and the affidavit will be
17 forthcoming As you are well aware proper preparation of
18 the mitigation in a death penalty case requires a thorough
19 social investigation of the defendant's background All
20 records of any type related to his past must be collected
21 and viewed Interviews of multiple family members,
22 friends, teachers, employees, et cetera, must be
23 conducted Additional investigation is a possibility
24 based on information received in this case Also, in this
25 case, a trip to Cleveland, Ohio must be made in order to

Steve Sumner - Direct Examination

1 collect records and especially to interview members of
2 Mr Evans' immediate family Mr Evans' grandmother and
3 his aunts, uncles, and cousins live in Ohio In addition
4 to Ohio, it possible that a trip to Atlanta, Georgia will
5 be necessary A case of this type should require
6 approximately 100 to 150 hours to complete discounting
7 family time My hourly fee is \$50 plus mileage and
8 expenses (postage, long distance calls, copy fees, plane
9 fares, hotels, out of state fares and so forth) Thank
10 you so much for asking for my assistance in this very
11 important matter I look forward to working with you and
12 Kamell Evars Sincerely, Lenora Topp "

13 Q When you received this letter of July 30th, at
14 that time had Ms Topp been retained by you?

15 A I know, Mr Nettles, I believe -- my recollection
16 is that we had reached a verbal agreement for her to come
17 into the case Whether or not she had been formally
18 approved by the court, I can't recall

19 Q Did anybody ever got to Cleveland, Ohio?

20 A To my knowledge, no

21 Q Did anybody, and I'm referring to this letter
22 here, did anybody ever go speak to his grandmothers and
23 aunts in Cleveland, Ohio?

24 A I don't believe anybody ever went to Cleveland,
25 Ohio to speak to the aunts and grandmothers My

Steve Sumner - Direct Examination

1 recollection is that Ms Topp did conduct some or, I
2 guess, multiple interviews over the phone with family
3 members

4 Q Did anybody ever go to Ohio to talk to his
5 cousins?

6 A To my knowledge, no

7 Q Let me ask you this, then, when you went to trial
8 on September 13th, had all records of any type relating to
9 his past been collected and reviewed?

10 A I would not say all records I would say some
11 records had been retained and examined

12 Q So, at least, she believed, Ms Topp, based on
13 this letter and your understanding was she believed what
14 in terms of the need to gather records?

15 A This letter was very similar to the one received
16 by Ms Davis and it, I think, is pretty self-explanatory
17 as to what she felt at this point on July 30th, some
18 things that she needed to take a look at an examine

19 Q Now, on August 10th, did you have a phone
20 conversation with Ms Davis?

21 A I do not recall that off hand

22 Q Did you at any point let Ms Davis know that she
23 was being replaced by Ms Lenora Topp?

24 A I believe I did

25 Q Do you know when that was?

Steve Sumner - Direct Examination

1 Q Do you know when that was?

2 A I do not

3 Q Why did you replace Ms Davis at this time?

4 A My recollection is Ms Davis told me that she
5 could not devote the amount of time necessary for
6 Mr Evans' case if it were not going to be continued, and
7 I told her I did not think it would be continued and I
8 believe she said I can't do this I believe is what she
9 said

10 Q The July 30th letter when she said a trip to
11 Cleveland must be made, you disagree with her on that?

12 A If I can expand on that just a little bit, when
13 she said a trip to Cleveland must be made to interview
14 members of the Evans' family, that was something I believe
15 she did over the telephone And in order to collect
16 records, I'm not sure she would need to be in Cleveland to
17 actually do that?

18 Q She certainly thought she need to do that

19 A On July 30th, she thought a trip to Cleveland
20 must be made to collect records and interview memooers of
21 the Evans' family?

22 (Ron Platt interview marked as Applicant's
23 Exhibit 19a for identification)

24 (Scott Parker interview marked as Applicant's
25 Exhibit 19b for identification)

Steve Sumner - Direct Examination

1 BY MR NETTLES

2 Q I draw your attention to what's been marked as
3 19b

4 A There is a 19a and 19b I just wanted to be
5 sure I'm holding a 19b which is an interview taker by
6 Scott Parker by Lenora Topp

7 Q Let's go to 19a, I apologize 19a is an
8 interview of Ron Platt Did you receive this interview?

9 A I believe that I did and I believe it's a part of
10 the file

11 MR NETTLES At this time, we would move to
12 introduce 19a into evidence

13 MS BROWN No objection

14 THE COURT It's in evidence

15 (Ron Platt interview marked as Applicant's
16 Exhibit Number 19a for identification was admitted into
17 evidence)

18 BY MR NETTLES

19 Q Did you receive this interview?

20 A I believe that I did

21 Q Did you read it in preparation for trial?

22 A Yes, sir

23 Q This is a memorialized of an interview that took
24 place on August 19th?

25 A That's what I took it to be

Steve Sumner - Direct Examination

1 did y'all call Ron Platt to the stand?

2 A I don't remember

3 Q Let me ask you this, let's go back to the second
4 page

5 A Of 19a?

6 Q Yes

7 A I'm there

8 Q Would you please publish starting a quarter of
9 the way down, "Mr Platt felt Mr Evars had no," and down
10 to finish with Mr Platt never heard Mr Evans discuss

11 A Sure These are in a bullet point format just
12 for the record Beginning where you asked me to,
13 "Mr Platt felt Evans had no family backing or support and
14 that's why he dropped out of college He was not given
15 any money so he could socialize like his peers Evans had
16 a since of wanting to be part of a crowd and maybe that's
17 why he did the tattoo thing Mr Platt never heard Evans
18 discuss gang activity or wanting to be in a gang "

19 Q Now, the reason that Mr Platt was interviewed
20 was why?

21 A I would imagine

22 Q Let me help you with this Go to the first
23 bullet point

24 A I believe that Mr Platt was a friend of
25 Mr Evans and his name had been furnished to me by

Steve Sumner - Direct Examination

1 Mr Evans and his name had been furnished to me by

2 Mr Evans as a potential character type witness

3 Q Let's go to 19b

4 A Okay I have it

5 Q Did you receive this memo?

6 A I believe I did

7 Q And it was in your file?

8 A Yes, it should be

9 MR NETTLES At this time we would like to
10 move Applicant's 19b into evidence

11 MS BROWN No objection

12 THE COURT Admitted

13 (Scott Parker interview marked as Applicant's
14 Exhibit No, 19b for identification was admitted into
15 evidence)

16 BY MR NETTLES

17 Q Could you read through, "The coach really didn't
18 know why Evans dropped out of school "

19 A I'll be happy to This is also in a bullet style
20 format for Scott Parker taken by Lenora Topp dated August
21 19, 2004 "Coach Parker remembered Kamell Evans as being
22 a great kid He was so surprised by the incident Kamell
23 Evans was a good football player and even though he seemed
24 to walk the line sometimes, it was never to the point of
25 discipline Coach Parker thought the tattoos and "gang
Evans versus The State - Day 2

Steve Sumner - Direct Examination

1 the image seemed to be portrayed by the black male
2 students not just by Kamell Evans Kamell Evans was
3 constantly polite Never had the wrong attitude toward
4 him or any of the team players "

5 Do you want me to continue?

6 Q No, that's enough

7 (Memo marked as Applicant's Exhibit No 20
8 for identification)

9 BY MR NETTLES

10 Q Let's go to what's previously been marked
11 Applicant 20, did you receive this memo?

12 A Yes, I did receive it and it is a part of my
13 file

14 MR NETTLES At this time, the applicant
15 would move what's previously marked 20 into evidence

16 MS BROWN Can I just have one moment,
17 please We had previously looked over this, but if I
18 could have just one moment

19 THE COURT Sure Take your time

20 MS BROWN No objection to the redacted
21 copy

22 BY MR NETTLES

23 Q The copy you have there, does it have redactions?

24 A It does It has been redacted

25 MR NETTLES At this time we move the
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 MR NETTLES At this time we move the
2 redacted copy into evidence

3 THE COURT What number is this?

4 MR NETTLES This is 20

5 THE COURT All right

6 (Memorandum previously marked as Applicant's
7 Exhibit No 20 for identification was admitted into
8 evidence)

9 BY MR NETTLES

10 Q Go down to the bottom of Page 3

11 A Okay

12 Q And if you start there where it says, "When asked
13 what he knew about gang activity," read that and go all
14 the way down to the next bullet point

15 A For clarification, Mr Nettles, I believe that's
16 at the bottom of Page 2 "When asked what he knew about
17 gang involvement, Mr Peden said Mr Evans never talked
18 about gangs, but they were going to start a motorcycle
19 club He laughed and said that was the closest thing that
20 was ever said about a gang "

21 Q Now, let's talk about Applicant's 21 Did you
22 receive this letter?

23 A I believe I did

24 Q Was it in your file?

25 A I believe, yes

Steve Sumner - Direct Examination

1 what's marked as Applicant 21 into evidence

2 MR BROWN No objection to the redacted
3 copy

4 THE COURT All right

5 (Letter dated August 25, 2004 marked as
6 Applicant's Exhibit No 21 for identification was admitted
7 into evidence)

8 BY MR NETTLES

9 Q Is the copy you have there redacted?

10 A It is redacted

11 Q Would you refer to this as a common threads
12 letter?

13 A Common threads?

14 Q She discussed this as a common threads letter

15 A Basically, this memo, Judge, from Ms Topp was
16 kind of an update and a common thread that she would seam

17 Q Would you read the first two paragraphs?

18 A The first two paragraphs are as follows and it is
19 addressed to me dated August 25, 2004 regarding this case

20 "In regard to the interviews I have completed
21 so far, I have found several common threads that are
22 prevalent among associates of Kamell Evans many of whom
23 don't even know each other One of these threads is
24 Kamell Evans is known to be a dependable, hard working,
25 caring, loving and nonthreatening man " Next paragraph
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 "In addition to his personality attributes,
2 Kamell Evans was not known to associate with gang members
3 There's no evidence to show he ever joined a gang What a
4 former coach and a current friend relayed to me that they
5 felt some of Kamell's actions indicated he just wanted to
6 belong to an fit in with "the crowd" i e , wearing gang
7 style clothing while at college The fact was most of the
8 male African American students at North Greenville College
9 wore this style of clothing during this time "

10 Q Go to the second page It would be the first
11 full sentence that begins with "Both "

12 A Yes, sir

13 Q Please publish that

14 A "Both he and Christina starting getting the
15 tattoos together from Jay McKee, 515 North Lafayette, in
16 Shelby, North Carolina 704/481-0082 Would it be prudent
17 to send Scott Peterman, the investigator, to talk to
18 Mr McKee? He might have some helpful knowledge regarding
19 any association Kamell might have had with gangs "

20 Q Who was Scott Peterman?

21 A Scott Peterman was the, what I would call,
22 investigator on the case He was not a mitigation expert
23 he was just -- I don't mean just -- his role was simply as
24 an investigator much as a police officer

25 Q Did you send him out to speak to Jay McKee or

Steve Sumner - Direct Examination

1 Shelby, North Carolina?

2 A I do not believe that I did

3 Q Can you share with us why?

4 A No, I do not recall why I did not do that I
5 don't have any recollection of sending him there and I
6 don't recall him having this memo or not having it I'm
7 not sure if he reviewed it or not

8 Q How about Skip Golasmith?

9 A I do not believe that I sent this specifically to
10 Skip

11 Q Of the memos that we've previously been through,
12 did you send those to Skip?

13 A I don't believe I sent any of those to Skip that
14 I can recall

15 (Email marked as Applicant's Exhibit No 22
16 for identification)

17 BY MR NETTLES

18 Q Now, let's go to Applicant 22, do you recognize
19 this email?

20 A I recognize this email

21 Q Was this email in your file?

22 A I believe it is in my file

23 MR NETTLES At this time, I would like
24 Applicant's 22 for ID be moved into the evidence

25 MS BROWN No objection, Your Honor
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 THE COURT It's in evidence

2 (Email marked as Applicant's Exhibit No 22
3 for identification was admitted into evidence)

4 BY MR NETTLES

5 Q Who is this email from?

6 A Mr Nettles, I believe it's from George Martin

7 Q And who is George Martin?

8 A George Martin was another expert who was retained
9 by the defense as an expert, I believe, in the area of
10 incarceration

11 Q Was Skip Goldsmith included in this email?

12 A No, it was from him to me and CC to looks like
13 Lenora Topp

14 Q Would you please be kind enough to publish the
15 second paragraph

16 A "As Lenora pointed out in our discussion earlier
17 this morning, Kamell's gang involvement was probably more
18 that of a "wanna-be", but the tattoos would make it more
19 difficult for him to denounce gang affiliation It would
20 seems to me that we could pursue both sides of the matter
21 to our advantage He may be an inadequate wanna-be, but
22 he'll have to be treated like to real thing for a long
23 time "

24 Q Would you go down to the fourth paragraph, fifth
25 line where it starts with, "Mr Banks "

Steve Sumner - Direct Examination

1 A Give me just one second Would you point that
2 out for me

3 Q Sure

4 A You want me from there to the end of that
5 paragraph?

6 Q Yes

7 A Sure "Mr Banks went in to some detail about
8 another team mate who had kept in touch with Kamell prior
9 to his arrest, a Nicholas Wideman I gathered that Kamell
10 and Mr Wideman had talked by phone some time during the
11 course of the hostage negotiations at the Sapinoso home
12 Banks said that Wideman had initially tried to support
13 Kamell with home visits after the arrest, but had given up
14 because of Kamell's unrealistic expectation that the
15 charges would soon be dropped Officer Barks was
16 understandably not too keen on appearing in court, but
17 said he'd testify to Kamell's good behavior and adjustment
18 at GCDC," which would be Greenville County Detention
19 Center "Lenora, if you haven't already, it may be worth
20 your time to ask Kamell about him and perhaps, make
21 contact with Mr Wideman "

22 Q If you'd please go to what has previously been
23 marked as Applicant 23

24 A Okay

25 Q Now, were you included on this email chain?

Steve Sumner - Direct Examination

1 A Yes, sir, I was

2 Q As a matter of fact is the top response from that
3 email from you?

4 A That is correct

5 MR NETTLES At this time, the applicant
6 would be moving 23 from ID into evidence

7 MS BROWN No objection, Your Honor

8 (Email marked as Applicant's Exhibit No 23
9 was marked for identification and admitted into evidence)

10 BY MR NETTLES

11 Q At the bottom there, it appears to me that what's
12 happened is that Lenora is commenting on Martin's
13 suggestion about going to go see Nicholas Wideman

14 A That is what it appears to be, yes

15 Q Let's start at the bottom and let's publish what
16 she said and your question and what your response was

17 A This part of the email is from her to me
18 "Steve, for some reason I recall Wideman was not going to
19 be very helpful??? I guess it was Christina who had him
20 call that night Maybe I misunderstood about him and I
21 certainly would be glad to contact him if you wish
22 Signed Lenora "

23 Q Could you publish you response

24 A "I don't think so at this time "

25 Q "I don't think so at this time," was in response
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 to her question about what?

2 A I believe, going totally from memory and looking
3 at the context of the email, I believe the questions was
4 Steve, do you want me to interview Wideman, this
5 individual named Wideman, and I said, no, not at this
6 time, I don't really think we need to pursue that

7 Q Why not?

8 A I do not remember

9 Q If you look here, the next would be Applicant 24

10 A I have it?

11 Q Share with me what that is -- did you receive
12 this memo?

13 A Actually, I received this memo and there are some
14 notes in it from me

15 Q This was in your file?

16 A It was

17 MR NETTLES At this time applicant would
18 move 24 into evidence

19 MS BROWN No objection to the redacted copy
20 coming in

21 THE COURT It's in evidence

22 (Email marked as Applicant's Exhibit No 24
23 for identification was admitted into evidence)

24 BY MR NETTLES

25 Q Is there a redaction on that copy?
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 A There is

2 Q Would you please share with us whose handwriting
3 is that on there?

4 A The actual memorandum itself is from Ms Topp
5 The writing on it where I had gone in and highlighted and
6 made notes regarding my, I believe, my conversation with
7 Mr Young This is what, looking back at it, Mr Nettles,
8 is I believe what it is

9 Q It says, "Mr Young knew Evans," and read that
10 bullet point and the next bullet point

11 A "Mr Young knew Evans and his father didn't get
12 along He felt Mr Evans did not like his son " Do you
13 want me to continue

14 Q Yeah, but what I really wanted was the one below
15 Mr Evans -- "Mr Young knew Mr Evans worked in a detail
16 shop with his brother-in-law," and I want the line below
17 that

18 A I've got you now "When asked about his
19 knowledge of Evans and gang activity, he said, "If Kamell
20 had been in a gang, he would have told me "

21 Q And the next one under that

22 A "Mr Young said he didn't know when Evans would
23 have had time to be in a gang because after working at
24 UPS, Evans went home, took a snort nap and then went to
25 work at the detailing shop "

Steve Sumner - Direct Examination

1 Q Now, let's go to the next one

2 A You mean the next page?

3 Q Next exhibit

4 A Exhibit 25

5 Q Yes

6 A I've got it

7 Q Are there redaction on that?

8 A There is

9 MR NETTLES At this time, applicant would
10 like to move in what was previously marked 25 for ID into
11 evidence

12 MS BROWN No objection to the redacted
13 copy

14 (Barry Evans interview was marked as
15 Applicant's Exhibit No 25 for identification and admitted
16 into evidence)

17 BY MR NETTLES

18 Q This is an interview of who?

19 A This is bullet points from an interview with
20 Barry Evans, father of the defendant, Kamell Evans

21 Q The date that this interview took place was wner?

22 A September 5th of 2004 was the date of the
23 interview This memorandum to me was sent on September 7,
24 2004

25 Q This is roughly a week before trial?
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 A That would be correct

2 Q Do you have any other documentation of anyone
3 speaking to Barry Evans prior to this interview?

4 A Not unless it's in the file I don't know if
5 there are notes that I made regarding my conversations
6 with Mr Evans or not I don't know

7 Q Where does Mr Evans lives?

8 A Mr Evans lived in Greenville County

9 Q And this is an interview with him that took place
10 on September 5th?

11 A That's correct

12 Q It was type up September 7th

13 A That's correct

14 Q We don't know exactly when you got it, but it
15 presumably September 7th at the earliest?

16 A That would be correct

17 Q Now, there's a line that's underlined down there
18 Please publish to the Court what the underlined bullet
19 point says?

20 A "He will testify in court that there was physical
21 violence between them "

22 Q Let's read the line above it

23 A "Mr Evans said he should have left the family
24 long before he did because he and Renee were not getting
25 along "

Steve Sumner - Direct Examination

1 Q So on September 7th, would you agree with me that
2 you had evidence that the father would testify in court
3 that there was physical violence between he and Renee?

4 A Yes

5 Q Do you think that that is a relevant mitigator?

6 A That there was violence presence in the home?

7 Q Yes

8 A In general or in this specific case?

9 Q I only care about this specific case

10 A I'm sorry

11 Q In this case

12 A In this case, I thought that it was relevant,
13 however, Kamell Evans had stated to me in interviews that
14 I believe that he had said there were times that he
15 classified that there being abuse in the home and other
16 times he said there was not It was just a stern
17 disciplinary atmosphere As it related to this case,
18 Barry Evans, I believe, testified for the defense in the
19 mitigation phase I believe that is correct As a
20 litigation strategy, I did not believe it would be best to
21 bring out the violence there because of the overall
22 strategy that we kind of employed at that point

23 Q Really

24 A I'm sorry

25 Q Really

Steve Sumner - Direct Examination

1 A To the best of my recollection

2 Q What did you do to develop this piece of evidence
3 that you got on September 7th about there being violence
4 in the household?

5 A I believe, Mr Nettles, that I spoke to Kamell
6 Evans I believe that I spoke with Lenora Topp Again,
7 of course, this is five years ago I believe I spoke with
8 Lenora Topp I believe she sent email communications kind
9 of strategy type oriented things back and forth to me
10 about it

11 There was, I believe as part of my file, a
12 divorce decree cited -- I didn't recall it at the time,
13 but in preparation for this hearing -- cited physical
14 cruelty grounds as well So that would have been the
15 extent of it

16 Q So you never talked to Barry about it?

17 A I can't recall whether I spoke with him about it
18 or not

19 Q So just to be sure then, and I want you to think
20 carefully about it, thus far what you're telling us that
21 you did to develop this issue was, and I want to make sure
22 you got them all, was you talked to Lenora Topp

23 A I believe I spoke with her multiple times, I
24 believe, and again total recollection, regarding that
25 information

Steve Sumner - Direct Examination

1 Q You spoke to Kamell?

2 A I believe that I did, yes

3 Q And sometimes he said there was abuse and
4 sometimes he said there wasn't?

5 A My recollection is I believe that I have notes in
6 my file that with my conversations with Kamell that he had
7 said to me on different occasions sometimes I felt like
8 there was abuse or criminal domestic violence atmosphere
9 at the home, and at other times he felt that there was
10 just stern discipline

11 Q Did you talk to Reree about it, that would be his
12 mother?

13 A I do not believe so

14 Q What's previously been marked Applicant 26

15 A You want me to go to 26 now

16 Q Please Do you recognize that?

17 A Yes, sir It's interview notes in the bullet
18 style format in the manner that we've referenced before in
19 the hearing today from Lenora Topp dated September 7, 2004
20 referencing two interviews with Shat-ma Evars on August
21 11, 2004 and August 22, 2004

22 MR NETTLES At this time, Your Honor, we
23 would ask, I believe without objection, 26 be moved from
24 ID into evidence with the redactions made by the State

25 MS BROWN No objection to the redacted copy
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 coming in

2 THE COURT It's in evidence

3 (Shatima Evans interviews marked as
4 Applicant's Exhibit No 26 for identification was admitted
5 into evidence)

6 BY MR NETTLES

7 Q Who is Shatima Evans?

8 A Shatima Evans to my recollection is Kamell Evans'
9 older sister

10 Q And she lives where?

11 A She lived at the time of this, Mr Nettles, she
12 lived with the father in Greer

13 Q So you got the father and the sister living in
14 one household?

15 A That was my information, yes, sir

16 Q When they talked to Shatima, let's go down and
17 let's start with -- let's read down through the first
18 eight bullet points

19 A Number 1, "Shatima Evans who also goes by Tima as
20 evidenced by the name of her shop Number 2, she was born
21 in Cleveland and is five years older than Kamell Number
22 3, Ms Evans recalls living at 3427 Form (ph), Cleveland
23 Heights, Ohio prior to moving in order to attend college
24 Number 4, during the early years Tima recalls a lot of
25 fighting between her parents both verbal and physical

Evans versus State - Day 2

Steve Sumner - Direct Examination

1 When they were fighting the police often came to the house
2 because they were called by either her mother or the
3 neighbors Number 6, she does not know if her father was
4 ever arrested Number 7, after the fights, Shatima,
5 Kamell and their mother Renee sometimes left the house and
6 lived with maternal grandmother, Georgia Cargile Number
7 8, although her mother did not drink, her father was a
8 heavy drinker and Tima saw him snort coke "

9 Q Read the next two and go down to, "Mr Evans
10 moved to Springfield, Ohio "

11 A The next bullet, Number 9, "She said her father
12 would spank both her and Kamell with a belt that would
13 raise welts Number 10, she recalled the last time she
14 saw her parents fighting her father was holding her mother
15 by the hair on her head on the kitchen floor and hitting
16 her Number 11, apparently he pulled hair from Renee's
17 head Number 12, this was the last time the family was
18 together because Renee moved out for the last time and
19 they filed for divorce Number 13, Mr Evans moved to
20 Springfield, Oh "

21 Q By this time, by September 7th, would it be fair
22 to say that you've got two family members -- my
23 understanding Kamell is saying sometimes there's abuse and
24 sometimes there's not, right?

25 A Correct

Steve Sumner - Direct Examination

1 Q And now you've got two family members, the
2 sister, according to this memo gave some fairly detailed
3 examples of abuse

4 A I would say so

5 Q And the father saying he would corroborate that
6 in the previous memo the interview of Mr Barry Evans

7 A Correct?

8 Q Now, did you ever go interview the sister,
9 Ms Shatima Evans?

10 A I believe I don't know if I'd call it a formal
11 interview or not, but my recollection, Mr Nettles, she
12 came to the office six to ten times during the course of
13 my representing him She came in and spoke with me
14 Whether or not it was actually memorialized, I can't say,
15 but my recollection is she came by the office numerous
16 times

17 Q Mr Sumner, please look at what's previously been
18 marked 27 for ID

19 A Sure?

20 Q Do you recognize that memo?

21 A I do, yes, sir

22 Q Who prepared that memo?

23 A I did

24 MR NETTLES At this time, Your Honor, we
25 would move what's previously been marked as Applicant's
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 Exhibit 27 into evidence

2 MS BROWN No objection If it's redacted
3 to just the redacted copy coming in

4 BY MR NETTLES

5 Q Is there a redaction on that?

6 A No

7 MR NETTLES Do you want to look at it
8 again? He says there's no redaction

9 MS BROWN No objection

10 (Memorandum dated September 10, 2004 marked
11 as Applicant's Exhibit No 27 for identification was
12 admitted into evidence)

13 BY MR NETTLES

14 Q Go ahead

15 A Yes, sir, I have this It's a memo from me

16 Q To who?

17 A To me It's regarding the State of South
18 Carolina versus Kamell Evans, September 10, 2004 regarding
19 trial strategy and it is a single-spaced memo, Judge Hill,
20 that is probably about 50 lines

21 Q What was the purpose of this memo?

22 A The purpose of this memo was just exactly the way
23 I titled it, "Trial Strategy " The purpose was to just
24 write down in case there was ever a hearing such as today
25 what I was thinking about how to approach the case and
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 what all had been done to this point and just basically
2 everything that was on my mind about it

3 Q How far before trial was this done?

4 A It would have been done on the date September
5 10th It would have been done about three days before
6 trial

7 Q You discussed in the memo whether Kamell should
8 testify

9 A Would you mind telling me, Mr Nettles, what
10 portion of the memo that is? I'm sure I did I think it
11 was pretty extensive

12 Q On the second line done, "On the issue of Kamell
13 testify "

14 A "On the issue of Kamell testifying," yeah, I mean
15 this memo addresses, I think, a fair portion of kind of a
16 summary, a Readers Digest version so to speak, of my
17 conversations with Kamell, my conversations with Skip
18 Goldsmith, co-counsel He was the lead attorney, but I
19 was the second attorney, but we really functioned on the
20 same plane for decision making context

21 Q One of the other things you talked about was --
22 you go down to the bottom it says, "During the past
23 several weeks," ---

24 A I do see that

25 Q One of the things we're going to talk about is
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 one of the other things you discussed in your memo was
2 whether there was enough abuse

3 A Yeah, I did say that

4 Q And in your opinion as a trial strategy, you
5 didn't think there was enough abuse

6 A Well, when I say whether or not there was enough
7 abuse -- let me refresh my memory

8 Q It starts there ---

9 A I'll just read that "During the past few
10 weeks," this is a portion of the memo 8/27 authored by me
11 "During the past few weeks, Skip and I have talked about
12 the various angles we could take with the jury and our
13 presentation regarding this case specifically in the
14 anticipated mitigation phase of the trial We have
15 conflicting information from Kamell and others regarding
16 potential physical abuse which he endured as a child and
17 as an adolescent Barry Evans denied to me and Skip any
18 physical abuse Kamell has given conflicting information
19 on this point There have been interviews where he says
20 he feels like he was abused and other interviews where he
21 indicated it was more of a strong discipline but short of
22 abuse I notice in Dr Berg's report that he denied any
23 physical abuse to her in his interview with Dr Berg "
24 And Dr Berg was Dr Elin Berg who testified for the
25 defense "Some members of the family feel like there was
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 abuse Skip and I decided that there just is not enough
2 hard proof on this point to try and use physical abuse as
3 in his childhood in the mitigation phase of the trial "

4 Q Let me clear about this, the Barry Evans that you
5 say in your memo denied to you and skip any physical
6 abuse?

7 A Yes

8 Q Is that a different Barry Evans from the one that
9 told Lenora Top in Applicant 25 that he will testify in
10 court that there was physical violence between them?

11 A That would be the same person

12 Q When did Barry Evans deny to you and Skip that
13 there was physical abuse?

14 A At some point

15 Q The memo that you got from Ms Lenora Topp which
16 is Applicant 25 ---

17 A Correct?

18 Q --- when did that interview take place?

19 A That interview took place on September 5, 2004

20 Q And that's the one where he says he will testify
21 in court there was physical violence between them?

22 A That's correct

23 Q So five days later, you do a memo to file?

24 A Correct

25 Q And somewhere between the 5th and the 10th he's
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 told you he didn't take place, is that what you're
2 testifying to?

3 A Yes, that would be my recollection I dictated
4 this, "Barry Evans denied to me and Skip any physical
5 abuse I would believe, yes

6 Q So that would mean that you and Skip met with
7 Barry Evans sometime between the 5th and the 10th

8 A My recollection is, yes My recollection is that
9 Skip Goldsmith came to my office in Greenville and we set
10 aside a certain amount of time to just go through the file
11 and cover every point that we wanted to because the trial
12 was going to start, I believe, on the 13th, which I
13 believe was a Monday I think, and at some point in the
14 week or right leading up to at Barry Evans had come by my
15 office I want to say three to five times I was about
16 half as much, I think, as the sister came by and we would
17 speak a little bit about the case sometimes in part I
18 can't really recall what said every time he came by, but
19 at some point this memo reflects and I believe and my
20 testimony is I spoke to him about physical abuse and he
21 denied it

22 Q Now, let's be clear about this, you said that
23 Skip Goldsmith was there when he denied it?

24 A Yes -- well, no I'm saying that Barry Evans
25 denied to me and Skip any physical abuse What I don't

Steve Sumner - Direct Examination

1 know is if Skip spoke to him separately or if we were both
2 in there together because Skip and I did work out of my
3 conference room so I don't know if there could be separate
4 communication prior to my involvement or we were both in
5 there together?

