

VOLUME SIX OF TEN
[PP 2501-3000]

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

S C Supreme Court

Kamell Delshawn Evans, #6016,

Respondent/Petitioner,

v

State of South Carolina,

Petitioner/Respondent

APPENDIX

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Dale Davis - Direct Examination

1 that email?

2 A I do but it's not the one we were just
3 discussing

4 Q I know, but do you recognize that email?

5 A Yes, I do

6 Q Who did you send it to?

7 A To Steve Sumner

8 Q What date?

9 A August 5, 2004

10 MR NETTLES Your Honor, I would move what's
11 previously been marked Applicant 43 for ID purposes into
12 evidence

13 MS BROWN No objection, Your Honor

14 (Email marked as Applicant's Exhibit No 43
15 for identification was admitted into evidence)

16 BY MR NETTLES

17 Q What was the purpose of that email?

18 A The purpose of this email was by this point I had
19 gotten the clear message that he didn't believe that he
20 could get a continuance, that he wasn't going to ask for a
21 continuance, and I sent a lengthy motion that had been
22 sued in a case in Georgia that he could maybe change to
23 fit a South Carolina situation and lay out the law and be
24 able to get the continuance that he needed

25 Q On the 22nd of July, who did you meet with?

Dale Davis - Direct Examination

1 A I met with Kamell Evans

2 Q Tell me a little bit about that meeting?

3 A It was a long meeting He was very cooperative
4 I had taken some questionnaires with me to help me get as
5 much information as quickly as possible, and he gave me a
6 lot of information to work with I was able from that to
7 determine a number of issues that would relate to
8 mitigation

9 Q What issues relating to mitigation did he share
10 with you? What issues did you walk away from that
11 interview with?

12 A One, that was around two years old, he had eaten
13 some paint chips and gotten lead poisoning He had lead
14 poisoning and was identified as having that and had gotten
15 treatment There was an extremely dysfunctional family
16 His father, parents, there was domestic violence between
17 the parents The father was abusive to both him and other
18 children The dad would come home drunk and start beating
19 his mom The kids, he and his sister, would intervene and
20 the dad would turn on them

21 The lead issue at that point was a big thing
22 to me because of all the possibilities and effects that
23 lead can have

24 Q What effects can lead have on a child?

25 MS BROWN Objection, Your Honor I didn't
Evans versus State - Day 3

Dale Davis - Direct Examination

1 near anything in the qualifications that would allow her
2 to testify to that

3 BY MR NETTLES

4 Q Why did you think that lead was important?

5 A Based on training sessions for mitigation and
6 mitigation conferences, sessions that related to
7 neurotoxins talked about the effects that lead can have on
8 children's IQ and development and things like that

9 Q As a mitigation investigator, what would be your
10 next course of actions once you had information that a
11 client had ingested lead?

12 A The first thing I would want to do with that was
13 to verify that information

14 Q How would you do that?

15 A I spoke with his sister and his mother to verify
16 in fact that was true I got information for his mother
17 as to where he was treated for it

18 Q And what did you do when you got that information
19 where he was treated?

20 A DHEC generally tracks lead poisoning in children
21 so I contacted -- first I did a database search just to
22 see if there might be something on the Internet, but there
23 wasn't So I contacted DHEC in Cleveland but because he
24 was raised in Cleveland Heights and that's where he was
25 treated and it's a different place, never the less she had

Dale Davis - Direct Examination

1 me fax some information to you

2 Q I'm showing you what's been marked as Applicant's
3 40

4 A Yes

5 Q Is that a file copy?

6 A Yes

7 Q Was there a signed copy sent?

8 A There was a signed copy faxed

9 MR NETTLES At this time I'd like to
10 introduce Applicant's 40 into evidence

11 MS BROWN No objection

12 (Letter marked as Applicant's Exhibit No 40
13 for identification and admitted into evidence)

14 BY MR NETTLES

15 Q You don't have to read the whole thing, but share
16 with the Court what is that?

17 A It's letter where I am saying our client tested
18 positive in a lead screening in the early 1980's and
19 received treatment according to his family and I'm trying
20 to find out something about that and if they have any
21 information about that

22 Q I'm showing you what's been previously marked for
23 identification purposes Applicant 41 Do you recognize
24 that?

25 A Yes, I do

Dale Davis - Direct Examination

1 Q Did you send that letter?

2 A I did

3 MR NETTLES Your Honor, at this time I'd
4 ask that Applicant's 41 be admitted into evidence

5 MS BROWN No objection

6 (August 4th letter marked as Applicant's
7 Exhibit No 41 for identification and admitted into
8 evidence)

9 BY MR NETTLES

10 Q Please share with the Court what Applicant's 41
11 is

12 A This is a letter to the medical records
13 department for Keiser Permanente That was there
14 insurance carrier and so that hospital was the one that
15 would have had the records on it or had referred him to a
16 clinic that said he was treated I was, in this letter,
17 trying to obtain birth records where he was born

18 Q Who provided you the information that resulted to
19 you sending that request to Keiser Permanente?

20 A That would have been his mother

21 Q That would have been Renee?

22 A Renee Evans

23 Q Tell me a little bit about how was she to deal
24 with?

25 A She was very good the little bit of contact I had
Evans versus State - Day 3

Dale Davis - Direct Examination

1 before her This is dated August 4th, I spoke to her by
2 phone before that, and she provided me this information
3 She told me that they lived in an apartment when he was
4 two and he tested positive for lead, and she was going to
5 get me an address where that was And then on August 5, I
6 got an email from her thanking me for talking to her and
7 she was going to fax -- I can't remember the email right
8 now but there was some medical records, a list of family
9 members, a number of things that she was going to fax to
10 me

11 Q Now, as it relates to -- I'm going to show you
12 what's previously been marked Applicant 42 Do you
13 recognize that document?

14 A Yes

15 Q Just tell me generally what it is?

16 A It's just notes where I was keeping track of who
17 I contacted and trying to get information about the lead

18 Q Did you keep that in your file?

19 A Yes

20 Q Did you provide that to Mr Sumner at some point?

21 A I emailed it to him, yes

22 MR NEFTLES At this time I'd ask to move
23 Applicant's 42 from ID into evidence

24 MS BROWN No objection

25 (Note files marked as Applicant's Exhibit No
Evans versus State - Day 3

Dale Davis - Direct Examination

1 42 for identification was admitted into evidence)

2 BY MR NETTLES

3 Q What does that document tell us?

4 A It told me the person I contacted ---

5 Q What did you memorialize in that document?

6 A I memorialized the contact with Tamlyn Malcoft at
7 the Ohio State (inaudible) in Ohio, then she had told me
8 Cohoga(ph) Courty is where I needed to get in touch with
9 the project director there She gave me the name and
10 address and phone number, that when I talked to his mom
11 she was going to get the address where they lived because
12 sometimes the databases are kept -- if a child tested
13 positive for lead, they would enter that address into a
14 database so they'd know that address had lead poisoning

15 Q And all that document related to what issue?

16 A Lead

17 Q In particular obtaining the records on lead
18 poisoning?

19 A Yes

20 Q Tracking it down?

21 A Trying to track it down

22 Q On July 23, did you have a meeting with
23 Mr Sumner?

24 A Yes, I had a meeting in his office

25 Q And who was in attendance at that meeting?

Dale Davis - Direct Examination

1 A As far as I can remember, it was Mr Sumner,
2 myself, a man named Martin, Jim Evans, a neuro
3 psychologist, his parents and his sister

4 Q How long did that meeting last?

5 A I'm going to guess an hour maybe

6 Q What was the purpose of that meeting?

7 A I'm not entirely sure I have never had an
8 initial meeting where experts were there before you ever
9 even identified issues that you need experts for But I'm
10 really not sure what the purpose of it was other than I
11 thought ---

12 Q What's your impression?

13 A My impression was that because in my meeting with
14 Kamell the day before he told me the difficulties they had
15 ---

16 Q The previous lawyer?

17 A The previous lawyer And so I knew the trial was
18 scheduled soon and that he wanted to let the parents know
19 that he was working on it

20 Q He who?

21 A Mr Sumner wanted to let the parents know that he
22 was working on it and that he was getting things moving?

23 Q Did you conduct any interview with any of the
24 family members at that time?

25 A No, I spoke with his stepmother briefly, but that
 Evans versus State - Day 3

Dale Davis - Direct Examination

1 wasn't a good situation for interviews

2 Q After you left that meeting, where did you go?

3 A After the meeting, I stayed in the office for a
4 while and went through some of the discovery that the
5 State had provided and took out some things that were of
6 interest to me and then I went back to the jail

7 Q Who did you see at the jail?

8 A Kamell

9 Q And what did you discuss?

10 A We just continued the discussion from the day
11 before about backgrounds, employment, schooling, addresses
12 he had lived at, the financial situation growing up, the
13 situation in the home

14 Q Let me ask you this, that one, the one before, or
15 any of your other meetings with Kamell Evans, did he ever
16 tell you how to handle the issue of gangs?

17 A No

18 Q Did he ever tell you that you were not to dispute
19 that he was in a gang?

20 A No

21 Q You sure?

22 A I'm positive

23 Q Now, on what's previously been marked and is
24 already in evidence is Applicant's 16, is that an email
25 you sent?

Dale Davis - Direct Examination

1 A Yes

2 Q And I'm not going to ask you to publish the whole
3 thing, but when you wrote Applicant's 16, what was the
4 purpose of you writing that email?

5 A I had become extremely concerned in a short
6 period of time that what I originally got involved with
7 this to do was not what was actually happening When I
8 spoke to Mr Sumner on the phone in Ms Sheilly's office
9 that day, he understood completely that I couldn't do this
10 trial at this time because I had another trial scheduled,
11 that the complete and only purpose of my coming up here,
12 dropping everything I was doing and coming up here, was to
13 identify issues to provide an affidavit to get a
14 continuance

15 It became evident during the course of this
16 very short time that he was saying that he had to go
17 forward, the judge wasn't going to give him a continuance,
18 that he had to go forward And I was traveling to Georgia
19 and Jacksonville working on things and was thinking about
20 that and couldn't get it off of my mind I thought he
21 just doesn't understand that that's got to be what it is
22 He just doesn't understand that you can't prepare this
23 that quickly and what is going to happen if he goes to
24 trial that quickly

25 So I just felt that I had to put that down
Evans versus State - Day 3

Dale Davis - Direct Examination

1 and that I had to say it

2 Q All right If you did not have any of the other
3 cases and you had nothing on your plate, if on your way to
4 Jacksonville you received a call saying all of your other
5 cases had pled, was there enough time in your opinion to
6 gather the records necessary to document the issues that
7 you had outlined in the time that was available?

8 A That would never, never be enough time to prepare
9 for a sentencing phase in a death penalty trial.

10 Q There is a quantity of time is enough

11 A That is not -- anyone who understood mitigation
12 and was reputable would never agree to take a case where
13 they would go to trial on that short period of time

14 MS BROWN Your Honor, I would object to
15 that and ask that it be stricken That is inflammatory

16 THE COURT I think I'm capable of not
17 inflaming myself I overrule the objection

18 MR NETTLES Thank you

19 THE WITNESS The initial things that I sent,
20 one of the paragraphs in the affidavit I sent him to
21 provide to the judge for the thing that they use to get
22 funding, it states in that that there's a minimum time
23 period of probably six months That's the least amount of
24 time because it's typically is going to take 300 to 400
25 hours of time to prepare and that's because it's not you
Evans versus State - Day 3

Dale Davis - Direct Examination

1 can get the cause and work it 40 hours a week What
2 you're doing is other people responding to you, and when
3 you're trying to take records if people send them right
4 back, that's great, but that doesn't always happen
5 particularly when you're dealing with old medical issues
6 or government type issues usually takes a lot of time

7 BY MR NEITLES

8 Q On August 10th, did you have a phone conversation
9 with Mr Sumner?

10 A Yes

11 Q And why were you calling?

12 A I was calling because when I agreed to come up
13 with me he told me that he had already had the money and
14 that he would advance me \$2000 when I came up Because at
15 that point I'm assuming he would get a continuance and I
16 would work the case, but when I came up and asked -- and
17 then the next day when I was getting ready to leave
18 because I had stayed in a motel that night and all, he
19 said the other lawyer had it so I left Then I was
20 calling him to, again, ask about the money because I had
21 just gotten a bad feeling about the whole thing over this
22 period of time So I called and asked him about the money
23 and when I sent the bill because I sent a bill in where he
24 said he had the money to begin with but then he said he
25 would pay me when the case was finished

Dale Davis - Direct Examination

1 So I called and asked about the money and at
2 that point he told me that he had hired somebody else

3 Q I understand that he had hired someone else
4 What did you do about the progress you made on the lead
5 issue?

6 A I had continued in the meantime to send him
7 things about lead again thinking that he just doesn't
8 understand what a big issue this is and so I'd sent him
9 some printed out information and articles and things like
10 that Once I wasn't in it any more, I sent everything
11 that I had I emailed all of that so that other person
12 could get it Some records were mailed to my house and my
13 office after I was off the case and I just forwarded those
14 to him

15 Q I'm showing you what's been marked Respondent's
16 19, okay Do you recognize that document?

17 A Yes

18 Q And what is that?

19 A It's a genogram

20 Q Who prepared that?

21 A I did

22 Q Now, I notice there is a squiggly line between
23 Barry Evans and Renee Evans and Robin Evans and Kamell
24 Evans, right?

25 A Yes

Dale Davis - Direct Examination

1 Q What does that represent in the document that you
2 prepared?

3 A In the ledger it shows an abusive relationship

4 Q What else is shown in terms of alleged in that
5 document?

6 A There is substance abuse, psychological problems,
7 former substance abuser, an abuser, physical abuse, sexual
8 abuse, psychotic behavior, mental illness and neglect
9 Because when you're doing a geogram in addition to
10 identifying family members also through the course of the
11 case when you go on you also identify generational issues
12 and could mark those so you get a pictorial at the end

13 Q In order to properly do that, would it be
14 necessary to talk to the living members on that geogram?

15 A Yes

16 Q Now, I'm showing you what's previously been
17 marked Applicant's 45 Do you recognize that document?

18 A Yes

19 Q What is that?

20 A It's an email from me to Steve Sumner and his
21 response back to me

22 Q Why did you send that email -- what is the date
23 on that email?

24 A I sent him an email on Sunday, February 13
25 Actually, there's one to me from him on the bottom and I

Dale Davis - Direct Examination

1 didn't notice it from him to me

2 MR NETTLES Your Honor, at this time I'd
3 ask that Applicant 45 be moved from ID into evidence

4 MS BROWN With the caveat that writing on it
5 will be explained or counsel can either introduce it or we
6 can redact that portion of it I'll be happy either way

7 (February 13 email marked Applicant's Exhibit
8 No 45 for identification and admitted into evidence)

9 BY MR NETTLES

10 Q Is there writing on the bottom of Applicant's 45?

11 A Yes

12 Q Whose writing is that?

13 A It's mine

14 Q What does the writing on the bottom of
15 Applicant's 45 say?

16 A It was a sticky note put on it that said, "I'm
17 sending this only because of the hell bent comment "

18 Q When you talk about the hell bent comment, what
19 are you talking about

20 A Because part of it -- I need to go back, January
21 24th, there's also an email to me This is February 13th
22 and I'm responding asking has the Judge signed the
23 vouchers yet, and I said, "I hope you presented this
24 situation to him as it happened, that I would not been in
25 this case at all had you not promised me payment up front

Evans versus State - Day 3

Dale Davis - Direct Examination

1 I was deceived into getting involved in the Evans case to
2 begin with I told you the day that I spoke to Jennifer
3 Sheilly's office that I could help you get a continuance,
4 but I could not do the case as it was scheduled when you
5 contacted me If you were hell bent on going to trial in
6 September, you should have told me and I would have never
7 made the trip up there "

8 Q Did you receive a response to that email?

9 A Yes He says that the Judge hadn't signed the
10 vouchers He talked about that then he says that my
11 "voucher was included with the original vouchers I was
12 not hell bent on the case going to trial in September, and
13 did not deceive you as to the information I had at the
14 time " He was trying to get me paid and everybody else it
15 goes on to say

16 (Document marked for Applicant's Exhibit No
17 46 for identification)

18 BY MR NETTLES

19 Q Now, Ms Davis, I'm going to show you what's been
20 marked Applicant's Exhibit 46 for ID Do you recognize
21 that document?

22 A Yes

23 Q Now, it's not in evidence so I don't want you to
24 read it, but let me ask you this, who produced that
25 document?

Dale Davis - Direct Examination

1 A I did

2 Q Is that document signed?

3 A This document is not

4 Q Was it sworn to in front a Notary?

5 A It was

6 Q Is that a file copy?

7 A This is a file copy

8 Q Was there one that was signed and sworn?

9 A Yes

10 Q What did you do with that?

11 A I wrote a letter to Joe Savage at Appellant

12 Defense and mailed to him once the case was over, I
13 checked with Appellant Defense several times until I find
14 out which lawyer was being assigned to it He was signed
15 to it so I wrote a letter to him and sent this with it

16 Q Sent that being what's been marked for ID
17 purposes Applicant's 46?

18 A Yes

19 Q Did you ever meet Skip Goldsmith?

20 A No

21 Q Never met him?

22 A No

23 Q Ever talk to him on the phone?

24 A No

25 Q Ever send him an email?

Dale Davis -Cross-Examination

1 A No

2 Q Did he ever email you?

3 A No

4 Q Did he ever call you on the phone?

5 A No

6 Q As you were finding things out, who did you
7 inform that information?

8 A Steve Sumner

9 Q Did you ever have a transition meeting with
10 Lenora Topp?

11 A No

12 Q Have you ever taken over from another mitigation
13 specialist?

14 A In one case, it was a similar case to this where
15 someone had had it and had not, in that case, that
16 mitigation specialist had done nothing

17 Q If you took over a case, do you think it would be
18 beneficial to have a meeting between the two of you?

19 A Yes

20 MR NETTLES Thank you No further
21 questions

22 CROSS-EXAMINATION

23 BY MS BROWN

24 Q Just a few questions, do you prefer Ms Davis or
25 Mrs Davis?

Dale Davis -Cross-Examination

1 A It doesn't matter

2 Q Ms Davis, I believe you started out in your
3 testimony that it was your understanding that you were to
4 prepare an affidavit for a continuance, is that correct?

5 A Prepare an affidavit that would identify things
6 that needed in further investigation so that he could get
7 a continuance in order to allow those things to be done

8 Q Sort of an outline? That would have been an
9 outline of what had to be done in your opinion?

10 A Well, I don't want to say an outline It was
11 just identifying specific issues that needed to be
12 investigated for the penalty phase and it was just issue
13 related things, the domestic violence, the lead, the
14 poverty, the neglect, that sort of thing

15 Q Why would you not use outline? Is that too
16 broad, is it tailored to each case?

17 A I don't know When I think of an outline I just
18 think of like a Roman Numeral or A,B,C,D,E, rather than
19 just a list Essentially it was a list

20 Q And I believe you testified that you had gotten a
21 clear indication that the attorneys were going to get a
22 continuance, is that correct?

23 A I got a clear indication that he wasn't -- at
24 some point during that week period of time that that
25 wasn't what he was going to do

Dale Davis -Cross-Examination

1 Q I was kind of focusing on your first contact with
2 Mr Sumner?

3 A Yes

4 Q That was what your understanding that he
5 intended?

6 A Yes, that's what he and Ms Sheilly was talking
7 about when I came back into her office because that's what
8 she had told him that he needed to do

9 Q And you mentioned that you gave him an affidavit,
10 is my understanding is that the same thing that you just
11 described where you need to look?

12 A No Whenever I come on to a case, I provide an
13 affidavit that says my name, who I am, my education, my
14 experience, that sort of thing and that's what the
15 attorney uses for funding because they need something for
16 funding

17 Q I understanding This is who I hired?

18 A Right, this is who I hired, this is their
19 qualifications and this is what they will be doing

20 Q Do I understand that you did start some initial
21 work before you were hired, is that correct?

22 A No I sent him back the first day, but I assumed
23 at the beginning, wrongfully I guess, that I would come up
24 and we would get the continuance and once the continuance
25 was granted at some point I would be working on the case

Dale Davis -Cross-Examination

1 just not right then

2 Q But you did have an obligation you informed
3 Mr Sumner that there was a Georgia trial coming up in
4 October of 2004?

5 A Yes

6 Q Did that go to trial?

7 A It did

8 Q Let me ask you a little bit about your
9 conversations You said you went to the Detention Center
10 to speak with Mr Evans, correct, to get some introductory
11 information?

12 A Yes, initial introduction information, as much
13 information as I could about things that I knew I would
14 have to collect records on

15 Q Basically what you were testifying to about your
16 suspected dysfunction and suspected maybe drug use or
17 something like that would have come from your client
18 interview at that point?

19 A When I talked to him that day, that was where it
20 starts I don't take a client's word for that

21 Q In this case you weren't hired so -- I'm just
22 trying to get a little time line for what you have known
23 at the time you were talking to Mr Sumner I understand
24 when you came up initially it was your understanding just
25 to get a continuance, correct?

Dale Davis -Cross-Examination

1 A I was hired' to come up to get information to
2 prepare an affidavit to get a continuance, yes

3 Q And you weren't planning on going ahead and
4 devoting a lot of time because you had the trial in
5 Georgia coming up?

6 A I wasn't planning right then you mean?

7 Q Because you had a trial in Georgia that took
8 precedent, far?

9 A Yes

10 Q And that's what I meant that those initial
11 statements came from the interviews You didn't have time
12 to receive any documents, accumulate information,
13 determine what was the right answer, what was the wrong
14 answer, or anything to corroborate anything at that point
15 because you just simply didn't have time at this point?

16 A I did an interview with his sister and did an
17 interview with his mother which corroborated a good part
18 of what he had told me, and I had gotten him to sign
19 releases when I went there So I was able to collect some
20 school records I had sent releases every place I had
21 sent things off to like Greenville College and a few
22 things I honestly did more on this than I thought that I
23 would have in that short a period of time just because I
24 kept thinking I could convince him that this was a big
25 issue I was traveling when I was writing these email, I

Dale Davis -Cross-Examination

1 was working on other things at the time

2 Q Ms Davis, I'd like to show you this document and
3 see if you can identify it for us

4 A Yes I chart this in all them as I identify
5 addresses and people and so forth and I put them into this
6 so that all the information is in one place

7 Q Do you have anything for Mr Evans' father on
8 that particular list?

9 A Barry Evans

10 Q Just the name?

11 A Yes

12 Q Keeping in mind this is still very initial for
13 you, I understand My question is I understood from your
14 testimony that his mother, Renee, was cooperative with you
15 when you first contacted her?

16 A She was

17 Q Are you aware of any tension between Barry Evans
18 and Renee Evans that would cause difficulty when you speak
19 to both?

20 A They were divorced I didn't know of any
21 particular problems between them, but they were divorced
22 so there I'm sure there were some problems at some point

23 Q The reason I asked that is you said they had a
24 family meeting and you said his mother and his father were
25 present?

Dale Davis -Cross-Examination

1 A It was actually stepmother

2 Q Did you ever seen Renee and Barry together
3 cooperating?

4 A No, I never met Renee I talked to her and she
5 emailed her and I emailed her, that's all

6 Q And you testified that there was as July 23rd
7 meeting in Mr Sumner's office?

8 A That was the only meeting That was the same
9 meeting that I said the parents

10 Q And you met with his father, his stepmother, Jim
11 Evans, a Mr Martin, and with Steve Sumner?

12 A And I believe there was some other person It
13 seems like there was some other person, but I just can't
14 remember who it was

15 Q I thought I understood you had never had that
16 kind of a meeting before, is that correct, where everyone
17 sits down that's on the defense team?

18 A No What I said was I never had an initial
19 meeting where experts were there because typically you
20 meet together and identify what kind of experts you need
21 and where you would contact experts because it was so
22 early in the case, there would be really no way to know
23 what kind of expert you would need That might be the way
24 he works, I don't know, but as many of these cases I've
25 done, I've never gone to an initial meeting where an

Dale Davis -Cross-Examination

1 attorney ---

2 Q It just could be a preference you get everyone
3 together and you start a cenergy movement

4 A My point is I don't know why you would have --
5 for instance, if you didn't even know that you needed a
6 neuro psychologist, why would have a neuro psychologist at
7 the first meeting Those issues may come up and you may
8 need one, but you wouldn't have any way of knowing that
9 yet

10 Q You're not suggestion a neuro psychologist
11 wouldn't be helpful, right?

12 A They would be helpful if that was something that
13 you needed

14 Q And PCR counsel had asked you if Mr Evans -- I'm
15 Mr Kamell Evans -- ever told you not to contest this gang
16 activity, do you recall that question?

17 A Uh-hum

18 Q And your recollection is he never said not to
19 contest it, is that correct?

20 A No He never said anything that made me think
21 that at all

22 Q He understood that you didn't represent him,
23 correct, that you couldn't make any binding agreements or
24 admission for him, did he understand that?

25 A I don't understand your question
Evans versus State - Day 3

Dale Davis -Cross-Examination

1 Q Did he understand why you were there?

2 A I believe he understood why I was there I went
3 to great lengths -- I mean that's always the first thing I
4 do because it's very unusual that you would be preparing
5 for sentencing before you even went to trial And
6 client's often misunderstand that, oh, you're already
7 sending me down the road and I'm not even convicted yet
8 So you take some time to explain that you have to be ready
9 because if the person is convicted you got to directly to
10 the sentencing and you wouldn't have time to prepare that
11 So I always spend some time talking about that

12 Q But he wouldn't have been under the impression
13 that you were an attorney?

14 A No

15 Q You couldn't represent anything about his gang
16 membership Anything you might have said is just a
17 misunderstanding, correct?

18 A I don't mean to be dense, but I'm not quite
19 understanding what you're saying What is it that I
20 promised him?

21 Q You didn't

22 A What is it he would have thought maybe I promised
23 him?

24 Q My understanding of PCR counsel's question was,
25 did the client ever tell you not to contest he was in a

Dale Davis -Cross-Examination

1 gang membership That indicated to me that perhaps he
2 misunderstood what you were doing, that you would probably
3 represent that or make a corcession or his part, so I was
4 trying to focus in on the way the question was posed to
5 you on direct Does that make sense to you

6 A If he nad said that to me, then I guess you could
7 make that assumption, but since he didn't say it to me, he
8 wasn't asking me or telling me -- he didn't mention that

9 Q That's what I'm getting at He never mentioned
10 gang activity to you

11 A No, he talked to me about garg activity He
12 talked to me about garg things, but not to not use it I
13 mean he didn't say use or don't use it He didn't say
14 anything about that?

15 Q Did he tell you he was a gang member?

16 A I think he told me he was involved withn gangs

17 Q Did he idertify a specific gang?

18 A He may have, but I'm just not remembering I
19 just don't remember

20 Q I believe I understood you to say on your direct
21 testimony that you couldn't gather the records in the time
22 that you came on to the case and the time it was expected
23 to go to trial and did go to trial in September so that
24 would have been roughly July through September, is that
25 correct?

Dale Davis -Cross-Examination

1 A That I couldn't?

2 Q It was your professional opinion that you could
3 not put together a case sufficient to your guidelines and
4 rules and the way you prepare a case during that time

5 A It's my opinion that nobody could and it just
6 couldn't be done in that length of time

7 Q And you didn't think that anybody should go
8 forward in a manner like this?

9 A Absolutely not

10 Q In your opinion, the two attorneys that did not
11 request a continuance in this case, nothing more than what
12 you knew from the time you were able to have contact with
13 Mr Evans and you left the case, knowing just that
14 portion, it's your opinion that the attorneys should not
15 have gone forward?

16 A It's absolutely my opinion that the attorneys
17 should not have gone forward

18 Q So two death penalty attorneys who are certified
19 by our State Supreme Court, could not make that
20 determination to decide whether they were ready to go
21 forward, in your opinion?

22 A That's right

23 Q Also, a mitigation specialist who is recognized
24 in North Carolina for her work and the quality of her work
25 would be incompetent or inept if she thought the case was

Dale Davis -Cross-Examination

1 ready to go forward or raised no objection?

2 A That's just my opinion

3 Q And the Judge was involved in the travesty?

4 A I'm not going to say anything about a judge

5 Q Ms Davis, do you remember the case Marian Bowman
6 versus State of South Carolina capital PRC tried in
7 Dorchester?

8 A Yes

9 Q What was your role in Mr Bowman's case?

10 A I was the mitigation specialist

11 Q At trial or PCR?

12 A At trial

13 Q Did you testify in the PCR hearing?

14 A I did testify in the PCR hearing

15 Q And that would be in Dorchester before the
16 Honorable James Lockamen back in September 2008?

17 A Yes, that's about right

18 THE COURT Ms Davis, could you speak up
19 just a little bit

20 BY MS BROWN

21 Q Do you recall in testimony that you said that you
22 had contacted the attorneys with some that you quote, "a
23 panic memo"?