6 Q So for that sentence to be true, one of two
7 things would have had to happen either (a) he said it when
8 you and Skip were there, or (b) he said it to you and
9 separately to Skip

10 A Absolutely correct He testified at trial

11 Q Was he asked about abuse?

12 A I don't recall

13 Q You want me to show you the trial testimony?

14 A Sure

15 Q I'm showing you the trial transcript which is
16 1665, Mr Evans takes the witness stand and he is off on
17 Page 1667 As a matter of fact, it's a witness you
18 called

19 A Okay

20 Q Please tell me if you asked him anything about
21 physical abuse?

22 THE WITNESS Just give me a second, Judge,
23 while I take a look over this

24 THE COURT Sure, take your time

25 THE WITNESS In your response to your
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 question about physical abuse, I did not directly ask him
2 about physical abuse I did ask him, "I'm going to ask
3 you a little bit about your family, a little bit about
4 yourself and we're going to talk a little bit about your
5 son," and that was the question that he answered

6 BY MR NETTLES

7 Q You said I'm going to ask him, but did you ask
8 him about the family life?

9 A I said, "Tell us about your children and your
10 family "

11 Q Is that the question that should have prompted
12 him to talk about the abuse in your mind

13 A Well, no I don't know if it would have prompted
14 him or not, what I'm saying is tell us a little bit about
15 your family He didn't testify about physical abuse

16 Q I'm just asking you ask the lawyer who put him
17 up, what was the question that was supposed to prompt him
18 to discuss that issue?

19 A Well, the question I guess would have prompted
20 him -- if he wanted to testify about it, tell us -- let me
21 go back to it, Mr Nettles I guess the question would
22 be, "Tell us about your children and your family " I
23 didn't stop him from testifying about any physical abuse
24 that he wanted to testify to He testified as a witness
25 in the trial He was under oath, he was sworn I mean,

Steve Sumner - Direct Examination

1 he didn't testify about it I did not directly ask him as
2 I memorialized in this memo about it because my
3 recollection of it is he denied to me and Skip any
4 physical abuse So he didn't testify about it at trial
5 I did not directly ask him about it He was a short
6 witness

7 Q This strategy memo that you did, are there any
8 other strategy memos that you prepared in preparation for
9 going to trial in this case?

10 A In this case?

11 Q Yes

12 A Yes

13 Q Where is it?

14 A I would guess it would be, and I don't know if I
15 need to get down and go to my file or not, but I took
16 extensive notes regarding all of my interviews with
17 Mr Evans When I say extensive, Mr Nettles, sometimes
18 they would be, sometimes they wouldn't be I don't recall
19 another memorandum titled "Trial Strategy," but obviously
20 there were a lot of memos done to the file that you've had
21 access to

22 Q But this is the only trial strategy memo?

23 A There may be one more, but I'll have to defer to
24 you I know you've had the file

25 Q Let me ask you this, what memo did you do

Steve Sumner - Direct Examination

1 documenting your strategy for dealing with the pathologist
2 in this case?

3 A The pathologist meaning the cause of death or the
4 seen

5 Q Not only that, and my memory is and the
6 transcript says, the pathologist testified that the
7 account Kamell gave of the events that was inside the
8 house was inconsistent with the forensic evidence

9 A I'm going to defer to you on that point I don't
10 recall right now, but --

11 Q Let me ask you this, did you have anybody review
12 the forensic evidence

13 A Just the investigator, Mr Peterman

14 Q And is he a forensics expert?

15 A No, he was a former federal agent who went
16 through the discovery and looked through everything

17 Q Was he at any time a pathologists?

18 A To my knowledge, no

19 Q Was he ever a crime scene expert?

20 A I don't know, Mr Nettles I'd have to look back
21 at whatever was in the file for his sub-file, but I don't
22 recall it right now

23 Q Did you hire anybody to be a crime scene expert?

24 A No

25 Q Did you ever hire anybody to be a pathologist to
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 look at the pathology report?

2 A No, sir

3 Q Did you document, as you documented here, Kamell
4 taking the stand, what you perceive to be lack of
5 violence, did you document anything about what your
6 strategy was going to be to deal with the pathologist?

7 A To deal with the State's experts?

8 Q State's experts

9 A The only thing I did was I have notes in my file
10 where I interviewed Mr Evans and he told me that he
11 signed off -- I believe he did, Mr Nettles, I can look at
12 it and see -- where he signed off and said it happened the
13 way that's been relayed in the discovery I gave him
14 discovery -- I believe I gave him discovery He reviewed
15 it and said There's no issue, I shot him I believe
16 there's a note in there I put two bullets or I shot X
17 number of bullets And then after that, no, I did not
18 proceed with the pathologist's report

19 Q And never denied shooting him, but the account he
20 gave of what transpired that's in the discovery was
21 different than what the State pathologist said?

22 A I'm going to defer that to you I don't recall
23 that right now

24 Q Assuming I'm right, wouldn't that make your
25 client out to be less than truthful?

Steve Sumner - Direct Examination

1 A I'm sorry Would you repeat that again?

2 Q Sure If you're deferring to me that the State
3 pathologist testified that the forensic evidence was
4 inconsistent or was more importantly not consistent with
5 what Kamell said -- so Kamell's statement is in and then a
6 forensic pathologist says, look the forensic evidence
7 simply doesn't match that statement, then the implication
8 then, there is your client is not telling the truth

9 A That is correct I agree with that

10 Q Would it have helped your case if there had been
11 -- if a pathologist would have come in and say, you know
12 what, I'm a trained pathologist and this statement that
13 was given by this defendant is consistent with the
14 forensic evidence?

15 A Would it have helped in this case?

16 Q Yes

17 A No

18 Q Not at all?

19 A No

20 Q Why?

21 A Because guilt was never an issue in this case, in
22 my opinion, and it's memorialized in this trial strategy
23 memo The strategy was laid out to try to get through the
24 guilt phase as quickly as we could in order to get to the
25 mitigation phase because I didn't feel like it was an

Steve Sumner - Direct Examination

1 issue and the client has rumerously said to me on various
2 occasions that guilt was not an issue So that was -- I
3 mean there was no question -- my recollection,
4 Mr Nettles, is we where we were trying to head

5 Q Just one second

6 You are aware -- you were present -- that the
7 State argued that this was a gang style execution

8 A Yes, sir

9 Q You were aware that Kamell gave a statement that
10 was different than what the State said transpired in the
11 house?

12 A Yes

13 Q And Kamell did not say it was a gang execution,
14 did he?

15 A I don't believe he used the words "gang
16 execution"

17 Q As a matter of fact, what Kamell said in his
18 statement was he thought one of the guys was going for a
19 gun

20 A To my recollection, yes

21 Q The State portrayed this as a gang-style back of
22 the head execution, correct?

23 A My recollection, Mr Nettles, is they just
24 portrayed it as an execution They did not -- I think
25 that gang references and photographs were presented by the

Steve Sumner - Direct Examination

1 State I think that the gang angle, if you will, was put
2 out there by the State, but my recollection is that the
3 State just said that it was an execution more than it was
4 directly a gang execution

5 Q Just one second

6 A Sure

7 Q I'm going to present you Page 1757 of the trial
8 transcript, which would be -- I'm going to show you the
9 bottom of 1756 and going through 1757, Lines 1 and 2, the
10 closing argument of, I believe, it was Bob Airial

11 A Okay

12 Q Read those four lines for us?

13 A I'm sorry, could you tell me which lines again

14 Q These two down here starting at 25 and just go
15 through and stop on Line 3

16 A This is a closing statement from Bob Airial, Page
17 1756 and 1757 of the trial transcript starting at Line 23
18 "He was going to show Christina and she didn't cooperate
19 that you couldn't mess with him He was a Crip, gang
20 style, six popping, five dropping, six popping, five
21 dropping, and that's the Crip Number "6", and he planned
22 this execution to the smallest minute gangland detail "

23 Q So the question to you would be this, if you had
24 gotten an expert, a pathologist, to come in and say his
25 account -- because his account that he gave to police was

Steve Sumner - Direct Examination

1 what?

2 A I don't have the statement in front of me so you
3 probably have a better recollection of it right now

4 Q If I just represent to you in the interest of
5 time, that Kamell said he was in there and that Joe
6 started to go for a gun and he shot him down, right?

7 A I think that's correct, yes

8 Q Now, what effect would it have had on both your
9 mitigation and trial strategy, guilt or innocence phase,
10 if a pathologist had said, as opposed to the account that
11 Bob Airial gave, no, there is a way that what Mr Evans is
12 saying is correct? Would that have hurt you any?

13 A No, I don't think it would

14 Q Is it a possibility that it might have helped
15 you?

16 A Well, there are infinite possibilities

17 Q Of one of the infinite possibilities is one of
18 the possibilities that that would have helped?

19 A I guess it could have, Mr Nettles There never
20 was, in my mind, any issue about guilt And, again, not
21 to beat a dead horse, as I look back at this memo and just
22 laid out the strategy that we were using So the strategy
23 was to get through the guilt phase as quick as we could in
24 order just to get to the mitigation phase

25 Q If there was evidence that it was not a gang

Steve Sumner - Direct Examination

1 execution style murders would that have helped you in the
2 mitigation phase?

3 A Yes, I think it would have given some help To
4 what degree, I don't know

5 Q Let's understand, this trial strategy memo you
6 have here, Applicant's 27 --

7 A Yes

8 Q It was the trial strategy for both the first
9 phase and the second stage?

10 A Yes I actually see Rick Beeds (ph) out there
11 from Spartanburg County Bar and I worked on a case --
12 Rick's done a lot of death penalty cases and actually you
13 had asked me earlier about this trial strategy memo and
14 where did it come from Well, I had worked with Mr Beeds
15 and I had been his underling counsel many years ago on
16 federal murder case I think Bob Fouler was our client's
17 name and I had spent a lot of time with Mr Beeds and he
18 said one thing that he did was dictate a memo of this
19 nature in a case of this nature prior to trial, and since
20 then I've employed that strategy, I think, with Freddy
21 Owens I think I did one in one of the cases involving
22 Freddy Owens and this case So it was just a detailed, I
23 guess, memorandum as I could put together regarding
24 everything that was -- as best I could -- everything that
25 had gone on up to the 10th and basically what the strategy

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Steve Sumner - Direct Examination

1 was at that point

2 Q And in this as detailed a memorandum as you could
3 put together, did that include -- my question was, did
4 that include the strategy, strategy for the first phase
5 and the second phase?

6 A Yes

7 Q In this as detailed a memorandum as you could put
8 together, where did you document what your strategy was to
9 deal with the issue of lead paint poisoning?

10 A It was not an issue The reason it's not
11 addressed in this memorandum is because it was not a part
12 of our trial strategy at all

13 Q In this as detailed a memorandum that you could
14 put together, where did you document what would you do
15 about brain damage?

16 A The words "brain damage," are not in this
17 memorandum I was unaware of any brain damage issue

18 Q Did you ever do an MRI?

19 A I left that to Dr Berg and to Dr Evans They
20 were the two -- I believe one was a neuro psychologist or
21 a neuro psychiatrist So I left that to their expertise

22 Q And in this detailed a memorandum that you could
23 put together, where did you document your strategy for
24 dealing with the line of duty aggravator?

25 A Again, did not see that as an issue to bring up
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 Q And in this as detailed a memorandum as you could
2 do, where did you document your strategy for failing to go
3 to Cleveland

4 A I didn't address negatives

5 Q Now, I'm going to ask you to move down to
6 Applicant's 28

7 A Okay Mr Nettles, do you want me to move off of
8 this?

9 Q I'm asking you to go 28

10 A I think I've got it I'm on 28

11 Q Applicant's 28, was this an email you received?

12 A Yes, sir, it appears to be

13 Q And who is this an email from?

14 A Lenora Topp, the mitigation specialist
15 investigator

16 Q And who is this to?

17 A To me

18 Q And is this in your file?

19 A Yes, it is

20 MR NETTLES At this time, Your Honor, we
21 would ask to move 28 for ID into evidence

22 MS BROWN No objection, Your Honor

23 (Email from Lenora Topp marked as Applicant's
24 Exhibit No 28 for identification was entered into
25 evidence)

Steve Sumner - Direct Examination

1 BY MR NETTLES

2 Q Now, this is Sunday, September 12th at
3 10 14 a m ?

4 A Yes

5 Q The day before trial?

6 A Yes, sir

7 Q And it says here that -- why don't you go ahead
8 and publish that whole email

9 A Okay I'll be glad to It's not very long As
10 we've already stated for the record this is Applicant's
11 Exhibit No 28 from Lenora Topp, an email to me, dated
12 Sunday, September 12, 2004 regarding Barry Evans

13 "Steve, after a lot of thought, I think you need
14 to call Barry as a witness What will the jury think if
15 Dan doesn't testify for his son He wants this case to
16 get over with (not like Robin who wants a continuance)
17 He also is discouraging family members to come to trial
18 Do you think he's embarrassed or something? Or just
19 resigned to the fact I believe he can warm up on the
20 stand if given enough time, and who knows, he just might
21 show emotion if it hits him that his only son is in prison
22 facing death, but you might want to put him on before
23 Robin so she can soften things up afterwards, and I don't
24 think its a bad idea for their oldest daughter, age 14, to
25 testify if she wants to Kamell really took a big brother
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 interest in him She recently wrote a poem about him and
2 I think it would be effective if she could read it if
3 asked if she'd like to say something to the jury (Robin
4 couldn't find it for me the other day) Maybe you and Skip
5 can sit down with him for about an hour the night before
6 he testifies Also, I'd think about putting the family on
7 after the coaches, et cetera I'm going to be at the
8 courthouse at 9 00 a m tomorrow to hand around a little
9 bit I wanted to go see Kamell today, Sunday, but my
10 water just came on at the house this morning and I need to
11 able to get things settled and ready to finalize reports,
12 et cetera for the next two weeks Kamell's mother has not
13 been cooperative in sending me any information about the
14 lead poisoning - I'll be checking on Keiser Permanente's
15 effort to get us the medical records tomorrow too
16 According to Barry, Kamell ate some paint chips and he was
17 treated at the KP Hospital in Cleveland when he was about
18 one-year-old According to Robin, Renee and some family
19 members aren't showing up until next Sunday See you
20 tomorrow GOOD LUCK!! P S I heard Christina may not even
21 shown up for court Do you think??? Lenora "

22 Q Now, Keiser Permanente is a hospital?

23 A I believe so

24 Q Did you ever receive before you went to trial,
25 did you ever received the records from Keiser Permanente?

Steve Sumner - Direct Examination

1 A To my recollection, no

2 Q After the trial did you get the records from
3 Keiser Permanente?

4 A To my recollection, yes

5 Q So after the trial was over, you received records
6 that were Kamell Evans medical records?

7 A I believe I got a phone call, Mr Nettles, from
8 Lenora Topp about two weeks to a month after the trial had
9 been concluded and said, hey, I got these medical records
10 in on Kamell, what do you want me to do with them? And I
11 believe it was a very short conversation and I said, send
12 them to me and I'll put them on the file or words to that
13 effect

14 Q So two weeks after the trial was over, it was a
15 little late to have Keiser Permanente's records?

16 A Yes

17 Q And they were basically related to led poisoning?

18 A I did not look at the records I don't believe
19 when they came in more than just a minute or two The
20 medical records I'll have to defer to you

21 Q Yes, yes The medical records, had you gotten
22 them before the trial started, would you have asked a
23 medical professional to look at them?

24 A Yes

25 Q And I'm talking about somebody like an M D ?
Evans versus State - Day 2

Steve Sumner - Direct Examination

1 A I probably would have looked over the records
2 first to see if there was anything that jumped out at me
3 as being unusual, and if there was, I'm sure I would have
4 followed up with a doctor -- medical doctor?

5 Q So you treat medical records in a capital case
6 much the way you treat mental and physical abuse in that
7 you look for if you think you've seen it?

8 A Well, at this point in time he, Kamell Evans, had
9 been administered through a battery of tests by a
10 neuro psychologist and a neuro psychiatrist I would have
11 given them the medical records if they had asked me for
12 them if I had them in the file There's no question about
13 that

14 Q I don't mean to me picky here, but what if you
15 had had them in the file and they didn't ask for them?

16 A If they didn't not ask for them?

17 Q Uh-hum

18 A That would not have occurred and I want to
19 explain kind of where I'm kind of coming from on that My
20 recollection is that with both Dr Evans and Dr Berg, I
21 believe I left them alone with the entire file in my
22 conference room and said go through it Anything that you
23 need from it, take from it, so if the medical records had
24 been in there, they would have come across them I'm not
25 trying to be difficult with you right now, I'm just saying

Steve Sumner - Direct Examination

1 they would have come across it I believe When I reviewed
2 Dr Berg's report, she referenced that she had reviewed
3 the file or something along those lines, so that's the way
4 that would have been in there If they had been in there,
5 I would have wanted them to have them

6 Q And the file that they reviewed did not include
7 -- did the file they reviewed include the Keiser
8 Permanente records that you received two weeks to a month
9 after the trial was over?

10 A No, it did not

11 Q Okay

12 THE COURT Mr Nettles, this is a breaking
13 point We're just going to reconvene tomorrow at 9 30

14 MR NETTLES Thank you

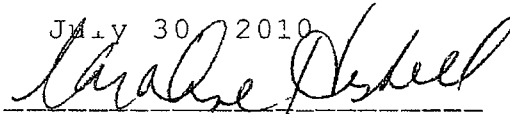
15 ---END OF TRANSCRIPT RECORD FOR DAY 2, JJNE 2, 2009---

Evans vs The State

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 2nd day of June, 2009

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto

11
12 July 30, 2010

13 
14 _____

15 Caroline Hiskell
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Vol 3

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS
3) 2006-CP-23-7719
4)

5 Kamell Evans) TRANSCRIPT OF RECORD
6)

7 -vs-)
8)

9 State of South Carolina)
10 -----)

11 June 3, 2009
12 Spartanburg, South Carolina

13 B E F O R E

14 THE HONORABLE GARRISON HILL, Judge

15 A P P E A R A N C E S

16 WILLIAM H EHLIES, Esquire
17 WILLIAM N NETTLES, SR, Esquire
18 CHRISTOPHER SEEDS, Esquire
19 Attornies for the Applicant

20 ANTHONY MABRY, Esquire
21 MELODY BROWN, Esquire
22 Assistant Attorney Generals
23 Attornies for the State

24 CAROLINE HISKELL
25 Circuit Court Reporter

Steve Sumner - Direct Examination (Continued)

I N D E X					
WITNESSES	DR	CR	RED	REC	
Steve Sumner	(Continued)	339	397	487	513
Dale Davis		524	546	560	---
Lenora Topp		561	584	599	602

E X H I B I T S			
DESCRIPTION	ID	IN	EVD
APPLICANT'S			
29 9-15-04 Letter	340	340	
30 9-15-04 Interview	350	350	
31 8-4-04 Letter	356	356	
32 Visitor's Log GCDC	561	---	
33 Lead Report	367	---	
34 Interview 4-2-03	361	361	
35 Divorce Decree	393	393	
36 Photograph	396	---	
37 Photograph	396	---	
38 Photograph	396	---	
39 Notes	512	512	
40 Letter	532	532	
41 8-4 Letter	533	533	
42 File Notes	535	535	
43 8-5-04 Email	529	529	
44 Resume Dale Davis	526	526	
45 2-13-04 Email	543	543	
46 Letter to Appellate Def	544	544	
47 Lead Poisoning Doc	568	569	

RESPONDENT'S

1 7-9-04 Note	399	402
2 7-12-04 Note	404	404
3 7-13-04 Memo	404	409
4 7-14-05 Note	404	409
5 7-23-04 Note	404	409
6 7-30-04 Note	404	409
7 7-30-04 Note	404	409
8 7-22-04 Note	413	413
9 7-22-04 Letter	413	413
10 8-12-04 Martin Email	413	413
11 7-9-04 Note	414	414

Steve Sumner - Direct Examination (Continued)

I N D E X

E X H I B I T S (Continued)

DESCRIPTION	ID	IN EVD
RESPONDENT'S		
12 Voucher	416	416
13 Voucher	417	417
14 Time report	418	418
15 Davis Letter	418	418
16 9-22-04 Letter	418	418
17 Statement	418	418
18 7-23-04 Note	420	420
19 Family Tree Diag	423	423
20 9-9-04 Letter	428	428
20a Resume	433	433
21 8-30-04 Martin Letter	433	433
22 Acknow Form	435	435
23 9-2-04 Note	449	449
24 9-1-04 Note	453	453
25 8-10-04 Note	459	459
26 7-29-04 Noe	480	480
27 8-24-04 Email	441	441
28 File Note	462	462
29 8-3-04 Note	468	468
30 8-5-04 Letter	470	470
31 8-3-04 Note	472	472
32 9-16-04 Note	473	473
33 9-6-04 Note	474	474
34 8-30-04 Note	480	480
35 File note	482	483
36 8-26-04 Email	599	599

Steve Sumner - Direct Examination (Continued)

P R O C E E D I N G S

(Evans versus State continued from June 2, 2009)

THE BAILIFF Court will come to order, the
Honorable Garrison Hill presiding

THE COURT Please be seated

The issue of the 15 pages that have been
withheld under the claim of attorney/client privilege, are
those documents that I need to review this morning?

MS BROWN Your Honor, if you decide in your
review that something should be disclosed, would we have
an opportunity to see that before this witness leaves the
courthouse today?

THE COURT Why don't you go ahead and hand
them up That's the reason I was asking about them now

DIRECT EXAMINATION

(Whereupon, testimony of Mr Steve Sumner continues)

BY MR NETTLES

Q Now, on September 15th, which was Wednesday, you
would have been in trial for two days

A Yes, I'm not sure if that would have been jury
selection or ---

Q The case had been called, correct?

A Correct, yes

Q And it would have been the second day of the
proceedings of the State versus Kamell Evans?

Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 A Correct

2 Q Would you take a look at what's previously been
3 marked as Applicant 29 for ID

4 A It is from my file

5 MR NETTLES At this time, I'd ask that
6 Applicant 29 be introduced into evidence, Your Honor

7 THE COURT Admitted

8 (Email from Lenora Topp marked as Applicant's
9 Exhibit No 29 for identification was admitted into
10 evidence)

11 BY MR NETTLES

12 Q And who was this email from?

13 A From Lenora Topp

14 Q And sent to who?

15 A Me

16 Q Was Skip Goldsmith included on this email?

17 A From the header, no

18 Q Did you forward it to him?

19 A To my knowledge, no

20 Q Please publish all but the last paragraph?

21 A "Steve, while I endured three hours of listening
22 to the above woman separately talk about themselves "

23 Q I'm sorry whose the subject matter of that
24 email?

25 A Mother and grandmother of the defendant "I
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 endured three hours of listening to the above woman
2 separately talk about themselves, it was very hard to keep
3 on track and talk about Kamell Grandmother Cargile was
4 rather theatrical She is very well spoken and will do
5 well on the stand She helped raise Kamell until he left
6 and held up very well under her discipline Now, Renee
7 was very emotional and cried off and on I guess she
8 thought I was her shrink because it was all about her and
9 the bad life she had Actually I feel so sorry for what
10 she endured but I'll never understand the battered wife
11 syndrome I probably would have had Barry jailed very
12 soon in the relationship I'm faxing a paper she did for
13 class I didn't have the heart to show her the grammar
14 errors but the theme says it all, I guess She'll be fine
15 on the stand, too It was extremely interesting to me how
16 both woman just kind of forgot about Kamell when he went
17 to South Carolina I'm sure Barry probably did keep
18 messages from him, but you'd think grandma would have been
19 a little more assertive We're going to have to put them
20 on the stand because they had so much interaction with
21 Kamell when he was small and aren't you going to get into
22 the family abuse?" The remainder of the email deal with
23 the weather Apparently there was some sort of storm or
24 some type

25 Q There was some kind of storm?

Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 A Yeah She lived in Asheville and there was some
2 sort of bad storm I think it cut her water and power off
3 or something like that

4 Q Do you have a copy of the paper that she did?

5 A Of the fax that she's referencing?

6 Q Yes

7 A No And I'm not sure if I ever got a fax like
8 that I may have but I don't recall ever seeing it

9 Q You don't recall seeing it You don't know
10 whether you got it or not?

11 A I don't recall whether I got it or not or if I
12 saw it

13 Q Did you follow up on getting it?

14 A To my recollection, no

15 Q Now, when she said, "Actually I feel sorry about
16 what she endured, but I'll never understand battered wife
17 syndrome " What was your impression of what she meant by
18 that?

19 A I would take it to me, and I don't know and I'm
20 just speculating here, I would take it to mean that Lenora
21 Topp felt that self purported that Renee Evans had been
22 involved in a relationship with Kamell Evans' father that
23 was physically abusive?

24 Q Did you follow up on that?

25 A Minimally I believe that's referenced -- again,
 Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 I'll go back to Exhibit 27, that was everything I can
2 remember, Mr Nettles, about that If I followed up on
3 that, it would have been when I say minimally I'd say I
4 spoke with Lenora Topp about it but didn't give it -- I
5 don't remember it ever becoming a huge prong of the case

6 Q We go back to Applicant's 27, that's your trial
7 strategy that was done 10 days before you received this
8 information?

9 A That is correct

10 Q Did this information that Renee Evans was talking
11 fairly extensively about abuse in the family, at this
12 point you had the daughter talking about the -- let me say
13 this When you wrote the trial strategy memo which is
14 Applicant 27 Lenora Topp had reported that Barry would
15 talk about the abuse, but you and Skip talked to him and
16 he denied it?

17 A Yes, that's my recollection

18 Q Kamell Evans' sister was unwavering about the
19 abuse

20 A Mr Nettles, my recollection of that was that
21 Shatima Evans had come by the office a number of times, as
22 I had told Judge Hill yesterday, my recollection of her
23 was that she was also waivering in terms of her feelings
24 about Mr Evans I believe my recollection was she would
25 talk about what she felt was abusive things Ther my

Steve Sumner - Direct Examination (Continued)

1 recollection is she would back off of that to some degree

2 Q You do have that documented in this detailed memo
3 about the father, your allegations that the father waived
4 red in this detailed memo Is there anywhere in this
5 detailed memo that you prepared, as you said yesterday
6 that the suggestion of Mr Beeds, anything about the
7 waivering of Shatima?

8 A I want to say that I had no involvement with
9 Mr Beeds in this case It was simply when I worked with
10 him in a previous murder case something I saw him do,
11 something that I incorporated The question is, is
12 Shatima's name mentioned in here I believe is your
13 question

14 Q Yes

15 A No, her name is not mentioned

16 Q Do you have it documented anywhere of Shatima
17 waivering on the existence of abuse in the family?

18 A To my recollection, no The only other place it
19 would be probably would be in my, you know, legal pad
20 notes and I'm not sure if it's in there or not

21 Q Do you have them with you?

22 A There over there

23 Q Do you want to look through them? Let me ask you
24 this, if she had waived, would have written it down?

25 A Not necessarily

Steve Sumner - Direct Examination (Continued)

1 Q Okay But you believe she waived?

2 A My recollection is that she waived

3 Q Now, did you ever interview your client's mother?

4 A I do not believe so

5 Q But you would not dispute that your client's
6 mother came to South Carolina for the trial?

7 A I believe she did

8 Q She lived in Cleveland and you did not send your
9 investigator to Cleveland

10 A I did not

11 Q Your investigator interviewed your client's
12 mother

13 A I believe she did, yes The investigator said in
14 this email, Applicant 29, that she had spent three hours
15 talking with Kamell Evans' mother and grandmother

16 Q And she told you what about her thoughts about
17 what type of witness she would make?

18 A She told me, Mr Nettles, in this email that she
19 thought she would do fine on the stand So she seemed to
20 have a positive indication of her testifying

21 Q And the theme of the paper she wrote said what?

22 A I don't believe I ever saw it so I don't know
23 She says here, "I didn't have the heart to show her the
24 grammar errors but the theme says it all I guess " I
25 don't recall ever seen it I might have You,

Steve Sumner - Direct Examination (Continued)

1 Mr Nettles, have been through the file I don't recall
2 seeing it

3 Q Was there a reason why you didn't talk to your
4 client's mamma when she came to South Carolina?

5 A My recollection and I'm sorry that I'm pausing
6 here but I'm trying to recollect about Ms Evans My
7 recollection about Kamell Evans' mother was that she was
8 not very responsive to me initially when I first got
9 appointed on the case I didn't have much interaction
10 with her and I did not speak with her during the course of
11 the trial that I can recall

12 Q I understand that and I appreciate that but my
13 question is this, is there a reason why you didn't talk to
14 her when she came to South Carolina?

15 A No

16 Q Now, did you subpoena her to South Carolina?

17 A I can't remember

18 Q Did you pay her travel expenses to South
19 Carolina?

20 A I don't believe so

21 Q So did you compensate her for any of her expenses
22 in South Carolina?

23 A I don't believe I did I would not have
24 compensated somebody but I don't believe I asked the court
25 to

Steve Sumner - Direct Examination (Continued)

1 Q So in terms of her responsiveness, she came on
2 her own

3 A To my recollection, she came on her own

4 Q And you not only did not talk to her, but you
5 didn't talk to her after your investigator told you, you
6 would agree with me, she suffered from battered woman's
7 syndrome?

8 A The investigator did say that

9 Q Said that to you?

10 A She probably said that to me verbally I know
11 she said it in writing

12 Q She said that the mother prior to trial, separate
13 and apart from trial, had documented this in a paper

14 A Correct

15 Q And that she thought she would make a good
16 witness

17 A Correct

18 Q She asked you, aren't you going to get into the
19 family abuse?

20 A Meaning Lenora Topp?

21 Q Yes

22 A Yes, she asked me that in this email, but she
23 also talked about the mother and the grandmother talking
24 three hours about themselves

25 Q I understand

Steve Sumner - Direct Examination (Continued)

1 A So I was reluctant, really, in terms of putting
2 -- Judge -- in terms of putting them on the stand, I took
3 the whole body of email into account in terms of
4 apparently the mother and grandmother going on and on
5 about themselves So I was a little bit concerned with
6 putting them on the stand if they might not take an hour
7 or so to talk about themselves which I felt would probably
8 alienate the jury

9 Q Well, do you think maybe you'd been in a better
10 position to make that determination had you met with them?

11 A I suppose so, but I deferred to some degree to
12 the investigator because that's what she was there to do,
13 To some degree I'm sure I looked at this

14 Q Well, to some degree you deferred to her, she
15 said, "She'll be fine on the stand too " To the extent
16 that you referred to her to there, why didn't you talk to
17 her?