24 A I did

25 Q And in that case you began to panic because you
Evans versus State - Day 3

Dale Davis -Cross-Examination

1 were close to trial, didn't know what was going on, you
2 were working other death penalty cases at that time and
3 you thought that the attorneys should contact you and you
4 be able to speak to them about getting a continuance You
5 remember that testimony?

6 A About getting a continuance?

7 Q Otherwise getting prepared for trial

8 A No, I didn't think I needed a continuance
9 Myself and the social worker, he sent a letter separate
10 from mine that I didn't know, just saying we were going to
11 trial and I had no idea of what the strategy was or what
12 they intended to present

13 Q Why exactly were you in a panic?

14 A Because we didn't have any idea of what was
15 happening We had a trial coming up with no plan

16 Q Okay

17 A I'm talking about the penalty phase

18 Q And I believe that you mentioned you had some
19 trouble getting paid in this particular case, Mr Evans'
20 case, is that true?

21 A I had some trouble getting payment but it wasn't
22 very much money so I guess I was upset by the whole thing,
23 the way the whole thing went

24 Q Did you ever receive payment for the work that
25 you did do?

Dale Davis -Cross-Examination

1 A I received payment for the bill that I sent him
2 I never billed him for part of what I did

3 Q And this affidavit that's been identified that's
4 not in evidence, I'm not going to ask you about the
5 substance of it, but I'd like to ask you when you sat down
6 and offered this affidavit?

7 A The one that I sent to Joe Savage?

8 Q Yes

9 A I probably did it sometime between the trial and
10 when I mailed it

11 Q After the trial was over?

12 A I may have done it before the trial because I
13 knew it was going to end up with a death sentence and in
14 the email that I sent him, I knew it was going to end up
15 with a death sentence and I've never done anything like
16 that before It just upset me

17 Q Ms Davis, why did you send it to Appellant
18 Defense?

19 A Because that's who was handling the appeals
20 and I just -- who else would I send it to

21 Q You said you've done several of these cases and
22 I'm sure you're well aware that, you know, there's an
23 objection or something that would preserve an issue, are
24 you not? I understood you knew what would constitute
25 grounds for continuances, do you know about objections?

Dale Davis - Redirect examination

1 A I'm not sure where you're going Again, I'm
2 sorry, I don't understand what you're talking about I
3 just knew if I sent it to Appellant Defense that it would
4 be in the record there and that's the only thing I could
5 get it a court record I couldn't file it with the Clerk
6 of Court or couldn't do those things with it and that was
7 the only way I knew to get it into the court record

8 Q So you were relying on an attorney to do what
9 they would?

10 A To get it into a record so somewhere down the
11 road it would be sent

12 Q We're almost finished here, last question You
13 said you never had a transition meeting with Ms Topp, is
14 that correct?

15 A Right

16 Q So you would concede that whatever work she did
17 on this case she did on her own?

18 A She had the things that I had and I think she
19 probably went from there because there was a list of
20 records I had made a list of records that needed to be
21 collected

22 Q Ms Davis, thank you for answering my questions
23 I appreciate it

24 MS BROWN No further questions

25 REDIRECT EXAMINATION
 Evans versus State - Day 3

Lenora Topp - Direct Examination

1 BY MR NETTLES

2 Q Let's talk about the case you did in Dorchester,
3 when cases get put together and you think they're put
4 together well, do you send letters or affidavits or
5 testify on those?

6 A No

7 MR NETTLES Thank you

8 (Visitor Log marked Applicant Exhibit 32 for
9 identification)

10 LENORA TOPP, having been duly sworn,
11 testified as follows

12 DIRECT EXAMINATION

13 BY MR EHLLES

14 Q You are Lenora Topp

15 A I am

16 Q And good evening

17 A Good evening

18 Q I think you're from Asheville now, I believe?

19 A Yes, sir

20 Q And before that I believe you were living in
21 Hendersonville?

22 A Yes, sir

23 Q We've heard a lot about your involvement in the
24 case of Kamell Evans Share with us, please, what your
25 education and vocational history is

Lenora Topp - Direct Examination

1 A I have an Associate Degree in Electronic Data
2 Processing and a former law enforcement officer for 15
3 years, and then a private investigator since '93, and I
4 still do that work for attorneys in North Carolina. So I
5 have 15 years in law enforcement because I started out as
6 an investigator in law enforcement and continued into
7 private investigations, and I've done that as my career?

8 Q And how did you ever get interested in
9 mitigation?

10 A When I worked with a mitigation specialist before
11 and I thought I would be interested in that? I took the
12 training in Raleigh, North Carolina and got called by the
13 Public Defender's Office here in Spartanburg to work with
14 them on one case and then another case, and then I was
15 called by Mr. Sumner to assist him with Kamell Evans.

16 Q So you've had training as a mitigation
17 specialist?

18 A Yes, sir.

19 Q And you've served in that role several times?

20 A Yes.

21 Q Tell us, briefly please, what you understand the
22 role of a mitigation specialist to be?

23 A I understand mitigation specialist is responsible
24 for doing a background research on behalf of the
25 defendant, gathering information which includes documents,

Lenora Topp - Direct Examination

1 court records, school records, interviewing friends All
2 those to be presented at trial in order to show another
3 side of the defendant other than what everyone hears about
4 his trial And these are to mitigate and to offset the
5 aggravating circumstances and this is to show the jury
6 there's another side to the defendant There might be
7 circumstances that would lead up to the situation and the
8 crime

9 Q And do the records that you are trained to
10 collect, are they medical records?

11 A Yes

12 Q They would include education?

13 A Yes

14 Q Vocational?

15 A Yes

16 Q Military records?

17 A Is there anything the defendant had done in
18 public or private, any records that can be obtained would
19 be my job to obtain

20 Q And is there a limitation in time to over the
21 last 10 years proceeding the defense or is it from birth?

22 A Birth

23 Q Even parental history?

24 A We do parental history, backgrounds on both sides
25 of the family, looking into education on both sides of the

Lenora Topp - Direct Examination

1 family, their backgrounds, their work histories, their
2 behavior, illness in the family, possible mental illness
3 in the family, anything

4 Q In that regard based on your experience and
5 training is the significance of getting a thorough record,
6 background and information?

7 A It is extremely important that a complete history
8 be done for a jury to hear everything for them to make a
9 final decision on the verdict

10 Q Is it true that sometimes the records themselves
11 reveal issues that aren't revealed otherwise?

12 A Yes, sir

13 Q Is there some guidelines, in your experience, how
14 often does that happen?

15 A It probably happens in every case that
16 information is found through records that someone has
17 forgotten to mention or doesn't want to mention

18 Q I'm going to show you a document that is marked
19 Applicant 32 and it is, if it's not in evidence, I move it
20 into evidence It's a Greenville County LEC visitation
21 log for people who came to see Kamell Evans from April 3,
22 '03 until September 19, 2004 I'm going to show you and
23 ask you to hold on to that This thing goes backwards
24 from the bottom of the page to the top of the page, and
25 tell the Judge, if you would please, how it is you came to

Lenora Topp - Direct Examination

1 be involved in the case of Kamell Evans?

2 A Attorney Steve Sumner called me and asked if I'd
3 be interested in talking to me in what needed to be done
4 to assist Mr Evans And I met with him and we enter over
5 -- he told me the history and I had not been able to look
6 at the file yet because I just got there and I was able to
7 do that later -- but he went over some things with me and
8 we discussed briefly what I needed to do and then he asked
9 the Court to approve me as the mitigation specialist

10 Q Do you recall exactly what it was he asked you to
11 do?

12 A He asked me to gather the records I know there
13 had been a previous mitigation specialist that started on
14 the case and he wanted me to follow up on her work, and
15 then to do some other things

16 Q Would that have been Dale Davis?

17 A Yes

18 Q Did you get the benefit of her work in regards to
19 background information?

20 A I did, yes, sir

21 Q And then what did you do with that?

22 A I started getting medical records that she had
23 not been able to do She had created an Excel Spread
24 Sheet showing me what she was going to be doing and she
25 was not able to do it so I started calling for records and
Evans versus State - Day 3

Lenora Topp - Direct Examination

1 writing and sending releasing on that and interview
2 persons on the other sheet There were two different
3 tables that gave me

4 Q Did you on July 30, '04, if you'll look at the
5 record in your hand, Applicant 32, is that the first
6 contact you had with Kamell Evans?

7 A Yes, I know that to be a fact July 30 I went
8 with Steve Sumner to the jail

9 Q Who else was with you at that visit?

10 A There was no one else with us

11 Q Did Mr Sumner introduce you to Mr Goldsmith?

12 A No, sir

13 Q Did Mr Sumner introduce you to Mr Peterman?

14 A No, sir

15 Q Scott Peterman?

16 A No, sir

17 Q Would you tell the Court when you first met
18 Mr Goldsmith?

19 A I first met Mr Goldsmith here the first day of
20 trial in September

21 Q Is that the first day of the jury trial on Kamell
22 Evans' case?

23 A Yes, sir

24 Q And had you been talking to him on the telephone
25 before then?

Lenora Topp - Direct Examination

1 A I had never spoken with Mr Goldsmith

2 Q Did you send him and copy any of the letters and
3 emails you sent to Mr Sumner?

4 A No The emails went directly to Mr Sumner

5 Q When you were sheperding the witnesses together,
6 did you suggest that they call Mr Goldsmith or ask
7 Mr Goldsmith in any way have direct contact or emails
8 with Mr Goldsmith?

9 A It was all through Mr Sumner

10 Q And were you able to work with Mr Peterman in
11 some of those factfinding things?

12 A I've never worked with him at all I think I met
13 him once

14 Q Is that unusual based on your experience in other
15 cases?

16 A Yes, it was

17 Q How?

18 A The other cases we had group sessions We had
19 the investigator We had at least the two attorneys It
20 was a group session where we all discussed the issues and
21 came up with idea Everyone was involved or certainly
22 told about soon thereafter

23 Q Does that normally persist through the case, that
24 relationship between all the team members?

25 A Yes, sir

Lenora Topp - Direct Examination

1 Q That was not the case in Mr Kamell Evans' case?

2 A No, it wasn't

3 Q When you met Kamell Evans and you got Dale Davis'
4 work, were you alerted to specific issues that were
5 mitigation sensitive?

6 A I know that Dale had put on her sheet there about
7 lead poisoning

8 MR EHLIES I'm going to ask you to put a
9 sticker on this for the applicant

10 (Lead Poisoning document marked as
11 Applicant's No 47 for identification)

12 BY MR EHLIES

13 Q I'm going to ask you what's been marked as
14 Applicant's 47 and ask if you can identify that document?

15 A I do

16 Q Is that a document that you generated?

17 A Yes, I found it

18 Q Why did you search that and find that?

19 A Because of the lead poisoning issue, I did not
20 look into that until later, I was still trying to get all
21 of the records that needed to be gotten and then I
22 interviewed by phone or it was email the mother, the
23 biological mother of Kamell Evans

24 Q Would that have been Renee?

25 A Yes And verified through Barry, the father ---
Evans versus State - Day 3

Lenora Topp - Direct Examination

1 Q The natural father

2 A --- the nature father that there was a lead
3 poisoning issue in Ohio and so I became interested in that
4 and I also started doing research about lead poisoning and
5 the effects it would have on children as they grow

6 Q Would you tell us how significant that issue
7 would have been for a mitigation case?

8 A It would be consider it to be very important in a
9 mitigation case

10 Q Do you know whether or not your physical presence
11 in the area where the treatments were rendered would have
12 been necessary, in this case Cleveland?

13 A I thought so because I tried to get information
14 by phone and you never find the right person You need to
15 be there and search through records These clerks in
16 different places whether it's the health department or
17 court houses, they don't understand They don't have the
18 time and the interest that I would have so I'm used to
19 searching records

20 MR EHLIES I would like to move Applicant's
21 47 into evidence

22 MS BROWN No objection

23 (Lead poisoning document marked as
24 Applicant's Exhibit No 47 for identification was admitted
25 into evidence)

Lenora Topp - Direct Examination

1 BY MR EHLIES

2 Q I'm going to show what's already into evidence as
3 Applicant 18 In connection with your current testimony,
4 and I interrupted you, you were talking about your
5 presence and the necessity on the lead poisoning in
6 Cleveland, did you address this issue in this Exhibit 18
7 or July 30? Is that your letter?

8 A Yes, it is

9 MR NETTLES Would you publish that? Who is
10 the letter to?

11 THE WITNESS Steve Sumner

12 BY MR EHLIES

13 Q Would you publish that third paragraph

14 A Sure "Also in this case a trip to Cleveland,
15 Ohio must be made in order to collect records and
16 especially to interview members of Mr Evans' immediate
17 family Mr Evans' grandmothers and his aunts, uncles and
18 cousins live in Ohio In addition on Ohio, it is possible
19 that a trip to Atlanta, Georgia will be necessary "

20 Q It says must, is that the word that you used in
21 there?

22 A Yes

23 Q What did you mean by that?

24 A That part of the defense that needed to be made
25 you need to talk to the person in person and I didn't know

Lenora Topp - Direct Examination

1 that would lead Often that leads to other areas, other
2 records to find, and he did grow up there His family was
3 there It seemed important to me to visit the home town

4 Q Nevertheless, when you brought that up with
5 Mr Sumner, would you authorized to go to Cincinnati?

6 A No

7 Q Tell us how that happened?

8 A We didn't even talk about because I was so busy
9 getting records and trying to find people to interview who
10 we needed to interview and when I asked about going to
11 Cleveland, Ohio, it was close to trial From what I
12 recall Mr Sumner said there was no reason to make the
13 trip because the family was coming here for the trial and
14 I could interview them here

15 Q Did that address the issue of the surrounding
16 neighborhood or the physical location of where the paint
17 was or anything about medical records?

18 A No Let me clarify something At first there
19 was no talk about the lead poisoning I did bring that up
20 though because from the two interviews I made, so by the
21 time the interviews were being done and Mr Sumner was
22 told about it I think he just decided it was enough for
23 them to come here They were going to be here in a few
24 days or weeks so there was no reason for me to go to
25 Cleveland

Lenora Topp - Direct Examination

1 Q That was whose opinion there was no reason?

2 A Mr Sumner

3 Q In spite of the fact, I'm going to show you
4 what's already been introduced into evidence, Respondent's
5 27 and do you recognize that document which is emailed to
6 Mr Sumner dated August 26, '04? Is that an email from
7 you?

8 A Yes, it is

9 Q I'm sorry to have to lean over your shoulder
10 Who is the email to?

11 A The email is to Renee Evans, the mother of
12 Kamell

13 Q Did you have any resistance from her or
14 characterize her as uncooperative and unfriendly?

15 A I can't recall that she was unfriendly She was
16 friendly to me when we met She was, however, when I
17 asked her about records or assisting because she said we
18 need to look into the lead poisoning and I agreed with her
19 when I asked for her help because I was not going to
20 Cleveland, I never got it And she did not go get records
21 of any kind even though she had suggested she would go get
22 medical records and especially the lead poisoning
23 information I eventually obtained the fact as to where
24 the -- she had two addresses She couldn't remember which
25 address it happened They had lived at two locations

Evans versus State - Day 3

Lenora Topp - Direct Examination

1 where the lead poisoning could have been and she couldn't
2 remember which one it could have been so she gave me the
3 address which I tracked down to find which is Cleveland
4 Heights

5 Q But I was asking you to publish that sentence in
6 the email Respondent's 27 addressing the issue of coming
7 to Cleveland

8 A Yes I told her I was looking for the family to
9 come down and interview them Attorney Steve Sumner and I
10 didn't think it's necessary to go to Cleveland I didn't
11 want anyone to think it was just Steve At this point we
12 weren't going to go -- I wasn't going to go?

13 Q And why was that?

14 A He didn't feel like I needed to

15 Q I think you were also involved at this time
16 pretty heavy in trying to get those medical records

17 A Yes, I was

18 Q Did you make telephone calls?

19 A Yes, I did

20 Q Did you make follow-up mailings?

21 A Yes, I did

22 Q And did you track them down?

23 A I did

24 Q And as a matter of your persistence did they
25 ultimately come in?

Lenora Popp - Direct Examination

1 A Yes, they did

2 Q And they ultimately came in to you?

3 A Yes, they did

4 Q However, that was what in relation to the trial?

5 A I believe it was after the trial

6 Q Was over?

7 A Yes, sir

8 Q The medical record relating to lead poisoning, do
9 you recall what they said?

10 A That he had been treated for lead poisoning, he
11 did have lead poisoning from what I recall It wasn't
12 anything -- he had been to the doctor for it and they
13 didn't think it was -- I don't think they looked at it
14 very hard I can't recall I'd have to find it if I've
15 got it The other things was there was mention about
16 Kamell being slow in school it could go back to lead
17 poisoning That's just what I remember There was
18 something else that mentioned about his being tested in
19 school in first grade or maybe before

20 Q You talked about the difficulties with the
21 medical records

22 A Yes

23 Q Were there some difficulties in obtaining all the
24 school records in the various districts and departments?

25 A Yes One school burned down and nothing to find
Evans versus State - Day 3

Lenora Topp - Direct Examination

1 Q Well, within the time frame that you were working
2 with?

3 A I had to make calls It was difficult You have
4 to go to the schools

5 Q I'm going to show you what's also been introduced
6 into evidence as 19a This is already in evidence Do
7 you recognize this document?

8 A I do

9 Q What is it, when was it generated?

10 A It's an interview with Ron Platt It was
11 generated on August 19, 2004

12 Q And if you'll look at Page 2, did you talk to
13 Mr Platt about whether or not Kamell Evans was perceived
14 to be a gang member?

15 A I did

16 Q And what was his response?

17 A He said no

18 Q Did he say he would not come to trial or testify?

19 A No, he wanted to and he wanted to bring his wife
20 and son because they cared for Kamell very much

21 Q I'm going to show you another one, 19a, a follow-
22 up with Coach Parker

23 A I interviewed Coach Parker who was at TL Hannah
24 High School in Anderson, South Carolina, interviewed him
25 on August 19th and this was generated on August 19th

Lenora Topp - Direct Examination

1 Q Did Coach Parker make any remarks in response to
2 your inquiries as to Kamell's demeanor, discipline in his
3 courtesies?

4 A Yes

5 Q And was it good?

6 A It was good

7 Q I'm going to show you what's Applicant's 20 and
8 ask if you can identify this one

9 A Yes, I can

10 Q And tell us what that is?

11 A This is an interview with Terry Peden He was
12 interviewed on August 22, 2004 and the report was
13 generated on August 22, 2004

14 Q And did you talk interview that particular
15 witness about whether Kamell was a gang member?

16 A I did

17 Q And what was his response?

18 A He couldn't believe that Kamell could be in a
19 gang He hung out with him a lot, went to cook outs
20 together, that even at the cook outs, Kamell was a
21 gentleman and tried to keep order if someone got out of
22 line but it was not in any mean way He stood up for
23 woman there If someone made a rude remark about a woman
24 at the party, he would take issue with it to defend this
25 person He knew that he was -- he just couldn't believe

Lenora Topp - Direct Examination

1 that he was in a gang

2 Q Was this a person willing to testify?

3 A Yes Can I add one thing?

4 Q Yes

5 A When I asked what he knew about the gang

6 involvement, Mr Peden said Evans never talked about gangs
7 but they were going to start a motorcycle club and that's
8 about as close as anything that was ever said about a gang
9 between them

10 Q 8/24, what is that?

11 A This is an interview with Benjamin, also known as
12 BJ, Young He lives in Georgia and he -- which part of
13 this did you want me to do

14 Q Did you talk to him about gang membership?

15 A Yes, I did

16 Q What was his response?

17 A Well, he worked with Kamell Evans at UPS and he
18 said that even if after working at UPS, he knew Evans
19 would go home, take a short nap, and then go to work at
20 the detailing shop that he had He said he didn't know
21 when he'd have time to be in a gang

22 Q Was he a willing witness?

23 A Yes, he was

24 Q I'm going to show you now Applicant 25 and tell
25 me if you can identify this document? Is it your product
Evans versus State - Day 3

Lenora Topp - Direct Examination

1 and who did you interview, what date, and did you speak to
2 him about gang activities?

3 A This interview is with Barry Evans, Kamell's
4 father I interviewed him on September 5, 2004 and the
5 report was generated by me on September 7, 2004 I did
6 talk to him about gangs and he did recall that Kamell
7 started getting some tattoos, but Mr Evans never noticed
8 "gang-type tattoos " He never thought that Kamell was in
9 a gang

10 Q Did you find Mr Barry Evans to be a willing
11 witness in his son's case?

12 A He became a willing witness if I could put it
13 that way

14 Q Was he educated as far as being a witness is
15 concerned?

16 A Yes

17 Q Did lawyers spend time with him to your
18 knowledge?

19 A No

20 Q Did Skip Goldsmith spend any time with him?

21 A If he did, I never knew about it

22 Q Let me show you now, A-26, which I Shatima Evans
23 Is this your work product?

24 A Yes

25 Q Did you inquire of her regarding gang activities?
Evans versus State - Day 3

Lenora Topp - Direct Examination

1 A I did

2 Q And what was her respond to that?

3 A She felt that the gang issue that kept being
4 brought up was because Kamell he wanted to be seen as a
5 big person and he wanted people to follow him He was
6 always a leader any way She does not believe she was
7 ever in a gang and she was very close to her brother

8 Q Was she a cooperative witness?

9 A Very much so

10 Q And did she provide information about ---

11 A Other people, yes She had even called Terry
12 Peder to come in there while I was in the shop She has a
13 beauty shop so she helped me all she could?

14 Q Within that time frame of 67 days or less than
15 that from the time you got involved and the time the trial
16 started, you did those while trial was underway, some of
17 it?

18 A I did?

19 Q Did you share with Mr Sumner all the information
20 you were discovering as far as witnesses and their
21 availability?

22 A Yes, I did

23 Q Did you share with him the substance of their
24 testimony?

25 A Yes, I did

Lenora Topp - Direct Examination

1 Q Did it involve more than gangs? Did it involve
2 education, employment, vocational settings?

3 A Yes, sir

4 Q Were there witnesses about his relationship, I
5 think to other woman, in a social setting if anybody was
6 consulted?

7 A Yes, and also children He worked well with
8 children

9 Q All of those things, did you do more than
10 memorialize them in a memo? Did you relay that
11 information to Mr Sumner?

12 A Yes

13 Q At any time, we looked at ever interview you did
14 with the exception of two, everyone of them dealt with
15 gang membership, at any time did Mr Sumner tell you gang
16 membership was not an issue and stop wasting time on gang
17 membership?

18 A I don't recall that but it was not a priority
19 He didn't say -- I don't recall, but it was not anything
20 we discussed in depth whatsoever

21 Q Did ever make a remark to your about your
22 continued pressing for medical records and interviews and
23 site visit to Cleveland, Ohio?

24 A Other than I wasn't going to Cleveland -- there
25 was so little time to do this background of any kind I

Lenora Topp - Direct Examination

1 don't know how this got done

2 Q The suggestion is that it didn't get done

3 A That's correct

4 Q Did anybody else go to Cleveland under your
5 direction and your supervision from Greenville?

6 A I don't think so It would have come out in
7 court, I'm sure

8 Q You didn't have some aide that you sent up there
9 to do your work?

10 A No, I did

11 Q So to our knowledge that no one from your defense
12 team went to Cleveland, is that true?

13 A To my knowledge, that's correct

14 Q There was another witness that you had a lead on
15 and his name was Nick Wideman, do you remember that name?

16 A I do

17 Q Tell us about Mr Wideman?

18 A I recall that Mr Wideman was at the house at the
19 time of the shooting

20 Q You mean the victim's house?

21 A Yes, the victim's house He was there He was a
22 friend of Kamell's and someone had called him to come and
23 try to talk to Kamell I was told that Mr Wideman would
24 be a hostile witness and there was no reason to try and
25 find him

Lenora Topp - Direct Examination

1 Q Who told you that, do you remember?

2 A It came out through -- it had to have come from
3 Steve Sumner because he's the only person that I talked to
4 about the case other than George Martin

5 Q As the case developed from your perspective over
6 the few weeks you had it, did your opinion regarding the
7 value of Mr Wideman's testimony change?

8 A Yes, it did

9 Q How did it change?

10 A Well, I got email from George Martin and he said
11 something about Kamell, it's in the email, and it hit me
12 that possibly Mr Wideman was not a hostile witness and
13 that he could be helpful certainly because he had known
14 Kamell at the time and known the circumstances He was on
15 the scene, one of the few witnesses actually on the scene

16 Q From your information was speaking with Kamell
17 during the talk down?

18 A Yes, that's correct

19 Q Did you relay any information about Mr Wideman
20 to Mr Sumner?

21 A I think he knew that

22 Q But did you personally relay that information to
23 him?

24 A I don't recall that, but I did ask him about now
25 talking to Mr Wideman and he said, no, it's not

Lenora Topp - Direct Examination

1 necessary

2 Q I'm going to show you, then, in that regard
3 Applicant's 23 and see if you recognize that Tell us
4 what that is, what the date is, from whom to whom?

5 A I emailed both Steve Sumner and George Martin
6 something to George about some lucky hat from talking to
7 some other witnesses, and then I asked Steve -- I said to
8 Steve for some reason Wideman was not going to be very
9 helpful, maybe I misunderstood, but I certainly would be
10 happy to contact him if he wished, and the email came back
11 to me later that day and Steve responded, "I don't think
12 so at this time "

13 Q I'm showing you Applicant's 21 and ask you if
14 this is a letter from you to Mr Steve Sumner?

15 A It is

16 Q And what's the date on that letter?

17 A The letter is August 25, 2004

18 Q And did you summarize the issues as you saw him
19 at that point?

20 A Yes, I did

21 Q And would you just give us a brief snapshot of
22 what you were working at at that time?

23 A Yes, it was gang issues

24 Q Did you ever get a response to that letter that
25 that was not in play?

Lenora Topp - Cross-Examination

1 A I don't recall getting one I don't have it in
2 my records

3 Q When you historically bring up the issues of
4 getting additional work and in particular to getting up to
5 Cleveland, was there any sort of standard or current
6 response from Mr Sumner?

7 A I don't think I got any response much -- I mean
8 at all I just kept on plugging I would just go on and
9 not get any response because there was so many things to
10 do I don't recall any other response other than what
11 you've talked about

12 Q Were there things to do local thing to the
13 general Greenville area?

14 A General Greenville area

15 MR EHLIES Thank you

16 CROSS-EXAMINATION

17 BY MS BROWN

18 Q Ms Topp, I believe you went over your
19 credentials as a mitigation specialist when you first
20 began testimony Can you give us an idea of how long
21 you've been doing this kind of work? I didn't hear dates
22 or anything for this particular section of your resume

23 A This would have been within two years of
24 mitigation because the two cases that I worked with the
25 Public Defender's Office prior to this

Lenora Topp - Cross-Examination

1 Q There were just two cases that you worked on
2 prior to this?

3 A Right

4 Q Do you remember the names of those cases?

5 A Frederick Evans and Marian -- it's on the tip of
6 my tongue

7 Q And that's in South Carolina?

8 A Yes

9 Q How about North Carolina?

10 A No mitigation in North Carolina, just lead
11 investigator with capital crimes It took three years and
12 did a PCR case there and found a gentleman that walked off
13 of death row He was freed

14 Q That was a Mr Chapman?

15 A Yes, Edward Chapman

16 Q And as a result of your investigation and your
17 help in part, did you receive an award from the ACLU?

18 A I did

19 Q And I understand because you've gone over several
20 of your memos that you had a lot of memos back and forth
21 with Steve Sumner, is that fair?

22 A I had too him rather than back and forth

23 Q When you asked him to respond, did he respond to
24 you?

25 A Many times most of my emails to him were facts
Evans versus State - Day 3

Lenora Topp - Cross-Examination

1 with no response He wanted to communicate that way with
2 me through email more than phone calls so it was easier
3 It was easier to email I was sending him information and
4 most of it did not have a need for response

5 Q I see

6 A I took records down and left them with his
7 secretary, made copies if I needed to I talked with her
8 -- he was busy, you know, he had other cases to But
9 email with my information what I gained and learned, I
10 passed on to him

11 Q Do you know if Steve shared that with co-counsel
12 or any other expert in the case?

13 A I couldn't tell you No, ma'am, I don't know

14 Q Do you know if Steve sort of accepted information
15 from everyone and then would consult with others, do you
16 know whether he did that?

17 A I have no idea He never told me that he did

18 Q If he said that he did, would you have any reason
19 to doubt that?

20 A No

21 Q And you were responsible for getting records
22 essentially? I know there's a lot more to that, but if I
23 had to put a label, is that good?

24 A Well, interviews are heavy too, records and
25 interviews

Lenora Topp - Cross-Examination

1 Q And do you remember contacting Kirk Junior High
2 in Ohio about elementary records?

3 A I do

4 Q Do you remember what the response was?

5 A I think those are the records that were burned,
6 the building burned I don't know I'd have to see There
7 were some school records that were unobtainable They
8 were burned or after 10 years they were purged or
9 something like that

10 Q Do you remember telling Mr Sumrer that unless
11 records from Ohio were sent to Greer with a transfer, you
12 may not be able to get them?

13 A Oh, that's true

14 Q You told him that, correct?

15 A I may have

16 Q And mental health records, did you tell him that
17 the policy in Greenville County is to send them to
18 Columbia and after 10 years they are destroyed?

19 A Yes, that was in an email

20 Q And they may not be available?

21 A That's right

22 Q And do you recall that the original address you
23 had for Keiser was no good?

24 A That's correct

25 Q Did you find another address?

Lenora Topp - Cross-Examination

1 A I did

2 Q And did you ever stop looking for those medical
3 records?

4 A No

5 Q Is there any of the emails that you might have
6 sent or fax or communications where you advised that you
7 didn't believe the case was ready to go to trial?

8 A If I did that -- I don't think I would have done
9 that because it wasn't my -- he was the attorney He told
10 me what he wanted He told me what to do and do the best
11 I can He was going to go to trial He was not going to
12 ask for a continuance, this was it

13 Q So if he told you he was ready to go to trial
14 that would be his professional decision?

15 A Yes, ma'am

16 Q I know you testified to this on direct that there
17 is an email that says essentially Attorney Steve Sumner
18 and I don't think it necessary for me to go to Cleveland?

19 A Yes

20 Q You did author that email?

21 A I did

22 Q Correct me if I'm wrong but you said you didn't
23 have a lot of time to interact, exchange information, with
24 the group?

25 A I wasn't asked to interact with them Maybe on
Evans versus State - Day 3

Lenora Topp - Cross-Examination

1 one occasion or two for Mr Peterson, is he going to
2 interview or is he going to do this, and I don't have in
3 my records I ever got a response from anything that I
4 suggested -- mentioned to Steve -- let me clarify this I
5 mentioned to Steve about Scott Peterson and he never
6 responded to me whether he was going to do it or not do
7 it The communication he had with the other members of
8 the defense team were not made known to me

9 Q Do you remember George Martin?

10 A I do

11 Q Do you remember having any communication with
12 Mr Martin?

13 A I do

14 Q Would you consider that you were sort of the
15 point person for coordination for witness interviews?

16 A Yes, I do

17 Q Do you think any other member of the team would
18 have conducted any kind of witness interview or help
19 prepare the person for trial?

20 A Yes, George did

21 Q Independent of you?

22 A Yes May I clarify? His interviews that he
23 ended up talking about was with the law enforcement
24 officers in the jail and George was over there quite a
25 bit, and he was able to interview them and pull them out

Lenora Topp - Cross-Examination

1 and talk to them and that sort of thing That was great

2 Q Did you ever express any concern to Mr Martin
3 that perhaps the case wasn't ready?

4 A I don't think so I don't know how George felt
5 about it either We just -- I think he did what he needed
6 to do because he wasn't as involved because he was dealing
7 with the life after a verdict in prison I don't know if
8 I discussed that with him at all I met him and like him
9 a lot and he did a good job in his area All I could do
10 was just my job and whether we were ready for it or not,
11 Steve was ready to go to court

12 Q Ms Topp, you remember that you testified that
13 you did have some conversations with George Martin?

14 A Yes, I did

15 Q And he did have some connection with this case
16 and handled his portion with the Department of
17 Corrections?

18 A Yes, ma'am

19 Q And I asked you if you had any idea what his
20 opinion of the case was or if you had expressed any
21 discontent with him?

22 A I don't know We did some talking and he'd have
23 to remind me Do I agree or disagree, I don't know
24 Mainly discontent I think about this gang issue because he
25 didn't think Kameli was in a gang either and we discussed

Lenora Topp - Cross-Examination

1 that I can't recall anything else If you'd like to ask
2 me if I said this, I might remember

3 Q I'd like to show you what's not in evidence yet
4 but show you this if you can identify this as a document
5 coming from George Martin going to Steve Sumner printed
6 from Steve Sumner's computer)

7 A I've never seen that before

8 Q Would it surprise you if I were to suggest that
9 Martin was satisfied with his part of the case?

10 MR EHLIES Your Honor, unless they're going
11 to introduce that as substituent evidence to Mr Martin
12 and that opinion to put into the record their
13 interpretation to a document that's not in evidence not
14 recognized by this witness would be improper and I would
15 object to that characterization to it

16 THE COURT You can answer it

17 BY MS BROWN

18 Q Would you be surprised if Mr Martin had
19 expressed satisfaction with the case?

20 A His part of the case?

21 Q If he said that Mr Evans got a vigorous defense
22 that every defendant is entitled to you, would you be
23 surprised based on your communications with him he would
24 make that statement

25 A I can't answer that I don't know

Lenora Topp - Cross-Examination

1 Q And you said that mostly you did fax and emails
2 to Mr Sumner, but did you call and leave messages as
3 well?

4 A I have, I did, and I went by his office and left
5 paperwork and spoke with the secretary

6 Q I want to know if you would identify something --

7 MS EHLIES Your Honor, I've made an
8 objection and I hope it was cogent enough to understand
9 where I am at this late hour, and I want to renew that
10 objection to any documents characterizing what they might
11 say without any intent to offer the witness himself as an
12 opinion The document itself is one thing, but an opinion
13 characterizing the document is another

14 MS BROWN Can we approach?

15 THE WITNESS Sure

16 (Discussion off record _

17 BY MS BROWN

18 Q Ms Topp, can I show you this memorandum and I
19 want to ask you if this is an accurate reflection of a
20 message you would have left at Steve Sumner's office for
21 Steve Sumner Would you mind reviewing that document and
22 telling me if that is an accurate reflection of your
23 message you would have left

24 A I don't know who wrote this but -- what is your
25 question again?

Lenora Topp - Cross-Examination

1 Q Do you recall leaving a message with Steve Sumner
2 that some of the witnesses were a bit hesitant in asking
3 his help in getting ---

4 A Some of them were

5 Q When you say hesitant what does that mean?

6 A Well, some of them just didn't want to come to
7 court, but not the ones that we talked about just now?

8 Q Did they give you any reason for that?

9 A They didn't want to get involved that was the
10 main thing They just didn't want to get involved

11 Q Going back to some of the school records If I
12 understand correctly, you did have some communications
13 with the client's mother, Renee?

14 A Yes

15 Q Did Renee ever indicate to you that she did have
16 some copies of records, either school records or medical
17 records, that she would be able to get to you?

18 A She did tell me she had some records

19 Q Did she ever provide those records to you?

20 A No, she didn't

21 Q Did you ask her more than once?

22 A Uh-hur

23 Q Did she describe the records that she had that
24 she was going to get to you?

25 A They were medical records, possibly from Keiser,
Evans versus State - Day 3

Lenora Topp - Cross-Examination

1 or especially medical records regarding the lead
2 poisoning

3 Q And school records anything like that, academics,
4 report cards or anything?

5 A That I don't know if she had access to them She
6 didn't have a release, she didn't ask for one

7 Q Did she have custody of Mr Evans wher he was a
8 small child?

9 A Yes

10 Q So she would have been the parent to have access?

11 A Yes, but she said she would and then I didn't
12 hear from her I did email her I said I haven't heard
13 from you about these records and never did get any
14 response And, of course, I met her when she came down
15 and I interviewed her then

16 Q Did she bring you anything when she came down
17 from Ohio?

18 A I think what she brought me was something she
19 wrote regarding ne then husband Barry Evans about the
20 abuse

21 Q None of the records, school records or anything
22 like that?

23 A No, ma'am

24 Q I think you said about the gang issue, and
25 correct me if it's wrong, if was not a priority?

Lenora Topp - Cross-Examination

1 A Right

2 Q Did you hear anything about gangs when you went
3 to interview Steve's client?

4 A Yes

5 Q What was the substance of the assertions?

6 A That he was a gang member

7 Q Did he have a particular gang that he claim
8 membership in?

9 A No

10 Q Did he show you any tattoos?

11 A Yes

12 Q Did you ask to talk about gangs or did he
13 volunteer gang membership?

14 A He volunteered gang membership and I knew that
15 would be something I would look into and see but I could
16 find no substance of gang activity from any of his
17 friends, family members, people who would know

18 Q What can you do as a mitigation specialist or
19 investigator to prove or disprove gang membership besides
20 talking to people?

21 A Criminal records Really nothing because there
22 are some many different gangs you wouldn't know where to
23 start, and he had no tattoo that I recall at that time
24 that identified any special gang There were no gang
25 member names He gave no names of any gang members or

Lenora Topp - Cross-Examination

1 where they met, so there wasn't any indication that there
2 was any gang activity other than Kameli saying so

3 Q And prior criminal activity would be a red flag?

4 A Yes, if there were other arrests and what the
5 arrests were for which I know he had several charges --
6 previous charges but nothing to do with gang There were
7 no police records here in town that would show gang
8 activity

9 Q In your experience and research in some of these
10 issues, is it common to have drug charges for gang
11 members?

12 A It's common to have drug charges for members
13 sitting out there, too

14 Q It's a factor?

15 A It's a very small factor

16 Q You were aware that Mr Evans had a 1999
17 conviction with intent to distribute?

18 A Yes

19 Q And possession of a gun charge in 1999

20 A Yes

21 Q And those would certainly be violent acts?

22 A Yes

23 Q I'd like to show you a picture and ask if you do
24 recognize this particular tattoo

25 A I don't recognize it but it looks like someone's
Evans versus State - Day 3

Lenora Topp - Cross-Examination

1 arm

2 Q And what does that say?

3 A Something -- I can't read it right I know the
4 "r" is the second letter

5 Q If I suggested to you it said Crip would you
6 agree or disagree?

7 A It could

8 Q And that tattoo?

9 A There was some mention of Crip

10 Q There was?

11 A Yeah, there was I'll make a correction, but
12 anyway Crip

13 Q And this tattoo, can you make that out?

14 A "120th Crips "

15 Q Would that be the kind of tattoo that you were
16 references would be a symbol or signal of possible gang
17 membership

18 A Well, there's a signal but I guess you can have
19 any tattoo you want

20 Q I think you testified on direct that you and
21 Steve Sumner would speak sometimes of expenses?

22 A I didn't testify that at all

23 Q I believe that you might have said when you sat
24 down and talked to him about Cleveland you talked about
25 different factors, I thought you said expense?

Lenora Topp - Cross-Examination

1 A No, ma'am

2 Q Did you ever talk about getting the funds to go
3 to Cleveland or anything like that?

4 A No

5 Q did you ever talk about getting additional
6 funding for research or something like that or request for
7 records that needed additional funding?

8 A Because he paid for all -- all bills were sent to
9 him The only money we talked about is he gave me an
10 advance?

11 Q So essentially it would be available for you if
12 you needed it?

13 A I would have no reason to not believe it I
14 never thought about it, but I had no reason not to believe
15 it

16 THE COURT how much more questioning do you
17 anticipate

18 MS BROWN This is actually the end

19 BY MS BROWN

20 Q Ms Topp, would you please look over this email
21 and confirm if that is the email that you sent regarding
22 the records that we just talked about a few minutes ago

23 A Yes, ma'am

24 MS BROWN I'd like to move this in as
25 Respondent's 36

Lenora Topp - Redirect Examination

1 MR EHLIES No objection

2 MS BROWN No further questions

3 (Email marked as Respondent's Exhibit No 36
4 for identification was admitted into evidence)

5 REDIRECT EXAMINATION

6 BY MR EHLIES

7 Q Ms Topp, does a mitigation specialist involved
8 and do more than just collect records?

9 A Yes

10 Q What are the other things that mitigation
11 specialists do?

12 A They interview people -- it's a matter of
13 collecting information It's involves some investigative
14 work to determine character and lifestyle and that kind of
15 things

16 Q And also would it be fair to say identify issues?

17 A Sure

18 Q And notify attorneys to the issues?

19 A Yes, sir

20 Q Now, you got this email that just came in under
21 the last exhibit number for the State and it references --
22 this would be 36 ---

23 A Yes, sir

24 Q What's the date on that email?

25 A August 26

Lenora Topp - Redirect Examination

1 Q In fact, isn't that kind of error that usually
2 occurs in tracking down old addresses and that kind of
3 thing?

4 A Oh, gosh, yes, sir

5 Q And in time it often cure themselves and you end
6 of at the end of the road with a pot of gold?

7 A Sometimes

8 Q Did you have the time to do that in this case?

9 A No, I didn't

10 Q You persist in finding those records and, in
11 fact, two weeks after the trial you did receive medical
12 records?

13 A I did

14 Q From the very place that you said you had the
15 wrong address from?

16 A Yes, sir

17 Q You were asked about this gang thing and you
18 chuckled a little bit, did you form an opinion as to
19 whether Kamell Evans was in a gang?

20 MS BROWN Objection, relevance I don't
21 think it would be relevant

22 MR EHLIES We've been talking about that
23 all day

24 MS BROWN She testified that she was to
25 gather information and send to attorneys

Lenora Topp - Redirect Examination

1 THE COURT I'll sustain the objection

2 BY MR EHLIES

3 Q This message that was typed of is dated September
4 1st, do you think that's about the date that you may have
5 left the message?

6 A It's possible I'm sure it's close to that date

7 Q And how far was that from trial?

8 A Days

9 Q On the funding issue in getting you additional
10 help to cover Cleveland, you were asked whether or not if
11 you had those conversations and I don't believe you ever
12 testified to that on direct, but in cross you were asked
13 about that Did Mr Sumner ever testify that he could go
14 get you some addition mitigation help for you to get the
15 funding to do that? Did he bring that up to get to
16 Cleveland?

17 A No, sir

18 Q Did he ever offer any suggestion for how your
19 team could get a member in Cleveland?

20 A No, sir

21 Q And Ms Renee Evans reported to you, I think on
22 cross-examination, that she had the actually medical
23 records pertaining to lead ingestion?

24 A She said she could get them I don't know if she
25 had them but she could help with that

Lenora Topp - Recross-Examination

1 Q. And if someone was physically present there,
2 would that have facilitated actually capturing the
3 records?

4 A. Sure.

5 Q. Prior to trial?

6 A. Sure.

7 MR. EHLIES: Thank you.

8 RECROSS-EXAMINATION

9 BY MS. BROWN:

10 Q. Ms. Topp, was Renee Evans in Ohio?

11 A. Yes, she was.

12 Q. And it didn't facilitate getting those records
13 through Ms. Renee Evans?

14 A. I didn't know what she did to get them. I was
15 not with her.

16 MS. BROWN: Thank you, ma'am.

17 THE COURT: We will reconvene tomorrow
18 morning.

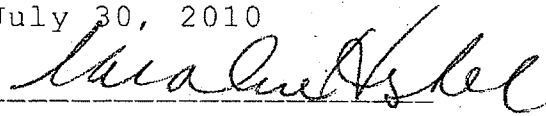
19 --END OF TRANSCRIPT RECORD FOR DAY 3, JUNE 3, 2009 --
20
21
22
23
24
25

Lenora Topp - Recross-Examination

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 3rd 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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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 -vs-)
7 State of South Carolina)
8 -----)

9 June 4, 2009
Spartanburg, South Carolina

10 B E F O R E

11 THE HONORABLE GARRISON HILL, Judge

12 A P P E A R A N C E S

13 WILLIAM H EHLIES, Esquire
14 WILLIAM N NETTLES, SR, Esquire
15 CHRISTOPHER SEEDS, Esquire
Attornies for the Applicant

16 ANTHONY MABRY, Esquire
17 MELODY BROWN, Esquire
Assistant Attorney Generals
18 Attornies for the State

19
20
21 CAROLINE HISKELL
22 Circuit Court Reporter
23
24
25

Lenora Topp - Recross-Examination

I N D E X

WITNESSES	DR	CR	RED	REC	---
Nicholas Wideman	606	620	626		
Sarah English	626	631			
Barry Evans	631	638			
rubin Gur	659	710			
Joseph Savitz	731	744			
Justin McKee	753	758			
Johnathan Arden	761	777	805	808	

E X H I B I T S

DESCRIPTION	ID	INEVD
Applicant's		
48 Medical records	820	820
49 Treaties	707	707
50 Treaties	708	708
51 Copy	709	709
52 Reports	710	710
53 10-1-04 Letter	742	---
54 Photograph	754	755
55 Photograph	754	755
56 Photograph	754	755
57 Photograph	754	755
58 Photograph	754	755
59 Photograph	754	755
60 Photograph	754	755
61 Photograph	754	755
62 Photograph	754	755
63 Chart	766	766
64 Port of trial trans	777	777
65 Photograph	807	807

Evans versus The State

I N D E X

Exhibits (continued)

DESCRIPTION	ID	IN, EVD
Respondent's		
37 Photograph	796	---
38 Photograph	802	802
39 Photograph	802	802
40 Autopsy Photograph	802	802
41 Autopsy Photograph	802	802
42 Photograph	802	802
43 Photograph	808	---
44 Photograph	802	---

Nicholas Wideman - Direct Examination

P R O C E E D I N G S

THE BAILIFF Court will come to Order

THE COURT Thank you Keep your seats

THE BAILIFF You can be seated

NICHOLAS WIDEMAN, having been duly sworn,
testified as follows

DIRECT EXAMINATION

BY MR NETTLES

Q How long have you been here?

A Two days now

Q Well, you're almost done Please tell us who you
are

A Nicholas Lavell Wideman

Q Where do you currently live?

A I live in Piedmont

Q What do you do there?

A I work at the Men's Warehouse and I recently as
of April 22 started a nonprofit

Q What's it called?

A It's called the Young Marathon Runners of
America

Q What do y'all do?

A It's a program sponsored by the Greenville
Hospital System and what we're doing is using the concept
of running marathons to bring awareness to childhood

Nicholas Wideman - Direct Examination

1 obesity

2 Q Where did you go to school?

3 A I went to school at Greenville High and on
4 scholarship I went to North Greenville College

5 Q On what kind of scholarship did you go to North
6 Greenville College?

7 A It was an athletic scholarship

8 Q What sport did you play at the North Greenville
9 College on scholarship?

10 A I played football

11 Q And what year were you there?

12 A 1993 until 1997

13 Q And while you there from 1993 to 1997, did you
14 have a chance to meet Kamell Evans?

15 A Yes, sir

16 Q And how did you meet him?

17 A Kamell was recruited as a freshman in 1995 He
18 was a freshman while I was an up and coming junior

19 Q Did y'all develop any sort of friendship?

20 A When he was recruited, he was a high recruit from
21 our team and he played the same position I played

22 Q And what was that?

23 A Defensive back, and because of that him being a
24 freshman and myself being an upper classman, I naturally
25 took him under my wing

Nicholas Wideman - Direct Examination

1 Q Tell us a little bit about North Greenville
2 College?

3 A North Greenville College is a private baptist
4 institution We're a Christian college The atmosphere
5 there is very conservative They're very strict They
6 have very strict guidelines that all students agree to
7 adhere to while they're there There's not a whole lot of
8 leniency there

9 Q To your knowledge, is there any gang presence at
10 the North Greenville College?

11 A No

12 Q Did you have an opportunity to meet Kamell Evans
13 father?

14 A Yes, sir

15 Q Who in Kamell's family have you had the
16 opportunity to meet?

17 A I've met his father I've met his step mom and
18 his younger sister

19 Q While Kamell was under your wing at the North
20 Greenville College, did you ever get any indication that
21 Kamell was in a gang?

22 A No, sir

23 Q Let's talk a little bit about his tattoos When
24 you knew him and he was under your wing at North
25 Greenville College, did he have tattoos?

Nicholas Wideman - Direct Examination

1 A Yes, sir, he did

2 Q Do you remember what they were?

3 A I remember just vaguely what they were They
4 didn't appear to me at that time to be gang related
5 tattoos but just standard emblems

6 Q Did he have anything like Crip on his arms and
7 Crip World on his knuckles?

8 A No, sir

9 Q Did there come a time that y'all loss contact for
10 a little period of time?

11 A Yes, we did I ended up leaving in 1997 and, of
12 course, he stayed there We lost contact for a period of
13 time from 1997 until a little later on

14 Q To your knowledge was Kamell involved in any
15 other athletic activities after he left Greenville
16 College?

17 A Yes, sir, he did play semi-professional football
18 in Greenville

19 Q Are you familiar with semi-professional football?

20 A Yes, sir

21 Q Did you ever play it?

22 A Yes, sir

23 Q Share with us the time commitment that's
24 necessary to play semi-professional minor league football?

25 A Most of the people that played semi-professional
Evans versus The State - Day 4

Nicholas Wideman - Direct Examination

1 football had full time jobs and we practiced three times a
2 week and then we met and had film sessions throughout the
3 week alternating between nights of practice So it was a
4 pretty rigorous

5 Q Did there come a time that you and Kamell became
6 reacquainted?

7 A Yes, sir

8 Q When was that?

9 A We met up again playing on the same team?

10 Q The semi-professional?

11 A Yes, sir

12 Q And share with us a little bit about that
13 relationship

14 A Well, we met up again and we were very happy to
15 see each other I didn't know exactly how his career
16 ended at North Greenville so we had a lot of time when we
17 initially met just catching up and now things were going
18 I was glad to see he had taken care of himself and still
19 athletic and played sports We were like kindred spirits
20 and had a good time catching up

21 Q And did your friendship continue to grow?

22 A Yes, sir

23 Q At that time that you knew him, was there any
24 indication that he was in a gang?

25 A No, sir

Nicholas Wideman - Direct Examination

1 Q Who was he dating at that time?

2 A At that time he was dating Christina Rodriguez

3 Q What was their relationship like?

4 A It seemed like at the time a normal relationship

5 They had been acquainted at some time before got

6 reacquainted with each other so it seemed like initially

7 it was just a normal relationship I didn't know a lot of

8 about her because she wasn't from the area

9 Q Do you know where she was from?

10 A I learned she was from Chicago

11 Q Did there come a time that you learned Kamell

12 thought she was pregnant?

13 A Yes, sir

14 Q What did he do about that?

15 A He proposed to her

16 Q And what did he do in terms of living

17 arrangements?

18 A They were already living together They were

19 renting an apartment They ended up getting a home

20 together

21 Q In the months before this tragic crime, what was

22 the relationship like between Christina and Kamell?

23 A There seemed to be a whole lot of confusion as to

24 where the relationship was going At the particular time,

25 Kamell didn't know how committed she was to him

Nicholas Wideman - Direct Examination

1 MR MABRY I'm going to object He can't
2 testify to what Kamell didn't know That would be all
3 hearsay He can testify to what he observed but not what
4 was told to him

5 BY MR NETTLES

6 Q What did you observe in terms of their
7 relationship?

8 A I observed there was a lot of confusion It
9 seemed like there was some type of communication issues
10 between them

11 Q And you base that on what?

12 A I base that on the fact that they just seemed to
13 not be around each other a lot I spent some time talking
14 to Kamell We used to go to Applebee's all the time and
15 talk with one another So I learned a lot about what was
16 going on in the relationship

17 Q Did you know what their financial situation was
18 at the time?

19 A Actually I didn't I knew Kamell had a job but
20 I've known that since earlier

21 Q Did he have a full time job?

22 A To my knowledge he worked at UPS and he worked at
23 another location

24 Q T H Handy?

25 A Yes

Nicholas Wideman - Direct Examination

1 Q Do you remember a party that you, Kamell, and
2 Joe (inaudible) went to?

3 A Yes

4 Q When was that party in relation to the crime?

5 A It was about a week before

6 Q What happened after that party?

7 A After that party we were leaving and he was
8 really upset he had broken down and started crying

9 Q And what happened after that?

10 A He came by my apartment and he apologized

11 Q What kind of car was he driving?

12 A A white Mercedes Benz

13 Q What did you think about that?

14 A It had a tag on it so I just assumed they were --

15 Q Who is they

16 A He and Christina

17 Q He and Christina were in a white Mercedes Benz?

18 A Yes

19 Q When did you last see Kamell before this
20 incident?

21 A I would say it was about three days, four, five
22 days before the crime We hung out together He came to
23 my apartment and played the Play Station and he hung out
24 late together at my apartment, and that was the last time
25 that I saw him before the actual crime

Nicholas Wideman - Direct Examination

1 Q Was there any discussion that night about
2 Christina?

3 A We both talked about our relationships

4 Q Was that a Saturday night?

5 A I can't recall which night it was

6 Q Now, did you receive a call from Kamell on the
7 Monday evening before the crime?

8 A Yes, sir

9 Q Did you meet him?

10 A No, sir

11 Q Did you receive a call from him on the night of
12 the crime?

13 A No, sir

14 Q Who called?

15 A I received a call about Kamell

16 Q Was this while the event was taking place

17 A Yes

18 Q And did you report this to the police officer?

19 A No, sir

20 Q Did you go over to the house that night?

21 A Yes, sir

22 Q Did you give a statement that night?

23 A I didn't give a statement that night, I gave a
24 statement the day after

25 Q What did you tell the police?

Nicholas Wideman - Direct Examination

1 A Basically the police wanted to recount my
2 relationship with Kameil and I explained to them that we
3 were college teammates and they asked me to explain as
4 much as I could about their relationship

5 Q Let's go back to this party where he was so
6 upset, did he have a gun that night

7 A Yes, sir

8 Q Tell us about that what you witnessed with him
9 and the gun?

10 A Yes, he did He had a gun on him and at this
11 particular time when he broke down and started crying, at
12 the time we didn't know where it was coming from And we
13 were like let's just go ahead and leave so we didn't draw
14 attention to ourselves in the parking lot. And in the
15 midst of him crying, he grabbed his handgun and put it to
16 his face

17 Q What do you think was the reason for him doing
18 that?

19 A The reason for him doing that was, in thinking
20 about it after the fact, I think he was crying out for
21 help, but I don't whether he was really going to pull the
22 trigger because we reacted so quickly to push his hand
23 down from his face and the gun fell down to the floor

24 Q Now, let's go back to at some point did you meet
25 with a woman from SLED after this event?

Nicholas Wideman - Direct Examination

1 A Yes

2 Q Does the name Dr Pam Crawford sound right?

3 A I can't remember the name

4 Q Was she a woman and said she was a doctor from
5 SLED?

6 A Yes, and she was with another gentleman in the
7 room

8 Q And so tell us what you told them that night?

9 A To the best of my ---

10 MR MABRY I'm going to object again to what
11 he told them Kamell said

12 MR NETTLES That's not what I said I said
13 tell us what you told them that night

14 MR MABRY If it contains hearsay, I'm going
15 to object to it if he's going to repeat what Kamell had
16 told him So I object to that because there's no
17 relevance either

18 MR NETTLES It's not hearsay because I'm
19 not introducing it for the truth of the matter asserted
20 but to show that it was told to them In other words,
21 Dr Pam Crawford came in and said tell us what you know
22 about Kamell and I think the Court is entitled to know
23 what he told them that night Because I'm not introducing
24 it necessarily for the truth of the matter asserted but to
25 show what they knew

Nicholas Wideman - Direct Examination

1 THE COURT I'll overrule the objection

2 BY MR NETTLES

3 Q Tell us what you told them from start to finish
4 that night?

5 A To the best of my knowledge ---

6 Q That's all we can ask

7 A I explained to them what type of person ---

8 Q What did you talk about what type of person

9 A I said he was a good kid and what happened I felt
10 like was not him And we talked about the relationship
11 that ---

12 Q What did you tell them about the relationship

13 A The relationship between him and Christina the
14 had a lot of fighting that took place leading up to that
15 point

16 Q Over the whole relationship?

17 A No, it intensified I didn't witness fighting
18 over the whole relationship, but it intensified leading up
19 to that tragic crime I don't necessarily remember the
20 whole script of what we talked about but they were trying
21 to find out that and get a time of events on what happened
22 between Christina and Kameil leading up to the event and I
23 explained to the best of my knowledge that they had done
24 some fighting and she ended up leaving him and going back
25 home to her parents house And he was trying to reach out

Nicholas Wideman - Direct Examination

1 to her and talk to he and was unsuccessful It's very
2 vague at this point what I told her It was one day and
3 the next day and it was very emotion

4 Q Let me ask you this, did she ask you anything
5 about gangs?

6 A Yes, she did

7 Q What did you tell her about whether or not you
8 thought Kamell was in a gang or not?

9 A I told he I didn't think he was in a gang

10 Q Did you have any contact with Christina after
11 April 2nd?

12 A Yes, sir

13 Q What was the contact you had with her after April
14 2nd?

15 MR MABRY I'm going to object to the
16 relevance of this testimony Also anything that she said
17 would be hearsay

18 MR NETTLES First of all, I think it's
19 relevant for the following reasons Let's remember who
20 this is This is the person that Steve Sumner said was a
21 hostile witness, don't go talk to him Why it's relevant
22 is, I think at this point it's become very obvious he's
23 not a hostile witness No 2, if he had a relationship
24 with Christina, there was some communication there, it
25 certainly would have been a possible means of dialogue

Nicholas Wideman - Cross-Examination

1 with the family on getting a life sentence out of this,
2 which I think any decent lawyer on a capital case would at
3 least explore

4 So what I'm laying the ground work for is
5 there was a means of dialogue He's not hostile and could
6 have possibly opened up dialogue with the family

7 THE COURT How do you get around the
8 hearsay?

9 MR NETTLES I didn't ask what she said, I
10 just asked what was your relationship with her after the
11 funeral

12 THE COURT Okay

13 MR MABRY I don't have any objection to the
14 relationship

15 BY MR NETTLES

16 Q My question is just tell me what was your
17 relationship with her -- did you have a relationship with
18 her after the funeral?