18 A I can not recall right now why I did not speak
19 with her I believe she was there, Mr Nettles, for a
20 portion of the trial I'm not sure if she was there for
21 the entire trial She might well have been I just
22 recall very little, if any, interaction with her from my
23 perspective

24 Q From your perspective

25 A Yes I mean very little if any interaction I
 Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 recollection is I had tried to talk with her earlier in
2 the process and that she, my recollection, was not
3 responsive to me I know there are other emails in here
4 where Ms Topp had asked her to provide information that
5 she had not provided, so, I just didn't have much
6 interaction with her

7 Q How about Ms Dale Davis, did she, to your
8 understanding, did she have any interaction with her?

9 A With the mother?

10 Q Yes

11 A I don't remember if she did or not

12 Q Let's talk about Applicant's 30 for ID

13 A This is from my file I recognize this as bullet
14 points from an interview that were from my file

15 MR NETTLES We would ask, Your Honor, what
16 has been marked as Applicant's 30 moved into evidence

17 MS BROWN No objection, Your Honor

18 THE COURT Okay It's in evidence

19 (Interview dated September 14, 2004 marked as
20 Applicant's Exhibit No 30 for identification was admitted
21 into evidence)

22 BY MR NETTLES

23 Q Now, when was this interview done?

24 A On September 14, 2004

25 Q That would have been after the case of State
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 versus Kamell Evans had been called to trial

2 A That is correct

3 Q And who is Ms Georgia Mae Cargile?

4 A She is the maternal grandmother of Kamell Evans

5 Q Is there any other documentation, anybody from
6 your team, speaking to the maternal grandmother of your
7 client prior to that date?

8 A Not that I can recall

9 Q So to the extent that the family was
10 nonresponsive, this person was the maternal grandmother
11 who lived where?

12 A Give me just one second According to this memo
13 she lived in Streetsboro, Ohio at the time

14 Q She had come to where for the trial?

15 A She had come to Greenville County

16 Q Did you subpoena her there?

17 A To my recollection, no

18 Q Did you ask the court to reimburse her for her
19 travel expenses?

20 A No, sir

21 Q Do you have any evidence that she didn't come on
22 her own volition?

23 A No, sir

24 Q Once again this is bullet points here, right?

25 A Yes This is in the bullet point format
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 Q Do you see down to 11 when it starts, "When Renee
2 met Barry"?

3 A I do see that

4 Q You can go through the next page -- why don't you
5 just read the whole thing and start with, "When Renee met
6 Barry " You received this memo during the trial of the
7 case?

8 A Yes, it was taken September 15th I don't recall
9 exactly --

10 Q Was it taken the 14th?

11 A It says it was taken the 14th and the date on
12 this is the 15th I don't recall when I got it I'm sure
13 I did at some point

14 "When Renee met Barry, Ms Cargile did not
15 like him nor did she approve of him She wanted Renee to
16 go to college to better herself but when Renee became
17 pregnant, she married Barry and they moved to an
18 apartment Trouble between Renee and Barry began soon
19 thereafter and Ms Cargile would often go and get her, the
20 baby, and also Kamell after he was born She said there
21 were so many times that both Shatima and Kamell saw
22 violence between their parents Barry beat Renee all the
23 time Renee never confided in her mother regarding her
24 feelings She seemed to hide her feelings and Ms Cargile
25 never really knew all what was going on between Renee and

Steve Sumner - Direct Examination (Continued)

1 Barry It was apparent that Barry acted as if he was lord
2 and master and the boss of everything Kamell was spoiled
3 by both Ms Cargile and his paternal grandmother who is
4 now deceased But Kamell was a good boy and a happy child
5 and no major discipline problems and no mean streak He
6 and Shatima often went on out of town trips with their
7 great aunt Kamell always treated his grandmother with
8 respect and was always so happy to be with her
9 Ms Cargile thinks Renee had gotten tired of being so
10 mistreated and that is why she left Barry Renee and the
11 children were living with her when Barry came to get
12 Kamell, and some time passed before Renee told her mother
13 the whole story Renee was always so hush hush
14 Ms Cargile had no problems with the children when they
15 lived with her She had rules in the house and she wasn't
16 going to let them rip and run at her house You are a kid
17 and you stay in a kid's place She recalled Renee was on
18 a bowling team and one day Renee left telling Kamell he
19 was to stay home, but when Renee left, Ms Cargile leave
20 out the other door and she thinks he did this often When
21 Kamell left with Barry, she didn't want to bother them by
22 calling or writing and Kamell never called her either
23 When he got a little older, he visited Cleveland and she
24 saw him again Shatima often sent pictures of Kamell and
25 her family to Ms Cargile Ms Cargile couldn't believe

Steve Sumner - Direct Examination (Continued)

1 it when she heard about the shootings She never thought
2 he would hurt someone She's received letters from Kamell
3 and is rather disgusted with boasts of how strong and
4 muscular he has become She knows life in prison would
5 not be easy for him, but she certainly does not want him
6 to lose his life " That's the end of the interview notes

7 Q As it relates to Ms Georgia Mae Cargile, did you
8 ever interview her?

9 A To my knowledge, no

10 Q Was there ever any documentation or word that she
11 waived about the presence of abuse and Kamell's witness
12 to that abuse to your knowledge?

13 A To my knowledge, no

14 Q How far is Greer from Greenville?

15 A About 10 to 15 miles

16 Q Let's be clear, Greer is where Ms Cargile was
17 interviewed by your investigator?

18 A Correct

19 Q Did you ever drive the 10 or 15 miles to Greer to
20 interview your client's maternal grandmother?

21 A No

22 Q Why?

23 A Because I made a determination, I guess just from
24 a litigation point of view, the allegations of abuse is
25 just not the direction we wanted to take

Steve Sumner - Direct Examination (Continued)

1 Q And you made that decision that's documented in
2 your memo which is Applicant 27, you made that decision on
3 September 10th?

4 A That is correct

5 Q Now, when you made that decision on September
6 10th that's documented in Applicant 27, you had not heard
7 from Ms Georgia Cargile?

8 A Correct

9 Q You had not heard from Reree, the mother?

10 A No Wait a minute, I had some interaction with
11 the mother, but nothing significant

12 Q Exactly what kind of relationship had you sent
13 Ms Lenora Topp to discuss with her?

14 A I don't know the answer to that question, but my
15 interaction with her had been minimal, but again, I would
16 classify her as being unresponsive at the beginning, but
17 it was minimal?

18 Q During that minimal interaction you had with your
19 client's mother in the beginning, did you ask her about
20 domestic abuse?

21 A No

22 (Discovery material dated August 4th marked
23 as Applicant's Exhibit No 31 for identification)

24 BY MR NETTLES

25 Q On August 4th, you received some additional
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 discovery, which would be Applicant's 31 Did you receive
2 this additional discovery

3 A I did, Mr Nettles This is a cover letter that
4 is typically with discovery

5 Q Did you receive some discovery with it There
6 should be a whole stack of documents

7 A No, I don't have that

8 Q Would you put a clip on that It's all supposed
9 to be one exhibit

10 A I'm holding probably 20 or so pages of what
11 appears to be handwritten notes that were xeroxed from a
12 legal pad

13 Q Were they included in your discovery?

14 A I'm assuming, Mr Nettles, the first time I got
15 these would have been early on as far as '04 That's what
16 the cover letter says

17 Q They were part of your discovery?

18 A Yes, but I would imagine they were not a part of
19 the initial part that I had received from Mr Richey It
20 was probably not a part of ---

21 Q I think the cover letter says supplemental
22 discovery, correct

23 A It does

24 MR NETTLES At this time I'd like to ask
25 that 31 be moved into evidence

Steve Sumner - Direct Examination (Continued)

1 MS BROWN No objection

2 (Discovery material marked as Applicant's
3 Exhibit No 31 for identification was admitted into
4 evidence)

5 BY MR NETTLES

6 Q I'm going to ask you to go five pages back

7 A One second, let me get there I'm looking at
8 what I believe to be Pages 5 and 6

9 Q Let me just point to it

10 A Thank you I see it now

11 Q Were you able to decipher these handwritten
12 notes?

13 A I'm having a lot of trouble today

14 Q Do you know whose notes they are?

15 A I believe they were Jeff Kinley I'm not sure
16 right now The note is -- I'm going to do the best I can
17 -- "Tyrone Johnson started a football team He is," I'm
18 struggling "When the baby died -- I never hung out if
19 they called -- football team " That's all I can make out

20 Q These notes were in your discovery Did you ever
21 make an attempt to find out whose notes they were?

22 A I was probably told by Betty Strom

23 Q Let's just do this Were they Dr Pam Crawford's
24 notes?

25 A I don't know

Steve Sumner - Direct Examination (Continued)

1 Q What did you do with them when you got them?

2 A I'm sure I glanced at them and looked at them and
3 really I can't read the writing I can't make out what
4 these attempts off at words I mean it's kind of like
5 doctor's writing and I can't read it

6 Q Well, let me ask you this, if you had a big
7 medical case and you had some doctor's notes, would you
8 find out whose they were?

9 A If they weren't contained in some other kind of
10 reports -- sometimes they'll be doctor's notes, and again
11 I don't do a lot of personal injury, but sometimes they'll
12 be doctor's notes and then they'll be a more formal typed
13 up report If I can't understand what that means, then
14 I'll go back, but generally they'll be contained in a
15 formal report

16 Q Is there a report that captures these notes?

17 A Are these reports from the recording or
18 interview? I'm just asking

19 Q What we're trying to figure out here is what you
20 did to find out what they are

21 A I can not remember What would typically occur
22 in it -- I did have a -- I dealt with Betty Strom I
23 didn't really deal with Mr Airial in the case, and
24 typically what she would do is she would call me up and
25 say Steve, I'm sending over whatever, do you want to

Steve Sumner - Direct Examination (Continued)

1 come over and look at this part of the discovery I would
2 feel like she told me what the rough notes were I would
3 feel like I looked at them and 'couldn't make out what they
4 were, and that was the end of it

5 Q You couldn't make out what they were and that was
6 the end of it

7 A Yes, unless it was -- the only thing, and again
8 I'm going back five years, the only thing I seem to
9 remember is there were notes of something, I believe,
10 recordings of a memorandum or an interview and I think
11 they were connected to something that was formalized
12 later

13 Q Assuming you're right, where is the document that
14 you believe formalized these notes?

15 A The only place it would have been it would have
16 been in my file If it's not in the file, then it's not
17 there

18 Q This is a pretty important issue I'm going to
19 ask you to take a look in your file and tell me where
20 you've got a report that formalizes these notes

21 A Okay

22 (Whereupon, witness reviews his file)

23 We can take a break for everyone's convenience
24 but I'm ready to go back on the stand

25 THE COURT Okay

Steve Sumner - Direct Examination (Continued)

1 BY MR NETTLES

2 Q Okay

3 A I've looked back through my file, Mr Nettles,
4 and these notes that were handed to me were part of a
5 package of probably 100 to 125 pages of discovery that was
6 received from the Solicitor's Office that contains four or
7 five different what I would call Code 5 reports that
8 appear to me to be completed by various law enforcement
9 officers that were on the scene that night, and the notes
10 are contained in that package and I can't find anything
11 that directly said there was a translation of that?

12 Q So let me ask you this then, when the first day
13 of trial came around and the Judge asked him you were
14 ready for trial and you told him you were ready knowing
15 you didn't have these notes translated?

16 A Correct

17 Q But you and I can agree that the notes pertained
18 to this case

19 A well, let me back up a little bit for a second
20 I can't specifically say that I was not told, Mr Nettles,
21 whose notes they were because, as I mentioned, there were
22 numerous times -- multiple times during the case when
23 Betty Strom would tell me, here's some discovery, here's
24 what I'm sending over, this type thing You can see from
25 the file there was a lot of supplemental discovery that

Steve Sumner - Direct Examination (Continued)

1 was provided to me or some, and so, I can't recall whether
2 or not they were such and such notes or not I don't
3 know, but I do know that I had, to my recollection,
4 several conversations with her what would be contained in
5 the discovery package

6 Q I appreciate that, but my question was this,
7 would you agree with me that these notes pertained to this
8 case?

9 A Yes, they did pertain to the case

10 Q Now, would you please go to what's previously
11 been marked 34 or ID

12 A Wait just a second I don't want to get these
13 out of order Do you want me to keep 31 handy?

14 Q Yean, and go to 34

15 A I have that

16 Q Do you recognize this?

17 A Yes, sir It appears to be from my file I
18 believe it is attempted transcription of a phone call
19 Just from memory, it's an attempted transcript

20 Q Why do you look at the top, the first top, to see
21 if that refreshes your memory

22 A It does It's labeled, "Interview with Cristina
23 Rodriguez and Dr Pam Crawford at the Law Enforcement
24 Center "

25 Q Was this part of your discovery?
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 A Yes

2 MR NETTLES At this time, we would ask that
3 what's previously been marked as Applicant's 34 be entered
4 into evidence

5 MS BROWN No objection

6 THE COURT Okay

7 (Interview of Christina Rodriguez marked as
8 Applicant's Exhibit No 34 and admitted into evidence)

9 BY MR NETTLES

10 Q What is this document?

11 A Mr Nettles, I appears to be a transcription of
12 an interview with Christina Rodriguez who I believe was
13 the girlfriend of the defendant at the time, and Dr Pam
14 Crawford who was at the time with SLED

15 Q And what is the date of that interview?

16 A April 2, 2003

17 Q Where is that day in relation to the crime?

18 A I believe it was -- I'm going to go with you

19 Q We don't know when during the day it was, but it
20 was within 24 hours?

21 A Yes It was contemporaneous

22 Q We've got on this interview we've got PC, which
23 would be who?

24 A Pam Crawford

25 Q And we've got CR, which would be who?

Steve Sumner - Direct Examination (Continued)

1 A Christina Rodriguez

2 Q Did you review this document in preparation for
3 trial?

4 A Yes, sir

5 Q Please go to Page 31

6 A I'm on 31?

7 Q And CR says, "He's from Cleveland

8 A Okay

9 Q CR begins speaking again obviously in response to
10 a question from Pam Crawford

11 A Yes, sir

12 Q Please read that response where he starts with,
13 "He says "

14 A Okay

15 "CR, 'He's from Cleveland (loud noise) He says
16 that he's a Crip from Cleveland I, you know, I'm not
17 going to down him or anybody, you know, whatever they have
18 to do with their gangs because I was like that too when I
19 was in Chicago But, you know, I just said go ahead, you
20 know, and be like that because there's nothing down here
21 I mean, and he was like that's when he started -- he just
22 all of a sudden came out with because I used to ask his
23 friend you knew him before I met him and was he like that
24 or was he all about do this and do that, and I was like
25 no, he didn't even mention it But I don't remember what

Steve Sumner - Direct Examination (Continued)

1 brought it out or whatever so we started getting tattoos
2 like Crip, Blood and all that "

3 Q Please just keep on reading

4 A "PC 'When did he start getting those?

5 CR It was like in 1999, 2000

6 PC '99?

7 CR Like the beginning of 2000

8 PC And would he just say he was doing it

9 because

10 CR No, he was, I mean, all of a sudden he just
11 started representing that he was a Crip like all of a
12 sudden I don't know I didn't say anything about it I
13 didn't want to, you know, hurt his feelings or whatever he
14 was representing so I would always give him the benefit of
15 that doubt You know, okay, well, that's fine, that's
16 what you do, you know, that's you So I left, you know, I
17 left that alone

18 PC But you're --

19 CR Because I was being -- because he came here
20 when he was young, I mean he moved here when he was like,
21 I think 11, and I was like I don't know how far into the
22 Crip lifestyle he could have been and he was only there, I
23 mean, unless he was gang banging really young, but I
24 think, you know, he moved here when he was young

25 PC So you sense in some of his friends as well

Steve Sumner - Direct Examination (Continued)

1 that he was kind of putting it on?

2 CR Right, like he was putting on like a front
3 and to this day if you ask all of his friends, that's a
4 big problem with Kamell is like he always tries to be a
5 person He wants people to see him as something else that
6 he's not just so they'll like him more not knowing that
7 his friends are there for him no matter what he does You
8 know, I mean, I used to say I bet your friends would
9 respect you more if they knew you had a job, you know,
10 instead of playing like you're just a big drug dealer and
11 how you make your money Because people, you know, people
12 like all his friends are like oh, I have to get up for
13 work in the morning and they used to crack on him like,
14 oh, you got to get up too, don't you? Oh, you don't have
15 no job You know, they always crack on him and he would
16 be like yeah, yeah, and he would just shrug it off "

17 Q You can stop there

18 A Okay, if I've covered what you want me to cover

19 Q Why don't you just keep on reading until you stop
20 after the first paragraph

21 A I'll continue reading on Page 33

22 "CR Yean, but not to the sense that he says ne
23 was There was little bit on the side He used to make a
24 little bit of money, but I never saw anything huge I
25 didn't see like pounds of weed anywhere

Steve Sumner - Direct Examination (Continued)

1 PC All right, so that was part of him being a
2 big guy?

3 CR Right, right

4 PC And what were some of the stuff we saw from
5 his house like his posters of him?

6 CR Yeah, he was representing the lifestyle of
7 the Crip

8 PC When you say represent, what do you mean?

9 CR Well, when you're in a gang, you always want
10 to represent your cause It's like you're, you know,
11 representing you Crip so that's what he was doing, you
12 know You like that He liked the Godfather movies He
13 like Scareface movies He liked Goodfellas He liked all
14 the Mafia movies Like he wanted his lifestyle to be like
15 that

16 PC Okay And so he had somebody take those
17 pictures of him?

18 CR Yeah, actually, well, I took the pictures of
19 him and we found out we could blow them up like at Kinkos
20 and that's how we made those

21 PC And what did you think about those?

22 CR I mean, I just, you know, be what he wants
23 to be if he's like that

24 PC So he asked you to take those pictures?

25 CR Yean, yeah

Steve Sumner - Direct Examination (Continued)

1 PC All right, and did he take it pretty
2 seriously?

3 CR Yeah, you know, I mean that's why I never
4 said anything about it, you know, you ain't a Crip I
5 never said anything like that because I didn't want to,
6 you know, disrespect him like that "

7 Q When the picture that have been shown, shown to
8 the jury, in this hearing, did you know who had taken
9 those pictures?

10 A No They appeared to be self-made or made by an
11 amateur person, but, no, I don't recall if I knew who took
12 them or not

13 Q At least this interview that was part of your
14 discovery, what did it suggest who took them?

15 A It suggested that Christina Rodriguez had taken
16 them

17 Q As a matter of fact, what did this interview
18 suggest that Christina Rodriguez believe about Kamell's
19 membership in a gang?

20 A That it was a front That it was not real That
21 it was impersonated

22 Q And this was information not that was obtained
23 through your investigation but information provided to you
24 by who?

25 A By the Solicitor's Office

Steve Sumner - Direct Examination (Continued)

1 Q Let me show you what's been previously marked 33
2 for ID

3 A Yes, sir

4 Q Was this in your file?

5 A Does it start with, "Health Effects of Lead"?

6 Q Yes

7 A It doesn't look familiar to me

8 Q Do you ever remember reviewing this document?

9 A No

10 Q What did you do to familiarize yourself with the
11 issue of lead poisoning in preparation for the trial of
12 this case?

13 A Nothing

14 Q Nothing

15 A Very minimal If I had done anything, I don't
16 have any recollection of it right now

17 Q What's the difference between very minimal and
18 nothing?

19 A If I did anything, it does not stick out in my
20 mind today five years later, and I would, for lack of
21 better words, I'm trying to articulate it, if I did
22 anything, I made notes about it but not to the point I can
23 remember it today

24 Q Did you do any research on the aggravator's line
25 of duty?

Steve Sumner - Direct Examination (Continued)

1 A Yes, I did

2 Q Where is it?

3 A It was verbal What I remember about it, it was
4 verbal

5 Q What do you mean by your research was verbal?

6 A I have an investigator who works with me full
7 time, Scott Robertson who was with the Sheriff's Office
8 I believe that Scott was with me on this case

9 Q Scott?

10 A Robertson I talked to him I talked to four or
11 five and I can't recall but I had deputies with the County
12 Sheriff's Office and all of them made clear to me you are
13 working in their minds -- I think under the contract at
14 the Sheriff's Office, you're working 24 hours a day, 7
15 days a week and that was the answer that continued to
16 resonate with me and whoever I spoke with And I believe,
17 and I'm going on recollection here, that Mr Scott
18 Peterman looked at it and that would be extent of my
19 research, just asking people?

20 Q Let's be clear who Scott Peterman is

21 A He was the investigator that was assigned to me
22 that worked with me and Mr Goldsmith during this case

23 Q Now, let me ask you this, did you ever consider
24 filing a Motion for Change of Venue because it maybe an
25 appearance that there was an impropriety in that the case

Steve Sumner - Direct Examination (Continued)

1 was being tried in the courthouse where the victim worked?

2 A I believe I filed and argued a Motion for a
3 Change of Venue, I think

4 Q What was the basis for that motion?

5 A I think it was pretrial publicity I would have
6 to -- I think the Motion is in there, Mr Nettles

7 Q Let's take a look at it

8 A You want me to?

9 Q Yes

10 A I think I've got a separate motions file Excuse
11 me just one second

12 THE WITNESS This won't take but a second,
13 Judge

14 THE COURT Okay

15 (Witness briefly leaves the witness stand)

16 THE WITNESS I have it Motion 26a was
17 defendant's motion to change venue or alternatively for
18 extensive jury voir dire, and I'm going to publish the
19 whole motion unless you want me to

20 BY MR NETTLES

21 Q It's already a part of the record All I need to
22 know from you is what was the basis for your motion?

23 A A extensive media coverage, B that he was a
24 Greenville County Law Enforcement Officer So those are
25 the two basis for it And, let me see here, it was denied
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 according to Skip Goldsmith's notes it was denied by Judge
2 Cole

3 Q So then as a third possible reason for venue was
4 there ever a motion filed for a change of venue based on
5 an appearance of impropriety in that one of the two
6 victims worked in the courthouse where the trial was being
7 tried?

8 A I don't know On my written motion, no I don't
9 know if I incorporated that into when I said he's a
10 Greenville County Law Enforcement Officer, and I don't
11 know if on the transcript I bolstered that with he worked
12 in this courthouse I would have to probably point
13 everybody at the transcript

14 Q I'm not going to go through that, but you would
15 agree with me that the only two places it would be raised
16 was either in the motion that you have or in the oral
17 transcript?

18 A Yes, sir

19 Q And if it was not in the motion or the
20 transcript, it was not raised?

21 A I would probably respectfully disagree with you
22 when you say it wasn't raised I think I certainly
23 brought to the Court's attention he was a Greenville
24 County Law Enforcement Officer, to that degree it was
25 raised to the Court Other than that, I would agree with

Steve Sumner - Direct Examination (Continued)

1 your statement

2 Q Okay Everything that was raised is either in
3 the motion or in the transcript?

4 A Yes, sir

5 Q Now, did you ever consider objecting to
6 Mr O'Cain's testimony whether he was qualified under Rule
7 702, that being expert testimony?

8 A Would you tell me again the substance of his
9 testimony?

10 Q He was the guy that came in and said that based
11 on -- without interviewing Kamell, without seeing any
12 interviews of Kamell, without seeing any of your notes,
13 not access to Dr Berg's notes -- that he looked at the
14 tattoos on his arms, he looked at a picture that was taken
15 over his bed and opined that he was in a gang

16 MS BROWN Objection, Your Honor I believe
17 that's a slight mischaracterization My understanding of
18 the record is that when he review someone coming into the
19 Department of Corrections, because that was a
20 qualification, that he would consider the tattoos and that
21 he would be considered or flagged to be someone to look at
22 possible gang membership

23 MR NETTLES Okay

24 BY MR NETTLES

25 Q That he was allowed to testify that your guy was
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 possibly in a gang and that if he got a life sentence,
2 that he would quickly rise up through the ranks of the
3 gang activity in the South Carolina Department of
4 Corrections, and that he would quickly become a leader of
5 a gang, and would be making essentially a living in gang
6 as a gang member, whereas, if they gave him death that he
7 could tell the jury that he could essentially keep him out
8 of a gang Do you remember that testimony?

9 MS BROWN Your Honor, I object a little bit
10 there too because my reading of the record was if he's in
11 a gang, if he goes here, these are the qualities that the
12 gangs would look at to raise standing That was my
13 understanding of the testimony

14 THE COURT The record will speak for itself
15 Go ahead

16 BY MR NETTLES

17 Q Whatever he said, he's the guy who talked about
18 that stuff?

19 A He did, yes And his testimony is what it was

20 Q It's in the transcript

21 A Right

22 Q Did you ever consider objecting to that out of
23 the presence of the jury as being inadmissible under Rule
24 702 in the South Carolina Rules of Evidence?

25 A I want to ask your question in two parts First,
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 I don't know what Mr O'Cain reviewed I know you had
2 mentioned earlier in your question when you questioned me
3 about Mr O'Cain and you knew he only reviewed A,B and C
4 I don't know what all Mr O'Cain reviewed I'm assuming
5 he reviewed everything that was provided to me by the
6 State, but I don't know what else he reviewed So I just
7 wanted to make that point, Mr Nettles, if I could

8 Number 2, was there consideration of objecting to
9 his testimony? Yes, there was That consideration took
10 place prior to the trial because Kamell Evans continued,
11 to my recollection and I think in my file, he continued to
12 tell us that he was a member of a gang He did not want
13 me to challenge, or Mr Goldsmith, to challenge his gang
14 membership in any way, and that was what I understood to
15 be a direct communication from him on repeated occasions
16 in the trial preparations

17 So it was considered before I think when
18 you look back at this now infamous memo that I wrote ---

19 Q Applicant 27

20 A Sure The only reference, Mr Nettles, that
21 Exhibit 27 has is that, "Barry Evans addressed that Kamell
22 could be a good witness or hold it together on the stand
23 --" which was real concern if he could hold it together on
24 the stand from a remorse angle "Barry Evans addressed
25 that he could hold it together if he could get out of the

Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 'gang hoodlum' attitude that he often portrays That's
2 the only reference to it in there But there are other
3 notes, I think, in my file where Kamell Evans continued to
4 say to us or me that he was a member of a gang and that he
5 did not want that challenged?

6 Q Go find in your notes where you had the
7 discussion, and I'm not talking about simply this, where
8 you discussed with Kamell challenging the scientific
9 admissibility of expert testimony? Not that he was in a
10 gang Was there ever a discussion that you had with
11 Kamell where you said Hey, Kamell, look essentially this,
12 I understand it's important to you to be in a gang, but
13 let me share something with you on this, there's going to
14 be a guy we think is going to come in and we think there's
15 a good chance it's not admissible, and what we would like
16 to do is just challenge -- and you can tell the experts
17 whatever you want to tell them, you can talk to Dr Berg
18 about it and you can talk to Mr Martin about it and you
19 can talk to Dr Evans about it, but we would like to
20 challenge, and we think it's important, to challenge the
21 admissibility of this one person, not whether you were in
22 a gang or not but whether he gets to talk about being in a
23 gang Did that discussion ever take place?

24 A No

25 Q So you never received permission from your client
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 to fail to challenge the admissibility of expert
2 testimony?

3 A Yes

4 Q You did?

5 A It was the general repeated statements that he
6 had made to me that, I'm in a gang, do not challenge that,
7 I'm a Crip, I'm Blood or whatever he was

8 Q Was he a Crip or a Blood?

9 A I don't remember I think it was a Crip, but the
10 words Crip and Blood were kind of thrown in I know he
11 would not say the same thing I cannot recall which one
12 it was

13 Q The extent to which your decision not to
14 challenge the admissibility, the legal admissibility or
15 expert testimony, was never discussed with your client?

16 A No, again, I'm going to disagree with that The
17 specifics under Rule 702, and I'm not sure if it would not
18 be admissible, and that would be Judge Cole's decision to
19 make in that challenge So I could not say that this is
20 not coming in, but I brought up to him about this gang and
21 there was a picture that had already been referenced, the
22 big posture of him, the gang issue, and, you know, you're
23 not in a gang I didn't feel like he was in a gang I
24 felt like from my dealings with him, Mr Nettles, just
25 like all the other people that have been referenced here

Steve Sumner - Direct Examination (Continued)

1 today and yesterday, but his consistent and repeated
2 communication to me was I'm in a gang, don't challenge
3 that, I'm in a gang I did not ask him specifically, as
4 you said under Rule 702, where I anticipate expert
5 testimony, it was just his statement that had been stated
6 to me several times, and that was the extent of it

7 Q So, now, you said earlier in your statement is
8 that you didn't know what Mr O'Cain reviewed in coming to
9 his decision

10 A That is correct I wasn't there when Mr O'Cain
11 reviewed anything I would assume that he reviewed just
12 as you said, the photograph I believe he talked about a
13 photograph, a poster, tattoos, and whether or not he saw
14 anything else, Mr Nettles, I don't know

15 Q Had you challenged that testimony, is it your
16 understanding you would have gotten the opportunity out of
17 the presence of the jury to learn exactly what he relied
18 on?

19 A Yes

20 Q Mr O'Cain also testified to testimony and the
21 prosecutor argued about general prison conditions

22 A Okay

23 Q Why did you not object to that? Separate and
24 apart from the gang thing, the same witness testified
25 about the gang stuff, and the record will characterize

Steve Sumner - Direct Examination (Continued)

1 what he said, he also testified about general prison
2 conditions, did you object to that?

3 A No I don't believe we did

4 Q Why not?

5 A Because we had a witness, George Martin, who was
6 going to come in and testify as a defense witness about he
7 was an expert in detention I'm not exactly sure what he
8 was classified as but I thought that if we object to the
9 State's witness wanting to talk about conditions in
10 prison, then don't think we would have been allowed to put
11 up our witness about conditions in prison

12 Q That's what your understanding of the law was?

13 A Yes I thought there was a risk of that I
14 don't know how Judge Cole was going to rule, but I thought
15 it would be -- you know, if you object to them and I'm not
16 going to let them talk about it, then I'm not going to let
17 you talk about it I've been in enough trial to know -- I
18 think that was a risk

19 Q So your understanding is that if you objected to
20 their testimony about general prison conditions, that you
21 would be precluded from giving adaptability to prison ---

22 MS BROWN I'm going to object, Your Honor
23 That's a bit leading I don't think that was anything
24 that was covered in the other question I would request a
25 rephrase

Steve Sumner - Direct Examination (Continued)

1 THE COURT Overruled Go ahead

2 THE WITNESS One reason for not objecting it
3 would I thought, as I've already answered, it would run
4 the risk of potentially our expert witness being hampered
5 in what he was able to testify to, number one Number
6 two, again, every time you object you bring attention to
7 something with the jury I mean, there's a lot of
8 different reasons why you object or not object, but I do
9 recall thinking we want to put Mr Martin up We want him
10 to be able to give all of his testimony, which I thought
11 would be helpful to the defense and all the other reasons
12 you typically don't object or make a decision not to
13 object at trial

14 BY MR NETTLES

15 Q What is your understanding is the law about the
16 admissibility for the defense to be able to give the
17 conditions of an execution?

18 A I don't have the law in front of me so I can't
19 remember This was the last death penalty case I handled
20 or was involved in, but I think the defense is given
21 normally fairly wide latitude in that, but that's about as
22 specific as I can be

23 Q So your understanding is defense can not bring in
24 testimony about what it's like to be executed?

25 A I'm sorry

Steve Sumner - Direct Examination (Continued)

1 Q It is your understanding that the defense can
2 bring in, under the laws of South Carolina, evidence about
3 what it's like to be executed?

4 A I do not know

5 Q Let's talk a little bit about voir dire I'm
6 going to give you some trial transcripts so I can speed
7 this up a little bit

8 This will be Juror No 165 begins on Page 247
9 of the trial transcript

10 Juror No 258, which begins on 172 of the
11 trial transcript

12 Juror No 118 begins on 677 of the trial
13 transcript, and Juror No 319 begins on 965 of the trial
14 transcript

15 A Thank you

16 Q Can I take you to Page 972 I'm going to ask you
17 how many strikes you used and the record will speak for
18 itself, but if I represent six strikes were used and four
19 were left ---

20 A I'll just have to totally go ---

21 Q If the record reflects that

22 A That's fine

23 Q If you look at Page 176, that would have be Juror
24 Elvis Mahabwa

25 A 176?

Steve Sumrer - Direct Examination (Continued)

1 Q Yes

2 A Yes, sir, I'm there

3 Q Now, would you go to Page 179

4 A Yes, sir

5 Q What's his employment? He was a prison guard and
6 that's what the record reflects

7 A I'll go with that

8 Q And he was asked whether his employment would
9 affect his deliberation and his answer was, "No, not at
10 all " That's what the transcript says And then when he
11 was asked whether his employment would affect his
12 deliberations and his answer was, "Not necessarily, no "
13 And the question was, "Not at all " What was the answer
14 to that question?

15 A Not at all He initially said, "Not necessarily,
16 no " And then Judge Cole said, "Not at all " And then he
17 replied, "Not at all "

18 Q Go down to 181, 182

19 A Okay

20 Q Where it say, "If there hadn't been a crime which
21 needs capital punishment, they wouldn't have to ask for
22 it "

23 A Okay

24 Q Did you voir dire him on that statement?

25 A Not if it's not reflected on the transcript

Steve Sumner - Direct Examination (Continued)

1 Q Why?

2 A Initially, I don't remember if I voir dire every
3 witness or if Mr Goldsmith did

4 Q You were part of the defense team, right?

5 A Yes, I am It's clear from -- I think and I
6 don't know, I can't recall specifically, but I think
7 Mr Goldsmith divided those up half and half

8 Q Well, you didn't do strike as you go, did you?

9 A I can't remember

10 Q Why didn't you strike him?

11 A This right here is just a colloquy between the
12 Court and him, is that right?

13 Q Yeah But even after a colloquy, would you have
14 the opportunity to ask questions? Would the defense have
15 an opportunity to ask questions?

16 A Yes, and ultimately I think a lot of information
17 came out about Juror Mahabwa and I'm assuming did not
18 strike him, is that right?

19 Q No, you sat him

20 A And the question is why was he not struck?

21 Q Well, he made the statement, "If there hasn't
22 been a crime that needs capital punishment, then the
23 wouldn't have to ask for it " I've got two questions on
24 it, number one, did you voir dire him about what he meant
25 by that statement?

Steve Sumner - Direct Examination (Continued)

1 A I would say no, if it's not in the transcript

2 Q Number two, having made that statement and with
3 no voir dire, why did you seat him or why didn't you
4 strict him?

5 A So the ultimate question is why was he not
6 struck?

7 Q Yes

8 A Probably because he was a prison guard at Perry,
9 is that right?

10 Q Prison guard at some kind of Department of
11 Corrections

12 A Let me see here I'm going back on Page 178 He
13 worked at Perry for 14 years, I believe, and when I look
14 at Page 178, Judge Cole asked him, "According to your
15 questionnaire, you've worked there for the past 14 years?
16 Approximately, yes Down at Perry Correctional? Perry
17 Correctional " And he was not a guard, he apparently had
18 some other type of other administrative duties about
19 assigning work details or something along those lines
20 You know, looking back on it, I don't have any specific
21 recollection about what conversations Skip and I had about
22 Mr Elvis Mahabwa In my general experience, people that
23 are prison guards, and we may have some here in the room
24 today, sometimes they do not have a similar outlook at law
25 enforcement This person was somebody who would know what

Steve Sumner - Direct Examination (Continued)

1 life in prison would be like and in the jury room could
2 say, listen, this is not some t v show, he's not going to
3 be out there playing tennis two hours a day And Perry, I
4 believe, is a medium and maximum security prison, but I'm
5 not sure I think it's not a light detention facility
6 And I was probably thinking and I probably shared with
7 Mr Goldsmith, I don't know, that this is a person in the
8 jury room, and again we never felt like guilt was an issue
9 here, Mr Nettles, never felt that way at all, that it
10 would come down to life in prison or death probably felt
11 like Mr Mahabwa could tell the other jurors, look, life
12 in prison is a rough, hard road and it's not something
13 that -- and not to expand on this issue, but there are a
14 lot of citizens who believe prison is not very difficult
15 This was not going -- if Kamell Evans was going to receive
16 life in prison, it was going to be a very high security
17 type facility and those are rough hard places to live
18 every day

19 Q What did you do about the fact that he said, "If
20 there hasn't been a crime which needs capital punishment,
21 they don't have to ask for it " Let me ask you this,
22 without asking him questions, could you take that to mean
23 that everybody that's convicted of murder, if they ask for
24 capital murder, then it must be a capital murder case?

25 A Well, this potential juror at this point is not
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 heard the testimony or heard the case We're looking at a
2 transcript, people speak as I'm speaking to day and you're
3 speaking today fairly quickly The transcript will have
4 to speak for itself on that one I can only tell you what
5 my general thoughts would be about a prison guard I
6 think it's a rough, hard dichotomy to cross, but I believe
7 that probably what I was thinking and I told this to
8 Mr Goldsmith was he can certainly tell the jury that
9 Perry is a rough place He may sympathize or have a lot
10 of credibility with George Martin's testimony that was
11 coming in about SCDC conditions and can tell the jurors
12 Martin is right, that's exactly the way that it's going to
13 be so that would be the reason

14 Q Let's go to Juror Freeman, 679, 681

15 A James Freeman

16 Q He was asked if he would assign more credibility
17 to a police officer than to an average person and would
18 you read the exchange beginning on 681

19 A Yes, sir What line is that? I got it It's
20 the top of the page

21 "QUESTION ---"

22 Q Question by who?

23 A Examination by me

24 "QUESTION Do you believe you have a tendency to
25 assign more credibility to the testimony of law

Steve Sumner - Direct Examination (Continued)

1 enforcement officers than you would to an average citizen?

2 ANSWER All things considered, probably, yes

3 At this point, probably yes If you'd asked me 30 years
4 ago, it probably would be a different answer, but yes

5 QUESTION So you tend to believe that law
6 enforcement officers are more credible and more
7 trustworthy and deserve more credit than an average
8 citizen and their testimony?

9 ANSWER Depending on the circumstances, a
10 trained law enforcement officer with the appropriate
11 training and experience will have the ability to discern
12 the facts and the issues But as the Judge referenced to
13 me which I was trying to reference back to him, just
14 because the officer would say that x is true, I don't
15 necessarily take that as gospel, but I will hear that
16 testimony and I will need to hear something strong to make
17 sure to counter that But, yes, I will hold a trained,
18 appropriately experienced law enforcement officer, I will
19 take his or her testimony at some weight, sure

20 QUESTION At a higher level of someone who has
21 not had that training?

22 ANSWER If all circumstances were equal,
23 probably, yes "

24 And then, "MR SUMNER Can we have a sidebar,
25 Your Honor?" And then a bench conference was held off the
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 record?

2 Q Mr Freeman was seated on the jury Not only
3 that, would you go on down there and read where it talks
4 about his son is in the process of receiving training for
5 law enforcement

6 A And?

7 Q Would you agree with me that he testified that
8 his son was in the process of ---

9 MS BROWN Objection, Your Honor, I'd like
10 to know a page so I can follow along with the
11 characterization

12 THE COURT Okay

13 MR NETTLES Page 679, starting on Line 19

14 BY MR NETTLES

15 Q Let me rephrase it this way, would it be fair to
16 characterize -- 679, Line 19, would it be fair to
17 characterize his testimony that his son had expressed a
18 desire to be in law enforcement?

19 A I would agree with that

20 Q You would agree with me that one of the victims
21 was a law enforcement officer?

22 A Right

23 Q Why didn't you strike him?

24 A I think you look and turn to the strikes in
25 general, I think every case that I've ever tried and I
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 believe this case would be part of that, you look at the
2 jurors who are sitting out there, you look at the
3 questionnaires, you go through the entire voir dire, and
4 you make a decision about who's sitting out there and who
5 you're going to go ahead and put on the jury I mean you
6 do the best you can to get the best jury that you can for
7 your client, but there's been numerous jurors I've struck,
8 Mr Nettles, over the years where you have to weigh who is
9 still sitting out there

10 My recollection is, and I think there's
11 extensive notes in the file, that Mr Goldsmith and I
12 looked at it and you're in a constant state of flux about
13 do you take this person? If we take this person, you may
14 not want to take this person, but there's seven other
15 people out there that we definitely don't want to take for
16 whatever reason It might be body language, it might be
17 demeanor, it might be dress and you just make the best
18 decision that you can

19 That would have to be my answer I don't
20 have any specific recollection at all of any of these
21 jurors I would just be able to answer it in a general
22 fashion

23 Q Let me ask you something, you would agree with me
24 that part of what he said was he'd have to hear something
25 pretty strong to overcome what a police officer said Did

Steve Sumner - Direct Examination (Continued)

1 you consider making an objection that there was a burden
2 shift here?

3 A No I don't recall any discussion about that

4 Q Was there a strategic reason for not doing that?

5 A Probably looked at, only going from recollection,
6 Mr Nettles, I probably listened to the questions that the
7 Court asked him and probably made a decision and graded
8 him as a juror as I typically do, juror 1 through juror 10
9 at some point and I felt like I had enough information to
10 grade him properly

11 Q Do you feel was sufficient -- just so we're all
12 clear about the process, a juror gets finished goes
13 outside Would there have been any harm in making any
14 objection that he was a burden shifter with the juror out
15 of the courtroom?

16 A No, sir, I don't believe there would have been
17 any harm in that

18 Q I'm going to ask you look at Page 254

19 A Sure Yes, sir

20 Q And there is as Juror Holcombe

21 A Yes

22 Q And starting at Page 254 to 255 read beginning
23 with Solicitor Atrial starting with, "When the State is
24 standing before you," and you can end on -- I'll just tell
25 you when to end

Steve Sumner - Direct Examination (Continued)

1 A Okay This is Solicitor Aerial apparently with a
2 statement to Sandra Holcombe, is that right?

3 Q Right

4 A 254 of the transcript, Line 17 "I want to
5 explore it just a little bit with you to make sure that
6 when the State is standing before you at the end of that
7 penalty phase, if you were put in that situation that you
8 would be able to give that fair consideration, not just
9 consideration but meaningful consider, would you be able
10 to do that?

11 ANSWER If the evidence really convinced me, you
12 know, beyond a shadow of a doubt that he is guilty

13 QUESTION And that the appropriate punishment
14 would be death Now, so, you're looking to the evidence
15 to establish that If the evidence establishes that, you
16 don't know any reason, any religious, moral, ethical,
17 social or any other reason, you are aware of that would
18 prevent you from opposing the death penalty?

19 ANSWER No, sir "

20 Q Did you ever voir dire on the standard for
21 determining guilty is reasonable doubt not beyond a shadow
22 of a doubt?

23 A No, sir

24 Q Can we go on down to transcript Page 258 He's
25 asked by, I believe, the defense counsel if the death

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Steve Sumner - Direct Examination (Continued)

1 penalty is imposed enough -- how often the death penalty
2 is imposed It's on Page 258

3 A Okay This is me asking her questions

4 "QUESTION Do you believe or feel that the death
5 penalty in our society is opposed to often, not enough, or
6 just about the right amount of time?

7 ANSWER Not enough in most cases that I've
8 heard

9 QUESTION Why do you feel that way?

10 ANSWER There's some ---

11 QUESTION Lean in to the microphone if you
12 would

13 ANSWER Okay To me there are some cases that
14 deserve the death penalty and others that don't, but then
15 again, I don't serve on the jury so I don't hear all the
16 evidence That's the reason why It just depends on the
17 case and the evidence brought to me

18 QUESTION And what you heard in court?

19 ANSWER Right

20 QUESTION Okay Do you feel that a sentence of
21 life without parole and Judge Cole will advise you that if
22 you are picked on a jury that a South Carolina life
23 without parole means exactly that It means the person
24 dies in prison There's no chance that they could come
25 out of prison Do you feel that that is a severe

Steve Sumner - Direct Examination (Continued)

1 punishment or not?

2 ANSWER Yes

3 QUESTION And this is my last question, you
4 understand Ms Holcombe that if you are picked for this
5 jury that if the State presents what is referred to as an
6 aggravating circumstance that would allow the jury to
7 bring back a death sentence, that you do not have to do
8 that That you could, at any point in time, vote for a
9 life without parole sentence

10 ANSWER Yes "

11 Q On Page 260, did you talk to her again? Did you
12 ask her if she would always vote for the death penalty?

13 A Question on 259?

14 "QUESTION Are you telling Judge Cole that's
15 what you could do?

16 ANSWER Yes, I could do either one It depends
17 on what the evidence brought to me and I guess what's in
18 my heart

19 QUESTION Yes, ma'am

20 ANSWER In other words, if all the evidence is
21 brought to me and I feel that it wasn't death penalty ---

22 QUESTION And it was not right in this case

23 ANSWER Right, then I will do the life

24 QUESTION And by the same token ---

25 ANSWER I could do the death, it just all
Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 depends on the evidence and ---"

2 And then I said I don't have any other questions

3 Q So she was not able to finish the sentence, "I
4 could do the death, it all depends on the evidence and"?

5 A Correct It was not transcribed for some reason

6 Q One last thing and then I think we're done On
7 the abuse ---

8 A Yes, sir

9 Q --- do you recognize this document?

10 A Yes, sir, it looks like a Divorce Decree

11 Q Did you obtain that during the course of your
12 investigation?

13 A I can't remember if I did or I didn't, so I
14 believe it's in my file I think I did?

15 Q Do you think it would be important to obtain the
16 Divorce Decree between your client's mother and father in
17 a capital murder case?

18 A Yes

19 Q Why?

20 A I guess to look at the circumstances and consider
21 the circumstances surrounding their divorce I guess it
22 would depend on the case I'm not sure

23 Q In this case, do you think it would important to
24 obtain the Divorce Decree between your client's mother and
25 father

Steve Sumner - Direct Examination (Continued)

1 A Not significantly

2 Q You don't think it would be significant to obtain
3 that?

4 A Well, I knew -- I believe there had been
5 allegations of abuse I knew that he had moved down with
6 his father when he was 11 or 12 years old I think this
7 occurred when he was, I want to say, 21 or 22 years old
8 So I don't think it had a lot of importance to me

9 Q Can you go and check your file to see if you even
10 got it

11 THE COURT I'll tell you what, we can go
12 ahead and take about a 10 minute break

13 (Whereupon, there was a brief recess)

14 THE BAILIFF The court will come to order

15 THE COURT Keep your seats

16 BY MR NETTLES

17 Q Did you find it?

18 A I did It's a part of my file

19 MR NETTLES At this time I would like to
20 mark and move Applicant 35 into evidence

21 MS BROWN No objection, Your Honor

22 THE COURT It's in evidence

23 (Divorce Decree marked as Applicant Exhibit
24 No 35 for identification was admitted into evidence)

25 BY MR NETTLES

Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 Q Would you please look at Page 2, first full
2 paragraph and would you please publish that to the Court?
3 Well, first share with the Court what that is and then
4 publish that to the Court

5 A This is Exhibit 35 This is a copy of a Common
6 Pleas Judgement from Domestic Relations Court in Ohio
7 Renee Evans, Plaintiff versus Barry Evans, et al?

8 Q Does it list in there what the grounds for
9 divorce was?

10 A Yes, Paragraph 2 does

11 Q What were the grounds for divorce in the court
12 document from Ohio?

13 A Gross neglect of duty and extreme cruelty

14 Q And who does it say grossly neglected their duty
15 and was involved in extreme cruelty?

16 A Barry Evans

17 Q That would have been your client's father?

18 A That is correct I believe, yes

19 Q Did you consider moving the Divorce Decree into
20 evidence?

21 A I didn't give it much thought

22 Q Was there a strategic reason why you did not move
23 it into evidence?

24 A Yes

25 Q What was that?

Evans versus State - Day 3

Steve Sumner - Direct Examination (Continued)

1 A Well, there had been some questions about his
2 father and about his mother, my recollection is there was
3 a lot of friction between these two people and ---

4 Q These two people meaning who?

5 A Barry Evans and his mother Renee Evans My
6 recollection is there was a tremendous amount of friction
7 between these two and Skip and I talked about and were
8 very hesitant or trying to eliminate the risk of it
9 turning into family court chapter 2 up there in terms of
10 their being witnesses So we stayed away from that and I
11 didn't put this into evidence because the case was about
12 him and I had made a decision as outlined in that memo
13 That decision, Mr Nettles, didn't change particular when
14 you considered some of the communications from Ms Topp
15 that there was a real risk that since there such a
16 tremendous amount of friction between his family members,
17 his sister, and the mother, and the father, and just
18 considering all that, we decided to stay away from it

19 Q Is friction between a mother, a father, and a
20 sister, in your opinion consistent or inconsistent with a
21 stable household?

22 A I'm sorry^

23 Q What type of household do you think results from
24 the friction between the mother, the father, and the
25 sister

Steve Sumner - Cross-examination

1 A Unpredictable, I guess I didn't give a lot of
2 thought to that

3 (Photographs marked as Applicant's Exhibits
4 No 36, 37 and 38 for identification)

5 BY MR NETTLES

6 Q Do you recognize these three photos that have
7 previously been marked as Applicant 38, 37 and 36?

8 A No, I don't

9 Q You don't recognize those?

10 A No, I don't

11 Q If I represent to you that these are the pictures
12 that were taken of Joe's car at the scene, does that
13 refresh your recollection?

14 A No, it doesn't, I'm sorry

15 Q What are those pictures?

16 A These are black and white photographs of a jeep,
17 four-door vehicle parked outside of a residence It's on
18 a dirt type driveway I can't tell the color, but it's
19 got a wrench on the front and heavy duty grill on the
20 front

21 Q Do you see a license plate number?

22 A I do SC-618ALS

23 | Q Thank you

24 A Sure Three pictures in total

25 || MR NETTLES I'm done Thank you very much,
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 Your Honor

2 THE COURT Okay Cross-examination

3 CROSS-EXAMINATION

4 BY MS BROWN

5 Q Mr Sumner, when you first began your testimony,
6 you refered that your practice was approximately 90
7 percent defense work, criminal defense work?

8 A Yes, ma'am

9 Q I believe you also referenced several cases One
10 was State versus Owens and tnat was a federal matter

11 A Yes, ma'am?

12 Q Would you summarize your capital and non capital
13 murder cases experiences you've had?

14 A Yes, ma'am I was not directly involved with
15 murder cases when I was an assistant solicitor in Beaufort
16 County, the 14th Circuit, but I did have some involvement
17 there as an assistant solicitor for two years I did work
18 with Rick B on a federal murder case that was prosecuted
19 by Trey Gaudy and David Stevens out of Greenville Bob
20 Fowler is his name I did try on either the second or
21 third round of the Freddie Owens re-sentercing I'm not
22 sure which round that was with Alex Kinlaw prior to this
23 case I tried Rusty Rice whose doing life in prison now
24 on a murder charge to a jury in Greenville County General
25 Sessions

Steve Sumner - Cross-examination

1 I believe after this case, I tried a case
2 actually with Judge Hill It was a murder case, I believe
3 in Greenville General Sessions I can't recall that
4 person's name That wound up being a self-defense type
5 case

6 I'm trying to think if I've tried any other
7 murder cases I can't recall if I had any or not right
8 now I've handled other cases that resulted in guilty
9 pleas, but I can't recall the number right now

10 Q Are you death penalty certified?

11 A I believe so

12 Q Were you certified at the time of the trial?

13 A Yes, I believe so

14 Q So your client actually had two death penalty
15 certified attorneys Either one of you could have been
16 lead counsel?

17 A Yes, ma'am

18 Q Do you have any idea, just an approximately, of
19 how many felony trials that you prepared for and actually
20 participated in?

21 A Both as a prosecutor and a defense attorney, I
22 would have to say felony trials 25 to 50 In terms of
23 preparation for them it would be probably 100s

24 Q I think you were asked yesterday, essentially
25 what you did to prepare this case and several different

Steve Sumner - Cross-examination

1 questions going into the preparation, would that be
2 correct?

3 A That would be correct

4 Q And we talked about when you actually became
5 involved in this case?

6 A We did

7 Q When you first got this case, how would you
8 characterized your receipt of it and its plan of action?
9 Did you wait a while before you started doing anything or
10 how would you characterize that?

11 A No, I didn't wait because my recollection is that
12 Judge Cole and Skip Goldsmith had said do you have the
13 ability to put a lot of focus on this right now, this case
14 is set for trial in September, and I immediately made just
15 a checklist type document and started looking for experts
16 that could come in, doctors I had worked with Dr Evans
17 before, Dr Jim Evans, before in the Freddie Owens case so
18 I knew him He said he was available I just started
19 doing that I got Investigator Scott Peterman He, you
20 know, started his work almost immediately I asked people
21 if they could just jump in and start pretty heavy
22 preparation from the beginning and started going from
23 there

24 (File notes marked Respondent's Exhibit No 1
25 for identification)

Steve Sumner - Cross-examination

1 BY MS BROWN

2 Q I'm going to show you what's been marked as
3 Respondent's 1 for identification

4 A That's fine

5 MS BROWN Would it be easier for the court
6 reporter to have the other exhibits over there?

7 THE WITNESS The only one that wasn't
8 admitted, I think, was 32 was filed I don't know if it
9 was referenced or not but I don't remember talking about
10 that one on direct examination

11 Can we kind of stack this stuff up

12 BY MS BROWN

13 Q I'm showing you a document marked Respondent's 1
14 Why don't you tell us what that just in general?

15 A Sure It's marked 7/9 of '04 It appears to be
16 copies of my notes from my file

17 Q In general, what do these notes reflect?

18 A They appear to be notes -- there are about seven
19 pages of notes, handwritten notes, from my initial -- I
20 believe these came from my initial conference with the
21 defendant It covers his education It covers his high
22 school, it covers elementary school Again, these are
23 notes from who is mother is, notes about her, who is
24 father is, full sister, Shatima Evans, two half sisters

25 Q And how many pages is it?

Steve Sumner - Cross-examination

1 A Seven pages

2 Q It's seven pages If you would, would you please
3 turn to Page 3 beginning with the second paragraph

4 A All right "In Cleveland - Defendant mom had
5 problems, single mom, sister in college, defendant running
6 the streets "

7 Q And -- I'm sorry Read as much as you want

8 A "No bad trouble, no jail but brushes with the
9 law Defendant decided himself to move down with his dad
10 In gang in Cleveland the Crips, Crips neighborhood'
11 cousins and uncles in the Crips

12 Q So that was the information you received from
13 your first communication with your client?

14 A Yes, ma'am

15 Q And the next page

16 A It talks about him from 11, 12 years old through
17 17 years old at Greer High School, summers in Cleveland,
18 spring break, Christmas, ran with the Crips Defendant
19 was a leader, "he worked his way up the ranks " Sold
20 crack, coke and weed, never got caught No "Crip"
21 involvement in Greer Sold crack, coke and weed in Greer,
22 never caught Got caught in Greenville, quarter of a
23 pound, Dick Warder got him probation

24 Q On the next page, Page 5, does it say anything
25 about carrying a pistol about midway down the page?

Steve Sumner - Cross-examination

1 A Yes "Expelled for carrying a pistol in 8th
2 grade from Greer in middle school

3 Q And on Page 7, you have what appears to be a mark
4 for defendant Would that be the defendant's statement to
5 you?

6 A That is correct

7 Q And what does that say?

8 A "Doesn't believe his is 'innocent' What
9 happened?" Then another notes, "Will cooperate with full
10 investigation, wants to know what happened "

11 Q And the remainder of that Page, did you get some
12 information for character references right off the bat
13 there?

14 A I did, six of them

15 Q If you would turn to what's been marked ---

16 MS BROWN I'd like to move Respondent's 1
17 into evidence, please

18 MR NETTLES No objection

19 THE COURT Into evidence

20 (File notes marked as Respondent's Exhibit
21 No 1 for identification was admitted into evidence)

22 BY MS BROWN

23 Q And No 2

24 A No 2 are further notes from my file dated July
25 12th of '04, the initial set is dated July 4th of '04

Steve Sumner - Cross-examination

1 This is July 12th of '04

2 Q And the third page of Respondent's 2, that first
3 paragraph, would you publish that, please

4 A "Christina - GF," which would mean girlfriend,
5 "Pattern of threats and abuse here Not good He made
6 threats against her and her family "

7 Q So that would be information you had beginning
8 July 12th of 2004?

9 A That's what my notes said, yes, ma'am

10 Q Going back to Page 2, there are little marks
11 indicating, I believe, are paragraphs, would that be
12 correct?

13 A Just bullet point type things

14 Q What does the 4th one point to?

15 A The one that's starred?

16 Q Right underneath that

17 A "Dr Pamela Crawford - SLED forensic
18 psychiatrist " The defendant didn't speak to her She
19 interviewed some others

20 Q So you had some kind of information that
21 Dr Crawford was involved back in July?

22 A That's correct

23 Q And let's go on ---

24 MS BROWN And may I move Respondent's 2
25 into evidence, please

Steve Sumner - Cross-examination

1 MR NETTLES No objection

2 (File notes marked as Respondent's Exhibit
3 No 2 for identification was admitted into evidence)

4 (Memo marked as Respondent's Exhibit No 3
5 for identification)

6 (To Do list marked as Respondent's Exhibit
7 No 4 for identification)

8 (Client conference note marked as
9 Respondent's Exhibit No 5 for identification)

10 (Interview notes marked as Respondent's
11 Exhibit No 6 for identification)

12 (File notes marked as Respondent's Exhibit
13 No 7 for identification)

14 BY MS BROWN

15 Q Respondent's 3, can you identify that for us,
16 please

17 A This is a memo to the file from myself dated July
18 13th of 2004 and it's from my file

19 Q And those first two sentences, would you publish
20 those, please

21 A "On July 9, 2004, I had the initial client
22 conference with the defendant, Kamell Evans During this
23 conference I introduced myself and overall had and
24 excellent meeting with Mr Evans "

25 Q So you characterized that meeting as excellent?
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 A I did

2 Q And you go over some of the information that
3 we've seen in the first notes today?

4 A That is correct

5 Q Let's move on to Respondent's 4

6 A This is from my file

7 Q And what is that?

8 A This would be a To Do list I think initially
9 when I answered your first couple of questions I sat down
10 and started making notes of everything I felt like I
11 needed to do It wasn't every single thing I needed to
12 do, but a starting point of what all I needed to consider
13 and I made this list on July 14th

14 Q How many entries are on the first page?

15 A Fourteen

16 Q So on July 14th, you had at least 14 things that
17 you wanted to work on?

18 A That is correct, yes, ma'am

19 Q And the second page, does that indicate any
20 conference?

21 A It's a conference with Skip Goldsmith where we
22 started talking about what all needed to be done and you
23 could see Steve out there, which would be me, and you
24 would say SP, which mean Scott Peterman who was the
25 investigator and I would Scott Peterman's initials by

Steve Sumner - Cross-examination

1 interview the negotiator, interview the cops, review the
2 photos and videos of the scene and that type of thing

3 Q So you had already started to put your team
4 together by that point?

5 A Yes

6 Q July 14th?

7 A Right

8 Q Let's move to Respondent's 5

9 A It is a single page of notes from my file

10 Q And can you just generally characterize what that
11 reflects?

12 A It was a client conference of July 23, 2004
13 interview between me and Kamell Evans referencing who
14 George Martin would be who was an expert that was called
15 by the defense who Jim Evans was basically what their
16 roles were I thought it was a positive meeting plus
17 interaction I got him to initial the statement okay with
18 full disclosure of test results to the prosecutor, full
19 explanation of this, pros and cons, and he initialed that,
20 and he signed off "I agree to take tests and release of
21 info if necessary," and he signed that -- Kamell Evans
22 did

23 Q How about what's been marked Respondent's 6

24 A This is more interview notes from my file of
25 Kamell Evans dated July 30, 2004 client conference

Steve Sumner - Cross-examination

1 Client conference, he had given me information about a
2 person named BJ Young that I believed was a witness, good
3 friend Full discussion of all perding charges and ne
4 told me that he did not believe it was a kidnapping, they
5 could have left if they wanted to He said he felt the
6 statement was coerced He said, "I wanted to be a man I
7 wanted to take responsibility " There are some other
8 notes

9 Q On the second page, specifically, that last
10 paragraph, what did you note back in 2004, July 30th?

11 A The last note I had was, "Again, in my presence
12 Lenora Topp, acknowledges that he did the shooting 'I'm
13 not going to deny it '"

14 Q And Respondent's 7, can you identify that
15 document

16 A These are more notes from my file dated July 30th
17 of '04 The reference a batch of discovery received from
18 Betty Strom

19 THE COURT Have those been marked? What
20 number is that?

21 THE WITNESS Number 7
22 Number 7 references North Greenville College
23 records, Greer Hospital records, supplemental reports,
24 drawings of the bullet entries, coroner's report, witness
25 Antonio Garrett

Steve Sumner - Cross-examination

1 BY MS BROWN

2 Q On the second page and you just mentioned Antonio
3 Garrett's name, how is he listed?

4 A He's a witness

5 Q And who would have given you that information, do
6 you recall?

7 A I don't recall

8 Q What was the information that you received in the
9 first two bullet points under Mr Garrett's name?

10 A "Witness Antonio K Garrett owns a club of some
11 type Defendant wanted to be a gangster "

12 Q So by 7/30/04 you had some indication that other
13 people believed he wanted to be a gangster

14 A Correct

15 MR NETTLES Your Honor, I would ask 106
16 that he actually read what it says

17 THE WITNESS Would you like for me to read
18 entire entry?

19 THE COURT You can read it

20 THE WITNESS The last entry, Mr Nettles, is
21 that what you're referring to?

22 MR NETTLES Why don't you start with,
23 "Witness "

24 THE WITNESS "Witness Antonio K Garrett
25 owns a club of some type Defendant wanted to be a
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 gangster, 'punk ass nigger " That's the end of it

2 BY MS BROWN

3 Q So by the end of July, you have seven memos that
4 speak of client meetings -- several client meetings,
5 meetings with several experts, specific experts listed by
6 name, a receipt for request for records, specifically
7 school records, and some initial investigation into
8 forensics Is that a fair analysis?