19 A Yes

20 Q Characterize the relationship?

21 A The relationship was a lot of conversations over
22 the telephone All of it was just remorse and I tried my
23 best to be there, just apologizing for the whole incident
24 And I tried because I was there to help console what she
25 was going through at the particular time because she

Nicholas Wideman - Cross-Examination

1 didn't have communication with her mother

2 Q You know Kamell ultimately went to trial in 2004
3 Were you contacted by anybody that said they were the
4 investigator for Kamell at that time?

5 A No, sir

6 Q Were you contacted by anybody that said they were
7 a lawyer at that time?

8 A No, sir

9 Q Is there anything about the way you felt about
10 Kamell in 2004 that would have prevented you from speaking
11 to anyone in Kamell's team?

12 A No

13 MR NETTLES No further questions Thank
14 you

15 CROSS-EXAMINATION

16 BY MR MABRY

17 Q My name is Anthony Mabry I'm the Assistant
18 Attorney General I just have a few questions

19 A Yes, sir

20 Q You testified that you and Kamell were good
21 friends, is that correct?

22 A That's correct

23 Q And how would you describe good friends? Real
24 close friends?

25 A Yes, sir

Nicholas Wideman - Cross-Examination

1 Q And your testimony was that you were not
2 uncooperative and you were willing to get involved in this
3 case and help Kamell back when this happened, is that
4 correct?

5 A When you say, "help Kamell," what does that mean?

6 Q You were willing to come and testify for him

7 A Absolutely

8 Q You wanted to get involved

9 A Yes

10 Q Let me show you Greenville County jail records
11 from the time he was incarcerated until the trial On one
12 column, it lists everybody who came and visited him Show
13 us on that document where you went and visited Kamell at
14 the Greenville County Detention Center?

15 MR NETTLES Your Honor, if he would like to
16 move that into evidence, we'd be more than happy to -- are
17 you going to move it into evidence?

18 MR MABRY Not at this point I'll move it
19 when I'm ready You try your case, I'll try mine

20 BY MR MABRY

21 Q My question is where on this document does it
22 show where you went to visit Kamell in jail in Greenville
23 County?

24 A It's not on that document

25 Q So you were one of his best friends -- his best
Evans versus The State - Day 4

Nicholas Wideman - Cross-Examination

1 friend, but, in fact, you didn't go to see him one time in'
2 jail, did you?

3 A That's correct

4 Q In fact, what this record shows is after the
5 murder occurred, you didn't want to be involved with
6 Kamell, did you?

7 A That's incorrect

8 Q So why didn't you go see him?

9 A Because from what I understood he had limited
10 visitation given the high profile of what the situation
11 was so I didn't request to be on his visitation list

12 Q You could have, though?

13 A I could have

14 Q You were his best friend?

15 A Absolutely

16 Q And you didn't request to be on his visitation
17 list?

18 A No, I didn't

19 Q Did you go to his funeral for Joe Sapinoso and
20 his father?

21 A Absolutely

22 Q So you were there comforting the Sapinoso family?

23 A Yes

24 Q Now, you said Kamell pulled out a gun at this
25 party you were at?

Nicholas Widemar - Cross-Examination

1 A That's correct

2 Q Was Kamell drunk?

3 A He had been drinking

4 Q He had been drinking when he pulled out the gun

5 and put it to his face and y'all took the gun away from

6 him, is that correct?

7 A That's correct

8 Q And you were his best friend, that's your

9 testimony?

10 A Uh-hum

11 Q Had you ever seen Kamell with that gun before?

12 A Yes, I have

13 Q How many times had you seen him with that gun?

14 A It wasn't routine I knew he owned it, but it

15 wasn't a part of how he carried guns all the time, it

16 wasn't part of his attire

17 Q Well, that was the question I wanted to ask you

18 Kamell did not carry a gun with him all the time, is that

19 correct?

20 A No, not to my knowledge

21 Q And he certainly didn't carry two guns with him

22 all the time, did he?

23 A Not that I saw

24 Q And if he told the police that he carried his two

25 guns with him at all times, that would not be a true

Nicholas Wideman - Cross-Examination

1 statement, would it?

2 A I don't know

3 Q Well, you were his best friend Did he carry two
4 guns with him?

5 A I didn't see them

6 Q You didn't see them He would had to have them
7 on him somewhere, would not?

8 A Absolutely

9 Q Now, you said he confided in you, correct?

10 A Absolutely

11 Q Did he confide in you that he tied up Christina
12 with duct tape?

13 A No

14 Q Did he confide in your that he stalked her for
15 the whole week before he murdered her brother and her
16 father?

17 A No, sir

18 Q Did he confide in you that he had told Christina
19 I'm going to get your brother and I'm going to get your
20 daddy?

21 A No, sir

22 Q Did he confide in you that he had told Christina
23 that I'm going to hide in the bushes and get them when
24 they come out to go to work?

25 A No, sir

Nicholas Wideman - Recross-Examination

1 MR MABRY No further questions

2 REDIRECT EXAMINATION

3 BY MR NETTLES

4 Q You testified that your understanding was he was
5 on a sort of limited visitation access?

6 A Yes, sir

7 Q Share with us why you didn't want to be put on
8 his visitation list?

9 A It wasn't I didn't want to be put on his list, it
10 was a simple fact that from what I learned he could only
11 see immediate family That's what I had heard so I didn't
12 pursue it

13 Q Were you in touch with him while he was in jail?

14 A Yes

15 Q How?

16 A He called me on my cell phone from inside the
17 jail

18 Q And would you take his call?

19 A Yes, sir

20 Q Was there ever a time that he called you that you
21 refused to talk to him?

22 A No, sir

23 Q As a matter of fact, did you stay in touch with
24 his family after he was in jail?

25 A For a brief time I was in contact with his

Nicholas Wideman - Recross-Examination

1 sister, Shatima

2 MR NETTLES Thank you

3 MR MABRY Just a few on recross

4 RECROSS-EXAMINATION

5 BY MR MABRY

6 Q Mr Wideman, at the time this happened, in the
7 days after the murder of Joe Sapinoso and his father, were
8 you upset with Kamell for committing two murders?

9 A Absolutely

10 Q And when he called you, did you tell him how
11 upset you were with him for committing two murders?

12 A I did

13 MR MABRY No further questions

14 RE-RFDIRECT EXAMINATION

15 BY MR NETTLES

16 Q But did you get over it?

17 A I told him I still loved him

18 MR NETTLES Thank you

19 THE COURT All right, Mr Wideman, thank you
20 very much

21 (Witness leaves the witness stand)

22 SARAH ENGLISH, having been duly sworn,
23 testified as follows

24 DIRECT EXAMINATION

25 BY MR NETTLES

Evans versus The State - Day 4

Sarah English - Direct Examination

1 Q You're going to need to tell everybody who you
2 are?

3 A Sarah English

4 Q And Sarah how old are you?

5 A 34

6 Q And where do you live

7 A I live in Greenville

8 Q And where were you born?

9 A I was born in Liverpool, England

10 Q As evidenced by your accent Where do you work
11 now?

12 A I work at Associated Receivables Funding in
13 Greenville

14 Q And what is your education in?

15 A I have a Bachelor's in Criminal Justice and an
16 Associates in Arts

17 Q Now, do you know Kamell Evans?

18 A Yes

19 Q How?

20 A I dated him previously

21 Q And when you dated him, how old were you?

22 A About 28

23 Q How old was he?

24 A 26

25 Q At the time that y'all were dating, where were
Evans versus The State - Day 4

Sarah English - Direct Examination

1 you in your BS Degree?

2 A I had not started

3 Q How long did y'all date for?

4 A About five months

5 Q And where did y'all meet?

6 A At his sister's birthday party

7 Q Was he working at the time?

8 A Yes

9 Q Where was he working?

10 A He worked at UPS and he worked as second job

11 Q Now, how long after his sister's birthday party
12 did y'all start dating?

13 A A couple of weeks maybe

14 Q Was he playing football at that time?

15 A No

16 Q At the time that you met him and through the time
17 that you were dating him was he in a gang?

18 A No

19 Q How do you know?

20 A Because I pretty much saw him every day, talked
21 to him every day He was living with his sister He hung
22 out at his sister's house I hung out at his sister's
23 house I never saw him with anyone that I would associate
24 as a gang member

25 Q Did he have the tattoos on his arms about Crips?

Sarah English - Direct Examination

1 A No, he did
2 Q Did he have anything on his knuckles about gangs?
3 A No, he did not
4 Q What kind of music did y'all enjoy?
5 A Rap music, R&B, whatever was popular at the time
6 Q That wasn't usual for children of your age?
7 A No
8 Q How did Kamell spend his money?
9 A Clothes That's really all I saw him spend
10 Q Was there any color that he particularly liked?
11 A He wore blue a lot
12 Q Was that because he was in a gang?
13 A No
14 Q Did you know Kamell's nephew DJ?
15 A Yes
16 Q Who is DJ's mother?
17 A Kamell's sister
18 Q His sister's child?
19 A Yes
20 Q Did Kamell spend time with him?
21 A Yes
22 Q After y'all stopped eating, who did Kamell start
23 dating?
24 A As far as I know he started dating a girl called
25 Christira

Sarah English - Cross-Examination

1 Q Did you ever meet Kamell's parents?

2 A Yes

3 Q Did you ever meet his mother or did you meet his
4 stepmother?

5 A I've met both

6 Q Did you meet them while you were dating or since
7 then?

8 A I've known the Evans family for 10 years I met
9 his mother after we started dating

10 Q His mother from Cleveland?

11 A Yes

12 Q Did Kamell ever carry guns while you were dating?

13 A No

14 Q Would you have been around him if he had carried
15 guns?

16 A No

17 Q Do you ever recall a time when Kamell and
18 Christina test drove a white Mercedes Benz?

19 A I heard about it, yes

20 Q Now, let me ask you this then, did anybody from
21 the defense team come and speak to you, investigator,
22 social worker, lawyer, about Kamell?

23 A No

24 Q Had they come and spoke to you about Kamell,
25 would you have shared with them what you shared with us

Saran English - Cross-Examination

1 today?

2 A Absolutely

3 MR NETTLES No further questions

4 CROSS-EXAMINATION

5 BY MR MABRY

6 Q Ms English, my name is Anthony Mabry I'm going
7 to ask you a couple of questions When you were dating
8 Kamell, did he ever leave South Carolina and go back to
9 Ohio?

10 A For a wedding, yes

11 Q Did you go with him?

12 A No, sir

13 Q So he left and went to Ohio to, I believe, his
14 sister's wedding?

15 A Yes

16 MR MABRY No further questions

17 THE COURT Thank you, Ms English

18 (Witness leaves witness stand)

19 BARRY EVANS, having been duly sworn,

20 testified as follows

21 DIRECT EXAMINATION

22 BY MR NETTLES

23 Q How you doing?

24 A All right

25 Q Share with us your name?

Evans versus The State - Day 4

Barry Evans - Direct Examination

1 A Barry Evans
2 Q And where do you live, Mr Evans?
3 A Greer, South Carolina
4 Q Mr Evans, what relation are you to that young
5 man sitting over there?
6 A I'm his biological father
7 Q Does your son have a sister?
8 A Yes
9 Q And what is her name?
10 A Shatima He actually has two sister, one full
11 sister and two half sisters
12 Q He has half sisters by your second marriage?
13 A Yes
14 Q His mother is your first wife?
15 A Yes
16 Q And her name is what?
17 A Renee
18 Q So you and Renee have how many children together?
19 A Two
20 Q The first one being?
21 A Shatima
22 Q The second one being who?
23 A Kamell
24 Q When was Shatima born?
25 A July 1, 72

Barry Evans - Direct Examination

1 Q And when were you and Renee married?

2 A October '73

3 Q When was Kamell born?

4 A December '76

5 Q And what year were you and Renee divorced?

6 A '86

7 Q Now, after y'all divorced?

8 A Springfield, Ohio

9 Q After Springfield, Ohio, where did you go?

10 A Greer, South Carolina

11 Q Are you from South Carolina?

12 A No, I was born in Mississippi and basically
13 raised in Ohio

14 Q What brought you to South Carolina?

15 A I wanted to get out of Ohio

16 Q Why?

17 A Still a lot of pain, too close to the ex

18 Q Share with me a little bit about why did you
19 leave your wife, Renee?

20 A A lot of physical anger, it wasn't a good family
21 relationship for my kids, abuse in the family I thought
22 it was best to get away from it, better for everyone
23 especially my kids

24 Q When you say physical anger, what do you mean by
25 that?

Barry Evans - Direct Examination

1 A I had physical violence against my wife, things
2 I'm not proud of and it was not getting better The
3 effect it had on those guys, my kids, myself I felt I
4 was losing control so I had to give it up

5 Q Did that prove to be a good decision?

6 A Yes

7 Q Why?

8 A I think things just to get away and see them on
9 the holidays had more of a positive effect The day to
10 day anger wasn't there I didn't have to deal with
11 something that wasn't made to be, but I had to get myself
12 together I had a new lady, finished my education and
13 things just got better

14 Q You have children now, don't you?

15 A Yes

16 Q How does their household differ from the
17 household that Kameel grew up in?

18 A I guess through just learning and growing and my
19 new wife's assistance which is totally different then how
20 I grew up It's now loving, sharing, doing things
21 together When we picked these guys up on the holidays,
22 we're a family, loving and carrying

23 Q That's your new family?

24 A Also when I can get those guys Every short
25 weekend vacation we could get them, it's just beautiful

Barry Evars - Direct Examination

1 It was different than the violence and stuff we
2 experienced in the household in Cleveland, and you grow
3 from that or at least I did

4 Q Let me touch on one other thing real quick and
5 then I'm going to leave The domestic abuse that took
6 place in your household in Cleveland, now was the
7 aggressor?

8 A I was

9 Q Now, obviously you son was living here in South
10 Carolina, right?

11 A Yes

12 Q And obviously he was arrested After April 2nd
13 of 2003, how many times did you meet with this first
14 lawyer Mr Richey?

15 A Never

16 Q Did you try to call him?

17 A I don't know how many times, tons of times He
18 never returned my call

19 Q How did that make you feel?

20 A It pissed me off I had no confidence in this
21 guy He's going to defend my son and he didn't even have
22 the courtesy to return my call From an ethical
23 standpoint, I don't know how he could be a lawyer

24 Q Now, during the time that Mr Richey was his
25 lawyer, did you ever speak with Mr Goldsmith?

Barry Evans - Direct Examination

1 A No

2 Q When was the first time that you met Skip
3 Goldsmith, your son's lawyer?

4 A At the day of the trial

5 Q September 13th?

6 A I don't know the date We were standing in the
7 lobby the first day of his trial, a few minutes before his
8 trial started

9 Q Did you ever try to get in touch with
10 Mr Goldsmith prior to trial?

11 A Yes, numerous times

12 Q Did he ever return your phone calls?

13 A No I had two numbers, one was North Carolina
14 and the other one was somewhere in South Carolina

15 Q Let me ask you this, before trial, how many times
16 did you meet with Mr Sumner?

17 A No more than twice I can only remember once
18 There was a possibility I met him a second time, but I can
19 only remember once

20 Q Where did you meet him?

21 A At his office

22 Q For how long?

23 A Like an hour

24 Q During either one of those visits, did he ask you
25 about your relationship with Kamell's mom?

Barry Evans - Direct Examination

1 A No

2 Q During the trial, did you have the opportunity to
3 meet with Mr Sumner?

4 A Yes

5 Q During that meeting did he ask you about your
6 relationship with you son's mom?

7 A No

8 Q Before the trial, do you remember ever meeting
9 with a woman named Ms Lenora Topp?

10 A Yes

11 Q An investigator, white hair, white?

12 A Yes

13 Q What did you tell her about the conditions of the
14 house as long as you and Kamell's mom were living there?

15 A I can't recall exactly, but I'm sure I mentioned
16 the violence that we had in the household It was one of
17 my conditions in the divorce that I didn't contest We
18 had physical abuse in the house

19 Q Now, let me ask you this, at any point, did you
20 tell anybody on the defense team that there wasn't abuse
21 in the household?

22 A No, I never said there wasn't abuse in the
23 household

24 Q Did you ever even discuss abuse in the household
25 with Mr Sumner?

Barry Evans -Cross-Examination

1 A Yes

2 Q What did you tell him?

3 A Basically there was abuse in the household,
4 several incidents

5 Q What did you tell him about your willingness to
6 testify to that in your son's trial?

7 A I told him I'd tell the truth

8 Q And what was the truth?

9 A The truth was I was physically abusive

10 MR NETTLES I have no further questions
11 Thank you very much

12 CROSS-EXAMINATION

13 BY MR MABRY

14 Q Mr Evans, my name is Anthony Mabry, I'm from the
15 Attorney General's Office I just have a few questions
16 for you Do you remember meeting with Lenora Topp on
17 September 7, 2004?

18 A Yes

19 Q And did you tell her that you were willing to
20 testify in court, and I'm quoting, "there was physical
21 violence between you and your wife"?

22 A Yes?

23 Q I'm going to show you her notes from that day
24 Do you see the underlined portion?

25 A Yes

Barry Evans -Cross-Examination

1 Q Do you see anywhere in her notes where you told
2 her that you were the aggressor and you were the only one
3 that committed the abuse?

4 A Can I show you in her notes?

5 Q Yes Look through the report and I'd like you to
6 point out to me where you told her you were the abuser and
7 it was not just violence between both of you

8 A The first page or do you want me to go through
9 the whole document?

10 Q If you see it anywhere in the document

11 A I just scanned through it

12 Q You don't see it?

13 A No

14 Q Did you ever abuse Kamell?

15 A I may have spanked Kamell I don't remember
16 abusing Kamell

17 Q That was my question After you divorced, you
18 moved to another part of Ohio initially, correct?

19 A Yes

20 Q And any time you could get visitation with you
21 kids, you went and got them?

22 A Yes

23 Q And then you came down to South Carolina and you
24 found out he wasn't being supervised He was running the
25 streets up in Cleveland, basically

Barry Evans -Cross-Examination

1 A Yes

2 Q So you went from here up to Cleveland and you got
3 your son and brought him back to South Carolina?

4 A Yes

5 Q And when you brought him back to South Carolina,
6 you provided him a good home down here, correct?

7 A Yes

8 Q In fact, you had some trouble with Kamell as far
9 as you setting down some rules for him and he didn't abide
10 by the rules that you set down?

11 A I don't understand what you're calling trouble

12 Q Do you remember him going to a couple sessions of
13 counseling with you in Greenville where you told he
14 psychologist or whoever it was that was doing the
15 counseling that you had laid down rules and he wasn't
16 obeying the rules?

17 A I didn't see that as trouble I saw that as a
18 kid growing up

19 Q And when he was down here you taught him to do
20 right?

21 A I counseled him to do right

22 Q And he was down here at some point in middle
23 school he took a girl that belonged to you and took it to
24 school, is that correct?

25 A Yes

Barry Evans -Cross-Examination

1 Q He got expelled for that?

2 A Yes

3 Q And when he did things wrong, I assume you
4 punished him when he was down here living with you?

5 A You have to define punish I counseled him

6 Q You counseled him but you didn't abuse him

7 A No

8 Q When he was in middle school I believe you told
9 Ms Topp he was a pretty good student, is that correct?

10 A Yes

11 Q And in high school he was a pretty good student,
12 correct?

13 A Yes

14 Q And, in fact, he went on to North Greenville
15 College for two, two-and-a-half years, is that correct?

16 A Yes

17 Q Now, at some point in time, you and he kind of
18 split for a while, is that correct?

19 A Yes

20 Q About how old was he when y'all had the split?

21 A Early 20s

22 Q So ne had grew up in your home, midale school
23 through high school and did he live with y'all through
24 college?

25 A He lived on campus

Barry Evans -Cross-Examination

1 Q What about in the summers, did he live with
2 y'all?

3 A Yes

4 Q And at some point he became emancipated from the
5 home and that's when the falling out occurred between the
6 two of you?

7 A It was a disagreement, yes

8 Q And you also told Ms Topp that after he became
9 an adult, you found out that Kameil was selling drugs?

10 A I don't remember that

11 Q On Page 3 of Ms Topp's report of her interview
12 with you and I'm going to read it and you tell me if I'm
13 wrong or not, "He and Robin urged him to get an education,
14 but he quit anyway " That would have been college, right?

15 A Yes, we drilled all of our kids to continue their
16 education

17 Q "But he quit college and started selling some
18 drugs "

19 A ~ I don't remember that particular conversation or
20 saying something like that I had a conversation with
21 Ms Topp at my kitchen table Now what she remembers I
22 don't know As far as that document there, I can't recall
23 verbatim what I said, but it's something that I never had
24 proof of or would have told anybody

25 Q Well, let me go down to the next line and you
Evans versus The State - Day 4

Barry Evans -Cross-Examination

1 said, "Regarding gang activity, Mr Evans doesn't believe
2 Kamell was ever in a gang He only tried to portray the
3 gangster image " Is that true? Did you make that
4 statement to Ms Topp?

5 A I never had any proof if Kamell was in a gang,
6 and if that's what she believes I said, then, you know

7 Q Then the next bullet point says, "He knows he was
8 selling drugs, didn't use them, but was trying to be big
9 by selling drugs " Did you tell Ms Topp that?

10 A I don't recall making that statement, no, because
11 I don't have any proof I wish I could elaborate more,
12 but I can't

13 Q Was your son convicted of possession with intent
14 to distribute marijuana around 1999 or 2000?

15 A Not that I'm aware of

16 Q You're not aware that he pled guilty with intent
17 to distribute marijuana and was put on probation?

18 A Not that I'm aware of

19 Q Y'all were separated at that time?

20 A Separated Evidently we were What time was
21 that?

22 Q 2000 is when he was convicted about three years
23 before this murder

24 A I wasn't aware of that

25 Q You also told her that, "I guess three or four
Evans versus The State - Day 4

Barry Evans -Cross-Examination

1 years before this crime was committed Kameil started
2 hanging around the wrong crowd," is that true?

3 A He had some, I think, associates that I wouldn't
4 want him to be around

5 Q Tell me who those were?

6 A I don't know their names

7 Q But you didn't like the people he was hanging
8 around with?

9 A I grew up in a rough area in Ohio I can
10 visually see and kind of see now people carry themselves
11 that they're probably up to no good, and everyone has
12 people that maybe aren't great associates from a parenting
13 standpoint, but I couldn't pass judgment I had no proof
14 of what they were just people I didn't like

15 Q You really didn't have a lot of contact with him
16 from the time y'all had the falling out until these crimes
17 were committed, isn't that correct?

18 A Not day to day contact, no

19 Q In fact, you didn't even know he had these gang
20 tattoos on his body, did you?

21 MR NETTLES I object to the
22 characterization of gang tattoos I don't think there's
23 been any expert testimony that he had gang tattoos He
24 can talk about the tattoos he had

25 THE COURT I've heard the evidence, I'll
Evans versus The State - Day 4

Barry Evars -Cross-Examination

1 sustain the objection Go ahead

2 MR MABRY I'll rephrase the question, Your
3 Honor

4 BY MR MABRY

5 Q Did you tell Ms Topp in your interview with her
6 in September 7th that Kamell started getting tattoos after
7 high school and you never noticed the gang style tattoos?

8 A Probably seeing him in the shower, something like
9 that, after school

10 Q I'm talking about the last three or four years
11 before this crime was committed before y'all had this
12 falling out and you didn't see him a lot, did you notice
13 he had tattoos on his hand that said Crip World?

14 A No, I didn't

15 Q He had Crip Forever on his arms?

16 A No, I didn't

17 Q That he had initials that had something to do
18 with Crips on his neck, you didn't know any of that?

19 A No

20 Q When you saw him, did he carry two guns?

21 A When I saw him?

22 Q When y'all had the falling out, you still saw him
23 sometimes

24 A Yes

25 Q Was he carrying two guns on him?

Rubin Gur - Direct Examination

1 A No

2 Q If he had been, would you have done something
3 about it?

4 A I would have spoken to him from a father's
5 viewpoint about it, but Kamell is a young man in his early
6 20s I can't tell him what to do but I can give him my
7 advice

8 Q I understand Now, earlier in your testimony
9 today and I apologize for asking you about this but you
10 became emotional talking about your file in Cleveland

11 A Yes

12 Q Did you become emotional when you testified at
13 his trial in Greenville?

14 A Yes

15 Q And you testified on behalf of your son in that
16 trial, is that correct?

17 A Yes

18 MR MABRY No further questions Thank you,
19 sir

20 MR NETTLES Nothing further

21 THE COURT Mr Evans, thank you, sir

22 (Witness leaves witness stand)

23 MS BROWN Your Honor, this is the witness
24 we referenced earlier in the week We have a motion for a
25 hearing to challenge the admissibility of the evidence

Evans versus The State - Day 4

Rubin Gur - Direct Examination

1 under 702, State versus Jones The argument is this, if I
2 could sort of frame it for the Court, Dr Gur has in his
3 report that brain damaged caused diminished capacity

4 THE COURT I assume that's him right there
5 He walked in

6 MS BROWN I don't mind setting the
7 parameters for it but I was just going to give you an
8 introduction, whichever you prefer

9 THE COURT I'm saying I think that's the
10 witness right there Did you know he was in here?

11 MS BROWN During all of this, no, I did
12 not

13 THE COURT I don't think for all of it, but
14 he just walked in

15 MS BROWN Just to give you kind of the
16 parameter of where we're going, Dr Gur says that brain
17 damaged caused mental capacity or that he has brain damage
18 that cause mental capacity and he has reviewed only MRI
19 images according to the report itself It's not that
20 we're challenging the volume analysis or anything that
21 he's referenced within the report itself, but this
22 connection between just looking at an MRI photo and
23 determining that there's brain damage that causes some
24 type of dysfunction,

25 Now, we've been provided with a 2006 study
Evans versus The State - Day 4

Rubin Gur - Direct Examination

1 that shows a correlation between some kind of volume
2 measurement and the possibility of lead poisoning and the
3 possibility of dysfunction But we're objecting to is
4 very narrow is the idea if you just have an MRI and you
5 can't opine that there is dysfunction

6 Dr Elin Berg, if you'll recall the testimony
7 from Mr Steve Sumner's cross, Dr Berg testified in the
8 criminal phase that just looking at an MRI will not allow
9 you to diagnose a condition It is a piece of evidence
10 that can be considered, but to diagnose you have to have
11 either the MRI image plus some indication of disorder or
12 plus some indication of dysfunction, so it's not a
13 complete opinion If one is relying simply on the films,
14 it is not scientifically reliable to make a determination
15 of dysfunction

16 In fact, we have a 2009 article that has been
17 published in the Anals of Neurology from the Researchers
18 at Washington University School of medicine and this is
19 just in March of this year, and the introduction to the
20 article that I have found from the School of Medicine's
21 web site shows there is a link of a potential indicator of
22 Alzheimer's Disease to brain damage in humans with no sign
23 of mental impairment This study stands for the
24 proposition that you can find damage, some kind of volume
25 analysis anomaly, but that does not equate with

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1 dysfunction It could be an indicator So with
2 Dr Berg's testimony and this particular showing and what
3 they are relying on, there is an incomplete process of
4 steps to get to the conclusion that Dr Gur has gotten to
5 and arrived at in his opinion

6 So that's why we're making the motion to
7 challenge the reliability I understand we don't have a
8 jury here but the reason I wanted to underscore the fact
9 that we need to consider whether this would be admissible
10 is a lot of times in these PCR proceedings we allow some
11 information to come in because we're not talking about
12 things that will be presented necessarily to the jury, but
13 what did counsel know, when did counsel know it, what did
14 a mitigation investigator know, relating statements that
15 are hearsay and will never come in to trial perhaps, but
16 it's something that we explore

17 But in scientific evidence, we really need to
18 be careful to focus in on whether it's going to be admissible
19 for trial So we have not only the State versus Jones
20 factors, but whether it not it would be more probative
21 than prejudicial or it would have the off chance of
22 confusing the jury And here, because it's not
23 scientifically reliable to look at just one MRI, on volume
24 analysis and make the conclusion of dysfunction, then that
25 would be unreliable and certainly more prejudicial than

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1 probative and would confuse the jury That's our motion
2 in a nutshell

3 I also mentioned one other thing in chambers
4 and I haven't gone over it today, we have a case from the
5 Western District of Missouri where the United States
6 challenged Dr Gur's testimony as not being scientifically
7 reliable And part of that -- I can confirm -- that part
8 of that has been sealed by court It's not available on
9 Pacer The documents go into affidavit and that sort of
10 thing, but it has been memorialized by order regarding the
11 District Court's finding has been memorialized in a
12 document that is available

13 The United States of America versus Lisa M
14 Montgomery, 056002, a Western District of Missouri case, a
15 motion of the United States to exclude the testimony of
16 defense expert of Dr Rubin Gur for failure to comply with
17 the Court's discovery order There is a notation that on
18 September 5, 2007, the Court held a status conference in
19 which it advised the parties that it was the Court's
20 current intention to exclude Dr Gur's findings and
21 conclusions in part with regard to his MRI testing And
22 much of Dr Gur's findings with respect to the PET
23 testing, the Court stated it would prevent Dr Gur to
24 testify on the portion of the PET scan findings because
25 Dr Gur had testified that there were two standard

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1 deviations In other words, the MRI part of the argument
2 was accepted and the judge decided it would not be allowed
3 in I'm talking about accepted from the United States
4 Government's point of view it was not scientifically
5 reliable

6 Now, ultimately Dr Gur did not testify at
7 all is my understanding because of the discovery order
8 violation He didn't produce certain materials requested
9 to allow a determination of admissibility for the second
10 part of that analysis, the PET scan So I don't,
11 obviously, know what the Court ultimately decided because
12 that was left out, but certainly as far as just relying on
13 MRI to make a diagnosis or conclusion or inference alone,
14 that part was not allowed under the expert rule

15 And that's what we have and that's what we
16 base our motion on, Your Honor We're focusing in on this
17 because we necessarily would have to consider whether this
18 would have been admissible at the time because this is
19 such specific testimony, expert testimony, and it didn't
20 really matter at this point what the attorneys would have
21 known in the investigation This is whether this
22 testimony could actually be presented That's very
23 relevant in the prejudice portion of Strickland versus
24 Washington

25 THE COURT So you concede he's qualified
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1 MS BROWN I have no objection to his
2 qualifications

3 THE COURT And you concede that his
4 testimony makes the criteria under Rule 702 that will
5 assist the trier of fact to understand the evidence fact
6 and issue in this case

7 MS BROWN To the extent that he's done a
8 volume analysis, yes, I would agree The volume analysis
9 I don't have a disagreement on at all The volume
10 analysis along his chart is his take on standard deviation
11 although I have some cross-examination and questions on
12 that challenging that, it's simply the conclusion that
13 based on an image as a result from the MRI test, he has
14 made an opinion that there is brain damage that caused
15 dysfunction That's not scientifically reliable

16 THE COURT What part of his technique do you
17 challenge as being unreliable?

18 MS BROWN Connection of the result

19 THE COURT His conclusion

20 MS BROWN As far as actually performing the
21 volume analysis, I don't have a problem with that That's
22 done in statistical work, that's done in research with
23 clinical work, diagnostic work to some degree does allow
24 for volume analysis, but it's not stand alone It must
25 have some kind of cognitive dysfunction analysis to be

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1 paired with to allow a conclusion of either disease or
2 other condition

3 THE COURT Let me make sure I understand,
4 your challenge is that his approach just looking at the
5 MRI and reaching the conclusion is not accepted the
6 scientific community and therefore unreliable under Jones
7 In order for it to be reliable, he would have to pair it
8 with cognitive evidence

9 MS BROWN Yes, sir

10 THE COURT Yes, sir, Mr Seeds

11 MR SEEDS Your Honor, as I understand it
12 they're not challenging the report or the quantitative
13 analysis and what Dr Gur is going to testify about, he's
14 testified about in a many cases qualified without
15 objection He's testified about the quantitative analysis
16 of MRI scans and a number of these specifically discussed
17 the volume based MRI analysis with respect to human
18 ablyndosis(ph), which is what he's going to testify to in
19 this case

20 I provided to respondent yesterday a couple
21 of articles These are just two, one published in the
22 Journal of Neurology and the other in the Journal of Neuro
23 Image, and I just received another that was published in
24 the American Journal of Epidemiology regarding Dr Gur's
25 process specifically with respect to lead which has been

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1 argued about in this case

2 As far as their connection to dysfunction,
3 what Dr Gur is testifying about is that Mr Evans' brain
4 is atrophied and he has brain damage That is what he is
5 testifying about The aspect that you can't eyeball and
6 MRI image and make the connections, I'm sure that's quite
7 accurate That, in essence, is what a radiologist would
8 do when they look at an MRI Right when they see an MRI,
9 they will be looking at it and you make some assessments
10 What Dr Gur's method is much more complex which he'll
11 describe but it involves a computer analysis that
12 actually, as he'll show, can show volume and you can see
13 volume deficiencies, atrophy in the brain, you, can't
14 simply see by looking at a single MRI scan

15 MS BROWN Your Honor, we may be closer in
16 arguments that it would initially appear As long as we
17 strike the conclusion that he has in his opinion that
18 there is dysfunction, there's brain damage, therefore that
19 equals dysfunction, then we're fine

20 MR SEEDS What Dr Gur is going to do based
21 on his expertise is he will talk about how struck certain
22 areas of the brain impact behavior and based on the
23 structures that are atrophied in Mr Evans' case, he say
24 this could impact functioning in this way I'm not aware
25 of any challenged to Dr Gur making those connections

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1 I want to say one thing about Montgomery
2 The MRI aspect of that case was part of the discovery
3 dispute and that case is unique with respect to this
4 discovery dispute which kept this evidence out I'm not
5 aware of any other case that Dr Gur has not been
6 qualified to discuss quantitative analysis in MRI scans

7 MS BROWN I'm hearing, Your Honor, again I
8 don't think we're that far apart on it As far as him
9 connecting volume analysis and the possibility of damage
10 and the possibility of dysfunction, that's fine, but the
11 report that I received said I'm looking at MRI and there's
12 atrophy therefore there's dysfunction

13 MR SEEDS Therefore there's damage The
14 atrophy is the damage I just clarify that Dr Gur sees
15 neurological symptoms so insofar as -- and so did
16 Dr James Evans who did the neuro psychological analysis
17 at trial

18 MS BROWN I'm not saying that he can't
19 conduct one, I'm just say is he didn't All he looked at
20 for his report is -- the copy that I have is a two-page
21 report that was simply done, "RE Summary of MRI
22 findings," and there are no neuro psychological testing
23 results mentioned at all It's simply MRI images and
24 that's where our objections come in

25 MR SEEDS Dr Gur has also seen Dr Evars'
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1 testimony and he's seen Dr Berg's testimony, so ---

2 MS BROWN If that's true, that fact is not
3 disclosed in that report and was never disclosed in
4 discovery The report I'll have and I'll be happy to hand
5 it up to the report, show it to counsel and hand it up,
6 but it's a two-page report that lists only MRI findings

7 Your Honor, may I add one thing?

8 THE COURT Sure

9 MS BROWN Mr Gur has been referenced in
10 several law review articles, one in particular referenced
11 a textbook that he was involved with either a chapter,
12 editor, I'm not exactly sure, but it's called
13 Neuro psychological Assessment and Psychological Research
14 and practice It is in Psychiatry Textbook, Revised
15 Edition, 1991, citing Dr Rubin Gur, Dr Andrew Sokin, I
16 believe, and Dr Rachel Gur In Pages 1 through 6, in
17 Chapter 72, "MRI or CT may show the region of anatomic
18 destruction but will tell us nothing about the effect of
19 the lesion on behavior Neuro psychological assessment is
20 essential for the psychologist to make a link between
21 brain dysfunction and behavior," and again that was
22 something that Dr Gur had edited and was aware of

23 That was back in 1991 and we also have the
24 most recent study about Alzheimer's research and a
25 definitive statement that there can be atrophy, there

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1 could be brain damage, but that's not a sign of impairment
2 and dysfunction That has to be paired with additional
3 testing

4 MR SEEDS Your Honor, if I may There has
5 been neuro psychological testing done in this case by
6 Dr James Evans He said in his testimony at trial he
7 couldn't define brain damage without more, without an MRI
8 and some additional analysis of that What Dr Gur has
9 done is he's looked at the MRI's performed a quantitative
10 analysis, he seen brain damage, and then he went back and
11 looked at Dr Evans' testimony and the testimony of
12 Dr Berg which we provided to him, and relied on that as
13 well.

14 THE COURT I don't see anything about his --
15 I've heard the testimony, but I don't see anything about
16 his conclusion in and of itself would preclude him from
17 testifying There's nothing in his methodology that I've
18 been pointed to that would make it inherently unreliable,
19 which I think counsel in State versus Jones were talking
20 about

21 MS BROWN Your Honor, if I may, there are
22 actually factors of the Publication Peer Review wire
23 application of method to the type of evidence involved
24 Wire application of method to the type of evidence
25 involved in important

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1 THE COURT What is the method? What are you
2 talking about?

3 MS BROWN His method is to look at one
4 image and then make a conclusion, that's not a
5 scientifically reliable method And, of course, the
6 consistency of the method with recognized scientific laws
7 and procedure, that's where we are As far as having that
8 volume analysis made, I have no objection to that, as far
9 as that being a piece of information given to another
10 doctor who did research the dysfunction, who did make his
11 own test if he should so desire to do so, and he put all
12 this information together with the volume analysis That
13 I would have no objection to, but making a conclusion,
14 extrapolating a decision just from images is not the
15 scientific method accepted

16 THE COURT Well, I don't have enough
17 information to make that decision I'd have to hear him
18 testify about it and if I find after he testifies it
19 doesn't satisfy Jones, I'll keep your objection under
20 advisement and grant it at that time, but I'd have to hear
21 exactly what he says and give you an opportunity to cross-
22 examine him about whether his technique is in keeping
23 those factors in itself reliable

24 MS BROWN Thank you, Your Honor

25 THE COURT Okay Let's take a short recess
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1 about be' back about 11 20

2 (Whereupon, there was a brief recess)

3 MR NETTLES Let the record reflect that
4 Dr Gur has been sworn

5 DIRECT EXAMINATION

6 BY MR NETTLES

7 Q Please share with us your name

8 A My name is Rubin Gur

9 Q Do you have a professional title?

10 A I'm Ph D profession with tenure at the University
11 of Pennsylvania School of Medicine

12 Q So you're a doctor?

13 A Yes

14 Q Share with me a little about your educational
15 background

16 A I received my Bachelor's Degree in Psychology and
17 Philosophy from the Hebrew University of Jerusalem in
18 1970 My Master's Degree and Ph D in Clinical Psychology
19 from Michigan State University in 1973, and Post Doctorate
20 and Fellowship at Stanford University And then at the
21 University of Pennsylvania where is stayed, initially
22 assistant professor and then up the ranks to full
23 professor with tenure

24 Q And, what do you teach at the University of
25 Pennsylvania?

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1 A I'm teaching in the School of Medicine as well as
2 in the School of Arts and Science My main topic is brain
3 and behavior, neuropsychology and my specialty within that
4 field is neuro-imaging

5 Q And have you ever been qualified in the field of
6 neuropsychology and neuro-imaging?

7 A Yes

8 Q Approximately how many times?

9 A About maybe 30 times

10 Q Have you done research in the field of
11 neuropsychology and reuro-imaging?

12 A That's where most of my research is

'13 Q Share with us some of the research I've done?

14 A Well, when we started to main method for neuro-
15 imaging for neuropsychology is to study patients with
16 different forms of brain damage, document the behavior,
17 and then try to link it to the damage in the brain

18 Now, before reuro-imaging, we had to rely on
19 less reliable science of damage or literally have to wait
20 for the patient that we studied to die so that the
21 pathologist could look at the brain and find out the
22 damage I was fortunate to be in the place where neuro-
23 imaging began to be developed at Penn and joined a team of
24 physicists, cnemists, nuclear medicine physicians,
25 neurologists, psychiatrists who developed procedures for

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1 using neuro-imaging to study the brain and behavior, and
2 especially I focused on relating behavior domains such are
3 studied in neuropsychology to both structural and
4 functional neuro-imaging on the brain

5 Q So in other words, you were involved in what at
6 the time was new and now it's not so new taking MRI and
7 using it to find whether there was brain damage or not?

8 A Yes When MRI was introduced in the late '80s,
9 early '90s, our team was the first to harness it to the
10 study of brain and behavior

11 Q In the late '80s and early '90s, y'all were one
12 of the firsts, but how prevalent is using MRI to finding
13 brain damage now in 2009?

14 A Well, now it's the method in the whole world and
15 there are multiple MRI centers around the country and the
16 world and it's being used routinely to diagnose brain
17 damage

18 MR NETTLES At this time, I would ask and
19 certainly present Dr Gur for voir dire, I would ask him
20 to be declared an expert in the field of neuropsychology
21 and neuro-imaging

22 THE COURT Voir dire

23 MS BROWN Just a few questions

24 VOIR DIRE

25 BY MS BROWN

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1 Q Dr Gur, as I understand it, your practice is to
2 look at MRI and conduct and analysis of an MRI, is that
3 correct?

4 A Yes

5 Q Is that your specialty?

6 A Yes

7 Q Tell me exactly what you do when you receive an
8 MRI?

9 A Most of them I will receive as part of a research
10 protocol, and then a good amount as part of clinical
11 referrals and medical/legal issues We process MRIs in
12 the same way The image itself is really a presentation
13 of the signal intensity in different parts of the brain so
14 we actually go to the numbers that generate the picture,
15 and we have developed standard procedures that are called
16 algorithms for analyzing the MRI data And we use them
17 the same way

18 Q If you would help me to focus in on just a little
19 part of what you said When you use the MRI, you're
20 looking at an MRI to establish volume, for instance, to
21 equate to brain damage

22 A Yes

23 Q Is that all at that point that you're looking at
24 just to bring the volume on brain damage?

25 A At that point, that's what we're looking at An
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1 MRI is a flexible procedure It can get other features of
2 the brain other than just the structural MRI, but for the
3 structural MRI of the kind we have on Mr Evans, this is
4 pretty much what we do

5 Q For instance, you don't suggest that a volume
6 analysis or MRI photograph alone is the basis for finding
7 dysfunction to psychosis or anything of that nature?

8 A It's sort of a photograph, if I may comment
9 It's literally painted dot by dot by the computer, so it
10 looks like a photograph, but it's really a digital image
11 And from a digital image all you can say whether volumes
12 are normal or abnormal You can not say anything about
13 the clinical presentation, it's just not there It's a
14 different source of information that you need

15 Q Thank you, Doctor I think you cleared that up

16 MS BROWN I have no further questions and I
17 have not objection to Dr Gur being qualified as an expert
18 in neuropsychology and neuro-imaging

19 THE COURT Okay He's qualified

20 DIRECT EXAMINATION (Continued)

21 BY MR NETTLES

22 Q Dr Gur, if we could move for a second to the
23 application of the procedure that you do to the
24 conclusions that we've come to today We're going to talk
25 about that for a little bit

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1 THE COURT Wait a minute Are you saying
2 you don't have any further objection under Council and
3 Jones?

4 MS BROWN As long as there is not a further
5 conclusion As far as him taking the photograph and
6 testifying to volume as he's done, I have no objection to
7 that Any conclusion as to function without any
8 additional information concluded, I still have a
9 continuing objection

10 MR NETTLES I'm going to clear that up
11 right now

12 BY MR NETTLES

13 Q Have you reviewed the testimony of Dr Evans?

14 A Yes, I did

15 Q According to the trial testimony of Dr Evans,
16 what ---

17 MS BROWN Your Honor, excuse me I have r
18 objection here because of what we discussed earlier The
19 reports only said that Dr Gur has looked at the MRI So
20 the only thing I have any basis to work on is that his
21 report said MRI findings were reviewed And he by his own
22 testimony has said you wouldn't make conclusions and a
23 diagnosis for an image alone I think the easiest thing I
24 would request that the Court restrict the testimony to the
25 volume analysis

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1 MR NETTLES I'm not sure that's what he
2 said

3 THE COURT Let me ask this

4 MR NETTLES Why don't you ask him and take
5 us out of it

6 THE COURT The only role I've got is the
7 gatekeeper under the rules What obligation does
8 Mr Evans' counsel have to give you any information other
9 than the report, if I heard Mr Nettles' last question

10 MS BROWN He's under obligation to give an
11 accurate report If he has knowledge that the report is
12 not accurate, I think that should be brought to someone's
13 attention and that the parameters of the report say that
14 the only thing reviewed was MRI and that was it

15 THE COURT But you're trying to exclude his
16 in-court testimony, not his report?

17 MS BROWN I ask to exclude the conclusion
18 to any clinical diagnosis or resulting dysfunction The
19 volume analysis, I believe should come in because he is an
20 expert qualified to do that analysis

21 THE COURT You would have to have some basis
22 to find Dr Gur could not use other experts information
23 that was not a recognized method and that makes his
24 conclusion unreliable in order to exclude his in-court
25 testimony under Rule 702, wouldn't you?

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1 MS BROWN And the fact that we're also
2 asking for it to be considered as more prejudicial and
3 probative because it's confusing to the extent that would
4 not be correct to have made a diagnosis simply on MRI
5 imaging So it would be scientifically reliable and it
6 certainly would be confusing to the jury, and again,
7 there's not a jury present here but that is something to
8 look at under Strickland prejudice and how to get this
9 testimony presented

10 THE COURT We hadn't walked off that bridge
11 yet and that's what I'm trying to underscore I haven't
12 heard what his conclusion is in court I've seen the
13 report, but your objection under Rule 702 that the
14 methodology he used was unreliable, I'm trying to
15 determine what would be the basis for that if there was
16 other evidence he reviewed other than the MRI

17 MS BROWN If the testimony does develop as
18 such there are other pieces of information, then I can
19 cross-examine him on that I have a report that says I've
20 only reviewed the MRI and I based my decision on that
21 But I want to reserve my objection that that's
22 scientifically unreliable

23 THE COURT What's unreliable?

24 MS BROWN To make a decision based solely
25 on an image It's almost like a two-part series here

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1 because there's his testimony in court in this proceeding,
2 and I think he's qualified to give his testimony in this
3 court in this proceeding, but they have to prove prejudice
4 under a Strickland analysis. So if it's coming in, we
5 have to look at it not only simply to be heard today, but
6 whether trial counsel could have done anything with it in
7 the original trial. So they would have been subject to
8 having argue scientific reliability if you're just looking
9 at a photograph and making a diagnosis in which I think we
10 all agree you can't do under scientific accepted practice.
11 It is a bit of information, but it's not the entire realm
12 of information one needs to make a diagnosis of
13 dysfunction.

14 And that's what I'm trying to reserve on the
15 record and something for you to consider. When we talk
16 about Strickland prejudice, it would be something that had
17 to be considered in whether this information would come in
18 in total in a trial.

19 THE COURT I understand your position.

20 MS BROWN Thank you, Your Honor.

21 MR NETTLES Can I maybe clear up something
22 here with a couple of questions?

23 THE COURT Yeah.

24 BY MR NETTLES

25 Q Let me ask you this question. Did you look at
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1 Dr Evans' testimony?

2 A Yes

3 Q Before you looked at Dr Evans' testimony, what
4 did you look at in order to come to the conclusions you
5 reached in the report?

6 A I only looked at the results of the analysis of
7 the MRI

8 Q In the field of neuropsychology and neuro-
9 imaging, is it within the bounds of regularly accepted
10 scientific practice to make the diagnosis that you made in
11 your report based on the information you had at the time
12 you made the report?

13 A I didn't make a diagnosis I reported the
14 results of the analysis which indicated loss of brain
15 tissue That's entirely appropriate That's what we do
16 based on this data

17 Q So what you said in your report that you produced
18 prior to reading Dr Evans' testimony what was your
19 conclusion?

20 A That there's tissue loss and in trying to
21 determine what might have caused the tissue loss and there
22 is a lot less secure grounds It's more of a conclusion
23 than the actual data The pattern of the abnormality was
24 consistent with what you would expect from lead and other
25 toxic exposures

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1 MR NETTLES Does that clear it up or she's
2 more welcomed to ask him some more questions on voir dire

3 THE COURT Do you want to ask him some more
4 questions at this stage?

5 MS BROWN No, Your Honor I believe I've
6 made my position clear and I believe that the witness has
7 testified

8 THE COURT Okay

9 BY MR NETTLES

10 Q Now, let's talk about the procedure that you used
11 in this case on this evidence that was presented to you
12 Are there any publications or peer reviewed articles about
13 the techniques you utilized in this case to come to the
14 conclusions you reached?

15 A Yes, there are multiple peer reviewed articles
16 both with the techniques and the results that come with
17 the techniques

18 THE COURT I'm sorry What was the last
19 thing you said?

20 THE WITNESS The technique and the results
21 when the technique was applied to different populations

22 BY MR NETTLES

23 Q In the past, have people utilized the technique
24 that you used in reaching the conclusions that you reached
25 in the past? Has it been done before?

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1 A Yes, many times

2 Q Share with us a little bit about the quality
3 control procedures that are used to insure the reliability
4 of both the technique and the conclusions that you
5 reached?

6 A Well, there are quality assurance procedures at
7 various spots during the processing although most of the
8 processing is fully automated The results are checked at
9 specific points to make sure that quality is there and
10 retained

11 First of all, when we get the study, we look
12 at the ---

13 Q Study being what

14 A The MRI

15 Q What is it you're starting off with?

16 A We usually get a CD that has the digital data on
17 it

18 Q And what is that called?

19 A Well, usually the data will be stored in a format
20 called Dicom, and that's what our software is ready to
21 accept Sometimes there are our formats

22 Q In this case, what was it?

23 A That's the standard Dicom format

24 Q Before we get too far ahead, what produced the
25 Dicom?

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1 A It was produced after the acquisition of the data
2 from the MRI center in which the study was done

3 Q What was done in order to get the Dicom study?

4 A An MRI of Mr Evans

5 Q So you get the Dicom What do you do with the
6 Dicom?

7 A We look at the images first Sometimes by visual
8 inspection, you can notice abnormalities like tumors or
9 stroke things like that Then we also look for artifacts
10 in the MRI The artifact we are most concerned with is
11 called a shading artifact or field inhomogenating(ph),
12 and that means that the scanner hasn't been maintained
13 properly and that can produce images that do meet quality
14 standards

15 Q Did you see any of that in this case?

16 A No, it was a pretty well done study

17 Then we apply a set of procedures that enable
18 us to compare any specific individual to groups of
19 individuals And that procedure requires quality checking
20 mainly at two spots

21 Q Share with us ---

22 A Essentially what the procedure does is it takes a
23 template of the brain, which is another MRI study done
24 exactly the same way as Mr Evans, but that has been
25 thoroughly labeled in terms of each dot Each dot has

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1 been assigned to a particular brain region by experts, and
2 what we do is we take that MRI and we warp it to

3 Mr Evans' MRI?

4 Q When you say warp it, what do you mean?

5 A Stretching or squeezing specific voxels to make
6 the picture -- the brain fit entirely into the template
7 And we record exactly how much we had to warp the template
8 in order to fit Mr Evans' ---

9 Q Would it be fair to say that you got one brain
10 scan that you've already got and then you sort of take the
11 other one and make sure the points sort of match up?

12 A It has to match up entirely

13 Q What does that tell you when the points matches
14 up?

15 A It's important to know that brains are similar to
16 faces in the sense that they all have the same parts and
17 yet no two are identical We all have eyes and a nose,
18 mouth and ears, and yet no two faces are the same It's
19 the same way with brains and what we basically do is we
20 have to take each brain that we study and Mr Evans' MRI
21 is like all the others and we take the template and we
22 warp This is done mathematically with the algorithms
23 We don't actually have to do it but it is done by the
24 computer, and the computer reports how much each brain
25 region had to be increased or decreased in size in order

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1 to fit Mr Evans' brain?

2 Q How does that insure reliability? I understand
3 there are two ways you can check it, right?

4 A Right

5 Q How is that procedure you just shared with us
6 help to insure reliability?

7 A That procedure is what we do The reliability
8 has been established in earlier studies In the case of a
9 specific brain, we just make sure that the warping works
10 because sometimes computers can be incredibly stupid
11 If there is something abnormal in the brain, if one of the
12 fishers is very deep, there are all sorts of ways in which
13 a computer can be mislead and you can see the results
14 And quality assurance at this point is to make sure that
15 the warping was done correctly and the computer didn't go
16 astray with one brain region or another And if you find
17 that they did, you can go back and check where it happened
18 and why it happened and then you can fix it manually

19 Q What is the second way that you assure
20 reliability

21 A Then we take the resulting image with the reasons
22 and we make sure that the regions really are where they
23 are supposed to be

24 Q How do you do that?

25 A Through anatomical knowledge It really is a
Evans versus The State - Day 4

Rubin Gur - Direct Examination

1 very robust procedures but occasionally errors can occur
2 and you should be able to tell by visual inspections if
3 there is a major or minor error

4 Q Now, let's talk a little bit about the
5 consistency Is this method that you're utilizing
6 recognized by scientific law and procedure?

7 A There is no scientific law that ---

8 Q Scientific procedure

9 A Yeah

10 Q We have law in physics right

11 A Yes The MRI is generated using the laws of
12 physics And the main point is that we did the same with
13 Mr Evans' scan as we did with all the other people we
14 study and these include a large sample of healthy people
15 who just volunteered for our medical research and that we
16 know how healthy people differ from the template, and we
17 have the average difference from the template from the
18 healthy people and this is the basis for our ability to
19 look at an individual to say whether a specific region is
20 within what you would expect from healthy people who are
21 outside the range of what is expected

22 Q I understand Let me ask you this, you completed
23 a quantitative analysis?

24 A Yes

25 Q And you shared with us a conclusion?

Rubin Gur - Direct Examination

1 A Yes

2 Q And that conclusion is contained in the report?

3 A Yes

4 Q And that conclusion is what?

5 A That Mr Evans has reduced volume in several
6 brain regions most prominent in the frontal lobe and also
7 in the occipital area of the brain, and the other major
8 finding is reduced finding in the corpus callosum, which
9 is ---

10 Q We're going to talk about that in a second
11 We'll talk about the ramifications of that in just a
12 second

13 A So my conclusions was that there is brain damage
14 in Mr Evans' MRI There's evidence mostly affecting the
15 frontal lobe but other regions are also effected

16 Q After you come to that conclusion, did you have
17 an opportunity to read the trial transcript of two experts
18 that were put up by the defense, Dr Evans and Dr Berg?

19 A Yes

20 Q Now, I will show you what -- I'm referring to
21 Page 1/30, Line 3 through 13 I would just ask you to
22 just read that, Lines 3 through 13 and then you and I are
23 going to talk about it

24 A "QUESTION As part of that concern, did you
25 order an MRI or anything such as that to look into that?

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1 "ANSWER No, I did not because it will not
2 necessarily rule in or out whether you have a frontal lobe
3 dysfunction It is not specific

4 "QUESTION Would it assist you?

5 "ANSWER If I had the psycho neurological
6 symptoms in addition to the cognitive dysfunction, I would
7 have done an MRI Otherwise, I would perceive it as a
8 waste of money

9 "QUESTION And you didn't see any on that day?

10 "ANSWER No, he had no psycho neurological
11 symptoms "

12 Q Thank you Dr Berg twice refers to the term
13 psycho neurological symptoms Is psycho neurological --
14 is there a recognized study of psycho neurological?

15 A Not that I'm aware of

16 Q So that study is not even recognized?

17 A I don't believe there is a field like that

18 Q Psycho neurological?

19 A Psycho neurological

20 Q Let me ask you this, is there a neuro
21 psychological study?

22 A Yes

23 Q Dr Berg testified according to this transcript
24 there was no psycho neurological symptoms, right?

25 A Right

Rubin Gur - Direct Examination

1 Q Which you I just discussed wasn't even a
2 recognized field

3 A Right

4 Q Were there neuro psychological symptoms based on
5 the transcript that you read?

6 A Yes

7 Q Who found neuro psychological symptoms?

8 A Dr Evans

9 Q What testing did he do that causes yu to believe
10 that there were neuro psychological symptoms present?

11 A He performed the standard neuro psychological
12 test battery

13 Q And you know that based on what?

14 A Based on his testimony

15 Q And based on his testimony, what did the neuro
16 psychological testing reveal?

17 A His neuro psychological testing revealed damage
18 dysfunction of the front lobe and also visual processing
19 systems

20 Q And based on Dr Evans testimony, based on the
21 transcript, what would he want to see in order to
22 determine whether the brain dysfunction was brain damage?

23 A He needed an MRI

24 Q Now, Dr Berg, and it's your understanding
25 Dr Evans and Dr Berg were both defense experts?

Rubin Gur - Direct Examination

1 A Yes

2 Q When you read the defense expert Dr Evans
3 testimony and you read the defense expert Dr Berg's
4 testimony are they conflicted?

5 A Yes

6 Q In what way?

7 A In that Dr Evans discovered neuro psychological
8 deficits and Dr Berg says she saw no psycho neurological
9 deficits I believe she mean neuro psychological

10 Q So even if we accept that she got the terms mixed
11 up, in your opinion was there neuro psychological symptoms
12 present?

13 A Neuro psychological symptoms are define as
14 deficit in neuro psychological testing, that's what
15 Dr Evans has established

16 Q So even if we accept that we've got one expert
17 that believes there's neurological deficits and there's
18 another expert that doesn't believe there's neurological
19 deficits, what would be the tie breaker?