9 A I would agree

10 MS BROWN Your Honor, at this time, I'd
11 like to move Respondent's 3 through 7 into evidence

12 MR NETTLES Without objection

13 (Respondent Exhibit Nos 3 through 7 marked
14 for identification was admitted into evidence)

15 BY MS BROWN

16 Q Mr Sumner, would you agree that these notes tend
17 to show two broad concepts by the end of July that one,
18 there was massive intense work, and two, that there was
19 already teamwork at this time

20 A Well, I felt that there was teamwork development
21 at the time Whether or not, I don't know if I
22 characterize it as, I think you said, massive and intense
23 work I felt like there was a lot of work being done at
24 this point

25 Q Can I ask you to look at what's been marked as
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 Respondent's 8

2 A Yes

3 Q I would ask you if you recognize that document?

4 A I do This bares a letter from my file off of my
5 stationery hand-delivered to Kamell Evans and he signed
6 for it at the bottom

7 Q And do you reference any specific experts in that
8 letter

9 A I do This is just a general -- if I could just
10 kind of summarize it, this is just a status to some degree
11 update It tells him that there's a meeting with Dr Jim
12 Evans, neuro psychiatrist that's been set up, Scott
13 Peterman, investigator, George Martin, former SCDC
14 employee, and his father It talked about meetings that
15 we were going to have and that he was going to be probably
16 seeing a lot of people and please cooperate with them when
17 they came to the jail to talk with him And sign anything
18 they needed signed and he signed for it

19 Q And when you said his father, were you talking
20 about your client's father?

21 A I was, Barry Evans

22 Q In July of 2004?

23 A Yes

24 Q And what's been marked as Respondent's 9 is a
25 group of letters?

Steve Sumner - Cross-examination

1 A That is correct

2 Q Can you identify that and kind of tell us what
3 that would reflect

4 A These were letters, I guess, of introduction --
5 copies of letters of introduction for Dale Davis just
6 introducing her to somebody just asking whoever she gives
7 these too that she's working with us and that she can have
8 -- one of them is for Dale Davis, one is for Mr Evans,
9 and also the last one would be Lenora Topp

10 Q The one for Ms Davis is dated what date?

11 A July 22, 2004

12 Q And the one for Ms Topp?

13 A July 30, 2004

14 Q And just to be complete for Mr Evans?

15 A July 22, 2004

16 Q And the one referencing Mr Evans actually has
17 Mr Peterman in it and Mr Martin, correct?

18 A That would be correct, yes

19 Q What's been marked Respondent's 10, can you
20 identify that for us?

21 A I can That's an email from George Martin to me
22 regarding Kamell Evans dated August 12, 2004

23 Q Would you please publish the first paragraph?

24 A "Steve, it was good to see you yesterday morning
25 I appreciate your arranging for a review of the files It
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 was helpful to get some background before talking with
2 Kameil As you told me to expect, he was very responsive
3 and willing to talk about his circumstances In the
4 course of our visit, I got some material I hope will be
5 helpful at trial His account of early gang involvement
6 is right from the textbook "

7 Q And that information was given to you by email
8 dated August 12, 2004?

9 A That is correct

10 Q On the second paragraph of that same document, I
11 believe there's a reference to SCDC policies?

12 A There is

13 Q Would you publish that, please

14 A "As soon as we get the SCDC policy, I'll begin
15 working on the summary you requested Given time
16 restraints it would be helpful if I could run by and pick
17 up the material I live nearby and would save several
18 days of unnecessary delays in getting to me The GCDC
19 records are needed but I can pick them up when I come back
20 up there "

21 Q Would you say that fairly reflects that
22 Mr Martin was acting quickly on this case as you were?

23 A Yes

24 MS BROWN I'd like to move Respondent's 8,
25 9 and 10 into evidence at this time

Steve Sumner - Cross-examination

1 MR NETTLES No objection

2 (Packet of documents marked as Respondent's
3 Exhibit 8, 9 and 10 marked for identification was admitted
4 into evidence)

5 BY MS BROWN

6 Q Let's talk a little bit about your experts Do
7 you recognize Respondent's 11 for ID purposes

8 A I do

9 Q Can you give us an idea of what that document is?

10 A This is a memo, I guess, outline of notes prior
11 to meeting that I wrote in preparation for a meeting with
12 Skip Goldsmith

13 Q And the date on that?

14 A July 9, '04

15 Q And you have two experts named?

16 A Right

17 Q Who was the first expert?

18 A The first expert of Drucy Glass

19 Q How did you know Ms Glass?

20 A I knew Ms Glass -- I met her when I worked on
21 the Freddie Owens case, Judge Kinlaw and I had I was
22 impressed with her She was real nice to work with, real
23 professional person, I thought And I thought about
24 getting her involved in this case

25 Q So yesterday we heard about a Ms Davis and we
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 heard about Ms Topp, but you also consulted with a third
2 mitigation expert or social worker?

3 A I think I started with Ms Glass I believe that
4 Drucy told me, going totally from memory, that she had too
5 many things going and would not be able to do it and I
6 asked for references from her and I believe she gave me
7 several, which was Dale Davis and that's the way it worked
8 on that point

9 Q So you had two experts that said they wouldn't
10 have time to do this and you looked for someone who would,
11 is that a fair characterization?

12 A I would There was not any time to waste There
13 was a trial date in place and so, yes?

14 Q And the second name there is?

15 A Scott Peterman, Private Investigator Peterman,
16 and I knew Mr Peterman He and I actually were friends
17 in high school so I knew him He was a retired federal
18 agent so it was somebody I thought about as an
19 investigator

20 MS BROWN Your Honor, I'd like to move
21 Respondent's 11 into evidence

22 MR NETTLES Without objection

23 MS BROWN It's in evidence

24 (File notes marked as Respondent's 11 for

25 identification was admitted into evidence)

Steve Sumner - Cross-examination

1 BY MS BROWN

2 Q Let's look a little bit at the time that you had
3 on this case and that you spent on this case I think you
4 were asked yesterday about the number of days from the
5 time of your appointment to trial, do you recall that?

6 A I believe Mr Nettles did ask me about that

7 Q Do you recognize what's been marked as
8 Respondent's 12 for ID purposes?

9 A I see Respondent's 14, but I don't believe that
10 12 and 13 -- oh, I'm sorry Maybe it's on the back Yes
11 Respondent's 12, yes, I have it It's an Voucher Form
12 executed by Judge Cole submitted by me

13 Q And what is attached to that Voucher Form?

14 A Attached would be a ---

15 Q It's a summary or a listing

16 A It's a time sheet type document that was prepared
17 by me

18 Q Is it fair to say or would you need to correct
19 the characterization that this would show the minimum time
20 that you had actually recorded and there may be other
21 times that you didn't record it?

22 A I would agree with that

23 Q The last page there seems to be a total section

24 A Right?

25 Q What are the total number of hours that you,
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 alone, put in?

2 A Out-of-court, 177 2, in-court, 59 5

3 Q Well over 200 hours, would you agree?

4 A When you combine the two

5 Q I won't just you to add them

6 MS BROWN We'd move Respondent's 12 into
7 evidence

8 MR NETTLES Without objection

9 (Voucher Form marked as Respondent's Exhibit
10 No 12 for identification was admitted into evidence)

11 BY MS BROWN

12 Q Would you look at Respondent's 13? I think
13 that's the one that's also marked on the back And before
14 you identify it, let me ask you, you mentioned yesterday
15 that you are the file custodian?

16 A That is correct

17 Q And that you have reviewed the file in detail in
18 preparation for this hearing?

19 A I have

20 Q Several times?

21 A Several times

22 Q Do you recognize No 13?

23 A I do This is a voucher submitted on behalf of
24 Skip Goldsmith While not being, you know, tremendously
25 familiar with it, I do recognize it

Steve Sumner - Cross-examination

1 Q Does it have a similar total of hours as the
2 former?

3 A It does

4 Q And what was that out-of-court total?

5 A 229 50 hours

6 Q And in-court?

7 A 59 50

8 MS BROWN I'd like to move Respondent's 13
9 into evidence

10 MR NETTLES Without objection

11 (Voucher marked as Respondent's Exhibit No
12 13 for identification was admitted into evidence)

13 BY MS BROWN

14 Q Moving to the next one we have Respondent's 14
15 that's been marked for identification Can you tell us
16 what that?

17 A The time sheet for George Martin in what was
18 provided to me which I sent on to the court

19 Q Does it reflect a total of the time spent in
20 investigation of this case?

21 A It does, 4 1/2 hours and 30 minutes

22 Q What about Respondent's 15?

23 A Dale Davis, similar type document and it's total
24 hours of 26 and a quarter hours on her behalf It was
25 submitted to the court

Steve Sumner - Cross-examination

1 Q Can you identify Respondent's 16?

2 A I can This would be the same document for
3 Lenora Topp, a total of 144 and a quarter hours spent on
4 the case

5 Q And finally in that grouping, how about
6 Respondent's 17

7 A Sure This is James Evans, Dr Evans

8 Q It's not really a total

9 A Not really a total on it I can go in my head
10 here, roughly 15 to 16 hours looks like

11 MS BROWN Your Honor, I'd move these
12 documents into evidence

13 MR NETTLES Without objection

14 (Vouchers marked Respondent Exhibit Nos 14,
15 15 and 16 marked for identification was admitted into
16 evidence)

17 BY MS BROWN

18 Q I'd like to go to quickly to Petitioner's 18
19 This is the letter from Ms Topp explaining that she would
20 require approximately 100 to 150 hours to complete the
21 investigation

22 A Okay

23 Q Do you recall that one?

24 A I do

25 Q I believe you were asked some questions about
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 that yesterday in regards to whether you thought you had
2 sufficient time to go forward Is there over 100 hours
3 put in on this case?

4 A By Ms Topp?

5 Q Yes

6 A Her voucher reflected 140 some odd hours

7 Q And in addition to that we have your hours,
8 Mr Goldsmith's hours, Mr Martin's, Ms Davis for her
9 part understanding she wasn't all the way through,
10 Dr Evans and we're not counting Mr Peterman or
11 Dr Burke, is that correct?

12 A That would be correct

13 Q I'd like to move on the Respondent's 18

14 A Okay

15 Q Can you identify that document?

16 A These are more notes from my file dated July 23rd
17 of '04

18 Q You have a line drawn through these notes,
19 correct

20 A That's correct

21 Q Could you reflect what is recorded above the
22 line?

23 A Above the line would be Barry Evans' address, his
24 home number, his cell number, conference with Dale Davis,
25 Jim Evans, George Martin, Barry Evans and Shatima Evans
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 Q Is it fair to say that this note reflects that at
2 least by July 23rd you were also conferencing not only
3 with your client and with experts with co-counsel, but
4 also with family members?

5 A That would be correct

6 Q And specifically Barry Evans and that's your
7 client's father, correct?

8 A That's correct, and sister, Shatima Evans

9 MS BROWN I would like to move Respondent's
10 18 into evidence, please

11 MR NETTLES Without objection

12 (File notes, July 23, '04 marked Respondent's
13 Exhibit 18 for identification admitted into evidence)

14 BY MS BROWN

15 Q Now, Mr Sumner, you've been asked several
16 questions yesterday and today about Mr Barry Evans, and
17 as I understood your testimony, and please feel to
18 correct, as I understood your testimony, you had decided
19 to call him at one point and you had wanted him to testify
20 for your client in the penalty phase

21 A That would be correct

22 Q And you're been asked about different
23 memorandums, suggestions, that there was abuse in the
24 family and you lastly recognized the divorce decree, is
25 that correct?

Steve Sumner - Cross-examination

1 A That is correct

2 Q I'm going to show you what's been marked as
3 Respondent's 19 Do you have that?

4 A I do

5 Q Can you tell us what that is?

6 A This is a grid of some type, a family tree type
7 document, with various notations on it

8 Q Do you know who would have generated that
9 document?

10 A I do not

11 Q You do not Does it have a legion on it?

12 A Yes

13 Q And what does that legion reflect?

14 A Substance abuser, alcohol drugs, psychological
15 problems, former substance abuser, things of that nature,
16 neglect, mental illness, sexual abuse, that type of thing

17 Q So presumably, these are things that would be
18 marked next to the entries to suggest these things
19 occurred, is that your understanding?

20 A That would be my understanding

21 Q Does this reflect your client's family?

22 A It does

23 Q Does it reflect both Barry Evans and Renee Evans?

24 A It does

25 Q And extended family further back including

Steve Sumner - Cross-examination

1 grandparents?

2 A It does

3 Q Uncles as well?

4 A It does

5 Q Okay Is there a notation about an abusive
6 relationship?

7 A There is

8 Q And how is that noted?

9 A Well, there's abusive relationship arrows drawn
10 from Barry Evans to Robin Evans, drawn from Barry Evans to
11 Renee Evans, and drawn Barry Evans skipping on through to
12 Kamell Evans, the defendant

13 Q Are there any other lines or there that would
14 indicate any kind of abusive relationship?

15 A No, ma'am Those are the only ones signified on
16 this grid

17 Q So is it fair to say that it's consistent that
18 whatever evidence would have been there would have just
19 been toward Barry and Renee's relationship or time
20 together? It's confined?

21 A I don't know

22 Q How would you interpret that?

23 A I'm sorry?

24 Q How would you interpret the lines denoting
25 abusive relationship or possible abusive relationship

Steve Sumner - Cross-examination

1 A Well, it seems to me that it comes from Barry
2 Evans according to this grid to his second wife or to
3 Robin Evans to Renee Evans to the defendant's mother, and
4 also to Kamell Evans, the defendant

5 Q Is there anything to the Shatima?

6 A It does not

7 Q But Shatima and Kamell lived in the same house at
8 the same time?

9 A Yes I can't remember for how long, but I
10 believe they all lived in Greer together for some TIME

11 MS BROWN I'd like to move in Respondent's
12 Exhibit 19 into evidence

13 MR NETTLES Without objection

14 (Grid marked Respondent's Exhibit No 19 for
15 identification was admitted into evidence)

16 BY MS BROWN

17 Q Also referencing Mr Evans, do you see
18 Respondent's 20?

19 A I do There's no header on this I believe it's
20 an email It is noted in my handwriting that it was sent
21 to Lenora Topp dated September 9, '04 I believe it would
22 be that I'm not very good with emails so I had to write
23 down who I wrote it to because I wasn't smart enough to
24 print out to and\from and all that So that's what it is
25 Would you like me to read it?

Steve Sumner - Cross-examination

1 Q Sure

2 A This is my email to Lenora Topp on September 9th
3 "I have read your interview with Barry Evans Do you
4 think we should call him as a witness? Please give this
5 some thought and call me tomorrow Thanks, Steve "

6 Q So that specifically says, "read your interview,"
7 and that would be Ms Topps' interview

8 A Right

9 Q And that was the one your were questioned about
10 yesterday?

11 A Right

12 Q So y'all had to have a discussion about that?

13 A We did

14 Q And do you recall any specifics?

15 A I just recall that Barry Evans in my dealing with
16 him was stoic to say the least I did not think he would
17 be a very good witness in the sense that I didn't -- I
18 just remember that I didn't feel like he would touch any
19 significant cord with the jury To say he was a man of
20 few words would be kind of an understatement And I just
21 remember thinking I was not sure There was a lot of
22 debate between -- when I say a lot of debate, I mean there
23 was some debate between myself, Lenora Topp, and Skip
24 Golasmith about whether or not to put him up on the stand
25 We didn't want to not put the father up, but clearly we
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 were concerned about what he would say or what type of
2 witness he would be perceived as

3 Q Did you work with him prior to trial on his
4 testimony specifically?

5 A I remember if I did or not

6 Q Do you remember when he testified?

7 A I remember after Mr Nettles gave me the
8 transcript yesterday, it kind of refreshed my memory that
9 from the looks of it and from my looking back over other
10 cases I've tried, I tried to keep it on a real tight leash
11 with him, get him up, say the positive things we felt like
12 he could say, and get him off of the stand

13 Q Do you believe that he said the positive things
14 that you needed him to say?

15 A I think he did Mr Nettles had that portion of
16 that transcript I can't quite remember I remember that
17 he gave pretty clipped answers, pretty short answers

18 Q Were they very favorable to your client, speaking
19 of character, not just from a father's point of view?

20 A Yes I don't know if I'd say very favorable
21 They were favorable, but I didn't feel like -- I just
22 didn't feel like he was a great witness I don't know any
23 other way to say it?

24 Q But you make the decision to put him up?

25 A With my reluctance, from my recollection, we made
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 the decision to put him up

2 Q Well, would you have wanted to bring out any
3 abusive relationship with him? When you bring him up
4 there, would it have affected his credibility to such an
5 extent that would have made in your decision anything like
6 that

7 A It did The thing about the abuse was that there
8 were notes in my file, if I can expand a little bit on the
9 abuse because I think Mr Nettles asked a lot of questions
10 about it and I think it's an important matter -- the thing
11 about the abuse was, my recollection of Kamell Evans from
12 my very first interview that I've already published, told
13 me several times he did not feel there was an abuse home
14 The fact that he had moved down voluntarily with his
15 father when he was 11 years old, and I can't recall now
16 old he was when this crime occurred, but it had been quite
17 some time It had been eight to ten more years from my
18 recollection

19 Barry Evans, as I mentioned, was very stoic
20 and I would say he was responsive when I spoke to him
21 about speaking to me but it was just short and to the
22 point He did not expand on anything

23 The mother, taking into account that the
24 mother had left their home voluntarily and moved down here
25 when he was 11 years old with his sister, she was very

Steve Sumner - Cross-examination

1 unresponsive to most everything I think she did come
2 down to trial, but I didn't have a lot of interaction with
3 her

4 We just decided, as I mentioned in this
5 memorandum, Judge, that I did know that there would be a
6 hearing of this nature, that we decided not to get into
7 the abuse because there was conflicting information about
8 it It was so far removed that I felt it would run a
9 credibility gap with the jury about, you know, they're
10 trying to blame something from 10, 12 years before this,
11 and I felt we would lose credibility

12 Skip and I discussed pretty extensively, Skip
13 Goldsmith and I, and ultimately we decided to stay away
14 from that and focus on basically that what happened was a
15 meltdown type situation It was just a freak situation
16 We focused on as many positive character references we
17 could get up for Kamell Evans, which were coaches I
18 can't recall if we had friends or teammates there, and he
19 testified to my recollection and also made a statement to
20 the jury in the mitigation phase and we felt that we would
21 try to show that he was a very good person That we had a
22 photograph of him holding his, half sister I believe,
23 after they had won a conference championship game, and we
24 decided that we would just try to focus, get through the
25 guilt phase and try to focus as much as we could on he was

Steve Sumner - Cross-examination

1 a very good person and he had a lot of good
2 characteristics and this was kind of a meltdown situation
3 that occurred

4 To answer your question about the abuse, we
5 decided as a litigation strategy that would not try to get
6 into that for the reasons I already mentioned

7 MS BROWN I'd like to move Respondent's 20
8 into evidence, please

9 MR NETTLES Without objection

10 (Email dated August 30, 2004 marked
11 Respondent's Exhibit No 20 for identification admitted
12 into evidence)

13 THE WITNESS This is a memorandum from
14 George Martin, Corrections Consultant to me, dated August
15 30, 2004

16 BY MS BROWN

17 Q Is that Respondent's 20-a?

18 A That is Respondent's 20-a, yes It is a Resume
19 document so to speak from George Martin, and there's also
20 a lot of underlying that I've done This is numbered It
21 appears to me to be the outline of his direct testimony
22 that was put together by him and reviewed by me with him
23 and it looks like about an 8 or 10 page outline of his
24 proposed testimony of what it would be, points to cover
25 That's what it is

Steve Sumner - Cross-examination

1 Q Would it fair to say that those are two copies of
2 the same memorandum but that, and please correct me if I
3 misunderstood you, it's your handwriting on here?

4 A Yes, it is my handwriting

5 Q So the entire document is an outline for you?

6 A Yes

7 Q Down on the first page, you have some handwriting
8 there about qualifications

9 A My notes to the myself, "previously qualified as
10 an expert in the corrections and prison administration,"
11 so I believe that's what I offered him to the Court as

12 Q And the line on the memorandum, which as I
13 understand would be from Mr Martin, is that correct?

14 A Yes I believe this memorandum was authored for
15 me by Mr Martin and then I sat down with him -- my
16 recollection is I sat down with him and I reviewed it with
17 him In other words he sent it to me, I reviewed it and
18 then I would sat down with him and went through it with
19 him in terms of testimony and what points would be
20 stressed and probably not stressed

21 Q On page two of the memorandum under "Issues for
22 direct questioning," under Section 2 of that heading, you
23 have, Security threat group "

24 A Correct

25 Q Can you explain to us what your markings around
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 that area would be?

2 A Well it's a dash and a question mark and a dash
3 which I can't say right now what I was trying to say to
4 myself there, speculating on my kind of shorthand I write
5 to myself, it would be a question of whether or not I
6 wanted to get into that

7 Q Could it also be a question of what it was?

8 A Could be

9 Q According to Mr Martin's memorandum to you how
10 did he explain Security threat group?

11 A "Self admissions, security threat group tattoos,
12 possession of security threat group publications,
13 documents, symbols, logos, colors, hand signs, involvement
14 or attempted involvement in security threat group like
15 activities "

16 Q And what's the remainder of that, "such as"?

17 A "Such as assaults on other inmates or staff,
18 compromising of staff, contraband introduction, possession
19 of contraband, criminal activity or any other type of
20 security threat group involvement not mentioned in the
21 above sections "

22 Q And I believe you testified earlier that
23 Mr Martin was a warden at one time in the SCDC?

24 A I'm not sure if I said he was a warden or not,
25 but I believe that he was He was either a warden or

Steve Sumner - Cross-examination

1 deputy warden in some prison system

2 Q So you would expect him to have knowledge of
3 whether there was a security threat group and what it
4 would be if it existed, is that correct?

5 A I would expect him to, yes

6 Q And you would rely on him for his description of
7 what was a valid description of this security threat group
8 in SCDC?

9 A I felt like he was a leading expert in this
10 field

11 Q And when you offered Mr Martin at trial, you
12 mentioned earlier I believe that you wanted him to talk
13 about the fact it would be a harsh sentence, is that
14 correct, or is that a mischaracterization?

15 A That is correct

16 Q Can you expand on that what your thought was?

17 A Well, I think the general focus from my
18 recollection of Mr Martin's testimony would have been
19 basically to explain to the jury what life in prison means
20 in South Carolina What type of environment they're going
21 to be in What they're day to day life is going to be
22 like What they're routine is going to be What type of
23 security, high security or medium security prison they're
24 going to be in And I believe he also reviewed Kamell
25 Evans' records and gave his opinion as to what type of

Steve Sumner - Cross-examination

1 environment he would be in, and, again to dispel overall
2 the notion it would be an easy life

3 It would be a very difficult, and of course,
4 this is what you're trying to convey to the jury that this
5 is the worse sentence Life in prison is going to be
6 worse than the death penalty or maybe trying to get people
7 to consider that

8 Q Is it fair to say that you wanted to show how it
9 would difficult for this particular client?

10 A That is correct?

11 Q Because of his tattoos, specifically because of
12 gang involvement?

13 A I don't think ---

14 Q Let me rephrase Gang indication

15 A Right I'm going to disagree with you a little
16 bit

17 Q Okay

18 A I think we stayed away from the gang stuff all
19 the way around I don't think we got involved in it too
20 much And he, Kamell Evans, said I'm in a gang We've
21 gone through that for two days I don't recall talking to
22 Mr Martin about the gang situation much more than I've
23 already testified to about what he was up there to do

24 Q Let me rephrase my question It wasn't so much
25 that Mr Martin was identifying, but Mr Martin had in his

Steve Sumner - Cross-examination

1 testimony, if you would agree with this, had referenced
2 that your client will likely be tagged as someone to
3 watch

4 A Right

5 Q Would you agree with me?

6 A I would agree with you

7 Q And that would be because of some of the tattoos,
8 whether he belonged or not, there would have to be some
9 watching and it would be fairly intense

10 A Correct

11 MS BROWN I'd like to move Respondent's 20a
12 into evidence, please

13 MR NETTLES Without objection

14 (Resume marked Respondent's 20a for
15 identification was admitted into evidence)

16 BY MS BROWN

17 Q Do you recognize what has been marked as
18 Respondent's 21?

19 A I do

20 Q Can you tell me what that document is?

21 A It appears to be notes from somebody

22 Q Do you recognize the handwriting?

23 A I do not

24 Q Do you recognize it as coming from your file?

25 A I do not

Steve Sumner - Cross-examination

1 Q If you would, could you please just put that over
2 on the side

3 A Okay

4 Q And we can move on to Respondent's 22

5 A I recognize a few that has been initialed and
6 executed by Kamell Evans on August 21, 2004

7 Q First of all, could you tell us what you wanted
8 to accomplish with this form?

9 A I wanted to make sure that Kamell Evans
10 understood his rights regarding testifying, that I had
11 covered them the way that a court would cover them with
12 him at the trial And I also talked about his
13 Constitutional Right to testify, there was a paragraph
14 about that There was a paragraph about jury
15 sequestration and what it is, authorization from him to
16 strike the jury as his attorney see fit, Mr Goldsmith and
17 I He acknowledges he's received a copy of the written
18 statement that he could be cross-examined on that
19 extensively

20 Paragraph 5 said that he had on multiple
21 occasions informed me that he had shot the two decedents,
22 that he committed the shooting in the living room of the
23 home

24 "After full discussion of the trial strategy,
25 I agree for Mr Sumner and Mr Goldsmith to acknowledge my
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 | guilt to the jury during the guilt phase of the trial
2 | This is a knowing free and voluntary decision made by me
3 | after full consultation regarding trial strategy " And
4 | the last acknowledgement that he initialed is that I can
5 | read, write and understand the English language

6 | He's initialed all of the paragraphs and
7 | signed it and dated it

8 | Q And I believe one sentence is that, "I fully
9 | understand that admission by my attorneys can be binding
10 | upon me "

11 | A Yes

12 | Q I'm sorry I didn't hear you read ---

13 | A I didn't publish the whole thing, but in
14 | Paragraph 5 is, "I understand fully that admissions by my
15 | attorneys can be binding upon me in court "

16 | Q And that is dated what date?

17 | A August 31, 2004

18 | MS BROWN I'd like to move Respondent's 22
19 | into evidence

20 | MR NETTLES Without objection

21 | THE COURT All right, it's in evidence

22 | (8-31-04 Form marked for identification
23 | Respondent's Exhibit 22 admitted into evidence)

24 | (Whereupon, there was a lunch break)

25 | THE BAILIFF Remain seated, court will come
 Evans versus State - Day 3

Steve Sumner - Cross-examination

1 to order

2 THE COURT Thank you

3 Before you continue, I want to take up this
4 issue of the 15 pages I think I'll talk to them
5 in-camera with nobody else in here and let them make their
6 arguments

7 Yes, sir, Mr Ehliies

8 MR EHLIES We had reviewed the file and we
9 came up with these 15 pages of medical records all
10 pertaining to a single event that occurred in August of
11 1998 They're provocative because it involves a gunshot
12 wound to the left hand, I believe, ring finger and the
13 palm of hand There are not allegations pertaining to
14 events as specific as that which predate the offense by
15 five almost six years, and in no way connected with the
16 offense that was charged And for that reason, we felt
17 that at this point in the issue of whether defense trial
18 counsel was ineffective, it would not be anyway relevant
19 It would be relevant for the State if there was a new
20 trial potentially in unique characteristics in the
21 defendant possibly bad act type stuff We're not at that
22 juncture

23 The issue before you is whether or not
24 counsel at trial were ineffective None of our
25 allegations point to the events of this shooting in the

Steve Sumner - Cross-examination

1 left hard Circumstances were not really disclosed in the
2 medical records themselves of how that happened, so we
3 withheld that

4 THE COURT Okay How would any kind of
5 attorney/client privilege attach to these documents?

6 MR EHLIES They're protected un HIPPA, of
7 course They don't fall under anybody's hands without
8 either a subpoena or the consent of the client, and I
9 think in this particular case I don't know how they came
10 to be in the defense's file, but they were And we
11 presume it's because of their relationship as attorneys
12 for the defendant and in that capacity obtained the
13 records

14 They're sheltered not only by HIPPA, but
15 other general privacy issues and other statutes I think
16 they were obtained in the context of representing him
17 They were obtained as protective documents generally
18 They were obtained in pursuance of and furtherance of
19 attorney/client relationship They are not relevant in
20 the issue before the court, so that would be our position

21 THE COURT All right After reviewing them,
22 I find that the documents are not communications made in
23 confidence to an attorney during the existence of
24 attorney/client relationship or the purpose of obtaining
25 legal advice

Steve Sumner - Cross-examination

1 I find it under the Upjohn Decision v United
2 States Supreme Court that they would not be request by
3 attorney/client privilege's objective

4 I find that the Statute allows trial counsel
5 to deem privilege waived and produce the file without
6 incisive court order necessary In this instance, these
7 documents would not be protected under the attorney/client
8 privilege, privilege to be strictly construed under State
9 versus Owens and under the analysis set forth by cases
10 such as Allen in the Fourth Circuit It had not be
11 established that these documents could constitute
12 attorney/client privilege material So I'm going to order
13 they be disclosed to the State

14 Anything further?

15 MR EHLIES I have another copy I can give
16 them

17 THE COURT We'll make this a Court's
18 Exhibit

19 (15-page document marked for identification
20 as Court's Exhibit No 1)

21 They can come back in

22 I ruled that the documents were not protected
23 by the privilege and he's going to disclose and give you a
24 copy, but you can certainly look at the Court's Exhibit

25 MS BROWN May I have a moment
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 THE COURT Sure

2 MS BROWN With your permission, I'd like to
3 continue

4 THE COURT Yes, ma'am, certainly

5 BY MS BROWN

6 Q Mr Sumner, I'm going to take a few of these
7 exhibits out of order Do you think you can find
8 Respondent's Exhibit No 27?