20 A MRI

21 Q Did we ask for an MRI to be done?

22 A Yes

23 Q Now, let's go for a little bit and talk for a
24 minute about how a brain works

25 A I was just mentioned that she you said that you
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1 can not rule out ---

2 Q Yeah She said, "No, I did not because it will
3 not necessarily rule in or rule out frontal lobe
4 dysfunction It is not specific " Is that statement
5 true?

6 A No

7 Q Why is that statement not true?

8 A Because MRI is the standard method the rule out
9 or rule in front lobe damage or damage anywhere else in
10 the brain Sometimes you can get a normal MRI even when
11 there is damage The method is not perfect and it could
12 miss certain types of damage, but if it sees a damage, you
13 know you have ruled it in If you don't see, at least you
14 have ruled out major types of brain damage You may not
15 be able to rule out all types of brain damage

16 Q Would it be fair to say then that if it sees it,
17 it's there?

18 A Yes

19 Q But if it doesn't see it, it might still be
20 there?

21 A It might still be there There are certain brain
22 disorder that do not show as abnormalities in MRI

23 Q Did this MRI show brain damage?

24 A Yes

25 Q That being the MRI of Kamell Evans?

Rubin Gur - Direct Examination

1 A Yes

2 Q Now, let's talk about the brain a little bit
3 Can you see that slide?

4 A Yes

5 Q Share with us what this top slide show

6 THE COURT If you need to get up and go over
7 there, that's fine with me

8 BY MR NETTLES

9 Q You can get off the stand if you'd like to

10 A I think it will understand what we're talking
11 about if we understand a little bit about how the brain
12 works In order to understand how the brain works, you
13 need to know a little bit about the building blocks of the
14 brain

15 These are brain cells and they are also
16 called neurons The difference between a neuron and a
17 regular cell in the body, the main difference is the cell
18 body has a lot of the protrusions surrounding it These
19 protrusions are called dendrites These protrusions are
20 sensitive to chemicals that surround the neurons and these
21 chemicals are called neuro transmitters, and when the
22 neuro transmitters get attached to the membrane of the
23 neuron, they have a different electrical polarity from
24 what's inside the cell And when that difference becomes
25 large enough, you basically have a short So we have an

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1 electric pulse that travels along the membrane of the cell
2 and then shoots down this long fiber, it's called axon
3 And that fiber is surrounded by what you see here as red
4 notches, in reality they are not red they are white They
5 are made of fat

6 These notches are important to insulate the
7 electrical signal otherwise it will dissipate in the same
8 way that if you send electricity through a wire and you
9 don't insulate the wire with rubber, the electricity will
10 go all over The electric company uses rubber, the brain
11 doesn't have rubber so it uses fat That fat is called
12 myelin This myelin sheath surrounds the axon allowing
13 the electrical signal to travel through it and then it
14 comes through the axon terminals and releases chemicals

15 Now, if there is another neuron here, that
16 would activate the next neuron and that's how information
17 is promulgated in the brain?

18 Q What if at the end of that there's a muscle?

19 A If there is a muscle at the end of that, the
20 muscle will contract

21 Q So that's how the brain tells the muscle what to
22 do?

23 A Yes And you can produce arm movement by getting
24 different muscles getting instructions to contract, and
25 different muscles to contract your arm will go up or down

Rubin Gur - Direct Examination

1 or twist

2 Q So that's how the brain tells the muscles what to
3 do?

4 A Yes

5 Q Are different parts of the brain assigned
6 different jobs?

7 A That's an important point This is a cartoon of
8 the neuron, a cartoon in the sense that there is no neuron
9 that really looks like it, but all neurons have all these
10 features in common But some neurons have a lot of
11 dendrites Some neurons have more than one axon and
12 different types of neurons aggregate in different parts of
13 the brain and that what explains why different parts of
14 the brain do different things

15 Q Now, let's talk about what the different parts of
16 the brain do, which coincidentally there's a slide of up
17 here

18 A At the bottom to the right you can see a side
19 view of the brain Feeding the brain the neurons coming
20 from the rest of the body, and that's really coming from
21 the spinal cord and it's the same brain that you see in
22 worms It brings in information about if you're hot,
23 cold, hungry, thirsty, body sensation, they all get fed to
24 the brain through the brain stem Then here you see a
25 part called the cerebellum It's a small part of the

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1 brain -- it's pretty big but it's tucked under the back of
2 the brain but it controls movement mostly?

3 Q Of your body?

4 A Of your body And at this point the left side
5 controls the left side of the body and the right side
6 controls the right side of the body As you go further up
7 each hemisphere controls the opposite side of the body
8 The left side of the brain controls the right side of
9 body, the right side of the brain controls the left side
10 of body And here we have four major lobes of the brain
11 One is the frontal here Then there is a parietal lobe,
12 then the occipital lobe, then the temporal lobe is right
13 behind the temples These are the main lobes of the
14 brain

15 And if you just push one forward ---

16 MR SEEDS I think the record should reflect
17 that we've been talking about slide one in the Gur
18 presentation which I suspect would be offered into the
19 record review should it be necessary We're now going to
20 slide 2

21 THE WITNESS No, it's still slide 1, just
22 one more image of slide 1

23 BY MR NETTLES

24 Q Go ahead

25 A That's what you would see if you slice the brain
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1 down the middle and open it up, so you take a look at
2 inside the brain and you can recognize the brain stem
3 coming in Right here in the center is what's called the
4 limbic system and that's a part that's already well
5 developed in reptiles like crocodiles, and it integrates
6 all the information from the body and has two parts that
7 are right next to each other that are very important for
8 survival One is called hippocampus and the other is call
9 amygdala, and they ask very simple questions but
10 different Hippocampus keeps asking for every incoming
11 information, have I experienced this before, is this new
12 In order to answer that question, it has to have good
13 access to the memory storage

14 So we are constantly checking what we see
15 with what our memories are and the hippocampus will alert
16 us if there's something new happening

17 The amygdala asked another question, not
18 always simple, but am I under threat? Is this
19 threatening? Whatever I see now is it posing a danger to
20 me? And mind you it's a very primitive organ It doesn't
21 speak with words, and when it senses danger it sends an
22 alarm signal

23 Q And just about every creature has that?

24 A Yes Very low in the evolutionary scale we
25 already see fully developed amygdala and hippocampus And

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1 then it issues an alarm. The alarm goes to this region
2 here which is the orbital, frontal area

3 Q Which is what color on the other slide?

4 A Red

5 Q Okay

6 A The orbital frontal area gets the alarm signal
7 from the amygdala and the role of the orbital frontal area
8 which is part of the big frontal lobe is to put that
9 signal into context. So in general, the way the brain
10 works is that information comes in through all the sensory
11 organs. Here the brain stem gives in the sense of touch,
12 heat, cold, those senses. The nose, which is here goes
13 through olfactory bulbs which is right under the orbital
14 frontal area, brings in smells. The eyes bring in visual
15 information. The visual information goes in first to the
16 back of the brain here the occipital lobe.

17 Q And what does it do there?

18 A First everything goes through the thalamus.
19 Thalamus is a region in the middle of the brain, and that
20 sends the information to the appropriate place so visual
21 information is sent to the occipital lobe. The first job
22 of the occipital lobe is to make the picture upside down
23 because the way our eyes work the picture arrives upside
24 down.

25 Q And the brain flips it right side up

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1 A Yes And it processes the information -- very
2 primary features of the information are processed here so
3 the occipital lobe lines can see light, shades, movement,
4 and it just processes it and forwards it to the parietal
5 lobe and in the parietal lobe, for example, if it goes
6 information from the occipital lobe that two vertical
7 lines connected by two horizontal lines, the parietal lobe
8 will come up with a window or a door

9 The parietal lobe integrates the visual
10 information It also integrates the auditory information
11 which similarly first arrives to the temporal lobe in the
12 auditory area and again crosses in a very primitive
13 feature The pace, the intensity, those aspects are being
14 processed and then its sent to parietal lobe to process
15 the meaning of all this

16 Then that information gets forwarded to the
17 frontal lobe and then the front lobe gets information from
18 all body modalities And it's already processed and the
19 frontal lobe is basically our chief executive and decides
20 what to do with all this information

21 Q And that's important The purpose of the frontal
22 lobe is to decide what to do with the information that a
23 person is receiving?

24 A Exactly

25 Q While they are important, why did you call the
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1 frontal lobe the chief executive?

2 A Because the frontal lobe makes the decision what
3 to do with all that information

4 Q All the rest is sort of gathering all the
5 information and the frontal lobe actually decides what to
6 tell the rest of the body to do?

7 A Exactly One other feature to point out here
8 with regard to myelination, to the myelin that surrounds the
9 axon, actually we are born with almost no myelin in the
10 brain

11 Q How can you tell that with babies?

12 A That's why if you take a baby and you tickle the
13 right foot, they will move both arms The electrical
14 signal dissipates in the whole brain and it's not until
15 the sensory and motor areas in the cerebellum are
16 myelinated that the baby can get their act together to
17 move just one arm and move fingers within that arm, and
18 hinder movements in other parts of the body

19 Q While we're talking about brain development, when
20 is the frontal lobe typically fully developed

21 A That's a discovery that was made in the '60s that
22 was postmortem data that very strongly supported more
23 recently with MRI data It turns out that different parts
24 of the brain become myelinated or mature at a different
25 age, at a different rate And it turns out that the

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1 frontal lobe is the last part of the brain to become
2 myelinated

3 Q Which means what?

4 A In the third decade of life The frontal lobe is
5 not fully myelinated until the early 20s That explains
6 why teenagers can be very smart, good at math, put
7 together a VCR to work when we give up, but they do some
8 things that leave us angst, what were you thinking

9 Q Right

10 A And that's because they make poor decisions The
11 judgment is not yet entirely on board with the rest of the
12 brain

13 Q What part of the brain does alcohol affect?

14 A Alcohol and most other drugs of abuse affect the
15 dopamine system, which has a lot of frontal injections,
16 but it can also have other effects depending on the
17 amount It could have effects proportionate to the size
18 of the blood vessels in a particular area, and if alcohol
19 gets there, it can actually numb and kill cells

20 The other important structure and this is it
21 for the lecture today, as you see here in the yellow is
22 the corpus callosum as I mentioned before It's totally
23 made of fibers There are only axons and these are the
24 fibers that connect the left and the right hemisphere
25 They are responsible for being able to experience our own

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1 selves as being a unified individual even though the left
2 and the right hemispheres do different things They look
3 at the world differently but we experience a unified view
4 because the hemisphere communicate with each other through
5 the corpus callosum

6 Q Now, with a understanding of how the brain works,
7 would you be kind of enough to share with us how an MRI
8 works What does MRI stand for

9 A MRI stands for magnetic resonance imaging, and
10 the way it works is that you put the head in a very strong
11 magnetic field, multiple times the strength of the
12 magnetic field of our planet When you do that all the
13 molecules in the brain align themselves with the magnetic
14 fields

15 Q That's physics, right?

16 A Yes

17 Q It happens every time

18 A Yes And when you pass a field at an angle to
19 the main field, a radio frequency signal that's an angle
20 to the big field, the molecules will try to align
21 themselves with a new force But that new force is there
22 very briefly, say, 20 milliseconds

23 Q How long is that in relation to blinking your
24 eye?

25 A It takes 120 milliseconds from when you decide to
Evans versus The State - Day 4

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1 blink and the blink

2 Q So it's not very long?

3 A 20 milliseconds if minuscule There's nothing
4 you can do in 20 milliseconds as a person and it's gone
5 So the molecules will go back to the main force, the main
6 magnet, and when they do that, when it's like my pointer
7 if you bent it and let it go, it doesn't just go back, it
8 rattles when it goes back and that's resonance That's
9 the resonance that we're talking about in resonance
10 imaging

11 Q So you take an image of that resonance?

12 A You record that resonance with a radio antenna
13 Now, the principle here is the way it works -- another
14 biological principle is big bodies move slowly, small
15 bodies move fast, and in this case we're talking about
16 molecules And the smallest and most abundant molecule in
17 the brain is water So the water molecule in the brain is
18 very small and it will resonate immediately Then will
19 come the proteins and then come to big fat molecules last
20 So depending on when you record, your image
21 will be influenced either by water mostly or mostly by
22 proteins and fat And we take that information and
23 basically what you get from the computer is a readout of
24 the signal intensity in each point in the brain And you
25 know if we take a photograph and we blow it up and blow it

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1 up, we see the dots that make it up, and these are called
2 pixels

3 In the case of an MRI we have three
4 dimensional pixels because each slice that we take from
5 the brain has each element in it has a known length,
6 width, thickness and depth And these three dimensional
7 pixels are called voxils

8 The computer determines how bright or dark
9 each voxel is based on how much signal comes from that
10 area So the computer literally paints the MRI dot by
11 dot, and what we can then stack up the slices As you can
12 see up here ---

13 Q Hang on a second, if you don't mind You've got
14 a whole bunch of little slices

15 A Yes

16 Q The computer takes them and stacks them almost
17 like you slice a loaf of bread and you put it back
18 together

19 A Exactly

20 Q By slicing the bread it allows you to look what's
21 on either side of each slice?

22 A Exactly

23 Q And that's what an MRI does?

24 A That what an MRI does

25 Q Share with me what quantitative analysis is?

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1 A What we do is we go straight to the signal that
2 produces the image and we tell the computer based on these
3 images these are ranges of intensities that you get from
4 grey matter which means the brain cells themselves

5 Q Right

6 A this is the intensity you get from white matter,
7 which is the fat, myelinated fibers, and this is the
8 intensity you get from fluid Our brain literally floats
9 all the time It is surrounded by fluid and has fluid
10 inside it, the ventricles, which is fortunately otherwise
11 we would get heavy injury every time we sneeze

12 Q Right

13 A The back of the head is very nice and smooth, but
14 the front has a lot of nasty bones right over the nose and
15 the front of the brain is literally sitting on those
16 bones, so the fluid gives a cushion and also nourishes the
17 brain But at the end of the analysis, we know exactly
18 how many voxels came from grey matter, how many came from
19 fluid, and since we know the precise dimensions of each
20 voxels, we can calculate the volume of each compartment,
21 grey matter, white matter, and cerebral spinal fluid

22 Q So once you've done the quantitative analysis,
23 you can tell the size of the voxels and all the different
24 types of fluid, grey matter, whatever, what do you compare
25 that to?

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1 A So then we apply the warping algorithm where we
2 take our template where we know those values on the
3 template and we warp it to a particular scan like
4 Mr Evans

5 Q Right

6 A And we know the volumes in the original scan so
7 we can calculate the volumes for Mr Evans by knowing how
8 much we have to flex or squeeze each ---

9 Q Sir, sir, if you had the template and you had
10 another scan that was small and you had to enlarge it 30
11 percent to get it to the size of the template, obviously
12 now small would the original brain had been? How much
13 smaller

14 A Well, it could be smaller and we know that this
15 particular brain is whatever percent smaller than the
16 template

17 Q The amount you had to enlarge it is the amount
18 that was smaller before you enlarged it?

19 A That's correct, and that goes for each region
20 within the brain

21 Q I understand, and you do that for each one of the
22 slices of bread

23 A Yes

24 Q And the other way of doing an MRI is to eyeball
25 it

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1 A Yeah

2 Q What is eye bailing an MRI mean

3 A The appropriate term would be a clinical
4 neuro radiological reading

5 Q What is that?

6 MS BROWN Objection, Your Honor, I believe
7 that's outside the field of expertise

8 THE COURT How would it be outside his field
9 of expertise?

10 MS BROWN I believe he testified he is not
11 a medical doctor and he is going into medical doctor
12 terminology

13 MR NETTLES I just asked him what it is, I
14 didn't ask him if he did it

15 THE COURT He's qualified as an expert in
16 neuro-imaging

17 MS BROWN But not as a radiologist

18 THE COURT You can lay more foundation

19 BY MR NETTLES

20 Q I'm not asking you if you did radiology, what is
21 a clinical neuro radiological reading?

22 A A neuro radiologist will look at the images that
23 are generated by the MRI and will see if there is anything
24 there that can kill you, basically Is there a tumor,
25 cerebral vascular disease, a stroke, is there evidence for

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1 multiple sclerosis, is there an arterial verus
2 malformation, all these are things that if they are found,
3 they are dangerous and need to be treated

4 Q Let me ask you this, as a neuro psychologist in
5 your profession, if a radiologist or a neuro radiologist
6 says to you, I didn't see anything, does that mean in your
7 field as a neuro psychologist specializing in neuro-
8 imaging, that the MRI will not find anything?

9 A No

10 Q Why not?

11 A Because a large number of head injuries do not
12 produce effects that can be visualized by a clinical
13 reading, an eye balling For example, a good analogy is
14 what happened in the Black Forest in Germany where it
15 wasn't until satellite images were taken and trees were
16 literally counted that they discovered the forest was
17 dying, it's diseased And the reason is that it's not
18 that the forest lost a third of its trees, but it didn't
19 all happen in one spot If it happened in one spot, just
20 any people living there would have noticed and any
21 airplane going over there would have noticed, but happened
22 in a diffused way So you can't just see it by
23 eye balling

24 Q Let's flip this, though, but as we just said, in
25 your field that if a clinical neurological reading does

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1 not produce brain dysfunction, that doesn't necessary mean
2 that an MRI won't find it Let's flip that If a
3 clinical neurological reading does show brain dysfunction,
4 what are the odds that an MRI is going to confirm that?

5 A Oh, ther for sure you'll see it on the analysis

6 Q Is that is because which of the two is a more
7 specific test?

8 A The quantitative analysis

9 Q The quantitative MRI?

10 A Yes

11 Q Do you and your colleagues have a particular area
12 focused for your analysis?

13 A Yes, we do the quantitative analysis I think
14 the example can be illustrated in the next slide

15 THE COURT That would be No 3?

16 MR NETTLES Yes

17 BY MR NETTLES

18 Q Tell the Judge what we're looking at?

19 A Here we're 'looking at an MRI and it was tweaked

20 Q And what do you mean by tweaked

21 A You can change the intensity of the picture
22 It's like what you can do on a tv screen to make the
23 contrast bigger or smaller

24 Q Right

25 A This one was tweaked so it would be best for
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1 discovering atrophy or death of cells when cells are
2 missing What Profession Delvotiekus ph) has done here,
3 he took the original scan ---

4 Q Which is?

5 A On the left -- which is optimized for detecting
6 cell loss, and he took out 30 percent of the voxils

7 Q He did that on the picture

8 A On the data 30 percent, almost a third, and
9 produced the picture on the right and nobody can see a
10 difference between those two

11 Q So what this doctor did in this study was he took
12 the original and took 30 percent of the voxils out?

13 A From that region

14 Q This region right here?

15 A Yes

16 Q Put it a different way, if this was a normal
17 original brain and a different person and there was a scan
18 run and there happened to be for whatever reason 30
19 percent less brain matter in this area, what would this
20 slide look like?

21 A It would look like this

22 Q So in other words ---

23 A A neuro radiologist would not be able to tell
24 that there is tissue loss, and the reason is that 30
25 percent was not all taken from the same spot If he had

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1 taken a third of the voxils all from the same area, you
2 would see a hole?

3 Q So what you're saying is this red area represents
4 how much is essentially missing?

5 A I'm sorry

6 Q In this picture, in the 30 percent atrophy, was
7 all 30 percent taken from the same spot?

8 A No, it was taken randomly from this region that
9 was shown with the red boundary

10 Q And the red boundary represent 30 percent of the
11 brain loss would be

12 A It shows the region where 30 percent of the
13 voxils were taken

14 Q So everything that was taken out was taken out in
15 that small area?

16 A Smaller area

17 Q Not the whole brain?

18 A No, no, no, the small area, and you still can't
19 see it with the naked eye

20 Q Now, let's go to the next slide which is believe
21 is the slide of the report, No 4 At the top it says,
22 "Figure 1 Volumetric Analysis, Dr Evans MRI Volumes are
23 expressed a Z-Zones Standard Deviations from the Mean,
24 relative to health men " When we talk about standard
25 deviations of the Mean from nealthy mear, what does that

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1 mean?

2 A For the same procedure that I described on Evan's
3 brain was performed on healthy people who volunteered for
4 research

5 Q When you say same procedure, you mean the MRI?

6 A The MRI, including the warping Each one of them
7 was warped into that same template And some of them were
8 smaller, some of them were bigger, some of them had to be
9 shrunk, expanded in different regions ---

10 Q But they were all healthy?

11 A All healthy And we recorded the volume of each
12 part of the brain in each one of those people

13 Q And is that represented along the volume here in
14 each part of the brain?

15 A Yes And then we calculate the average of the
16 volume for each brain region

17 Q Each one of these regions?

18 A Of these healthy people and you don't just
19 calculate the average, you want to know the dispersion
20 around the average so you calculate standard deviation
21 which is approximately the average difference from the
22 average in you sample

23 Q The average being the normal healthy brain?

24 A Normal healthy brains

25 Q And let me just say, that sample is composed of
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Rubin Gur - Direct Examination

1 how many different samples?

2 A In this case there are 41 men we compared him to
3 who are from similar social demographic backgrounds
4 According to the laws of statistics, 68 percent of people
5 will be within one span of deviation from the average, 99
6 percent of the people will be within two standard
7 deviations So now we can see now the volumes that we
8 obtained from Mr Evans stack up or compare against the
9 volumes of the healthy sample

10 Q Right

11 A And a Z-score tells you how many standard
12 deviations away from the average a particular value is
13 So a Z-score of 1 means that a standard ---

14 Q This line right here?

15 A That's minus 1, 0 is average

16 Q So 1 is the top line, the top of the chart

17 A Yes

18 Q And 0 is the second line there?

19 A Yes, and that's the average If the average
20 volume of the frontal lobe is say 400 millimeters in your
21 sample and you look at Mr Evans and his frontal lobe is
22 also 400 millimeters, it will show as a dot and 0

23 Q He was 0 there which means he was right on the
24 standard ---

25 A On the average

Evans versus The State - Day 4

Rubin Gur - Direct Examination

1 Q As a matter of fact, how many different areas are
2 tested?

3 A 96 regions

4 Q But how do you represent it on this chart here?

5 A How I represent it on this chart is the main
6 lobes, frontal, temporal, preceptial, occipital and all of
7 the regions where on of the hemispheres was approaching 2
8 or worse than 2 standard deviations

9 Q How many did he come at below 2 standard
10 deviations from the Mean?

11 A Where you can see on the right where there are
12 quite a few deviations where he's below 2 standard
13 deviations, clinically significant if it's more than 1
14 standard deviations If you look at the whole lobes, his
15 temporal and parietal lobes are within normal, but both
16 frontal lobes left and right and the right orbital lobe
17 are below normal, are 1 1/2 approaching 2

18 Q Which means?

19 A It's clinical significant You don't see that
20 In a normal brain those four dots would be on a straight
21 line or with just very little fluctuation The first four
22 dots that you see ---

23 Q Oh, right here

24 A The volumes will be a straight line Maybe there
25 will be some jaggedness to it, but basically you get a

Rubin Gur - Direct Examination

1 straight line So the significant reduction in volume in
2 the frontal lobe bilaterally and in the occipital lobe on
3 the right

4 THE COURT Did you say that it's clinically
5 significant if the standard deviation is more than 1?

6 THE WITNESS Yes To explain that question,
7 if you think you're aging and your memory is not as good
8 and you start worrying and you want to know about it that
9 you may be developing Alzheimer's you may want to go to a
10 neuro psychologist to be examined According to the
11 standard procedures, if any of your cognitive abilities is
12 1 standard deviation below your average, then you are
13 classified as having mild cognitive impairment

14 And it turns out that 20 percent of people
15 who were diagnosed with mild cognitive impairment will
16 have Alzheimer's within a year and another 30 percent will
17 have it within two years So 1 standard deviation below
18 normal is clinically significant in this situation and in
19 most medical situations

20 You may look at it and say, well, probably
21 nothing, but if you put it with other factors like you're
22 not depressed, it could be that you're depressed so, you
23 will probably want to repeat that But if it's there, you
24 will be treated

25 BY MR NETTLES

Rubin Gur - Direct Examination

1 Q On how many parts of Kamell's brain is he more
2 than 1 standard deviation from the Mean?

3 A Away from the Mean?

4 Q Yes

5 A I can count and say about 10 or 12

6 Q And how many is he more than 2 standard
7 deviations off the Mean?

8 A Nine

9 Q And what do these stars represent?

10 A The stars represent the regions that show reduced
11 volume in studies of lead exposure

12 Q So, now that we've got all of this, we've got a
13 lot of areas that he is -- is there any area that he's
14 above the Mean?

15 A No

16 Q With the exception of two of those points, all
17 points are above or below the Mean?

18 A There are other area where he is at the Mean, I
19 just didn't understand

20 Q I understand, but these are the ones that are
21 clinically significant

22 A Yes

23 Q And of the ones that are clinically significant,
24 I guess what I'm getting at here, what significance do you
25 assign to the fact that there are that many points that he

Rubin Gur - Direct Examination

1 is below the Mean?

2 A It means that his brain is damaged

3 Q What is the effect in day to day life, what is
4 the impact, and more specifically, what's the most
5 significant place there's brain damage?

6 A The most significant damage is in the frontal
7 lobe, especially in the orbital frontal area, and that's
8 the area that, as I mentioned before, inhibits amygdala
9 and puts the alarm signal that the amygdala will send into
10 a context, and prevents and action based on the alarm or
11 modulates or regulates that action

12 Q In day to day life, in real life situations, what
13 is the impact of a damaged orbital frontal lobe? How does
14 that affect day to day life?

15 A It's a famous case of Pheneas Gage who was an
16 upright citizen, married had a family, and then a railroad
17 spoke went through his brain -- it became very well known
18 -- and he miraculously survived, but as soon as he
19 recovered from the injury, he began philandering,
20 gambling, got into bar room brawls and just his social
21 skills, his decision making, deteriorate, and that's what
22 we see with frontal lobe damage People with frontal lobe
23 damage will make bad decisions that are not in line with
24 their own good, they're not in line with their own goals
25 People with Parkinson's Disease, for example, affect the

Rubin Gur - Direct Examination

1 frontal lobe You get people all of their life were
2 productive citizens of society, they get Parkinson's
3 Disease and all of a sudden they gamble all of their money
4 away

5 Q Let me ask you this, what does modulation mean?

6 A It's making things higher if they're too low or
7 making things lower if they're too high So if the alarm
8 signal is strong, you calm it down

9 Q That's what the brain is supposed to do?

10 A Yes

11 Q Specifically what part of the brain is supposed
12 to modulate the emotion?

13 A Frontal

14 Q If the frontal lobe is damaged, what affect does
15 that have on the brain's ability to modulate your
16 activities?

17 A It will have difficulties in perceiving the
18 situation and correctly in relation to the context of the
19 situation

20 Q What is perseveration?

21 A The frontal lobe in order to be able to be an
22 executive, has to derive a principle from all the
23 incidents that it experiences and then apply the
24 principle, and it also has to have the flexibility to
25 change if a particular principle doesn't work any more

Rubin Gur - Direct Examination

1 So that was like what was demonstrated in one of the tests
2 that Dr Evans gave that he had a hard time understanding
3 the principle and once he understood the principle, he
4 couldn't switch away from it

5 Q If you change the underlying data supporting the
6 principle, what ---

7 A The frontal lobe is supposed to adjust to it and
8 adjust to the behavior So like a several Parkinsonian
9 patient may stand in front of the elevator and the door
10 opens and he came initiate the movement to go in You have
11 to push him a little bit and he will walk, and he will
12 then walk until he hits the wall on the other side He
13 will have difficulties modulating and changing his
14 behavior in accordance to what's going on And that's
15 call perseveration The perseveration is a classical
16 frontal lobe sign that you frontal lobe is damaged when
17 you do something again and again and again and you don't
18 change it based on the experience You get into the set
19 and you can't get out of it

20 Q Right

21 A Like even the simple task of asking somebody to
22 copy a drawing that has several dots in it, a frontal lobe
23 patient with that syndrome will continue to make dots
24 until he runs out of the paper?

25 Q What impact does the reduced volume of the brain
Evans versus The State - Day 4

Rubin Gur - Direct Examination

1 have on processing anxiety signals?

2 A Some of the regions that show lower volume are
3 the insula in the case of Mr Evans, and the insula along
4 with the other limbic regions

5 Q All of which he slows what?

6 A He has reduced volume, that's the part that
7 interprets anxiety, threat, experiences those emotions
8 If the volume is low, there are deficits in the ability to
9 integrate those emotions He also has low volume in
10 several occipital areas, visual area and that may explain
11 the visual constructional deficits that Dr Evans has
12 noted in his testing

13 Q Were your findings consistent with Dr Evans'
14 findings?

15 A Yes

16 Q Where they more or less specific than Dr Evans?

17 A They were a lot more specific

18 (Learned Treaties marked as Applicant's 49
19 and 50 for identification)

20 BY MR NETTLES

21 Q I'm handing you what's been marked Applicant's 49
22 and 50 Are those Learned Treaties in the filed you
23 practice?