9 A I bet I can I have it This is a email from
10 Lenora Topp that was sent to Shatima Evans

11 Q Would this be something that was in your files?

12 A Yes

13 Q Does it show a header that indicates that you had
14 printed this message for the file?

15 A It does show that, yes

16 Q We spoke briefly before about your team effort in
17 getting information?

18 A Right

19 Q Do I understand that Ms Topp was your mitigation
20 specialist or investigator?

21 A Yes, she would be the one

22 Q She was the one that you relied on in this case
23 even though you contacted others?

24 A Well, she ultimately was the person who took over
25 that role through trial, yes

Steve Sumner - Cross-examination

1 Q And you had a free flow of information between
2 the attorneys and Ms Topp?

3 A I felt that way, yes

4 Q And you could discuss strategy with her to a
5 certain extent?

6 A Yes, ma'am

7 Q And she would make requests for funding or
8 anything like that through you, correct?

9 A That's correct

10 Q In this exhibit, No 27, can you read the first
11 paragraph for us, please?

12 A Yes It's from Lenora Topp It says, "Hi Renee,
13 Shatima tells me her two grandmothers are coming down
14 around the first of the month and I can't wait to meet
15 them I think I will be waiting for the rest of your
16 family to come down before meeting them Attorney Steve
17 Sumner and I don't think it's necessary to go to Cleveland
18 (although I've never been there to see Lake Erie) Can
19 you please tell me who on both sides of the family will be
20 down?"

21 Q Yesterday, there was some question of whether
22 Ms Topp felt that she would need to go to Cleveland, and
23 as I recall your testimony, please feel free to correct
24 me, you felt it was an outline, that she may have to go to
25 Cleveland and you discussed that in your meeting, is that

Steve Sumner - Cross-examination

1 correct?

2 A Yes

3 Q And what does that tell us that August 26, 2004,
4 what was your position as far as Cleveland?

5 A I did not think she needed to go Cleveland to get
6 to interview the family She could interview them over
7 the phone, I guess, and request records I just didn't
8 see where it would be necessary, I guess, for her to go to
9 Cleveland, and ultimately, you know when I look at this
10 memo I see that she agreed with that She told the family
11 she did not think it would be necessary to go to
12 Cleveland

13 MS BROWN I'd like to move Exhibit 27 into
14 evidence at this time

15 MR NETTLES Without objection

16 (Email from Lenora Topp marked as
17 Respondent's No 27 for identification was admitted into
18 evidence)

19 BY MS BROWN

20 Q We earlier spoke about your client's agreement
21 not to challenge the forensic testing and specifically I'm
22 referring to Exhibit 22 That was the acknowledgement
23 form you read to the Court

24 A Right

25 Q I want to go over to the forensic evidence that
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 you had before you when you were thinking about your
2 strategy and settling on a strategy Can you find
3 Respondent's 23

4 A I have it right here?

5 Q Can you identify that document?

6 A It is notes just as there have been a lot of
7 notes referred to here in my testimony On September 2,
8 '04, notes from a client conference with Kamell Evans
9 regarding trial preparation and testimony

10 Q So you're still having conversations back and
11 forth on discussing what you were finding throughout this
12 process, is that correct?

13 A Yes, I felt that way

14 Q Now, can you tell us and briefly summarize the
15 facts of the shooting as you recall them?

16 A As I recall them, Kamell Evans had some type of
17 very serious disagreement with this Christina Rodriguez,
18 and they had what I would characterize as an on again and
19 off again relationship towards the last three or four or
20 five months preceding this incident I can't recall the
21 exact nature of this fight that led to this, but they had
22 some type of fight and Kamell Evans was angry at their
23 breaking up or -- I can't recall if they were living
24 together or not at this time I think they had before

25 Kamell Evans from what I could remember
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 parked his car two or three streets away This is just
2 what I remember and it may be some details that I recall
3 He came over to the place that she was living in, which
4 was also occupied by her brother, Joe Sapinoso, who was
5 the deputy, her father, I don't recall his name, her
6 mother, and I'm sorry I don't recall her name

7 She lived there, Judge, I think kind of off
8 and on as well I think she would be live there some and
9 be out some I believe she had a child, but I don't
10 believe it was by Kamell Evans but I can't recall

11 He came and parked the car about three or
12 four streets away, had a bag with about 60 to 75 bullets
13 in it and had two guns He walked over, hid behind the
14 bush at the home, waited for somebody to return, which
15 actually I don't know if went over there with designs on
16 Joe Sapinoso or not

17 Joe Sapinoso pulled up in the vehicle and
18 parked his car, I guess it was the jeep here, and pulled
19 into the home when Kamell Evans came out of the bushes,
20 pulled a gun on him and said go on in the house and shut
21 the door I think he may have even taken his gun I'm
22 not sure if he took Joe Sapinoso's gun or not, I can't
23 remember

24 They went in the home, a hostage situation
25 developed very quickly thereafter It went on for roughly

Steve Sumner - Cross-examination

1 five to six hours, I think The mother was upstairs and
2 she heard what was going on I think she went to the top
3 of the stairs and can even see what was going on, I
4 believe, and she took the child and went in the closet and
5 hid in the closet and had a cell phone with her, I think,
6 and called 911 That's how the police became alerted to
7 it, I believe

8 They came out, it was a barricade Then it
9 developed into a lot of phone calls, negotiations back and
10 forth It went on for four or five hours Ultimately, I
11 think it was determined that Kamell Evans said, all right,
12 I'm going to come out I'm going to come out, then I
13 believe he didn't come out Then they said why aren't you
14 coming up, we thought you were coming out And there was
15 some movement, I believe, from the Sheriff's Office I
16 can't exactly recall

17 Joe Sapinoso and his father were in the
18 living room, and they either had their arms behind their
19 back or their hand clasped behind their back and they were
20 shot by Kamell Evans There were I think five rounds
21 fired, I think I'm not sure

22 The police rushed in, the Sheriff's Office
23 rushed in, five or seven second of them hearing gun shots
24 Kamell Evans through his gun across the floor and got down
25 face down on the floor and put his hands behind his head

Steve Sumner - Cross-examination

1 and was arrested at that point

2 Q Now, your recollection would be based a little
3 bit along the forensic reports you received in discovery
4 and a little bit from discussions with her your client

5 A It was a combination of everything that I looked
6 at including the work with Scott Peterman, conversations
7 with Kamell Evars Everything that I talked about today
8 was what went into me giving that

9 Q There was some discussion about the forensics and
10 the way the shooting actually occurred after there was an
11 agreement to come out within that short period of time
12 Do you recall specifically what you client said about that
13 specific time period?

14 A I believe when Mr Evans and I spoke, we talked
15 about that on numerous occasions when we met at client
16 confererces, and one of the last things I remember is
17 Kamell Evans said, I believe, that this would not have
18 happened if Joe had not gone for the gun or something
19 along those lines, that a gun was on the end table He
20 had taken Joe Sapinoso's gun and put it somewhere inside
21 the living room, somewhere kind of close, and that Joe
22 Sapinoso had gone for the gun and that none of this would
23 have ever happened had Joe Sapiroso not gone for the gun
24 That was one thing that Kamell Evans had said to me at
25 some point I think it was towards the end towards trial

Steve Sumner - Cross-examination

1 There is one thing I want to make clear and
2 you said one thing I don't recall Kamell Evans ever
3 being in complete total agreement regarding all of the
4 forensic evidence, and I think when you asked that part of
5 the question, I want to clarify that, that would not be
6 correct

7 Kamell Evans, on multiple occasions had told
8 me that is the way it happened I think he was more
9 referring to a general sense I don't think he was
10 referring necessarily to the inch by inch developments or
11 the split second developments I don't want to
12 mischaracterize that If I made that statement earlier, I
13 just want to clear that up

14 He had repeatedly said that with question
15 what I've already testified to about the guilt phase I
16 don't want to put words in his mouth It was a general
17 agreement and I don't want to say it was a very specific
18 agreement about that

19 Q I appreciate that Would you agree with me that
20 Deputy Sapinoso was shot four times in the head?

21 A I do not recall the exact number of times I do
22 recall he was shot in the head, and I will defer to you as
23 I deferred to Mr Nettles regarding the specifics of the
24 case

25 Q And Mr Sapinoso was shot several times, would
 Evans versus State - Day 3

Steve Sumner - Cross-examination

1 you agree with me three times?

2 A To the best of my memory, they were both shot a
3 number of times

4 Q Twice for Mr Sapinoso twice in the head and once
5 in the arm, does that sound right?

6 A That sounds right to me

7 Q Would you look at Respondent's 23, please

8 A Yes

9 Q On the second page, you have several small
10 paragraphs and down towards the bottom, you have a "KE,"
11 what would that denote in your notes?

12 A I'm just going to go from the top a little bit
13 "KE, I'm sorry, no, 1, hurt Christina, no 2, hurt the
14 whole family, no 3, hurt Tebo, Sergio, KE wanted to adopt
15 and raise him " Think this was a child that was not a
16 part of their union

17 "KE, this never would have happened if he
18 hadn't gone for the pistol "

19 Q And that's what you were referring in your
20 testimony to

21 Oa Yes And this was September 2, that right

22 Q If you would turn back to the second page, next
23 to the last paragraph on that page, would you please
24 publish that?

25 A "KE, turns to use the phone, sees Joe move for
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 the pistol then shoots both people, shoots one while he is
2 or the floor "

3 Q And that would be a statement by your client to
4 you?

5 A Yes Now, that would not be a direct
6 transcription of what he said, it would be a note
7 summarizing a statement that he made

8 Q So with Deputy Sapinoso shot four times in the
9 head, if there was some question about the distance on the
10 first shot or some question of the distance of the second
11 shot, how do you get around your client's statement that
12 he went over to the deputy and shot him, admittedly, at
13 least one time while he was on the floor?

14 A Just as I said in testimony to the Court and in
15 response to Mr Nettles, I did not -- after I got into the
16 case and had been on the case for two, three, four weeks
17 or something like that, I didn't feel like there was any
18 way around his pulling the trigger and his responsibility
19 He shot them and he had told me numerous times He told
20 me that multiple times, and I didn't feel like there was a
21 way to really overcome that at all

22 Q Do you recall any conversation where your client
23 testified that Mr Sapinoso reached for any weapon?

24 A Regarding his testimony in court?

25 Q No, in his statements to you?

Steve Sumner - Cross-examination

1 A About Joe Sapinoso's father No, I don't recall
2 him saying anything like that

3 Q But that victim was shot three times?

4 A Right

5 MS BROWN We'd move Respondent's 23 into
6 evidence, Your Honor

7 MR NETTLES Without objection

8 (File notes marked as Respondent's 23 for
9 identification was admitted into evidence)

10 BY MS BROWN

11 Q Respondent's 23a is a collection of documents
12 Do you recognize these documents?

13 A This is a group of P&E reports from the discovery
14 that was received in this case from the Solicitor's
15 Office This is from the Sheriff's Office

16 Q The first page, the first entry, that's marked
17 Item S

18 A Yes, ma'am

19 Q Is that the bag that you were referring to when
20 you mentioned the bag that Mr Evans had?

21 A It is

22 Q And in addition to approximately 150 rounds of
23 ammunition, what else did he have in the bag?

24 A He had a knife with an 8 inch fixed blade The
25 rest of it appears to me to be, as you mentioned, 50 to 75
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 rounds It looks like to me more like 150

2 Q And the second page on that document, do you see
3 blue bandannas that was recovered from your client?

4 A I do I see two blue bandannas that was
5 recovered

6 Q And that was immediately after the two murders?

7 A Yes, ma'am

8 Q On the third sheet, the following two entries,
9 projectile collected from beneath the carpet in the living
10 room?

11 A There -- one each entry of those, but there are
12 two total there

13 Q And on the last page, the first entry, projectile
14 collected from the living room floor, is that not correct?

15 A Correct

16 MS BROWN We'd move Respondent's 23a into
17 evidence, Your Honor

18 THE COURT Any objection?

19 MR NETTLES None, Your Honor

20 THE COURT It's in evidence

21 (GCD Safety Property Report marked as
22 Respondent's 23a for identification was admitted into
23 evidence)

24 BY MS BROWN

25 Q Respondent's 24, it's dated 9/1/04 and it seems
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 to have an P&E review notation on that?

2 A That is correct

3 Q The first paragraph, would you publish that?

4 A These are my notes from myself and Scott
5 Peterson, the investigator, going over and reviewing the
6 physical evidence Betty Strum, from my recollection, had
7 invited me to come over and take a look at it before
8 trial These are my notes of what we went through myself
9 and Scott Peterman No 1 is a poster Do you want me to
10 read the notes on it?

11 Q I do These are your notes having viewed this
12 evidence you expected the State to present, correct

13 A These are my notes "No 1, posture-Kamell gang
14 style There appear to be two of them Terrible Has
15 guns in his hands Shiny symbol? No, 2, Roco Wear hat
16 found behind the house No 3, 9 millimeter and
17 380 pistol "

18 Q If we could just go up to that terrible comment
19 Terrible in what sense?

20 A Terrible as when a jury sees it, it would be
21 terrible I had seen it one time and what I remember
22 about it it was very aggressive, for lack of a better
23 word, gangster style photograph I'm not sure if he had a
24 bandanna or not I know he had a couple of guns in his
25 hands It was terrible

Steve Sumner - Cross-examination

1 Q I think we may have seen this earlier

2 A When I say terrible, I mean it would be bad if it
3 comes in, which I assumed that it would

4 Q Would you agree with me that whether it would be
5 established through a book of Crips that are registered
6 somewhere are what have you that he was not in a gang,
7 that posture remained, "terrible," for you to have to deal
8 with?

9 A Yes, I agree

10 No 2 was a Roco Wear hat found behind the
11 house No 3 was 9 millimeter and 380 pistol Those are
12 the calibers of guns No 4 was, "On all items I reviewed
13 the chain of custody sheets and appeared to be in order
14 No 5, projectiles and shell casings reviewed through the
15 plastic No 6, SCID card in the name of Kamell Evans
16 No 7, blood samples and swatches, et cetera No 8,
17 black MO bag, three boxes each, 20 rounds per box, 9
18 millimeter and 380 No 8, miscellaneous bullets, less
19 than 20 rounds, No 9, projectiles from the victims head,
20 chain present here " I'm referring to chain of custody
21 "No 10, clothing, shoes, et cetera, taken from the
22 defendant, chain present here No 11, blood swabs off
23 the gun " And that concludes those notes

24 Q No 2 on the hat, do you recall that the hat was
25 found actually in a house that was under construction next

Steve Sumner - Cross-examination

1 to the home?

2 A Now, that you mention it, it seems vaguely
3 familiar, but I didn't remember it when I was going
4 through here

5 MS BROWN We'd move Respondent's 24 into
6 evidence

7 MR NETTLES Without objection

8 (File notes marked as Respondent's Exhibit
9 No 24 marked for identification and admitted into
10 evidence)

11 BY MS BROWN

12 Q Would you please find Respondent's 25

13 A I have it

14 Q And these appear to be your notes again, is that
15 correct?

16 A They are

17 Q On the first page you have the defendant sign,
18 would you please publish that one sentence for us, please

19 MR NETTLES Wait I'm not sure if it's in
20 evidence yet, and secondly, I don't have enough
21 information to what she's talking about it

22 MS BROWN Okay This is the one -- do you
23 see it?

24 MR NETTLES Okay

25 THE WITNESS I see it These are August 10,
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 '04, client conference about three or four bullets down,
2 full admission that he pulled the trigger

3 BY MS BROWN

4 Q Right above that you've got two names

5 A Scott Peterman, Lenora Topp, I don't know if they
6 were there or not Above that I have, "Explain status and
7 detail," and what that means to me, Judge, is I went
8 through a pretty extensive here's where this is, here's
9 where that is, that type of thing Next line is
10 "Discussion of Dr Evans findings and preliminary
11 results " I'm not sure if I had those at that point or I
12 talked to him or the phone or he sent them to me Then I
13 had Scott Peterman or Lenora Topp I don't know if they
14 were there or if I gave them an update or what they were
15 doing and kind of where they were in this particular part
16 of the case

17 Q Either way it's a reflection that y'all were
18 still working together, still keeping your client in the
19 loop on all of these developments?

20 A I felt that way

21 Q On the third page of that document, about three
22 fourth of the way down, you've got defendant sign

23 A Right

24 Q And correct me if I'm wrong but I'm reading,
25 "Defendant snoots three to four feet, kills Joe, then

Steve Sumner - Cross-examination

1 walks over to dad, again, three to four feet "

2 A Right

3 Q So again we have consistent admission that he's
4 shooting both of them, is that correct?

5 A Yes, there was consistent statements from Kamell
6 Evans throughout the entire time that I was representing
7 him that he had shot the two decedents

8 MR NETTLES Your Honor, I'd like to ask her
9 to 106 My understanding from looking at this is he gives
10 an account of what happened, and the facts on either side
11 of that, I believe, are somewhat mitigating and under the
12 rule of completeness, I'm going to ask that he read that
13 entire portion of that document

14 MS BROWN Your Honor, there's actually more
15 that goes with this There are two other pages that's all
16 linked together and I believe that it will all come out

17 MR NETTLES I think I've got the right to
18 ask that it be done right now

19 THE COURT Let me see if I understand,
20 you're putting documents into evidence

21 MS BROWN Absolutely It's not redacted
22 It's already in

23 MP NETTLES She's pulling two sentences out
24 of a whole document I believe I've got the right to have
25 him publish the whole thing to put those two sentences in

Steve Sumner - Cross-examination

1 context even though it is coming into evidence

2 THE COURT On redirect you certainly can do
3 that Since this is not for a jury, I'll give you the
4 opportunity to do it at the same time she's doing it so we
5 don't have to keep switching gears

6 MS BROWN I have no objection to that and I
7 don't mind the witness reading the whole thing

8 MR NETTLES Why don't you start with the
9 thing that says facts that includes the two lines that she
10 wanted you to read

11 BY MS BROWN

12 Q Actually, you can go into where it says defendant
13 go read the entire document, and it does kind of put it
14 into context

15 A Well, I'll read the whole thing I've already
16 talked about the first top of the first page There's an
17 initial blank where Kamell Evans initials and signs the
18 following statement

19 "Kamell agrees that I don't need to spend
20 time trying to factually prove that is innocent or not
21 guilty, he shot the two decedents Kamell fired four to
22 five shots (two a piece) He gave the confession
23 statement It is accurate as to the facts I will spend
24 all of my time (most all) or mitigation phase of the
25 trial "

Steve Sumner - Cross-examination

1 He initialed that and I wrote, "I agree," and
2 he signed underneath that

3 "I did not go over there intending to shoot
4 anybody It just happened " That's the signature and he
5 signs that My recollection is he said he wants to make
6 this clear and I said okay He wrote it down and he
7 signed it

8 "Facts Defendant Joe and Dad are talking
9 about leaving the house Joe was handcuffed early but
10 released Joe's gun in defendant's hand, both other guns
11 (9 millimeter and 380) are in the defendant's sweat
12 shirt Defendant Joe and father to leave Defendant
13 wanted to stay inside of the house and let the cops come
14 in Defendant puts a Glock down on the table Defendant
15 reaches for phone to call Tony Lee," who was some type of
16 hostage negotiator "Joe reaches for the pistol in the
17 living room Defendant guns in both hands shoots both of
18 time Joe's got his gun in his hand Defendant shoots
19 (three to four feet), kills Joe Then walks over to dad
20 (three to four feet) Dad, shot and looked like he was
21 sitting on the couch Defendant tells me he was facing
22 the dad when he shot him, no question," and I underlined
23 that meaning that I asked are you sure, yes, and that's
24 the signal to me no question "Joe a little sideways, a
25 little ducking action Defendant shot dad because dad was

Steve Sumner - Cross-examination

1 using aggressively himself like Joe did Shot with two
2 different," and that's blank meaning 9 millimeter and
3 380 "Immediately after shooting, get Joe's gun, goes to
4 the hallway Defendant tried to load more bullets into
5 the 380 and the 9 Defendant tackled by the police,
6 roughed up some Bullets in the bag defendant had with
7 him Four or five packs, 9 millimeter bullets, four or
8 five packs 380 bullets Defendant carried guns with him
9 all the time," and I underlined the word all, "both the
10 guns at all time "

11 "Drawing by the Defendant at the scene," he
12 signs off on this where he drew a schematic of where
13 people were sitting or I can't recall now It's not of
14 scale "Defendant facing dad when shot and almost Joe
15 when Joe shot " And I can't describe this drawing, you'll
16 just have to look at it

17 Here's an initial blank "Kamell It was a
18 fucked up day, some fucked up shit It wasn't supposed to
19 go down that way I wanted to let them know how she
20 treated to me, how she lied to me, stole my \$ money, took
21 my keys " Star to me, "He views this as a manslaughter
22 type case Admits to shooting "

23 MS BROWN Your Honor, we would move
24 Respondent's 25 into evidence at this time

25 MR NETTLES Without objection
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 (Notes marked as Respondent's Exhibit No 25
2 for identification was admitted into evidence)

3 BY MS BROWN

4 Q Now, your client suggested manslaughter In your
5 opinion in connection with this particular case where you
6 were counsel of record, did the facts support manslaughter
7 under the Case Law as you know it?

8 A No No, ma'am

9 Q Now, in your mitigation case, which you said you
10 were concentrating on once you had these facts to address,
11 you talked to two doctors, correct?

12 A I did Two doctors testified

13 Q Can you find Respondent's 28

14 A I have it These are notes from my file I'm
15 having a hard time -- they're copies of notes which start
16 with Dr Elin Berg and they're questions that I had
17 written down that she needed to answer?

18 Q Would this have been a proposed discussion or
19 discussion with the doctor?

20 A It would have been I can't recall if I went
21 over this with her on the phone and said these are the
22 questions that you're going to need to be able to answer,
23 or if I said I'll have the questions ready for you at
24 trial, or these need to be addressed in your report I
25 can't remember right now, but it would have been one of

Steve Sumner - Cross-examination

1 those

2 Q There is an attachment to that note

3 A There is

4 Q What is that?

5 A Well, the attachment is part of the, I believe,
6 the death penalty statute at that time There are some
7 stars -- not stars but some notations about things that I
8 wanted to explore I think with Dr Berg about whether or
9 not she could testify to meet that component or criteria
10 that would make it admissible

11 Q Specifically you were looking at from your notes
12 that the murder was committed while under the influence of
13 mental or emotional disturbance?

14 A Correct

15 Q And you have some symbol by that Can you
16 explain that?

17 A I have a star by that meaning to the best of my
18 recollection that was going to be one of the strong parts
19 that was probably be applicable to the trial I also have
20 "The capacity of the defendant to appreciate the
21 criminality of his conduct or conform his conduct to the
22 requirements of law which was substantially impaired " I
23 also have Xs marked by age or mentality of the defendant
24 at the time of the crime because he was fairly young And
25 the last one is the defendant had retardation at the time

Steve Sumner - Cross-examination

1 of the crime and there's a definition of mental
2 retardation

3 Q So you didn't rule anything out, you talked to
4 the doctor about every mental thing that you could think
5 of, mental condition mitigator that goes with mental
6 illness?

7 A I felt that way I wanted to raise everything
8 I believe Dr Berg and Dr Evans had a lot of experience
9 I've worked with Dr Evans before and Dr Berg had a lot
10 of experience with death penalty cases and I certainly
11 wanted to bring everything I felt could come into the
12 table within reason

13 Q So you didn't hold anything back Let me put
14 this to you and put you on the spot for just a minute
15 because I thought I understood you from your direct
16 testimony that you believed you should take the medical
17 evidence, look at it, and then go see the doctor, is that
18 what I understood or did I misunderstand?

19 A What I meant by that in this case I did not have
20 any difficulty communicating with Kamell Evans at all I
21 personally and I'm not a doctor of medicine, but in my
22 experience I didn't have any difficulty communicated with
23 him We had a lot of conferences Nobody else
24 communicated that they had any difficulty communicated
25 with him Dr Berg offered a report and testified at
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 trial Dr Evans authored a report and testified at
2 trial

3 In terms of the medical records, it's not
4 something that jumped out at me in this case because I
5 didn't see any indication that he had any problems And,
6 so, I guess, when I was trying to answer Mr Nettles
7 questions was I deferred it really to Dr Evans and
8 Dr Berg I mean, they are neuro psychologist and neuro
9 psychiatrists, I deferred that to them

10 Q They were your experts that you can rely on?

11 A Right

12 Q But you don't set the parameters for them?

13 A I do not There was nothing that I felt like
14 during the course of my -- and I've mentioned this
15 numerous times now -- there was nothing during the course
16 of my representation to make me think -- I mean the whole
17 act itself was terrible The whole crime was terrible,
18 but there was nothing independent of that that made me
19 think he had any real significant medical issues that I
20 could see

21 MS BROWN We move Respondent's 28 into
22 evidence, Your Honor

23 MR NETTLES No objection

24 (Notes marked as Respondent's Exhibit No 28
25 for identification was admitted into evidence)

Steve Sumner - Cross-examination

BY MS BROWN

Q Now, Respondent's 29, those are in your notes, correct?

A Just give me one moment

Q Sure

A Yes, they are my notes

Q And that has the date of August 3rd, 2004?

A It does

Q Can you just kind of summarize what this document is?

A I'll be glad to I'll be glad to handle it however the Court wants me to in fairness to the other counsel These are my handwritten notes They are six pages, five-and-half pages, in duration It is my interview with Dr Evans, Dr James Evans He says on the Wexler Adult, something, Scale that "Kamell Evans scored in the low average range, that his IQ was 94 Low average put him in the 35th percentile On sub-test mostly the same performance, did well on comprehension above average No 2 was the Wide Range Achievement Test Word recognition skills, reading recognition, he performed at an eighth grade level On erythematic computation he performed at a seventh grade level " He meaning the defendant "Or the Ratan Battery," I've got a star by this, "a battery of tests designed to show brain damage,

Evans versus State - Day 3

Steve Sumner - Cross-examination

1 brain disfunction, ne did well or some subjective tests,
2 did poorly on some " He said, "He exhibited a cognitive
3 rigidity to some degree " I'll explain that in a minute
4 because I didn't know what that meant at first

5 Trail making, he did poorly here on some type
6 of test where maybe you take red, yellow, green and put it
7 together or something like that

8 "Factual performance test, he did poorly He
9 showed some left hemisphere dysfunction He did okay on
10 other subjective test with Ratan " Star by this

11 "Impairment index, 3 equals mild brain dysfunction "

12 "No 5, IBA test, some problems with speed
13 and response Also suggested moderate attention deficit
14 disorder Also showed some depression "

15 "No 6 was Conson Card Sorting Test, backs up
16 Trail Making Test and again shows some suggestion of a
17 learning disability All information supports self-
18 reported history May have been LD at some point, also
19 lead poisoning QEEG Test showed decreased communication
20 skills, may indicate some type of injury or brain
21 dysfunction Showed a lot of high frequency activity
22 Motor running high a lot " I think that dealt with his
23 brain I guess brain activity

24 Then I asked mitigating factors which I took
25 from the Statute "No 1, mental or emotional

Steve Sumner - Cross-examination

1 disturbance " I got the word yes, and I got it underlined
2 meaning my notes to me is he was very solid with that
3 "No 4, capacity of the defendant Diminished capacity to
4 alter or come up with alternative ways to deal Again, no
5 flexibility Probably acts before thinking More prone
6 than average for poor judgment No 5, not mentally
7 retarded Dr Evans does recommend initial evaluation by
8 a psychologist He will try to run one down for me "
9 That's probably where Dr Berg came in

10 I didn't understand what cognitive
11 inflexibility was I believe that Dr Evans' statements
12 to me and also his testimony in court was once Kamell
13 Evans determined a path of action on something, nothing
14 was going to dissuade him for that, and that he might have
15 lesser -- I believe he said he had lesser an ability to
16 back up from a situation than an average person Meaning
17 that if he decided I'm going to go into that McDonalds and
18 start a fight with this guy that said something to me
19 yesterday, he starts at the other end of the street and as
20 he's walking if somebody says, no, don't do that, he's
21 already made up his mind up, he's going on in there

22 So those are my notes from Dr Evans

23 Q And those notes are from August

24 A There's from August 3, '04, that's correct

25 Q And I want to go back to a couple of things that
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 you mentioned and these, correct me if I'm wrong, but this
2 is after Dr Evans has run several of these tests and he's
3 telling you some of the results of these tests that could
4 support mitigation?

5 A That's correct He's already given the six or
6 seven tests that I quoted for Judge Hill He's already
7 given those I think this might be prior to him actually
8 doing the report, but I believe he was telling me pretty
9 much this is what he's going to say kind of thing

10 Q And he told you and you starred this particular
11 portion that is a equal sign, some type of a medical sign
12 there, "Mild brain dysfunction "

13 A What page are you on?

14 Q That's the information you have from Dr Evans
15 I think it's 3 My copy, unfortunately, is not very good
16 either

17 A Those are equal signs to me He said, you know,
18 index of 3, and I would say, well, what does that mean,
19 and he would say that equals mild brain dysfunction, so I
20 just put equal sign of mild brain dysfunction That would
21 be correct I put a star by that I felt that was
22 significant

23 Q On the next page I believe is 4, some suggestion
24 of a learning disability So that was Dr Evans' opinion,
25 some suggestion of a learning disability

Steve Sumner - Cross-examination

1 A That is correct Those would be my notes from
2 him regarding our visit

3 Q All the information he has is self-reported
4 history?

5 A Correct

6 Q In other words he could verify some result from
7 whatever he was given, is that your understanding?

8 A My understanding what that meant was that he had
9 earlier interviewed Kamell Evans that all of the test
10 results supported what Kamell Evans had communicated to
11 him verbally earlier, that's the way I took that

12 Q And Dr Evans advised you that your client may
13 have been learning disabled at some point

14 A Yes

15 Q Also lead poisoning?

16 A That is correct

17 Q So he was looking for some indication of an
18 effect of some dysfunction, learning disability, or
19 dysfunction, lead poisoning He was looking for some
20 effect because these should be things he should find?

21 A I had no indication that Dr Evans did not have
22 an extensive examination of Kamell Evans

23 Q And you earlier said that your team worked
24 together, so you would not have instructed Dr Evans to
25 withhold any information at all?