24 A Yes They were both published and peer reviewed
25 really high impact journals in the field

Rubin Gur - Direct Examination

1 MR NETTLES Your Honor, at this time I'd
2 introduce Applicant's 49 and 50 into evidence

3 MS BROWN Your Honor, I don't object, but I
4 jus want to make sure that we get the dates of those
5 because I believe they were well after the trial

6 MR NETTLES I believe the dates are on
7 them

8 THE COURT They're in evidence

9 (Learned Treaties marked as Applicant's
10 Exhibit No 49 and 50 for identification was admitted into
11 evidence)

12 BY MR NETTLES

13 Q And as opposing counsel pointed out in her
14 objection, the dates of these journals may have been after
15 this trial, but do they document principles ---

16 A The method is older specifically looking at the
17 facts of lead exposure

18 Q Were these the first two articles that ever
19 linked lead exposure to brain damage?

20 A No, no

21 MR NETTLES Your Honor, I'd like to
22 introduce Applicant 51, which is a printed copy of the
23 material -- I mean -- the slides that Dr Gur used for
24 purposes of his testimony

25 MS BROWN No objection, Your Honor
Evans versus The State - Day 4

Rubin Gur - Direct Examination

1 THE COURT They're in evidence

2 (Slides marked as Applicant's Exhibit No 51
3 or identification was admitted into evidence)

4 Let me ask you a few questions to clarify the
5 record You mentioned a phrase about the failure to be
6 able to adjust behavior and you used a term and I didn't
7 know how to spell it When you were talking about ---

8 THE WITNESS The circumstances?

9 MR NETTLES Perseveration

10 THE COURT Can you define that for us one
11 more time

12 THE WITNESS It's repetitive behavior that
13 does not adjust to the circumstances

14 THE COURT You were also talking about
15 earlier when you were looking at the slide and I think it
16 was the first slide, it's talking about the large scale
17 structure of the brain and you were talking about the area
18 that's part of the limbic system and there were two
19 sections in there What are those again?

20 THE WITNESS Hippocampus, amygdala

21 BY MR NETTLES

22 Q Dr Gur, did you prepare a report for this trial?

23 A Yes

24 Q And that a copy of your report?

25 A Yes

Rubin Gur - Cross-Examination

1 Q And is that your signature on the back?

2 A Yes

3 MR NETTLES A+ this time I would ask that
4 Applicant's No 52 be introduced into evidence

5 MS BROWN No objection, Your Honor

6 THE COURT It's in evidence

7 (Report marked as Applicant's Exhibit No 51
8 marked for identification was admitted into evidence)

9 THE COURT Cross-examination

10 CROSS-EXAMINATION

11 BY MS BROWN

12 Q Dr Gur, I'll have to apologize in advance if I
13 say something or pronounce something incorrect My
14 background is in government so I'm not familiar with all
15 the terms I understood you're not a medical doctor,
16 correct?

17 A Yes

18 Q You work with medical doctors?

19 A Yes, actually married to one and have a daughter
20 who just became one

21 Q You're just virtually surrounded?

22 A Yes

23 Q Is it your practice that you see anything on an
24 MRI that raises a concern, a statistical deviation, what
25 would do at that point if you were reviewing this in a

Rubin Gur - Cross-Examination

1 diagnostic manner

2 A I would report the finding to the treating
3 physician

4 Q You would not diagnose

5 A It depends If I were referring the patient for
6 diagnoses, I would also examine the patient, do the
7 testing and integrated with the imaging data and then I
8 could offer a diagnosis

9 Q And the testing that you're talking about that
10 you would perform would be similar to what Dr Evans in
11 this case did?

12 A Yes

13 Q And I understood that you agree with Dr Evans in
14 this case? This would be Jim Evans

15 A Yes I thought he did a thorough evaluation and
16 reported it in a fairly straight forward fashion, fairly
17 standard?

18 Q You were asked about Dr Elir Berg's testimony,
19 do you recall that?

20 A Yes

21 Q Are you aware that Dr Berg is a medical doctor?

22 A Yes

23 Q Psychiatrist Your perception was that the
24 statement that she made concerning the MRI was incorrect?

25 A Yes

Rudin Gur - Cross-Examination

1 Q But I also heard you say that it may still
2 correct because there are some things that cannot be
3 diagnosed from the MRI

4 A I don't remember saying that I thought what I
5 said was that there are situations where the MRI comes out
6 negative and there may still be brain damage Is that the
7 statement you're referring to?

8 Q Yes, it is

9 A Then that's true

10 Q It's not definitive for certain diseases?

11 A You can definitively rule it in, but for certain
12 diseases you can't definitively rule out brain damage just
13 based on the MRI

14 Q So you object because it's pretty much a broad
15 statement?

16 A Well, it's wrong in one angle in the sense that
17 you can rule in brain damage with MRI It's not the case
18 if you can't rule in It's partly true in the other part
19 of it in that you can't always rule out There are some
20 forms of brain damage that you can't rule out

21 Q But there's a difference between brain damage and
22 dysfunction, do you agree?

23 A I think they are fairly similar terms
24 Neuro psychologists prefer to use dysfunction rather than
25 damage until they have the MRI results because it is not

Rubin Gur - Cross-Examination

1 quite as strong as the word damage Dysfunction means
2 it's not working out, damage means that it is actually
3 something broken

4 Q And you equate any kind of reduction with brain
5 volume as brain damage?

6 A Yes

7 Q Is there any level of reduction that would not
8 constitute brain damage?

9 A Yes, if it's within the normal limits for an
10 individual

11 Q So individuals vary which I believe is a
12 statement you've made before

13 Let's talk about how they vary at least in
14 you chart here If we're talking about clinically
15 significant, if it's more than 1 standard deviation, does
16 that mean necessarily there is presence of dysfunction?

17 A Well, you don't get that in normal brains You
18 got two aspects of this, one is when you look Z-scores in
19 my graph, these are the absolute Z-scores These are how
20 many standard deviation away each region is from an
21 individual, but it's also important to look within that
22 individual and you see a lot more fluctuation in the
23 volumes then you see in normal brains So for someone to
24 have -- or even the difference between the hemispheres for
25 someone to have a normal right hemisphere volume say on

Rubin Gur - Cross-Examination

1 the superior frontal lobe and then the left superior
2 frontal is more than 2 standard deviations below normal,
3 that just doesn't happen in normal people

4 Q Okay Let's kind of zero in on the standard
5 deviations I thought I understood you to say that it was
6 "clinical significant," if it was less than 1 standard
7 deviation?

8 A Yes

9 Q But I notice that less than 1 standard deviation
10 also can be normal under your chart, is that correct?

11 A No

12 THE COURT I'm confused I thought he said
13 it had to be more than 1 to be clinically significant?

14 BY MS BROWN

15 Q Did you say more than 1?

16 A More than 1 I may have said 1 but worse than 1

17 Q Worse than 1?

18 A Yes

19 Q So it would have to be 2 to be clinically
20 significant?

21 A Worse than 1, it doesn't have to be 2

22 Q Is there a difference between being clinically
23 significant and diagnostically significant?

24 A No, the difference I'm drawing is being
25 clinically significant and being clinically and statically

Rubin Gur - Cross-Examination

1 significant Statistical significance in studies in order
2 to conclude that one sample is different from another --
3 that's not exactly the analogy If you want to compare
4 one individual to a sample and you ask if that is that a
5 statistically impossible that individual is a part of that
6 sample, you would say that if there were more than 2
7 standard deviation difference

8 Q So there is a difference in the way things are
9 treated in a clinical or statistical approach as opposed
10 to a diagnostic approach?

11 A Clinical is more on the side of diagnostic, if
12 you wanted to diagnose someone Like if you had high
13 blood pressure, you would go to a doctor Your blood
14 pressure may even be within normal, but on the high part
15 of normal He will give you a panel of tests and if he
16 finds, for example, in an echocardiogram that your heart
17 is enlarged, again normal but in the upper range of
18 normal, he will conclude that your heart is already making
19 the adjustment so we'd better treat your blood pressure

20 Q So it could be an indicator?

21 A Yes I think that's a good way of describing it

22 Q And that's what we're looking at when we go down
23 to these sections, indicators of brain damage?

24 A So now more than 2 standard deviations is beyond
25 indicator

Rubin Gur - Cross-Examination

1 Q How would you characterize that?

2 A It's there It's the damage we are looking at

3 Q So once you get below 2 standard deviations?

4 A It's a little arbitrary the rule

5 Q Exactly

6 A You see there's a bunch of regions that hover
7 around 2 You have close to 2 or below 2 and that's the
8 damage we're looking at?

9 Q So would it be fair to say that here and here and
10 here we have indications, strong indications that maybe
11 something going on that may be damaged?

12 A Yes

13 Q Those are strong Well, let me ask you this,
14 this here -- and I'm pointing to here -- this part of the
15 screen of the longer graph, this relates to the frontal
16 lobe, right?

17 A Yes

18 Q But here on the same graph, you have the frontal
19 lobe well above 2?

20 A Yes

21 Q Could you have some compensation?

22 A Well, the frontal lobe is a big chunk of real
23 estate It's really very big and these are smaller
24 regions within the frontal lobe, so the whole frontal lobe
25 is between 1 1/2 and 2 standard deviation lower than

Rubin Gur - Cross-Examination

1 normal, but some regions within the frontal lobe are much
2 worse, other regions are less and this states the average
3 of them, the total of them

4 Q So in total it's fairly small?

5 A Yes

6 Q These indicators are fairly small indicators?

7 A For the total volume?

8 Q Yes

9 A I would say it's beyond mild, it's moderate

10 Q But you agree with Dr Evans in the battery of
11 tests that are normally associated with your profession
12 that he interpreted them correct, and if he considered the
13 indicators to be mild cognitive dysfunction, would you
14 disagree with his analysis?

15 A As I recall, there are some indicators that are
16 mild, but some are moderate

17 Q And you said -- going back to neuro-imaging
18 specifically you said when you compare the images you
19 receive, you compare them to a database and that database
20 is an average of what? How many that you always received
21 and you continued to add to this study or how do you come
22 to your database?

23 A No, the database is at this point really frozen
24 It's a database we collected so we can use in comparison
25 for other populations We are collecting data all the

Rubin Gur - Cross-Examination

1 time at some point we may publish another database, a
2 larger database

3 Q You would change that if you got some indicators
4 if it didn't cover a broader spectrum?

5 A You have to be very -- that wouldn't be the
6 problem Our healthy volunteers are not -- we could as
7 many college undergraduate and medical students as we
8 wanted to, but that's not what we use for creating the
9 normative database We go out in the community We try
10 to get the plumber to come in to volunteer for a study
11 It's very difficult work This is all done as part of the
12 grant -- the federal grant so you have to justify how many
13 people you study You can't study too few because then
14 you make it less likely to have a finding, but you can't
15 also study too many because it costs too much and is not
16 justified

17 There is a procedure called power
18 calculations in which you have to present and explain this
19 is how many people I need to study in order to establish
20 that The normative sample size that we have is actually
21 more than adequately powered to establish normal
22 variability on the MRIs

23 Q If you had several participants who had high
24 education, wouldn't that skew the database?

25 A Yes There isn't a big strong correlation
Evans versus The State - Day 4

Rupin Gur - Cross-Examination

1 between education and brain volume, but there is overall a
2 correlation and IQ and brain volume and IQ is correlated
3 with education And so if we had a lot of highly educated
4 people in the sample, that would have skewed it That's
5 why we look at representative sample

6 Q For instance, if you have these indicators, there
7 may be something wrong or there is something wrong in the
8 area you want to look at further Say, for instance,
9 someone had a minor learning disability and that person
10 was enrolled in programs to reach him or her and to be
11 able to develop ways to compensate and receive information
12 better, would the dysfunction not lessen even though the
13 indicator may still be present?

14 A Oh, yeah, the whole field of neuro rehabilitation
15 is focused on trying to ameliorate the dysfunction and
16 what you can use MRI to help you is learning disability is
17 a very broad term It can be caused by very different
18 abnormalities, mechanisms The MRI, for example, is show
19 you this person is learning disability because, for
20 example, the left temporal lobe has abnormally low volume
21 so verbal memory is poor So in order to overcome that,
22 we teach them strategies other than those relying on
23 verbal memory

24 Another example is if you have a lesion in
25 the right frontal area, one of the symptoms is that people

Rubin Gur - Cross-Examination

1 speak in monotone Or if it's on the left, they can't
2 speak at all They have the classical so-called bronchus
3 dysphasia or expressive aphasia But there are cases, for
4 example, with left hemisphere lesions who can't speak, but
5 they can sing So essentially it is to teach them to say
6 what they want to say in song and then taper off the music
7 from it, so after a while when it's done, they are able to
8 speak and you wouldn't tell that in their mind they're
9 singing with a flat voice

10 So MRI can help guide the specific
11 rehabilitation strategy that you will use in individual
12 cases

13 Q And to lessen dysfunction once it's been
14 identified?

15 A Yes

16 Q Dr Gur, do you keep up with publications in your
17 area?

18 A I try but it's not easy

19 Q Are you familiar with a study done by Washington
20 University School of Medicine a finding that, "Brain
21 damage found in cognitive normal people is an Alzheimer's
22 marker"?

23 A They have an excellent group at Washington

24 Q I'd like to show you an entry from their web site
25 and see if this refreshes your memory as to whether you've

Rubin Gur - Cross-Examination

1 seen this article or not

2 A Okay I haven't read this article, no, but I
3 know the people involved and they are top notch people

4 Q Just basically the gist of the argument is that
5 you define brain damage but that doesn't necessarily
6 equate with dysfunction, is that consistent with your
7 testimony?

8 A Yeah, it is Often you say, in Alzheimer's
9 especially, you can see the brain damage before the
10 patient actually experiences symptoms or reports them
11 Most likely the dysfunction was there, it just didn't pass
12 the threshold of being clinically detected

13 Q Okay Do you recall participating in either
14 editing or contributing to a book for psychiatry in a
15 chapter labeled, "Neurological assessment and psychiatric
16 research and practice," and this will would have been a
17 revised edition 1991 with Andrew Sokin and Rachel Gur,
18 which I take would be related?

19 A Yes That's my wife

20 Q In Chapter 72 of that publication I have a quote
21 and I'd like for you to either agree or disagree if that's
22 still correct

23 A Okay What year was that?

24 Q 1991 "MRI or CT may show the region of anatomic
25 destruction but will tell us nothing about the effect on

Rubin Gur - Cross-Examination

1 the lesion of behavior "

2 A Yes

3 Q Okay The second quote, "Neuro psychological
4 assessment is essential for the psychiatrist to make the
5 link between brain dysfunction and brain behavior "

6 A Yes

7 Q Dr Gur, your report has been admitted into
8 evidence, do you have that?

9 A Yes

10 Q Let's start with the findings The Summary of
11 MRI Findings, the header, do I understand when you first
12 wrote this report the only thing you had in connection
13 with this case were the MRI films or CD?

14 A Yes

15 Q And under Summary and Opinion, the second page,
16 you said, "These abnormalities" and that's relating to
17 volume, correct?

18 A Yes

19 Q "These abnormalities likely relate to behavior
20 deficits in the areas of rational decision making,
21 emotional processing, and coordination of sensory
22 information "

23 A Yes

24 Q Is that consistent with your testimony that these
25 are indicators, something that needs to be looked at?

Rubin Gur - Cross-Examination

1 A Yes

2 Q The next sentence, Dr Gur, "Mr Evans has brain
3 damage that causes diminished capacity to appreciate and
4 respond to threat and to adjust his behavior to social and
5 environment context " Are you saying it's an indicator
6 that he may have that?

7 A Yes, he has the kind of brain damage that would
8 cause --

9 Q The intent of that sentence is not to say I find
10 diminished capacity

11 A No, I'm sorry if it sounds that way

12 Q Dr Gur, forgive me for asking you this but I
13 assume that you're being paid for your appearance here?

14 A Yes

15 Q And the work that you do?

16 A Yes

17 Q And I understand that you mentioned earlier that
18 you testify a good bit?

19 A Just had a bunch of them It's unpredictable but
20 every once in awhile it happens

21 Q It's been pretty intense later, though, hasn't
22 it?

23 A It's been amazingly intensive

24 Q Within the last 30 days, how many times have you
25 testified in similar proceedings?

Rubin Gur - Cross-Examination

1 A Two

2 Q Do you recall being in Kentucky recently? Was
3 that Kentucky?

4 A Yes, one was Kentucky

5 Q And California?

6 A No, one was in Denver

7 Q Have you recently gone to California or intend to
8 go to California in a case?

9 A I haven't testified in California recently I
10 have testified in California about two years ago

11 Q Do you intend to go to Connecticut?

12 A Yes

13 Q And what type of case would that be?

14 A It's also --

15 Q It's a capital matter

16 A It's a capital matter, yes, although it's the
17 actual trial

18 Q And in the Connecticut matter, that would be
19 Mr Roskowski, does that ring a bell?

20 A Yes

21 Q You produce a report for Mr Roskowski's case?

22 A Yes

23 Q And did you find in your opinion there was
24 dysfunction?

25 A Yes In his case I also interviewed him
Evans versus The State - Day 4

Rubin Gur - Cross-Examination

1 Q There was a personalized interview?

2 A Yes

3 Q But you didn't do that here?

4 A No

5 Q In Mr Roskowski's case, if you recall, did you
6 have more indicators than you have here?

7 A I don't remember In my life, I can't think
8 about something until it has actually happened

9 Q Would it be helpful if I showed a copy of the
10 report?

11 A Sure I think a bit fewer

12 Q A bit fewer in this case

13 A In Roskowski's case About the same Roskowski
14 had 19 and Mr Evans has 17

15 Q If you wouldn't mind turning to the summary
16 there, this is what I really wanted to ask you about
17 because I understand that all of these are indicators and
18 it's something that you would refer to a medical doctor
19 for examination, but I wanted to ask you about one
20 particular sentence If I read you a sentence, I would
21 like you to review your work in the other case and tell me
22 if you have a similar sentence This is a sentence from
23 Mr Evans' report "Mr Evans has brain damage that
24 causes diminished capacity to appreciate and respond to
25 threat and to adjust his behavior to the social and

Rubin Gur - Cross-Examination

1 environmental context " Is there a similar sentence in
2 that report? '

3 A Possibly He also had "frontal lobe damage
4 impairs the ability to adjust behavior" ---

5 Q Yes, sir, but I'd like to know if there's a
6 similar sentence to this one that the client has, "brain
7 damage that causes diminished capacity to appreciate and
8 respond to threat and to adjust his behavior to social and
9 environmental context "

10 A Similar

11 Q And could you read that, please

12 A "Mr Roskowski has brain damage that causes
13 diminished capacity to appreciate and respond to threat
14 and to adjust his behavior to the social and environmental
15 context "

16 Q In fact, that's the exact same sentence with a
17 different defendant's name

18 A Yeah

19 Q And the reason I ask that is again this is a
20 generalized indicator?

21 A Right Damage in very similar regions -- the
22 same region actually lateral frontal orbital

23 Q Thank you, sir

24 MS BROWN May I have just a moment?

25 THE COURT Sure Take your time
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Rubin Gur - Cross-Examination

1 BY MS BROWN

2 Q Dr Gur, just a few more questions In this
3 case, you said that you received the MRI from another
4 individual?

5 A From this case?

6 Q Yes

7 A We received them from the facility that performed
8 it

9 Q You didn't request it, they came to you already
10 done?

11 A Yes

12 Q And are you aware that there were two MRIs done
13 in this case?

14 A I don't remember specifically on this case, but
15 it's possible they don't do a good job the first time
16 Sometimes we get MRIs and we look at them and we say we
17 can't do the analysis because of the voxel size or too
18 much shading artifacts

19 Q It's a very general statement so feel free to
20 correct me but there are different settings as such for
21 MRIs?

22 A Yes MRI can be used in many many ways and we
23 are just scraping the surface

24 Q And the way that the MRI is actually performed
25 can differ?

Rubin Gur - Cross-Examination

1 A Yes

2 Q But they're accepted but there are just different
3 ways of performing the MRI, is that correct?

4 A Some ways are standard and some ways are still in
5 the experimental phase

6 Q Would you agree with me that you have a certain
7 protocol that you require, a certain way that the MRI is
8 conducted or you to be able to run your analysis?

9 A Yes

10 Q Somebody could disagree with your findings and be
11 looking at a different MRI?

12 A Well, if they get an MRI that doesn't meet our
13 specifications then they can't analysis it

14 Q So if you received this first MRI that was
15 conducted in this case and it was not to your
16 specifications, we would not have gotten these readings?

17 A Yes Depending on what the problem is, for
18 example, if the slice is too thick or the voxel size is
19 too big, we couldn't resolve the smaller regions We
20 could only do the main lobes

21 Q I believe that's all I have Thank you, Dr Gur,
22 I appreciate your time

23 MS BROWN That's all we have, Your Honor

24 MR NETTLES We have no questions I would
25 ask if we could call one quick witness before we break for
Evans versus The State - Day 4

Rupin Gur - Cross-Examination

1 lunch

2 THE COURT I got a couple of questions
3 Dr Gur, you mentioed I think 96 locations
4 tested?

5 THE WITNESS Yes

6 THE COURT And by my count there are 21
7 selections on this chart Why only 21?

8 THE WITNESS Well, these are 96 in each
9 hemisphere I only put here those regions where either
10 the left or the right hemisprere had clinically
11 significant reduction, and then I included the other
12 hemisphere for that region So basically we scan the
13 values and if we see that the region has -1 or worse or
14 below normal, I take that region and take the other
15 hemisphere as well for that region You can assume the
16 other regions are -1 and +1 standard deviations from
17 normal

18 THE COURT Is the amygdala one of the 96?

19 THE WITNESS Yes

20 THE COURT Where is it?

21 THE WITNESS The amygdala is not one of the
22 regions in this case I can find exactly how much it was,
23 it was low but it didn't reach -1

24 THE COURT I was reading not too long ago
25 about this man who died six months ago may who was up at
Evans versus The State - Day 4

Rubin Gur - Cross-Examination

1 MIT Do you know who I'm talking about? Who had brain
2 surgery when he was 20 years old and they took out --

3 THE WITNESS HM

4 THE COURT He was having seizures and they
5 did surgery and took out the medial lobe where they
6 thought the seizures were emanating from and that included
7 the hippocampus

8 THE WITNESS Hippocampus and amygdala, they
9 took both of them out

10 THE COURT Did he have this perseveration?

11 THE WITNESS He didn't have perseverations

12 His experience was like every moment he's walking from
13 sleep He had no memory from what happened to him since
14 the time of his operation He remembered his life before
15 the operation, but nothing after His wife would come to
16 greet him and he would say, God, you've grown old
17 overnight, that kind of an experience He described it as
18 every moment is like he's waking up from a dream or from
19 sleep So you could introduce yourself to him and he'd
20 say nice to meet you, you go out, come back in, introduce
21 yourself again and it would be as if he never saw you
22 before You could that 100 times during the day and he
23 would not recognize you

24 THE COURT So even the complete removal of
25 the amygdala would not necessarily cause perseveration?

Joseph Savitz - Direct Examination

1 THE WITNESS No Perseveration are frontal
2 lobe signs

3 THE COURT That's not connected to the
4 amygdala?

5 THE WITNESS No It's not related to the
6 amygdala

7 THE COURT Thank you That's all the
8 questions I appreciate you being here

9 How long is your next guy?

10 MR NETILES It's Joe Savitz from Appellant
11 Defense

12 THE COURT Thank you, Doctor
13 (Witness leaves the witness stand)

14 JOSEPH L SAVITZ, having been duly sworn,
15 testified as follows

16 DIRECT EXAMINATION

17 BY MR EHLIFS

18 Q Please state your name for the record

19 A My name is Joseph L Savitz, III

20 Q And Mr Savitz, please tell us where you are
21 currently employed?

22 A I am the Chief Attorney at the division of
23 Appellant Defense, which is a subdivision of the Office of
24 Indigent Defense in Columbia

25 Q How long have you worked there?

Joseph Savitz - Direct Examination

1 A I been at Appellant Defense since January 2,
2 1985

3 Q And your current capacity?

4 A As an appellant defender not running the office
5 but as an appellant defender

6 Q And what's your connection to Kamell Evans' case?

7 A I did the direct appeal There are two attorneys
8 in the office, myself and Bob Dudeck(ph), and we, along
9 with a couple other people in the office now, we divide
10 the death penalty appeal between ourselves and we do all
11 the capital appeals pretty much across the state

12 Q Do you recall Mr Evans' appeal?

13 A Yes, I do

14 Q And the issues you raised?

15 A I believe there was only one issue I raised I
16 believe it was about the mitigators, I believe Yeah

17 Q Would you read the issue you raised from the
18 Brief, please?

19 A "The Judge erred at sentencing by failing to
20 instruct the jury on the Statutory mitigating
21 circumstances provided by SC Code Section 16-3-20(c)(b)6,
22 which is the capacity of the defendant to appreciate the
23 criminality of his conduct or to conform his conduct
24 through requirements of law was substantially impaired
25 The charge on this mitigator was necessary because both

Joseph Savitz - Direct Examination

1 the State by introducing Evans' statement, and the defense
2 through Evans' own testimony, the testimony of expert
3 witnesses had introduced evidence that the killings
4 weren't premeditated, but had occurred when Evans snapped
5 under the combined strain of extreme emotional turmoil and
6 profound depression among other factors "

7 Q That issue was not preserved

8 A No, it wasn't

9 Q How often is it that you file an Appellant Brief
10 in which you don't raise any issues that are preserved for
11 appeal?

12 A I can only think of one other time that -- you're
13 essentially filing an Anders Brief If you file a Brief
14 in a capital appeal with an issue that hasn't been
15 preserved, you're essentially filing an Anders' Brief
16 which says the appeal has no merit My hope was that the
17 Court would look at this issue anyway, but to get to your
18 question, the only time that I filed a Brief that has had
19 an unpreserved issue was in the second Freddie Owens
20 appeal which I ended up winning as a matter of fact

21 Q Let me ask you a venue issue in this case and
22 counsel did file a Motion for a Change of Venue, is that
23 correct?

24 A That's correct

25 Q And do you remember what the basis was for that
Evans versus The State - Day 4

Joseph Savitz - Direct Examination

1 Motion?

2 A I believe it was because at least one of the
3 victims -- the victim's family and at least one of the
4 victims was well-known in the area and may have worked in
5 the courthouse in some kind of law enforcement capacity
6 He was prominent and well-known in the area particularly
7 in the area where it was going to be tried in the courthouse

8 Q Was the Motion based on, in your collection,
9 pretrial publicity?

10 A I don't remember I don't remember if there was
11 pretrial publicity, but just the fact that he was so well-
12 known within the judicial community I don't know if it
13 was a wider publicity or he was so well-known in the
14 judicial community, I can't remember

15 Q So that Motion might have encompassed simply
16 pretrial publicity or might of had something more to do
17 with the ---

18 A It had to do with one of the victims being well-
19 known?

20 Q And that Motion was denied?

21 A That's correct

22 Q Would you quickly state the State versus Corwell
23 Rule for when a trial denies a Venue Motion as a pretrial
24 publicity? What the rule on that?

25 A The Rule if you can't pick a fair jury, the venue
Evans versus The State - Day 4

Joseph Savitz - Direct Examination

1 has to be transferred basically and to a large part is a
2 judgment call

3 Q So on appeal, what would you do to review that
4 issue?

5 A Well, what I would have done is I would have
6 said, you know, the victim was or at least one of the
7 victims was so well-known within the area the case was
8 being tried that it was an abuse of discretion not to move
9 to another location where he could get a jury that wasn't
10 permeated ---

11 Q In other words, this might be a situation of
12 extraordinary circumstances?

13 A Yes

14 Q Did you consider raising the venue issue on
15 appeal?

16 A You know I don't remember that I did I consider
17 pretty much everything There wasn't a lot of raise in
18 this case There weren't a lot of objections It wasn't
19 like I was overwhelmed with issues in the case that I
20 could have raised I'm sure I considered and I didn't --
21 obviously, if I thought it was a winning issue I would
22 have raised it as opposed to raising an issue that was not
23 preserved

24 Q I just want to show you this as reference

25 Please tell us what we're looking at there?

Joseph Savitz - Direct Examination

1 A This is the case of United States versus Rife out
2 of the United States District Court from the Eastern
3 District of New York It was issued on March 19 of this
4 year

5 Q And does that case relate to the appearance of
6 impropriety?

7 MR MABRY I'm going to object at this
8 point I don't see the relevance of a Decision issued in
9 March 19, 2009 to an appeal he filed a couple years ago --
10 four years ago

11 THE COURT I don't know I'm going to let
12 him go ahead and question him

13 THE WITNESS What this says is basically
14 that as I'm reading here is that while a change of venue
15 while under the normal rules of changing venue, the change
16 of venue wasn't strictly necessary because of actual
17 prejudice within the area, but because of the -- really a
18 change of venue is necessary just to preserve the
19 integrity of the system and it was the appearance A lot
20 of times you have things that are actual as opposed to
21 appearance and that was a case where a change of venue was
22 necessary just because it made the system look back not to
23 change venue Things have to not only appear fair but be
24 fair

Joseph Savitz - Direct Examination

1 BY MR EHLIES

2 Q Is that something you considered?

3 A I did not consider that I proceeded under the
4 Rules regarding change of venue at the time I handled the
5 case

6 Q Thank you I want to ask you just a few
7 questions about testimony of Lewis O'Cain at the trial
8 Do you recall who he was?