Steve Sumner - Cross-examination

1 A No No, ma'am

2 Q On Page 5 when you go into mitigating factors,
3 the first one the mental emotional disturbance, you have
4 underlined and it indicates that the doctor was very solid
5 on that

6 A The way I write notes that would indicate to me
7 very solid, no issues about?

8 Q Would that also mean that the other ones are not
9 as solid?

10 A Yes

11 Q And the last page recommends an evaluation by a
12 psychiatrist?

13 A Correct

14 Q Did you seek that evaluation by a psychiatrist at
15 Dr Evans' suggestion?

16 A We did

17 MS BROWN We'd move Respondent's 29 into
18 evidence, Your Honor

19 MR NETTLES No objection

20 (Notes dated August 3, 2004 marked as
21 Respondent's Exhibit No 29 for identification was
22 admitted into evidence)

23 BY MS BROWN

24 Q Mr Sumner, if you would find Respondent's 30,
25 would you please, sir

Steve Sumner - Cross-examination

1 A I have it

2 Q Would you describe what this is?

3 A Yes This is a letter sent to Betty Strom by me
4 on August 5, 2004 It is a fairly lengthy letter It is
5 about a page and a half Six weeks before trial I
6 basically outlined what I outlined for Judge Hill today
7 I state to her that we hadn't received any formal reports,
8 but here's what I believe they're going to say

9 I say, "Please be advised that pursuant to
10 the Code Section 16-3-20b, that the defendant will mostly
11 present mitigating evidence of that phase of the
12 sentencing occurs or assuming it occurs No 1, the
13 defendant has no significant history of prior criminal
14 conviction involving the use of violence against another
15 person No 2, the murder was committed while the
16 defendant was under the influence of mental emotional
17 disturbance And No 7, the age and mentality of the
18 defendant at the time of the crime And, possibly,
19 depending upon the results of further testing, No 6, the
20 capacity of the defendant to appreciate the criminality of
21 his conduct or to conform his conduct to the requirements
22 of law was substantially impaired " I did go ahead and
23 notify her I said, "Should any type of insanity and or
24 guilty but mentally ill defense become a real possibility
25 at the trial, I will notify you immediately However,
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 based on the information contained in this letter and
2 known to me at this time I don't anticipate either of
3 those "

4 Q And the date of that letter was?

5 A August 5th

6 Q And the notes that you just reviewed from your
7 conference with Dr Evans before the final report ---

8 A August 3rd is when they're dated

9 Q So would it be a fair assessment you were working
10 on what Dr Evans gave you?

11 A At this point, yes I don't believe Dr Berg had
12 been involved at this point I believe it was Dr Evans

13 Q And would explain why you said, "the age and
14 mentality of the defendant possibly, depending upon the
15 results of further testing, the capacity of the defendant
16 to appreciate the criminality of his conduct or to conform
17 his conduct to the requirements of law was substantially
18 impaired "

19 A Correct

20 MS BROWN Your Honor, we'd move
21 Respondent's 30 into evidence

22 MR NETTLES Without objection

23 (Correspondence dated August 3 marked as
24 Respondent's Exhibit No 30 for identification was
25 admitted into evidence)

Steve Sumner - Cross-examination

1 BY MS BROWN

2 Q Mr Sumner, Respondent's 31, would you identify
3 that for us, please

4 A These are my notes from an interview with
5 Dr Evans of August 30, 2004 and I went through these same
6 points with Dr Evans regarding what I believe his
7 testimony was going to be at trial He told me, if I
8 could just paraphrase here, that the defendant knew right
9 from wrong, no issues here Defendant was sane at the
10 time of the offense That he had the capacity at the time
11 of the offense to distinguish right from wrong, that he
12 was no insane, that there were no issues here regarding
13 insanity or guilty but mentally ill, meaning he did not
14 feel he could testify on either of those two for the
15 defendant He emphasized again mental or emotional
16 disturbance He told me that he felt like Kamell Evans
17 knew right from wrong and he told me he did not believe he
18 was mentally retarded

19 I have a note to myself, "Evans does believe
20 defendart under some type of emotional mental disturbance,
21 but that was as far as he could go "

22 Q And that note is attached to a copy of what?

23 A The Statute

24 Q So you're reviewing all of the statutory
25 mitigating circumstances that you earlier said you were

Steve Sumner - Cross-examination

1 reviewing in your first ---

2 A That would be correct I didn't go through
3 probably those that I didn't feel like were applicable to
4 Dr Evans, but I all of them I felt like would be
5 applicable to him I went through

6 Q And you asked him about this capacity and he said
7 he couldn't ---

8 A I did I did

9 MS BROWN We'd move Respondent's 31 into
10 evidence

11 MR NETTLES Without objection

12 (Interview notes marked as Respondent's
13 Exhibit No 31 for identification admitted into evidence)

14 MS BROWN If I could have just a moment,
15 Your Honor

16 BY MS BROWN

17 Q In one of our earlier exhibits, I think it was
18 22, your client acknowledged that you could make decisions
19 during voir dire If you could look at Respondent's 32

20 A Okay, I have it here?

21 Q Could you tell us the date on that?

22 A It's September 16, 2004, it's notes from a client
23 conference The notes are as follows "Review the jury
24 strike process Pull input from client here " The next
25 part is initialed and signed by him We reviewed the jury

Evans versus State - Day 3

Steve Sumner - Cross-examination

1 strike sheet Kamell approves the jurors he wants
2 stricken and is in full agreement by his initials and
3 signature, and he signed it

4 We talked about his testimony "Skip
5 present," and that would be Skip Goldsmith "His
6 testimony again, stressed remorse many many mistakes " We
7 went through cross-examination we felt like he would be
8 asked to try to prepare him for those

9 Q Is it fair to say that even though you had an
10 agreement with your client going in to striking the jury,
11 selecting the jury, you still conferenced with him?

12 A Yes

13 Q You never left him out of the process?

14 A I don't believe we did I don't recall doing
15 that

16 MS BROWN We'd move Respondent's 32 into
17 evidence, Your Honor

18 MR NETTLES No objection

19 (Notes dated September 16, 2004 marked as
20 Respondent's Exhibit No 32 for identification was
21 admitted into evidence)

22 BY MS BROWN

23 Q Respondent's Exhibit No 33

24 A 33, Judge Hill, is notes of a client/conference
25 dated September 6, 2004 The notes are as follows

Evans versus State - Day 3

Steve Sumner - Cross-examination

1 "Detailed explanation of insanity versus mental emotional
2 disturbance testimony and the law here, what it means,"
3 that would mean I would try to talk to Mr Evans about
4 what they are in the eyes of the law "Extensive
5 testimony about his testimony, pros versus cons Practice
6 address statement He does better this time than last
7 week His attitude is better States he was happy, very
8 happy with me, upset about lack of activity prior to my
9 involvement "

10 Q So he did express to you that he was not happy
11 prior to your coming on to the case?

12 A That would be correct

13 Q But he expressed directly to you that he was very
14 happy with the way the case was going at this point on
15 September 6, 2004, is that correct?

16 A That is correct

17 MS BROWN We'd move Respondent's 33 into
18 evidence, Your Honor

19 MR NETTLES No objection

20 (Notes dated September 6, 2004 marked as
21 Respondent's Exhibit NO 33 for identification and
22 admitted into evidence)

23 BY MS BROWN

24 Q Jury selection and qualifications Are you aware
25 of the precedent allowing questions on race and bias?

Steve Sumner - Cross-examination

1 A My recollection on this is, no, I haven't had a
2 death penalty case since this case

3 Q Let me ask you this there was some kind of racial
4 bias affiliated to this case at all with any respect that
5 you would need to question the jury directly about bias?

6 A No, ma'am

7 Q Nothing entered your mind?

8 A No, ma'am

9 Q You were asked on direct about the transcripts,
10 do you recall that?

11 A Regarding the transcript of the voir dire?

12 Q Actually you were handed some notes and you were
13 asked if those notes had been transcribed, and I believe
14 that you had mentioned there may have been a tape that you
15 received or some notes that may have been identified by
16 the Solicitor's Office, but you couldn't identify that
17 particular set of notes

18 A Mr Nettles did ask me that, and I did say that,
19 correct

20 Q And you recall that testimony?

21 A I do

22 Q Was some portion of the note that would suggest
23 the contents even though you couldn't read it clearly?

24 A I guess I'd have to go back and look at them
25 again I would imagine so, but it's just been a long time

Steve Sumner - Cross-examination

1 since I reviewed those

2 Q Would you look at Respondent's 26, please, sir

3 A I would be happy to

4 Q That may be the one you left up here folded

5 maybe

6 A I have it in my hand These are notes from my
7 file dated July 29, '04 They're in my handwriting They
8 are a page and a half in length There are notes about
9 the review of what I call Book 2 discovery, which I guess
10 would have been the second book of discovery from Rodney
11 Richey?

12 Q About midway the page, unless you see something
13 down there that you would like to reference, about midway
14 the page, it looks like perhaps a name or something
15 underlined Can you interpret that?

16 A I can That's Betty, which would mean Betty
17 Strom "Any typed transcripts of 911, phone calls, et
18 cetera, all phone records, phone logs - all in discovery?"

19 That would have been a conversation between
20 myself and Betty Strom I'm probably trying to make sure
21 that we, meaning the defense, has everything from that
22 incident to include transcripts of the 911 call, if
23 applicable, phone calls, if applicable, phone records,
24 anything that would be applicable along those lines?

25 Q And that's indicative of the relationship you had
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 with the Solicitor's Office at least throughout this case?

2 A I did I never had any problem that I know if
3 getting anything

4 Q And the second page of that same document, is
5 that also a call to Betty or from Betty?

6 A That would be a note to myself In the
7 discovery, I seem to remember something about an incident
8 happening in October of '02 involving, I believe, Kamell
9 Evans and I believe Christina Rodriguez It some type of
10 gun pulling incident or something along those lines, CDV
11 type incident and I'm going totally from memory here, and
12 I believe I asked Betty are you going to try to introduce
13 this in your case And my recollection is she said, no,
14 we're not going to even get into that So I believe that
15 was the end of that

16 Q And if you'll recall back in Respondent's 2, on
17 the third page, and this again you identified earlier as
18 your notes from July 12th, 2004

19 A Correct

20 Q You read part of this Do you remember reading
21 over that?

22 A I do

23 Q And you have pattern of threats and abuse here,
24 correct, not good?

25 A I do

Steve Sumner - Cross-examination

1 Q So these notes indicate that there was a history
2 there of an abusive relationship between him?

3 A My recollection was that they police had been
4 called either one or two times and there were people who
5 had, I guess, spoken to the investigator that they had had
6 -- that he had been aggressive towards her in the past and
7 just what my notes say, Judge, "Christina, girlfriend,
8 pattern of threats and abuse here, not good," meaning this
9 is not good for representing him, which I was happy to do
10 He made threats against her and her family, and that came
11 from somewhere

12 Q And on this last one Respondent's 26, this looks
13 like incident report of October 12, 2002, and that's the
14 threatening?

15 A It would have been October 12, '02, which I guess
16 would have been pretty close in time I can't recall
17 exactly the day that this happened, but it would have been
18 pretty close in time to ---

19 Q The murders happened in 2003

20 A Yes It was pretty close in time and I remember
21 being pretty concerned about how far the Solicitor's
22 Office might be able to go with this, I don't know,
23 pattern of conduct type and getting other things in which
24 I thought would be very very bad from the prospective that
25 Skip and I were trying to show this as a one day meltdown

Steve Sumrer - Cross-examination

1 series of bad decisions I felt like if this starts
2 coming out regarding the last four or five, six months,
3 that's going to really numb that and give us difficulty on
4 that

5 MS BROWN May I have just a moment, Your
6 Honor

7 THE COURT Yes, ma'am

8 BY MS BROWN

9 Q Going back to some of the transcriptions that you
10 had in this case

11 A Yes, ma'am

12 Q Do you recall that Dr Berg sent you a copy of
13 her report?

14 A I do

15 Q And she had a sources of case information on her
16 report, do you recall that?

17 A I do Yes, ma'am, I do recall she had sources of
18 case information shown on her report I reviewed a little
19 bit for preparation for this hearing

20 Q I'd like to show you what has marked as a Page 2
21 and see if that, in your recollection, is the same
22 material that you were just discussing?

23 A Yes, ma'am

24 Q And does that show that Dr Berg had access to
25 transcripts or the transcribing of the tapes?

Steve Sumner - Cross-examination

1 A She did, yes

2 Q Are there two entries in there?

3 A There are six Six entries in terms of what her
4 source of case information were There are two different
5 transcription that are listed

6 Q So when you were asked the question or direct
7 whether you had some of the tapes transcribed or there was
8 some reduction in writing or report, is that what you were
9 talking about?

10 A It is

11 Q Thank you

12 A Sure

13 MS BROWN I'd like to move Respondent's 26
14 in if it has not been moved in already

15 MR NETTLES Without objection

16 (File notes dated July 29, 2004 marked as :
17 Respondent's Exhibit No 26 for identification was
18 admitted into evidence)

19 MS BROWN I'd like to have this marked for
20 identification as Exhibit 34 and have the witness identify
21 it

22 (File notes dated August 30, 2004 marked as
23 Respondent's 34 for identification)

24 BY MS BROWN

25 Q Mr Sumner, I'd like to have you look at what's
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 | been marked for identification as Respondent's 34 and ask
2 | you if you recognize that?

3 | A I do These are notes from my file, August 30,
4 | 2004 entitled "Attorney Notes "

5 | Q And, again, feel free to read whatever you'd like
6 | to the Court The entire document will be in if it's
7 | admitted and it will be admitted in its entirety, but I'd
8 | like you to look at the third paragraph down

9 | A Starting with Tony Lee?

10 | Q Right and publish that portion

11 | A "Tony Lee's Code 5 not good here He hears
12 | Christina talking about her past problems and fear of the
13 | defendant "

14 | Q So on August 30th, you still have some indication
15 | there's a fear or some kind of background that you would
16 | not want in the trial

17 | A Correct

18 | Q And that did not come in the trial did it?

19 | A I don't believe it did

20 | MS BROWN We would like to move that into
21 | evidence, Your Honor

22 | MR NETTLES Without objection

23 | (File notes dated August 30, 2004 marked as
24 | Respondent's Exhibit No 34 for identification was
25 | admitted into evidence)

Steve Sumner - Cross-examination

1 (Notes of meeting marked as Respondent's
2 Exhibit No 35 for identification)

3 BY MS BROWN

4 Q Mr Sumner, I'm handing you Respondent's for
5 identification 35

6 A All right

7 Q And ask you if you recognize that document?

8 A I do

9 Q And what is that document?

10 A These are notes regarding a meeting that Skip and
11 I had with John Mauldin at Greenville covering about looks
12 like three pages of just thoughts and ideas from him and
13 notes that I made what we covered I would mark through
14 it and describe the general voir dire process A mark
15 through it would indicate I've done that He shared his
16 thoughts with us on a variety of things

17 Q Now, Mr Mauldin was actually appointed at one
18 time in this case and then was relieved, correct?

19 A That is correct

20 Q But he would still talk to you about general
21 capital litigation?

22 A I've talked with John about a lot of different
23 things over the years and this was the meeting at that
24 time

25 Q Starting was it a designation of 8 and 9 on that
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 page?

2 A Right "No 8, how far can the State go with
3 past crimes, bad acts, et cetera in the sentencing phase?"
4 I've got No 1 we've got a possess with intent to
5 distribute conviction I'm asking does he think that
6 could come in "No 2, a documented pattern of stalking
7 and harassment," and I tell him about the issues here with
8 the prior incidents

9 Q So that was something you were concerned about
10 and continued to ask about?

11 A That's correct, yes

12 MS BROWN I'd like to move that document
13 into evidence, Your Honor

14 MR NETTLES Without objection

15 (Notes marked as Respondent's 35 for
16 identification was admitted into evidence)

17 BY MS BROWN

18 Q Now, we've established that you have some notes
19 that there were threats against the family -- that your
20 client made some threats against the family, had some
21 documented abuse against Christina immediately prior to
22 the murder You were asked about Christina and
23 Christina's interview on direct Do you recall that?

24 A I do

25 Q And there was an indication that Christina told
Evans versus State - Day 3

Steve Sumner - Cross-examination

1 Pam Crawford, which, of course, is several layers down,
2 but just for the sake of discovery and what you knew at the
3 time, there was some indication that she was in a gang?

4 A Correct

5 Q Again, that's just an indication?

6 A That is right

7 Q But at that time you had that information along
8 with the admission that together they were getting
9 tattoos?

10 A I guess there was something about them getting
11 tattoos together

12 Q And there was some indication if one was in a
13 gang you wanted to display colors, correct?

14 A Correct

15 Q So there was a gang associate according to that
16 information not, at least taken from the truth, but at
17 least during the discovery and that would be Christina?

18 A Yes

19 Q So if you called Christina to say I think he's a
20 wanna be, could Christina also testify to all of the
21 abusive acts that you had discovered in discovery?

22 A Yes, I thought there was a risk of that

23 Q And going to the SCDC expert Mr O'Cain that
24 testified, you were asked about a hypothetical if you
25 could challenge his qualification You had also reviewed

Steve Sumner - Cross-examination

1 with us on cross-examination you spoke to Mr Martin?

2 A Right

3 Q And that he, at least in some detail, reviewed
4 security threat group and management, and how that is
5 utilized in SCDC

6 A Right

7 Q Knowing that from your expert, do you have a
8 legal basis to challenge the admission of testimony from
9 an SCDC employee who handles that particular group?

10 A Well, as I mentioned to Mr Nettles, I felt that
11 clearly Kamell Evans communicated to me that -- the
12 background to answer that question would be there had been
13 numerous communications from him to me that he did not
14 want any kind of challenge to his gang affiliation or gang
15 membership

16 In terms of whether or not it would have been
17 objectionable in terms of Mr O'Cain's testimony, I did
18 mention to Mr Nettles that I didn't want to run the risk
19 of Mr Martin not being able to testify because he would
20 be a good witness for Kamell Evans, and didn't want to
21 bring real attention to it In my experience, the more
22 you object, the more you kind of bring a lot of attention
23 to a certain aspect of it So all of those things went
24 into the decision not to testify

25 Q And in selecting the jury, I believe the
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 transcript bares out that both you and Mr Goldsmith
2 participated?

3 A We did

4 Q And I understood your testimony to be that you
5 were looking at all the questions You didn't isolate one
6 question

7 A Correct

8 Q But if you had a concern, if there was something
9 -- I believe you mentioned facial expression or body
10 language in addition to the words, you wouldn't have
11 hesitated to question that particular juror, would you?

12 A No, not to question him any more than we felt
13 like we could and there wouldn't have been a hesitation to
14 do that

15 Q And, again, you would review everything the juror
16 said and not anything in isolation?

17 A You always want to ask, I guess, as many
18 questions as you feel like you need to, but once I had
19 enough information to try to put a juror in a particular
20 category, you probably, you know, kind of move in from
21 there

22 Q Mr Sumner, going back to the incidents between
23 your client and Christina immediately before the murder,
24 do you recall any specifics from the transcript or even
25 listening to the tape of Pam Crawford's interview with
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 Christina?

2 A I do not

3 Q If I said there was something that would raise a
4 concern about stalking or tying up, would that refresh any
5 recollection?

6 A My recollection is there were prior incidents,
7 certainly alleged prior incidents, regarding Kamell Evans
8 and Christina Rodriguez, a balance between the two It
9 was referenced in some police reports and it was
10 referenced in Pam Crawford's interview I wanted to do
11 everything we could to keep that from potentially being
12 sought to place that into evidence by the State

13 Q Thank you, Mr Sumner

14 MS BROWN I have no further questions, Your
15 Honor

16 REDIRECT EXAMINATION

17 BY MR NETTLES

18 Q Allegations of previous abuse and the police
19 reports, where are they?

20 A In the discovery

21 Q Where?

22 A I believe there are in that '05 stuff

23 Q Please show me

24 MR NETTLES Your Honor, I may be able to
25 shorten this a little bit The specific thing I am
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 interested in is the police reports if there any police
2 reports of abuse

3 MS BROWN Your Honor, I'm going to object
4 If he has any indication, that's what he was asked It
5 could have been a report, it could have been an interview,
6 it could have been anything I think the witness should
7 be allowed to review his file

8 MR NETTLES I'm not saying he can't review
9 his file He said something in police reports and my
10 question is that I'm mainly interested in the police
11 reports

12 THE WITNESS Okay Here's one of them dated
13 July 29, 2004 It's a supplemental report I'm getting
14 this out of my file It's discovery on Kamell Evans'
15 case "I then responded to the incident location and met
16 with Ms Christina Sapinoso who stated the suspect Kamell
17 Evans was an ex-boyfriend who she had constant problems
18 with Ms Sapinoso stated that last Tuesday the suspect
19 had held her at gun point and she was attempting to have
20 no contact with him "

21 Now, that's a supplemental report from Tony
22 Lee dated April 2 of '03 I think there may be others,
23 but that's one of them

24 BY MR NETTLES

25 Q Could you review the rest of them, if you don't
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 mind

2 A No, I don't mind

3 THE COURT While he's reviewing that, we'll
4 take a break And Mr Sumner, I know you need a break as
5 well so you can take a break as well

6 THE WITNESS Thank you, I will

7 (Whereupon, there was a recess)

8 THE BAILIFF Please remain seated, court
9 will come to order Thank you

10 BY MR NETTLES

11 Q Have you had an opportunity to review ---

12 A I did Kind of quickly because the file is two
13 Banker's Boxes full, I did find this incident report that
14 I did point out to you over the break It was written by
15 Tony Lee and it said ---

16 Q Go ahead and give us the date

17 A This is April 2, '03 "I then responded to the
18 incident location and met with Ms Christina Sapinoso who
19 stated the suspect Kamell Evans was an ex-boyfriend who
20 she had constant problems with Ms Sapinoso stated that
21 last Tuesday the suspect had held her at gun point as she
22 was attempting to have no contact with him I was advised
23 by Ms Sapinoso that the Mauldin P D was aware of the
24 situation with Kamell Evans " So I took that to mean
25 there was an incident report somewhere floating out there

Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 from Mauldin P D "I was also advised that the suspect had
2 been arrested but was not on probation "

3 Q Did you go to the Mauldin Police Department to
4 verify that?

5 A No

6 Q Was an incident report from the Mauldin Police
7 Department provided to you in discovery?

8 A Not that I could find over the break

9 Q Let's also put this a little bit into context
10 This is a statement that was made by a woman who either
11 her brother and her dad are in the process of being held
12 hostage or her brother and her dad have just been killed?

13 A Yes

14 Q About your client?

15 A Right

16 Q Now, in sort of completeness, she also was
17 interviewed by Pam Crawford?

18 A Correct

19 Q And asked you to publish some of that In that
20 which took place on the 2nd as well, she made some
21 allegations about abuse between the two of them in that
22 discussion with Pam Crawford?

23 A To the best of my recollection, she did

24 Q What did you do to investigate any of these
25 allegations of abuse?

Steve Sumner - Redirect Examination

1 A In terms of Kamell Evans and Christina Rodriguez?

2 Q Yes

3 A Nothing except probably made the investigator
4 aware of it, but when she didn't come to trial and I
5 believe my notes reflected that Betty Strom said we're not
6 going to get into that, I believe, Mr Nettles, I can't
7 specifically say but looking at my notes Betty Strom said
8 we're not going to get into that So when she said we're
9 not going to get into that, I wasn't going to get into any
10 of that

11 Q So, obviously, when she said they weren't going
12 to get into that, you didn't have to factor that into any
13 of your trial strategies?

14 A Only if she showed up I'm sorry Only if she
15 showed up and she did not show up for the trial I don't
16 believe she was there Only if she showed up and Kamell
17 Evans testified to the effect of, well, I've never had any
18 problems with her, I've never pulled a gun on her, I've
19 never done anything I thought that might make him
20 subject to cross-examination should that occur, but when
21 she didn't appear and it wasn't raised in direct, it was
22 not a factor at that point

23 Q How about the fact that Ms Strom said they were
24 not going to get into it?

25 A Well, when Ms Strom said they were not going to
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 get into it, I felt good about that and no longer that was
2 front burner issue with the file Once she said, we're
3 not getting into that, I never had any serious concerns or
4 substantial concerns that it would be brought out at
5 trial I knew that it could be You know, you never know
6 how a trial is going to go It could be if he had
7 testified I've never done anything like that, it could
8 potentially open the door, but that was the extent of it

9 Q Now, let's talk about Ms Pam Crawford Ms Pam
10 Crawford conducted an interview with Christina and we've
11 talked about that In that interview, Christina, however
12 you want to characterize it, was less than -- sort of cast
13 doubt on whether Kamell was truly a member of a gang or
14 not?

15 A Yes, she did

16 Q During your cross-examination of Mr O'Ca'n, did
17 you ask him if he had reviewed that part of the State's
18 file?

19 A I don't have any recollection of specifically
20 asking him that, no

21 Q It was information that was provided to you by
22 the State?

23 A Yes

24 Q He was testifying without objection as an expert?

25 A Right

Steve Sumner - Redirect Examination

1 Q You understand experts can rely on hearsay?

2 A I do

3 Q Was there a strategic reason for not asking him
4 if he had reviewed that transcript?

5 A There were two reasons and they have been the
6 reasons I've mentioned already in our hearing One is, I
7 felt, under expressed communication from Mr Evans not to
8 challenge any aspect of his gang affiliation, and No 2,
9 did not want to bring attention by objecting to something
10 that would potentially draw the jury's attention
11 specifically to that witness, to that portion of the
12 testimony, and No 3, I believe that Skip Goldsmith and I
13 both wanted to keep our objections minimal during the
14 guilt phase to try and just move through it as fast within
15 reason as it could be moved through for all the reasons
16 that I've stated today

17 Q Now, Mr Sumner, you obtained from your client
18 and expressed written signed agreement and you've got it
19 in your notes

20 A Yes

21 Q It's numbered 32 We're going to start with that
22 one

23 A Hold on just one second, I'll get there Yes,
24 sir, I see it?

25 Q "Review jury strike process," now this is the
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 meeting you had before the trial?

2 A No, 9/16/04 would have been three days into the
3 trial

4 Q Three days into the trial you had a meeting with
5 the client and you had a client conference three days into
6 the trial and what did you obtain from him over his
7 signature?

8 A Just an initial

9 Q Please publish client conference 9/16/04 and
10 publish everything down to this signature?

11 A Okay "Review jury strike process, full input
12 from client here We reviewed the jury strike sheet
13 Kamell approves the jurors he wants stricken, and his full
14 agreement as signified by his initials and signature "
15 And then his signature is above his name that I wrote in
16 cursive, and then his initials are right beside that in
17 the line that I put

18 Q And did you write out that paragraph, "We
19 reviewed the jury process," did you write that out?

20 A That is my handwriting, yes, I did

21 Q You wrote that out and you asked him to sign it?

22 A Yes, I did

23 Q Now, on Exhibit 25

24 A That would be 8/10/04?

25 Q Yes

Steve Sumner - Redirect Examination

1 A I have it

2 Q That would have been prior to trial?

3 A Yes

4 Q A client conference and there's as KE out to the
5 left

6 A Yes

7 Q Would you please publish that down through his
8 second-- first of all whose handwriting is that to the
9 write of KE?

10 A That is my handwriting

11 Q Please publish for the Court what you wrote and
12 what he signed?

13 A 'Kamell agrees that I don't need to spend time
14 trying to factually prove he is innocent (not guilty) he
15 shot the two decedents Kamell fired four/five shots "

16 Q Wait a minute, isn't there something before the
17 four or five?

18 A An approximate sign "Approximate four/five
19 shots (two a piece) He gave the confession and
20 statement It is accurate as to the facts I will spend
21 all of my time (most all) on mitigation phase of trial "
22 As to that statement, Mr Nettles, there are two initial
23 blocks and there is also all caps "I agree" and then he
24 signs it

25 Q And you wrote all of that?

Steve Sumner - Redirect Examination

1 A I did

2 Q And what does it say below that?

3 A "I did not go over there interding to shoot
4 anybody, it just happened Kamell Evans " That was my
5 writing, but I believe that was something he told me
6 specifically

7 Q And he signed it?

8 A He signed it, yes, sir

9 Q And on Exhibit No 5, which is the 7/23/04 notes
10 there's another KE out to the left?

11 A That is correct

12 Q And it says he agreed to another statement that
13 was written?

14 A That is correct

15 Q And what is the statement he agreed to?

16 A "Okay with full disclosure of test results to
17 prosecutor full explanation of this pros cons I agreed
18 to test and release of info if necessary " I printed the
19 name of Kamell Evans, he signed it and initialed it

20 Q And that was done 7/23/04?

21 A Yes, sir

22 Q And there was an acknowledgement that was signed
23 by him on a typed acknowledgement, Respondent 22?

24 A Yes, sir

25 Q And in this, there is, along the left hand side a
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 place for him to initial five paragraphs?

2 A Yes, sir

3 Q And that he could read and write the English
4 language?

5 A Yes, sir

6 Q Paragraph No 1 had to do with his right to
7 testify at trial?

8 A Yes, sir

9 Q Paragraph No 2 is that you had explained the
10 jury sequestration procedures?

11 A Yes, sir

12 Q That he has, "No objection to any motion he may
13 file if the Court ask that the jury not be sequestered "

14 A Yes, sir

15 Q "No 3, I authorize my attorneys to strike the
16 jury from my case from procedural prospective in any
17 manner they see fit "

18 A Correct

19 Q "No 4, I've received a copy of my written
20 statement and been advised on numerous occasion to review
21 it thoroughly as I understand I could be questioned at
22 trial regarding my statement "

23 A Correct

24 Q "On multiple occasions I've informed Mr Sumner
25 that I shot two decedents I committed the shooting in
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 the living room of the home I spoke with the hostage
2 negotiators on the cell phone I understand fully that
3 admissions by my attorney can be binding on me in court
4 After a full discussion of trial strategies with
5 Mr Sumner, I agree for Mr Sumner and Mr Goldsmith to
6 acknowledge my guilt to the jury during the guilt phase of
7 the trial This is a knowing free and voluntary decision
8 made by re and me alone after fully consultant my trial
9 counsel and potential options that may be available "

10 A Right

11 Q And he initialed that?

12 A Right

13 Q And he initialed he could read and write the
14 English language?

15 A Correct

16 Q And he signed his name to this document on
17 8/31/04?

18 A Yes, sir

19 Q You shared with us a number of handwritten notes
20 that in one of his first interviews he talks about that he
21 is in a gang?

22 A Yes, sir Are you referring, Mr Nettles, to my
23 notes?

24 Q Yes

25 A I believe so, yes Wait a minute, I'm sorry I
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 believe the very first time that I spoke with him he said
2 he was a member of a gang?

3 Q As a matter of fact that would be Respondent No
4 1

5 A Okay

6 Q That is July 9, '04

7 A I have it

8 Q On Page 4 I believe, starting at the bottom of
9 Page 3, publish that to us

10 A "In gang in Cleveland 'Crips, Crip neighborhood'
11 cousins and uncles in the Crips from 11 or 12," and I was
12 referring to his age, "through 17, senior year at Greer
13 High Going to school here Summers in Cleveland, spring
14 breaks, Christmas, main family living there," meaning
15 Cleveland "Ran with the Crips Defendant was a leader
16 He worked is way up the ranks " That would be a quote
17 from him "Sold crack, coke and weed, never caught, no
18 Crip involvement at Greer "

19 Q Okay if you could stop for just a second What
20 did you take, "no Crip involvement in Greer," to mean?

21 A I took it to mean, looking back on it, that he
22 was either a member of the Crips and did not exhibit his
23 affiliation while living in Greer and only exhibited his
24 affiliation while he was in Cleveland on these breaks, or
25 that he had disassociated himself from the Crips entirely

Steve Sumner - Redirect Examination

1 Q Now, what I want to ask you now is in your
2 handwritten notes where you document that he told you that
3 his expressed communication from Mr Evans anything to
4 disabuse anybody of the notion that he was a member of a
5 gang?

6 A I would need to get up for just a second to do
7 that I'm going to keep this stuff in the order that you
8 had them I'll tell you where that came from I would be
9 here It would have been September 9, '04 client
10 conference and I'll tell you where it came from The
11 checkmarks would be the topics that I covered with him
12 "Addressed gang issue Are you a member of the Crips?"
13 And I underlined the word, yes "Did the gang angle have
14 anything to do with the shootings? ANSWER No "
15 September 9th of '04, that's what I'm referring to when he
16 continued are you a member of the Crips and he emphasized
17 to me, yes, he was

18 Q Is there anything else? Before you go back, is
19 there anything else?

20 A On the gang issue?

21 Q Yes

22 A I'm going to take a quick look I don't think
23 so, but I'll take a quick look I'm going to say no
24 because I think my notes are in chronological order I
25 think that would have been the last time that I have a

Steve Sumner - Redirect Examination

1 note to myself from the file regarding the Crip issue

2 Q Would you please retrieve your notes?

3 A Sure

4 Q Did you review those in preparation for your
5 trial today

6 A No, not much I mean I reviewed them

7 Obviously, you know that I met with you and Mr Ehliies and
8 I met with the other attorneys before today, but I didn't
9 go back and read through them I mean, I'm somewhat
10 familiar with them I haven't studied them in preparation
11 for today

12 Q Did you look at them before you got here today?

13 A I spent some time this past weekend organizing
14 the file as you may be aware As you know when you were
15 at my office, the file had been gone through a lot, picked
16 through, and been subject from Protective Orders from
17 Mr Ehliies and whatnot So I went back and organized the
18 file I looked through a few things when I did that

19 Q The applicant would like to take a look at those
20 notes

21 A You have them

22 Q I don't think we do

23 A Oh, yeah Mr Ehliies copied the whole file I
24 thought he did

25 Q I'm not arguing with you about it, I just wanted
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 to take a look at it to make sure

2 A I'm not trying to argue with you either,
3 Mr Nettles, I just wanted to make sure -- I just want to
4 say this and get it very clear on the record There's
5 nothing that's in the file today that was not provided to
6 Mr Ehliies when he took the file about a year-and-a-half
7 ago and copied it

8 Q You and I will agree on one thing today, you have
9 been forthcoming with the file Let's just dismiss with
10 that Those are the two references Are there any other
11 references to gangs in your notes with your interviews
12 with Mr Kameil Evans

13 A There are probably one or two other references to
14 gang involvement The latest one to my knowledge, the
15 trial started on September 13, the latest one was on
16 September 9th and those were the notes When you ask me
17 where do I get this statement from Mr Evans about gang
18 involvement, it would have been the four days prior

19 Q That right there The question, "Are you a
20 member of the Crips? Yes " That was what you relied on
21 --- did you ever have him fill out, write a little
22 paragraph, and have him sign that he expressly did not
23 want you to dispute that he was a member of a gang?

24 A No

25 Q Is there anywhere in your notes where you reflect
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 with him about Mr O'Cain and his right to challenge the
2 testimony of that?

3 A No

4 Q When you talked a minute ago about -- I'm going
5 to go to Respondent's 26, and it says at the top, 7/29/04,
6 it says, "Review of Book 2 discovery Try and get a
7 pathology projection on bullet wounds to the head of both
8 victims "

9 A It says, "get a path projection " It says, "Try
10 and get a path projection on bullet wounds to the heads of
11 both victims " I don't think that was shorthand for
12 pathologist I think that was path projection to try to
13 alert either myself or investigator to and see if there
14 was -- you know, sometimes they're put those little vowels
15 through about what was the path projection of a bullet I
16 believe that's what I was saying?

17 Q What discipline often does that sort of testing?

18 A Typically it would be a pathologist Yeah, a
19 pathologist, and yeah, there may be some other closely
20 associated kin, but I think it would come under that

21 Q Did you contact a pathologist about getting a
22 projection of the bullet wounds in the heads of the
23 victim?

24 A No

25 Q Now, I'm going to now, what's been previously
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 been marked Respondent 29 and ask you to go to Page 4 of
2 that and that is an 8/0/04 interview with Dr Jim Evans

3 A I have it right here

4 Q If you go back and would you please publish
5 everything on that page down to No 2

6 A I'll be glad to "Some suggestion of a learning
7 disability All info support self-reported history May
8 have been LD," which would mean to be learning disabled,
9 "at some point, also lead poisoning "

10 Q Did you do anything -- did you obtain any
11 documents to support the diagnosis there of lead
12 poisoning

13 A No

14 Q I'd like to draw your attention to the trial
15 transcript 1702, which would be the cross-examination of
16 Ms Strom of Dr James Evans and I can show you a copy of
17 that

18 A Thank you

19 Q We're going to start on Page 8 Would you please
20 publish that

21 A "QUESTION You stated that the defendant, you
22 thought that the defendant had some sort of brain
23 dysfunction based upon lead poisoning as a child?

24 ANSWER That seemed like a likely conclusion,
25 yes

Steve Sumrer - Redirect Examination

1 QUESTION Did you confirm that with any medical
2 records?

3 ANSWER No, I did not

4 QUESTION That's simply from the defendant,
5 himself?

6 ANSWER Yes

7 QUESTION And his family but no medical records?

8 ANSWER No "

9 Q Do you think it might have bolstered Dr Evans'
10 testimony had he had medical records of lead poisoning to
11 rely on?

12 A I don't know I mean, that would be Dr Evans
13 I don't recall getting any communications from Dr Evans
14 to request that I need to get specific records I feel
15 like I would have done what he asked me to do I guess
16 Dr Evans would have to answer that

17 Q Well, as a lawyer, had he had records of lead
18 poisoning, just as a trial lawyer, do you think that would
19 have shut down that line of questioning?

20 A Well, if they had showed -- it would depend on, I
21 guess, what the records would have shown, I guess

22 Q Let's just assume for my question that the
23 records showed there was lead poisoning

24 A Okay

25 Q Would that have helped -- would that have made
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 Dr Evans' testimony stronger or weaker

2 A I think it would have made it stronger

3 Q Let me ask you this and now I'm going to

4 Dr Evans' testimony 1684 We're starting at Line 13 and
5 this would be direct examination by you

6 A Correct

7 Q Start with Line 13 and read down through Line 21

8 A "And here when I say brain dysfunction, brain
9 damage, I want to clarify that No one including
10 neurologists knows that someone has brain damage unless
11 they can see it on a CAT scan or an MRI or during
12 neurosurgery So almost always brain damage is inferred
13 on the basis of tests like this That's why I prefer to
14 call it brain dysfunction and not brain damage because I
15 haven't actually seen the damage Brain dysfunction is
16 what I'll be referring to "

17 Q Did you take from that that he was calling it
18 brain dysfunction, but he was stopping short of calling it
19 brain damage because he didn't have an MRI?

20 A No I took it more probably as Dr Evans being
21 cautious in his testimony and making sure everything he
22 said was correct and trying to clarify that to the jury
23 that I'm giving my testimony based upon the results of a
24 battery of tests, they do not include an MRI or CAT scan

25 Q "No one including a neurologist knows that

Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 someone has brain damage unless they can see it on a CAT
2 scan or an MRI "

3 A Right

4 Q So that would mean that as in a CAT scan or an
5 MRI, you can't conclusively conclude it as brain damage?

6 A Yes, I agree with that

7 Q Did you do a CAT scan or an MRI?

8 A To my knowledge, no, not while I was involved an
9 MRI or CAT scan was done

10 Q Let's speak for a second, this is Respondent's 28
11 and that is the memorandum that was done as a result of
12 George Martin's ---

13 A I'm looking at it right now

14 Q I go down to No 3 under "Issues for direct
15 questioning "

16 A Yes, sir, I got it?

17 Q And I've got 3c

18 A "Behavior in GCDC is best available predictor of
19 adjustment for long term incarceration in SCDC "

20 Q So was the purpose of Mr Martin's testimony to
21 show essentially adaptability in prison, that he would be
22 adapt well In the past he had been good and he would
23 continue to be good?

24 A I think to the best of my recollection there were
25 main themes of Mr Martin's testimony That would be one
Evans versus State - Day 3

Steve Sumner - Redirect Examination

1 of them and the other one would have been some of the
2 others of what I've testified to But, yes, I've got a
3 star by it That would be a note to me to stress that in
4 his testimony

5 Q As it relates to adaptability in prison
6 testimony, I'm not going to ask you to quote the statute,
7 would I accept my recommendation that South Carolina Code
8 16-3-24(C)1, "A capital jury may not impose a death
9 sentence upon the influence of any arbitrator factor "

10 A Can I just see

11 Q Sure

12 A This is a statement from a case This would be
13 State versus Berkhardt

14 Q Just be -- I sited that for you, but I'm
15 referring this to you for the proposition of the Statute
16 This was sited in 2006 and this was the Statute in 2003,
17 would you accept that?

18 A Yeah That's certainly a statement the Supreme
19 Court is making in '06

20 Q What was your understanding of the law as to
21 State v Platt having to do with allowing or disallowing
22 the defense evidence regarding the process of execution?

23 A I do not remember

24 Q Do you also recognize -- would you except my
25 representation of the law under 16-3-20 that, "A trial

Steve Sumner - Redirect Examination

1 judge, after imposing the death penalty shall find an
2 affirmative act that the death penalty was warranted under
3 the evidence of the case and not result of prejudice,
4 passion, or any other arbitrating factor "

5 A Yes, you're quoting directly from the Statute

6 Q There is more than one Platt?

7 A I think so

8 Q We talked about the defense evidence regarding
9 process of execution, that's Platt 2

10 A Yes

11 Q In respondent's 7, on Page 2

12 A What would be the date on that?

13 Q 7/30/04

14 A Yes, sir, I have it

15 Q Page 2, Antonio K Garrett

16 A I believe it's Garrett

17 Q "Owns a night club of some type," would you
18 publish that?

19 A Yes, sir "Witness Antonio" ---

20 Q You don't have to use all that language That's
21 the part where it says defendant wanted to be a gangster

22 A Yes

23 Q Did you receive this as part of your discovery
24 from the Mauldin Police Department?

25 A You know, Mr Nettles, I don't remember I'm

Steve Sumner - Redirect Examination

1 | sorry but I don't remember I think that virtually every
2 | police officer that went out there wrote a supplemental
3 | report I don't know how many there are in there, maybe
4 | 20 or 25 I think what they did is when they heard it on
5 | the radio, I think they responded and started converging
6 | on this house I think they are, maybe, under a duty to
7 | write a report, I don't know, but there were a lot of
8 | them

9 | Q Would you take a look at that and just take your
10 | time to look at it I would draw your attention to the
11 | charges, to the allegations Go to the second page and
12 | tell me if ---

13 | A I know what you're saying This is a two-page
14 | Mauldin P D supplemental investigative report It
15 | references Antonio Kenyatta Garrett who was a driver He
16 | apparently had gone to the scene, this Antonio Garrett,
17 | and he was questioned by a lot of officers that were there
18 | because I believe what they did is set up a road block
19 | away from the house and began to question people because a
20 | lot of people might have heard it on their scanners
21 | Later on he said that he knew Rodriguez, referring to
22 | Christina Rodriguez He said that, "Evans wanted to be a
23 | gangster and would try to act like a Crap gang member "
24 | he made another statement that I'm not going to publish
25 | again He said that Evans would act tough and act like he

Steve Sumner - Redirect Examination

1 was in Los Angeles Garrett told Evans he was in South
2 Carolina and not California and quit acting like a
3 gangster

4 Q Do you read this in preparation for trial?

5 A For this trial?

6 Q No, the one where you were the lawyer

7 A That's a little bit different I believe
8 certainly that I did because my notes reflect almost a
9 direct quote from that in a lot of ways that I'm not going
10 to get into right now Can I say one other thing? Very
11 briefly in response and as an addendum to that When I
12 had testified earlier to you about reports that had
13 referenced other incidents, this was the kind of stuff a
14 little bit, it wasn't a direct quote that he was acting
15 like a gangster and he said he was a Crip, just in
16 supplement to some other things

17 Q Did you send your investigator out to talk to
18 Mr Garrett?

19 A I can not remember

20 Q Do you have a note or anything documenting?

21 A I believe that it would be under Scott Peterman's
22 notes that are in the file if he had I believe to my
23 recollection that he did a little memo about everybody
24 that he interviewed So if it's not in there, I would
25 imagine that he didn't

Steve Sumner - Redirect Examination

1 MR NETTLES At this time, we would move 39
2 into evidence

3 MS BROWN No objection

4 (Notes marked as Applicant's Exhibit No 39
5 for identification and admitted into evidence)

6 BY MR NETTLES

7 Q I'm going to show you now what's been marked as
8 Respondent's 40

9 A Okay

10 Q Do you have there whether you hired a social
11 worker or not?

12 MS BROWN I'm going to object because
13 that's been asked and answered several times in both in
14 direct and cross

15 BY MR NETTLES

16 Q Well, let me ask you this, who was the social
17 worker?

18 A I would refer to that loosely as the mitigation
19 specialist I used those terms interchangeable Not in
20 terms of this hearing, but I think in my mind that I have
21 I probably was referring to Ms Topp and probably
22 Ms Glass I don't know what her title would be but
23 mitigation specialist

24 Q Who did you hire to come in as a social worker
25 and testify at trial?

Steve Sumner - Recross-Examination

1 A Nobody other than the people I hired Nobody
2 other than the people I mentioned

3 Q Would you agree with me, just so we get on the
4 same page, that a mitigation investigator, although they
5 may have a degree in social work, that they go out and
6 interview people, gather records and report to you?

7 A Yes

8 Q That often you hire a social workers, someone
9 with a MSW, to then testify at trial?

10 A I know that is done and has been done, it was not
11 done in this case

12 MR NETTLES That's all Thank you very
13 much

14 MS BROWN Just a few questions

15 (Discussion off the record)

16 RECROSS-EXAMINATION

17 BY MS BROWN

18 Q I believe you were asked a few questions on
19 redirect your efforts to verify some of things about prior
20 domestic violence and innocents And you also referenced
21 the interview with Christina Rodriguez and Dr Pam
22 Crawford

23 A Right

24 Q This has been marked and admitted at Applicant's
25 Exhibit 34A, do you recall this?

Steve Sumner - Recross-Examination

1 A I do

2 Q Would you look at this and just publish 18 to the
3 top of 21

4 A "PC How many times did he abuse you like that?

5 "CR It was ---

6 "PC Or threaten you?

7 "CR Okay he hit me three times "

8 And just for the record, Pam Crawford is PC, and
9 CR is Christina Rodriguez

10 "CR Our whole relationship and the third time
11 was the last, you know, last Tuesday

12 "PC Okay

13 "CR And he pulled his gun on me twice

14 "PC When was the last time that happened?

15 "CR Tuesday

16 "PC Tuesday When did you decide to leave him?
17 When that all happen?

18 "CR Tuesday was the last, was the final thing
19 that because he -- I mean that's why he did all this --
20 that's why his all happened now because he hit me and then
21 in his house

22 "PC This was last Tuesday

23 "CR Yeah He had me in the house and he had
24 made me think everything was okay He was like, you know,
25 you know, we were living our own life We were happy We

Steve Sumner - Recross-Examination

1 were doing good And then all of a sudden he was like, so
2 what about this money We ain't getting the money, right
3 You lied about the morey I was like I didn't lie about
4 it I was like, well, like obviously didn't get it
5 because we would have gotten it by now I wasn't going to
6 pressure my dad I'm not going to ask him about it
7 because I'm not supposed to know about it He was like
8 yeah, yeah, yeah, yeah, you lied He was like I been
9 playing with this a long time So he pulled his gun out
10 on me and was talking about he was going to shot me He
11 was like turn around, turn around, I'm going to shoot you
12 in your back And then he said, no, fuck that He said
13 get on the couch He was like lay down So I was like
14 begging and begging and begging for my life And I said,
15 please, please, let me see my son, let me see my son, and
16 he was like oh, man, fuck that You fucked with my life
17 too much I gave up too much for you So that's -- then
18 I finally broke down so hard, you know, I said, please, I
19 love you I was trying to say anything I could to get
20 myself out of there Finally, he let the gun go and he
21 had taped my hands together and he let -- he cut the tape
22 and he was like come here, I'm sorry, I'm sorry And I
23 sat there and I hugged him just I wanted -- I wanted that
24 satisfaction that he was okay with me that I wasn't going
25 to get hurt any more

Evans versus State - Day 3

Steve Sumner - Recross-Examination

1 "PC He taped your hands together?

2 "CR Yes

3 "PC With what? Duct tape?

4 "CR Yes, Duct tape

5 "PC And that was what, a week ago Tuesday?

6 "CR It was Tuesday

7 "PC Okay "

8 Do you want me to continue?

9 Q That's fine That's pretty consistent with the
10 Mauldin report that you read and the other reports that
11 you seen in discovery?

12 A It was I mean, the report as I mentioned was
13 not actually a Mauldin report It was a report from one
14 of the supplementals saying that there had been an
15 incident that Mauldin P D was aware of a week earlier
16 So it was all consistent with what was kind of peppered
17 into the discovery about these prior incidents, one or
18 more

19 Q You were also asked about whether if you inquired
20 if Mr O'Cain had read the Crawford notes

21 A Right

22 Q If he had read the notes about Christina and the
23 allegations about your client possibly not being in a
24 gang, maybe he wasn't in a gang, I don't think so, he
25 would have also read about all this aggressive behavior as

Steve Sumner - Recross-Examination

1 well, right?

2 A He would have read the whole thing, I presume

3 Q And you mentioned to us in Mr Martin's testimony
4 he discussed the security threat group measures how they
5 identify possible gang members and part of that was
6 aggression and acts of violence?

7 A Correct

8 Q So would that not have supported or at least
9 according to Dr Martin's investigation a finding that he
10 should have been flagged for security threat group issue?

11 A I think that would be a logical thought process

12 Q And you were also asked about your objection to
13 Mr O'Cain's testimony and you testified that one of the
14 third things that you thought about was is that you and
15 Mr Goldsmith both wanted to object as little as possible
16 and you said at that pointed to object as little as
17 possible in the sentencing phase

18 A If I said sentencing phase, I made a mistake I
19 meant guilt or innocence phase, guilt phase?

20 Q So it was consistent with both phases that you
21 were prefer not to object or as little as possible?

22 A Well, I don't recall a lot of objections during
23 the sentencing phase, but during the guilt phase, we felt
24 like going in as I have already published this to Judge
25 Hill or referenced it to Judge Hill that we did not want

Steve Sumner - Recross-Examination

1 to object unless we felt like we had to, that it was
2 something that was very strong

3 I know Mr Nettles has asked me about this a
4 lot and we talked a lot about this, Mr O'Cain and the
5 gang aspect, I felt I was directed very clearly by
6 Mr Evans that he did not want any challenges to it

7 Q And it wasn't just the fact of not challenging
8 it, was it, with your experts, did your experts say he
9 would not stop talking about his gang business?

10 A Yes

11 Q He even described tattoos to Dr Berg?

12 A He talked about it to everybody that would listen
13 to him

14 Q So it wasn't just ---

15 A I don't mean that in a negative way, Dr Berg,
16 Dr Evans, me, Skip Goldsmith, I believe Lenora Topp, that
17 was a constant them with everybody that I recall being a
18 part of the defense team

19 Q And you did go over, once again, that you were
20 intending to really challenge the shooting or the fact of
21 guilt in some respect?

22 A That is correct, shared that with Mr Evans well
23 in advance of trial

24 Q And you also mentioned on your redirect, though,
25 that he maintained that it was not an intentional

Steve Sumner - Recross-Examination

1 shooting, do you recall that testimony?

2 A I do I recall him telling me on a couple of
3 occasions that I didn't go over there intending to shoot
4 them I don't believe that he ever said I did not
5 intentionally shoot them He said Joe went for the gun
6 and it wouldn't have happened if Joe hadn't gone for the
7 gun I don't believe he ever said it was not intentional
8 that he shot them both He just said, I did not intend or
9 get in my car to go over there with the idea that I was
10 going to shoot them

11 Q And he told you that he always carried two guns
12 all the time?

13 A Always

14 Q Would that effect in your mind that he intended
15 this violence or not?

16 A I did not feel there was any legal basis
17 differential he was drawing in his mind on that

18 Q How did he explain carrying 140 plus rounds of
19 ammunition?

20 A He couldn't explain it

21 Q Or hiding out in a house under construction
22 across from the scene, he couldn't explain that?

23 A No

24 Q Couldn't explain in his statement that he
25 essentially pointed his 9 millimeter at Deputy Sapinoso

Steve Sumner - Recross-Examination

1 while Deputy Sapinoso was getting out of his car before he
2 even had a chance to go for his gun?

3 A Correct

4 Q And once again on redirect, you referenced the
5 primary report of Mr Evans and went into some of
6 Mr Evans' testimony, do you recall that line of
7 questioning?

8 A I do

9 Q Now, you were asked wouldn't it have made
10 Mr Evans' testimony stronger that you had evidence that
11 some kind of lead poisoning had occurred or documentation
12 of some kind of lead poisoning occurred?

13 A I was asked that question

14 Q And you said it would make it stronger, correct?

15 A Well, that's hard There's a lot of speculation
16 in that answer that I answered for Mr Nettles It would
17 depend on what the report said and it would depend on any
18 direct correlation between lead poisoning to whatever
19 degree I assume it could be lead poisoning of a minute
20 degree of a half of an inch to about a foot I think I've
21 been told that a lot of people who have had lead poisoning
22 are doctors or supposed to have had lead poisoning I
23 just don't know

24 Q It doesn't affect what he was looking for?

25 A I didn't feel like it did I would say that
Evans versus State - Day 3

Steve Sumner - Recross-Examination

1 Dr Evans, I believe, had ample time to exam Mr Evans
2 He gave a well-thought out testimony diagnosis in my mind
3 about what his opinion was

4 Q Dr Evans is not a psychologist, correct?

5 A That is correct Dr Evans is a neuro
6 psychologist, I believe

7 Q And his advise to you he said to get a
8 psych_atrist to have an evaluation, correct?

9 A He suggested that, yes, he did

10 Q And you did that?

11 A Yes, I did

12 Q And you were asked a little bit about the MRIs
13 and Dr Evans referred you to a medical doctors for the
14 MRIs if necessary, correct?

15 A Correct

16 Q Now, do you recall that Dr Berg was asked about
17 MRIs at the penalty phase?

18 A I don't recall

19 Q May I show you record Page 30 line 1 through 16

20 A Sure

21 Q If you could just publish that to the Court so
22 we're all on the same page here

23 A Right Page 1730 of the trial transcript,

24 Dr Elin Berg, cross-examination by Ms Strom

25 "Dr James Evans who testified yesterday had some
Evans versus State - Day 3

Steve Sumner - Recross-Examination

1 concern about frontal lobe functioning As a part of that
2 concern, did you order and MRI or anything such as that to
3 look into that?

4 ANSWER No, I did not because it will not
5 necessarily rule in or out whether you have a frontal lobe
6 dysfunction, it is not specific

7 QUESTION Would it assist you?

8 ANSWER If I had psycho neurological symptoms in
9 addition to the cognitive dysfunction, I would have an
10 MRI Otherwise, I would perceive it as a waste of money

11 QUESTION And you didn't see any on that?

12 ANSWER No, he had no psycho neurological
13 symptoms "

14 Q And you understood that Dr Berg could have
15 ordered an MRI if she believed in her professional opinion
16 it was necessary?

17 A I believe, yes, I believe that she could have

18 Q But it still wouldn't have been definitive
19 according to her testimony?

20 A Not according to her testimony

21 Q You were also asked about a witness, Mr Garrett,
22 who went to the scene and was questioned by officers?

23 A I was

24 Q Would you agree with me that he expressed again
25 in that particular passage that you read from your report

Steve Sumner - Recross-Examination

1 that your client was acting like a gangster?

2 A I believe Mr Garrett had told the police that
3 right that he had seen Mr Evans on numerous occasions act
4 like a gangster

5 Q On numerous occasions That's consistent with
6 the character of the defendant is it not? Regardless
7 whether or not it was gang initiation or no gang
8 initiation, that's the way he acted

9 A Every indication that he had was he acted in the
10 manner I don't think 24/7 that he did it all the time,
11 but this was sort of a persona that he took on when he
12 wasn't at work or something along those lines?

13 Q And lastly, you were asked about a social worker

14 A Yes, ma'am

15 Q In any of the trial that you prepared for that
16 had a death sentence or a death notice already issued of
17 the possibility it would be a death penalty trial, for
18 instance the Owens case you referenced earlier, had you
19 worked with a social worker before?

20 A I have I see Ms Glass is here I don't know
21 exactly what her specific title is here today but she has
22 an MSW, I believe, but I have worked with social workers
23 before and I did work in the Evans case with her and there
24 was another lady, and I can't recall her name, that worked
25 on that case

Dale Davis - Direct Examination

1 Q In that capacity, the people you had worked with
2 before, mitigation specialist or social worker, helped you
3 to bring together information and possible witnesses

4 A Yes, ma'am

5 Q And you made the decision on whether the
6 witnesses were called?

7 A Yes, ma'am

8 Q Thank you, Mr Sumner

9 MS BROWN I have no further questions

10 MR NETTLES Nothing further

11 THE WITNESS I'm going to leave before
12 anybody changes their mind

13 (Witness leaves the witness stand)

14 THE COURT Y'all ready to call your next
15 witness?

16 MR NETTLES Yes, sir Your Honor, at this
17 time, applicant would call Ms Dale Davis to the stand

18 DALE DAVIS, having been duly sworn, testified
19 as follows

20 THE COURT I need you to state your full
21 name

22 THE WITNESS Dale McNaritan(ph) Davis

23 DIRECT EXAMINATION

24 BY MR NETTLES

25 Q Ms Davis, what is it you do for a living?
Evans versus State - Day 3

Dale Davis - Direct Examination

A I'm a mitigation specialist Some people call them investigators, I'm a specialist

Q What is it you do as a mitigation specialist investigator?

A In death penalty cases, I'm the investigator that prepares for the sentencing phase of the trial by interviewing initial the client, getting all the information that I can from him or her, collecting records, interviewing family members, going through those records, documenting various things that would be important for preparing life's chronology, preparing a genogram. It's sort of an ongoing process that as you get some records you would develop other things from those records.

Q What is the difference between a mitigation investigator and a testifying social worker?

A The social worker would be the one who would take all the information who has the expertise to take what I've gathered to put together and talk about the cumulative effects of those things or the life effects of those things and bring some explanation to the jury

Q I'm showing you what's previously been marked for ID, what is that?

A It's my resume

MR NETTLES At this time, I'll show this to
Evans versus State - Day 3

Dale Davis - Direct Examination

1 the State and I believe they do not object to Ms Davis'
2 resume which is Applicant 44

3 MS BROWN No objection

4 MR NETTLES At this point, I would so move
5 it into evidence

6 THE COURT Yes, sir

7 (Resume marked as Applicant's Exhibit No 44
8 for identification was admitted into evidence)

9 BY MR NETTLES

10 Q How long have you been a mitigation investigator?

11 A I've worked at it full time since January of
12 2000 I was doing it part time while I was at the Public
13 Defender's Office in '98 and '99

14 Q Let's talk a little bit about this case Where
15 were you when you first got the call about this case?

16 A I had been meeting with Jennifer Sheilly and the
17 Charleston County Public Defender's Office on another
18 death penalty case that I was working on with her I left
19 her office and while I was still in the parking garage I
20 got a call from her paralegal asking me to return because
21 she had gotten a call from somebody that she thought I
22 should talk to, and I did return to her office and spoke
23 to the person I believe she was still on the phone when
24 I returned and I spoke to Mr Sumner

25 Q Who did you talk to?

Dale Davis - Direct Examination

1 A Steve Sumner

2 Q When was that?

3 A It was July 21 of '04

4 Q As a result of that conversation, what did you
5 do?

6 A I made arrangement with him and told him I would
7 come up the following day, speak to the client, do a
8 little bit of work because it was apparent from what he
9 had told me that a continuance was what he needed And so
10 we discussed ---

11 MS BROWN Objection to a legal conclusion,
12 Your Honor, move to strike

13 MR NETTLES She's not saying what she
14 thought She's saying that based on her discussion that
15 she had what she thought the purpose of her being hired
16 was

17 MS BROWN I understood it was the
18 continuance that he needed a continuance based on what she
19 heard from the case

20 MR NETTLES I'll rephrase

21 BY MR NETTLES

22 Q Did you have a discussion with Mr Sumner?

23 A I did

24 Q After you had the discussion with Mr Sumner,
25 what was your understanding that you were to help him do?

Dale Davis - Direct Examination

1 A My understanding based on that conversation was I
2 was speaking to him July 21st, he had a trial scheduled he
3 told me either the 13th or the 20th of September, he
4 wasn't sure, and that I would come up and help him get a
5 continuance on the case

6 Q How would someone like you be instrumental in
7 getting a continuance?

8 A Because he had just gotten the case It wasn't a
9 new case, another lawyer had it for some length of time
10 There had been nothing done by way of mitigation,
11 investigation or any kind of preparation for the
12 sentencing, and so because that's an involved lengthy
13 process, I would see what I could find out by speaking to
14 the client and family members and determine what needed to
15 be done initially to prepare for sentence and that would
16 not be able to be done in that short period I would
17 prepare an affidavit so that he would be allowed to get
18 proper time to prepare for sentencing and I had done that
19 in other cases So that was the reason that came up

20 Q On July 21, did you send an email to Mr Sumner
21 requesting he set up a visit with you with Kamell?

22 A I asked him to set up a contact visit with Kamell
23 for the next day

24 Q As a matter of fact, I'm presenting what's been
25 previous marked for ID, Applicant 43, do you recognize