9 A If you could jog my memory

10 Q He was a Security Threat Coordinator employed by
11 the South Carolina Department of Corrections?

12 A Yes He was the gang expert

13 Q So to speak

14 A So to speak

15 Q Do you recall if he knew anything about the
16 defendant?

17 A I don't believe that he did He was just --
18 gangs are a big deal now, but this was when gang activity
19 was first starting to be thought of as a problem in this
20 State and I don't think he had any connection I think he
21 had done a little study on his own or something like that
22 I don't know what his qualifications were, but he said he
23 knew stuff about gangs and gangs specifically in prison,
24 but I don't think he had done any study of Mr Evans or
25 knew anything about Mr Evans

Joseph Savitz - Direct Examination

1 Q So it's fair to say he had no specific knowledge
2 of Mr Evans?

3 A I don't think so My memory is he had never met
4 with him or interviewed him I don't think he looked any
5 records pertaining to him It's been a while since I
6 handled this case

7 Q Do you recall his testimony -- I'm going to hand
8 it to you actually

9 If you will would you publish this starting
10 there

11 A Just so you know where we are, we are at Page
12 1602 of the transcript and the question was from Solicitor
13 Airial "QUESTION If Mr Evans came to the Department
14 of Corrections under a sentence of death, would he present
15 a problem for you in relation to gangs?"

16 This is to Mr O'Cain

17 "ANSWER No, sir With his sentence if he were
18 to be sentenced to death he would be go Lieber
19 Correctional Institution down in the southern part of the
20 State Death Row, it has a better population of officers
21 monitoring what's going on with them He would be very
22 limited to visitation, to the phone calls He would be
23 limited to mail A lot of things would be different than
24 just him being inside for life It would be less of a
25 problem on my end because it's a lot easier to monitor how

Joseph Savitz - Direct Examination

1 many we have, 70 or 90, whatever we have on death row
2 versus the other 24,000 inmates

3 "QUESTION And if he were on death row, how much
4 time is allowed to spend outside of the cell per day?

5 "ANSWER I'm not sure of the exact parameters of
6 death row I don't have to deal with it that often The
7 normal is that they have a very limited visitation He is
8 in a cell by himself versus life he could be in a cell
9 with as many as three other individuals Death row is
10 constantly monitored He does not have one on one contact
11 with the visitation It's through windows and things like
12 that as with life he has one on one visitation in the
13 cafeteria area where they can sit at tables and talk to
14 each other and it is a different situation

15 "QUESTION That's all I have Answer any
16 questions defense counsel may have "

17 Q Do you recall a case of State versus Burkhart?

18 A I recall three cases of that name and I handled
19 all three of them

20 Q And a case specifically regarding the precedent
21 set in the State versus Bowman?

22 A Yes

23 Q And could you tell us briefly about the ruling in
24 that case?

25 A I know a lot of this because Walter Bailey used
Evans versus The State - Day 4

Joseph Savitz - Direct Examination

1 to make this argument all the time about how great life in
2 prison was and all the things you got to get if you got
3 life It really sounded pretty good And our things was
4 that it really wasn't -- even if it were true, that was a
5 decision the defendant was not responsible for You can
6 send a defendant to Hawaii if he gets life and that's
7 stuff that the State controls That doesn't reflect upon
8 the defendant's character or the circumstances of the
9 crime That's decision the Department of Corrections
10 makes, the Legislature makes So we kept arguing that
11 they should not be able to portray life in prison as
12 basically a vacation, a holiday

13 And Walter Bailey, when he was Solicitor made
14 that argument constantly, and we didn't have a whole lot
15 of luck We raised it several times and didn't have a
16 whole lot of luck with it Bob Dudeck raised it again in
17 the Bowman case and they held that it was not preserved
18 but had it been preserved, they probably would have
19 reversed The second Burkhardt opinion came along and we
20 had basically the same argument that life in prison was
21 just kind of a vacation and it was preserved in this case
22 I think Mr Nettles probably preserved it and probably
23 deserves the credit for the reversal But I wrote the
24 Brief and we argued it and the Court finally agreed with
25 us that was an error and does not reflect the defendant,

Joseph Savitz - Direct Examination

1 his character, and the circumstances of the crime and
2 something completely out of his control

3 Q And that case was tried?

4 A I can not remember Like I said I've represented
5 Burkhart three times and I got his current appeal pending
6 right now

7 Q I'm going to show you what's in the record Page
8 1758 going over the Page 1759 Would you publish that?
9 This is the prosecutor's summation and closing?

10 A This is the closing argument starting at the
11 bottom of Page 1758 and he says, "A big prison is like a
12 little city In prison, he will have all the necessities
13 of life, restaurants They feed you, they cloth you,
14 house you, doctors, hospitals, contact with family, tv,
15 loved ones, freedom of movement in a limited degree,
16 social structure, play cards and games and watch the
17 football game, go to work, go to school Sure you don't
18 have a car but in most instances it's not much more than a
19 chamber of trust "

20 Q Does that sound like the kind of testimony that
21 the Supreme Court's Decision in Burkhart was talking
22 about

23 A Yes, it does

24 Q Did defense counsel object to it?

25 A No

Joseph Savitz - Direct Examination

1 Q If they had objected to the testimony or the
2 summation that you just read on the basis of the Statute
3 relied on in Burkhart that predated -- the Statute in the
4 Burkhart case predated this trial If they had objected
5 to the testimony argument, would you have raised the issue
6 on appeal?

7 A Yes, they would have I had been raising that
8 issue repeatedly I'm actually kind of surprised I raised
9 an issue that wasn't objected to I'm kind of surprised I
10 didn't raise this one as well, but I've been raising this
11 issue for several years Had it been objected to -- like
12 I said there wasn't a range of issues to choose from in
13 this case We were pretty limited in the preserved
14 issues If any of them were preserved, I would have
15 raised them

16 Q And what chance do you think that would have had
17 at success before the Supreme Court?

18 A I would have won them

19 MR EHLIES Can we mark this as one exhibit
20 (Letter dated October 1, 2004 marked as
21 Applicant's Exhibit No 53 for identification)

22 BY MR EHLIES

23 Q Can you tell us what the exhibit you're holding?

24 A It's Exhibit No 53 It's a letter from Dale
25 Davis dated October 1, 2004 to me at the Office of
Evans versus The State - Day '4

Joseph Savitz - Direct Examination

1 Appellant Defense about Mr Evans to me

2 Q Just go ahead and read what she says on the front
3 on the letter itself

4 A "Dear Joe, I was introduced to you by Teresa
5 Norris at the Public Defender conference in Charleston and
6 we spoke about this case at that time My affidavit and a
7 copy of the email correspondence enclosed I wanted to
8 send this on to you as I am starting a case in Georgia on
9 Monday and I wanted to be sure that you got it as soon as
10 possible If there is anything I can do to assist with
11 this, please, let me know "

12 MR MABRY Just a second You said you were
13 going to just reference the document and now you're having
14 him read the document so I object That's not what you
15 told us you were going to do If we could look at it for
16 a second

17 MR EHLIES I'm sorry I thought you were
18 talking about the affidavit itself I apologize

19 BY MR EHLIES

20 Q Mr Savitz, do you recall receiving that letter?

21 A To be honest with you I don't I do not I am
22 not saying I did not receive it, I'm just saying right now
23 I don't remember receiving it I do remember having a
24 conversation at the Public Defender's conference about
25 this, but I do not remember getting this

Joseph Savitz - Cross-Examination

1 Q What was the substance of that conference?
2 A It was just a Public Defender's conference
3 Q I mean the conversation you had
4 A This was during a period of time, I think, in a
5 lot of death penalty cases where you have people just
6 signing up to do them for like a flat fee It was kind of
7 like a cookbook that you did death penalties by, you did
8 this, this, and this in every case even whether it fit to
9 case I think I remember her being concerned that that
10 approach was being taken to this case I mean obviously
11 the facts of this case were pretty bad and it's not like a
12 case of alibi or something like that where there was a lot
13 of focus on the defense phase The mitigating phase was
14 what the focus of the case was, and I believe she had some
15 concern It was probably before I even got the case that
16 the mitigation had been kind of last minute that sort of
17 thing

18 MR EHLIES Thank you I have no further
19 questions

20 CROSS-EXAMINATION

21 BY MR MABRY

22 Q Mr Savitz, tell me again what the issue was you
23 did raise?

24 A The issue that I raised if I remember the facts
25 of the case correctly this involved a break-up of the

Joseph Savitz - Cross-Examination

1 girlfriend and he was drinking bummed out and everything,
2 and he went over there and killed these people under great
3 emotional stress. He had been up for days and I thought
4 it was sufficient evidence where he had gotten the three
5 mitigators dealing with the mental state at the time of
6 the incident, and at the time I thought that it was still
7 kind of unclear whether or not -- the case law was
8 unsettled. There has actually been an Opinion since then,
9 I can't remember the name of it. There was one case where
10 they finally said, no, the judge doesn't have to canvass
11 -- what I was saying is the judge ought to have to go down
12 the list of mitigators with the defense lawyer and say do
13 you want this, want this, want this, want this because
14 like sometimes you might not want a provocation mitigator.

15 Anyway, I thought that that was the procedure
16 and still believe that that was the procedure in place at
17 the time and that this was possible and exception to State
18 versus Lorraine, and that because of the testimony he
19 gave, he would have been entitled to the three mitigators
20 and the judge had not done what I said he should have done
21 in charging all the mitigators.

22 So it was the missing of the three you get
23 when you present evidence of a mental state at the time of
24 the trial.

25 Q But that aggravator was not requested and there
 Evans versus The State - Day 4

Joseph Savitz - Cross-Examination

1 was no objection to the failure to charge that aggravator?

2 A That's correct

3 Q So you raised an issue that was not preserved to
4 the Supreme Court?

5 A That's correct

6 Q And you chose to raise only that issue?

7 A That's correct

8 Q And you didn't raise anything about Mr Airial's
9 argument, did you?

10 A I didn't raise anything, no

11 Q And was this case tried before Burkhart?

12 A I believe it was before

13 Q But it was after Platt, correct?

14 A I had been making the argument before

15 Q But you're familiar with State versus Platt, but
16 even though it was unpreserved, you raised another
17 unpreserved issue and you decided not to raise this issue?

18 A Yes I didn't raise it and I don't know if I
19 said I'm deciding not to raise this

20 Q And I heard your testimony on direct where you
21 said if you had raised the issue about Solicitor Airial's
22 closing argument you would have won in the Supreme Court?

23 A Obviously I'm predicting that I would have won,
24 it's a prediction I didn't travel back in time or to the
25 future, but I feel like if it had been objected to we

Joseph Savitz - Cross-Examination

1 would be talking about Mr Burkhardt being on death row
2 today and we'd be talking about State versus Evans, I
3 guess

4 Q And that's, again, your opinion, right?

5 A It's my informed opinion

6 Q And you don't have a crystal ball and you can't
7 tell us what five Justices will do on the Supreme Court,
8 can you?

9 A I been doing this a long time and it's just
10 gotten to be that time for this issue

11 Q I'm asking you can you predict what the five
12 Justices will do?

13 A Sometimes

14 Q Sometimes not, right?

15 A Sometimes not, but many times not

16 Q And isn't it true that the standard for the
17 propriety of a closing argument is whether it is based on
18 the evidence in the record?

19 A That's true but it can't be inflammatory even
20 with the evidence in the record

21 Q And do you remember what the testimony was in
22 this case about conditions of confinement and whether
23 defendant introduced how tough it was going to be in
24 prison?

25 A No, I don't

Joseph Savitz - Cross-Examination

1 Q It could have been the reason you didn't raise
2 that issue is because there was evidence in the record
3 that Mr. Atrial could have been basing his argument on?

4 A There's always invited response. If you get up
5 there and make it an issue, then certainly the State is
6 entitled to respond. If that happened in this case, I
7 don't remember. I'm just saying based on the argument I
8 see without reference to the record.

9 Q And any objection to a closing argument you got
10 to look at what's in the record and what was introduced by
11 both sides?

12 A Right.

13 Q And you're familiar with two cases, two PCRs,
14 John Henry Wood and Brad Selgman where they attacked the
15 closing argument and they have been denied relief, is that
16 correct, similar argument?

17 A I'm not sure. I didn't have anything to do with
18 either one of those cases, but I believe you if you tell
19 me that.

20 Q Now, as far as the Change of Venue Motion, are
21 you familiar with the case of State versus Frederick Evans
22 that came out of this very county?

23 A Vaguely, yes.

24 Q And do you remember that being basically a
25 similar case in the last couple of years discussing the

Joseph Savitz - Cross-Examination

1 standard of a best test of whether to change venue or not
2 is voir dire of individual jurors?

3 A That's correct

4 Q And in that case, you had actually two murders,
5 the murder of a woman in an apple orchard and another
6 murder in the park and the jurors said they can put that
7 aside and try the case?

8 A Uh-hum

9 Q As far as Mr O'Cain, you just don't specifically
10 why that issue was raised at all or do you remember?

11 A The issue about the gang stuff?

12 Q Right

13 A I believe it was I don't know if it was
14 objected to or not I haven't read the transcript

15 Q But you raised another issue that wasn't object
16 to?

17 A That's because I thought there was and as it
18 turns out there was a little bit of confusion about what
19 the Judge had to do when charging the Statutory
20 mitigators An Opinion since then has made it very clear
21 you have to ask for exactly what you want, and that's why
22 I raised that issue There wasn't a whole lot of material
23 to work with here

24 Q And as far as the three cases, Bowman, Burkhardt,
25 I can't remember the other one right offhand, there is

Joseph Savitz - Cross-Examination

1 language in those opinions that said conditions of
2 confinement can be admitted as long as it's tied to a
3 particular defendant, is that correct?

4 A Yes

5 Q And his behavior in those conditions?

6 A That's correct

7 Q And future danger is admissible in the penalty
8 phase as well, correct?

9 A Most definitely

10 Q And also the character of the defendant?

11 A Uh-hum

12 Q You're not telling us here today that the fact
13 that Mr Evans may have been in a gang or had gang tattoos
14 on his body was not admissible in the penalty phase of
15 this trial?

16 A I'll be honest with you if it was, hey, he's in a
17 gang, kill him, then no, it wasn't admissible If it's
18 like, hey, he's in a gang and we know he'll be doing gang
19 stuff in prison, then that's different You can't execute
20 somebody -- I'm in the Masors You can't execute somebody
21 just because they belong to a group

22 Q You know the Crips are a violent criminal gang,
23 don't you, Mr Savitz?

24 A For the most part, yes

25 Q And he's got tattoos on his body that say I'm a
Evans versus The State - Day 4

Joseph Savitz - Cross-Examination

1 Crip, I'm a member of a Crip, then that indicates his
2 character as a violent character, does it not?

3 A I don't know If you ask me my personal opinion,
4 there are gangs in South Carolina I think the whole gang
5 thing is really overblown and a law enforcement technique
6 to get money The fact that he had Crip things on him, I
7 don't know that he was a member of the Crips I see kids
8 in high school flashing gang signs, white kids, and I
9 don't think they're members of the Crips

10 Q Well, if he had tattoos on his neck, initials,
11 that he told his own experts Crips deliver bodies and he
12 murdered two people, do you think that would be admissible
13 in the penalty phase of a death penalty case?

14 A If he had just a tattoo that says -- yes, if he's
15 a Crip and he's a deadly Crip and he's going to be violent
16 in prison and they got evidence of that, yeah, sure But
17 if it's just a speculation that he belongs to the Crips
18 ---

19 Q Well, he tells everybody

20 A Freddy Owens is another example During the
21 cooling off period, Freddy Owens cell mate dies Freddy
22 Owens delivers this gigantic confession to all he did to
23 this guy, and it was introduced in the penalty phase
24 That's what he said, it was just his confession and a lot
25 of that stuff just wasn't true and was factually

Justin McKee - Direct Examination

1 untethered to what actually happened

2 Q You familiar with the evidence in the Freddy
3 Owers case, right?

4 A Yes

5 Q He tortured and murder his cell mate, didn't he?

6 A That is the allegation and that what he wrote in
7 his statement that he said he did There is a lot of
8 evidence, though -- we has never prosecuted for that crime
9 I believe There's a lot of evidence, though, the way he
10 said it happened is not the way it happened

11 Q Was the victim's chin and hair burned off of this
12 face?

13 A I mean the victim's dead

14 Q Beat to death?

15 A Definitely

16 Q Pen stuck up his nose?

17 A Yes Horrible death, but my point is the
18 confession that he gave to that crime does not match the
19 facts of the crime and there is evidence that other people
20 were involved in the death of his cell mate

21 Q In your opinion?

22 A No, the law enforcement's opinion

23 Q If there is evidence that Mr Evans in this case
24 carried bandannas, gang bandannas and left one at the
25 crime scene and had them on his person at the time of

Justin McKee - Direct Examination

1 these murders, do you think his gang affiliation would be
2 admissible in the penalty phase of this trial?

3 A I don't think the mere fact that he belonged to a
4 gang would be admissible unless it's tied to the facts of
5 this crime somehow

6 Q I'm asking if the evidence was he had a bandanna
7 on his waste one in his back pocket and another one on the
8 floor, would that be enough to get into the penalty phase,
9 in your opinion?

10 A No

11 MR MABRY Nothing further

12 THE WITNESS Thank you, Judge, for taking me
13 out of order

14 THE COURT Thank you for being here We'll
15 reconvene at 3 00

16 (Witness leaves the witness stand)

17 (Whereupon, there was a lunch break)

18 JUSTIN MCKEE, having been duly sworn, testified
19 as follows

20 DIRECT EXAMINATION

21 BY MR NETTLES

22 Q Tell us who you are

23 A Justin McKee

24 Q Where do you live, Justin?

25 A Gaffney, South Carolina

Justin McKee - Direct Examination

1 Q And what do you do in Gaffney, South Carolina?

2 A Work full time at Charter Communication and I was
3 formally a full time tattoo artist

4 Q Now, as a tattoo artist, do you know Kamell
5 Evans?

6 A Yes

7 Q You haven't seen him in a while?

8 A No

9 Q The first time and the last time that you saw
10 him, how long did you know him?

11 A Five years maybe give or take

12 Q And how well did you know Kamell during that
13 time?

14 A As a tattoo artist client relationship

15 MR NEFFLES You're I've got a series of
16 photographs that have been marked

17 (Pictures marked as Applicant's Exhibit Nos
18 54 through 62 for identification)

19 BY MR NETTLES

20 Q I'd like you look at photos that have been marked
21 as Applicant's 54 through 62 and tell me if you recognize
22 those tattoos

23 A Yes, sir

24 Q Did you do those tattoos?

25 A Yes, sir

Justin McKee - Direct Examination

1 Q Who did you perform those tattoos on?

2 A Kamell

3 MR NETTLES I'm moving what's previously
4 been marked Applicant's 54 through 62 into evidence

5 MR MABRY No objection

6 (Photos marked Applicant's Exhibit Nos 54
7 through 62 for identification was admitted into evidence)

8 BY MR NETTLES

9 Q I'm going to show you Applicant's 60, did you do
10 that tattoo?

11 A Yes

12 Q And to whom?

13 A Kamell

14 Q Applicant 61, did you do that to Kamell?

15 A Yes

16 Q Applicant 59, did you perform that tattoo on
17 Kamell?

18 A Yes

19 Q All of these are on Kamell, right?

20 A Yes

21 Q Applicant 58?

22 A Yes

23 Q Applicant 57?

24 A Yes, sir

25 Q There are several tattoos on Applicant 56, did
Evans versus The State - Day 4

Justin McKee - Direct Examination

1 you do all of them?

2 A I did everything but this that says The Realist

3 Q Applicant 55?

4 A Yes, sir

5 Q And Applicant 54?

6 A Yes, sir

7 Q Now, when we look at the tattoos of Kamell on his
8 forearms, which would be Applicant 61, 60, 59 and
9 Applicant 62, Applicant 62 says Crip World, Applicant 59
10 saying 120th Crips

11 A Yes

12 Q Applicant 60 saying Crip?

13 A Yes

14 Q And Applicant 61 saying for life?

15 A Yes

16 Q When you were doing those on Kamell, each one of
17 those, what did you think?

18 A That it was childish, silly

19 Q Why?

20 A Any sort of gang affiliation like that I've done
21 I never agreed with

22 Q Now, so you've done, while you don't agree with
23 it, if a client came in and asked you, showed you what
24 they wanted done, would you do it?

25 A Yes

Justin McKee - Cross-Examination

1 Q And so people have asked you do tattoos that have
2 had sort of a gang theme to it?

3 A Yes

4 Q To your knowledge, has anybody that you put a
5 gang tattoo on been in a gang?

6 A Not to my knowledge

7 Q Let me ask you this, 2003 or 2004, was anybody
8 who was representing Kamell Evans, investigator, lawyer,
9 anybody contact you?

10 A No, sir

11 Q Had you been contacted, would your testimony been
12 substantially the same as it is today?

13 A Yes, sir

14 CROSS-EXAMINATION

15 BY MR MABRY

16 Q Justin, I want to ask you a few questions I'm
17 Anthony Mabry with the Attorney General's Office

18 A Okay?

19 Q Would it be fair to say somebody who puts this on
20 their body is either in the Crips or wants to represent
21 that they're in the Crips?

22 A That would be a safe assumption

23 Q Did you put these initials on Kamell's neck?

24 A I do not recall

25 Q And just looking at them, does that appear to be
Evans versus The State - Day 4

Justin McKee - Cross-Examination

1 some kind of script or initials?

2 A Yes, it's old English letters CRE

3 Q And if Kamell's first name begins with a K and
4 his middle name begins with a D, that's not his initials,
5 right?

6 A Correct

7 Q Now, did you do these tattoos on his stomach as
8 well?

9 A I did his top, this one

10 Q And you tell me if I'm wrong but you've got a
11 tomb stone with the birth year and right behind the birth
12 year is an angel, correct?

13 A Correct

14 Q And ther there's a dash and it doesn't have the
15 year of his death, that's left blank?

16 A Yes

17 Q But then there's a demon with a liquor or
18 something in his hand, is that right?

19 A Yes, sir

20 Q And below that you don't think you did that?

21 A No, sir

22 Q Can you tell me what those things are in that
23 photograph?

24 MR MABRY I'll tell which exhibit, Your
25 Honor, I'm sorry First was State's Exhibit AAAA from the
Evans versus The State - Day 4

Justin McKee - Cross-Examination

1 trial and State Exhibit HHHH for the trial

2 THE WITNESS Just the three lower?

3 BY MR MABRY

4 Q Yes

5 A One on the left appears to be a dagger, the one
6 on the right is a semi-automatic handgun The one on the
7 bottom is brass knuckles?

8 Q Is there some lingo that goes with that?

9 A Not that I'm aware of

10 Q Have you ever heard the phrase gun, knife or
11 brass knuckles, you take your pick?

12 A No, sir?

13 Q You put these tattoos on Kamell's hand and I'm
14 referring to State's Exhibit GGGG, and State's Exhibit
15 VVV?

16 A Yes

17 Q And this one 120th Crips, you did that one,
18 State's Exhibit WWW?

19 A Yes

20 Q Did you do this one on his back that says
21 Cleveland?

22 A I did some of it, I did not do the whole thing

23 Q State's Exhibit YYY In this one State's Exhibit
24 KKKK, did you do the tattoos on his chest?

25 A Yes, sir

Joseph Savitz - Cross-Examination

1 Q "Smile now, cry later "

2 A Yes, sir

3 Q Do you know what that means?

4 A Nothing really I've done a million people with
5 that on it

6 Q You don't know what it means?

7 A No, I don't

8 Q Did you do these initials on his neck, State's
9 DDDD

10 A I don't recall I don't think I did the ones on
11 either side of his neck That's old English letters

12 Q Is that CDB?

13 A I can't really tell on the last one but it's
14 definitely CD

15 Q It's some kind of initials or something, it
16 stands for something?

17 A I would assume someone's initials

18 Q You don't know Mr Evans told his psychologist
19 what those initials meant, do you?

20 A No

21 MR MABRY No further questions

22 MR NETTLES Nothing further

23 THE COURT Thank you, you may step down

24 (Witness leaves the witness stand)

25 MR NETTLES At this time we would call
Evans versus The State - Day 4

Joseph Savitz - Cross-Examination

1 Dr Arden to the stand

2 JOHNATHAN ARDEN, having been duly sworn,
3 testified as follows

4 DIRECT EXAMINATION

5 BY MR NETTLES

6 Q How are you?

7 A I'm fine, sir Thank you

8 Q Please tell us who you are?

9 A I'm Dr Johnathan Arden

10 Q And Dr Arden, where are you from?

11 A McClaine, Virginia Right outside of Washington,
12 DC

13 Q What do you do?

14 A I'm a physician and in particular a forensic
15 pathologist

16 Q Share with us a little bit about your schooling
17 in forensic pathology

18 MR MABRY Your Honor, we'll stipulate that
19 he is a forensic pathologist

20 MR NETTLES Thank you

21 At this time, Your Honor, I'd ask that

22 Dr Arden be qualified as a forensic pathologist

23 MR MABRY No objection

24 THE COURT He's qualified

25 BY MR NETTLES

Johnathan Arden - Direct Examination

1 Dr Arden to the stand

2 JOHNATHAN ARDEN, having been duly sworn,
3 testified as follows

4 DIRECT EXAMINATION

5 BY MR NETTLES

6 Q How are you?

7 A I'm fine, sir Thank you

8 Q Please tell us who you are?

9 A I'm Dr Johnathan Arden

10 Q And Dr Arden, where are you from?

11 A McClaine, Virginia Right outside of Washington,
12 DC

13 Q What do you do?

14 A I'm a physician and in particular a forensic
15 pathologist

16 Q Share with us a little bit about your schooling
17 in forensic pathology

18 MR MABRY Your Honor, we'll stipulate that
19 he is a forensic pathologist

20 MR NETTLES Thank you

21 At this time, Your Honor, I'd ask that

22 Dr Arden be qualified as a forensic pathologist

23 MR MABRY No objection

24 THE COURT He's qualified

25 BY MR NETTLES

Johnathan Arden - Direct Examination

1 Q Share with us a little bit about your experience
2 What have you done for a living as a forensic pathologist?

3 A After I completed my education and training, I
4 held four different jobs as forensic pathologist or as a
5 medical examiner covering a total of 20 years of
6 government experience or service I was a medical
7 examiner for about two years in Suffolk County in New
8 York, for three years working as a medical examiner for
9 the State of Delaware, then nine years I spent with the
10 office of Chief Medical Examiner for the City of New York

11 I rose through several different positions
12 including being a deputy chief medical examiner and then I
13 was made officially the first chief medical examiner which
14 is the second in command to that system in New York City

15 After New York City, I spent just about 5 1/2
16 years as the Chief Medical Examiner for Washington, DC
17 When I left there in late 2003 since that time I then
18 spent about a year-and-a-half in a part time position with
19 the medical examiner system for the Commonwealth of
20 Virginia while I was building my current consulting
21 practice And also in the past year or so in addition to
22 my consulting, I have a part time appointment as a
23 forensic pathologist for West Virginia so that I am doing
24 some medical examiner work in addition to my consultant

25 Thank you very much

Johnathan Arden - Direct Examination

1 Q What have we asked you to review in preparation
2 for testimony in this case today?

3 A You have provided me and I have reviewed what I
4 believe is the discovery materials, most importantly to me
5 the two autopsy reports as well as the laboratory reports
6 that related to those autopsies, the toxicology, for
7 instance, also the various forensic laboratory and crime
8 scene type documents that were relevant to my analysis
9 Of course there were other police investigative documents
10 that were part of the package that I reviewed There was
11 the written statement from Mr Evans which was part of
12 those police documents that I received

13 I also received electronic versions of the
14 autopsy photographs, photographs from the police which
15 were both of the scene of the events as well as some other
16 photographs of various items of evidence and photographs
17 of Mr Evans for that matter were include as well

18 Q Did you review the trial transcript?

19 A I was provided a trial transcript most
20 particularly in terms of my analysis the testimony of
21 Dr Ward, the forensic pathologist, and since then I've
22 been provided with the handwritten notes from the defense
23 attorney to review

24 Q Now, after having reviewed the autopsy reports,
25 the crime scene photographs, the autopsy photographs, the

Johnatnan Arden - Direct Examination

1 trial testimony of Dr Ward, and the statement given by
2 Mr Evans on April 2, 2003, do you have an opinion to a
3 reasonable degree of medical certainty whether the count
4 that Kamell Evans gave of the events of April 2, were
5 consistent with the forensic evidence?

6 A I do have such an opinion

7 Q What is that?

8 A My opinion is the account that he gave in that
9 statement in large part is, in fact, consistent with the
10 forensic evidence that I reviewed

11 Q If you had been called to trial on September 15,
12 assuming that you were available, of 2004, would you give
13 that same opinion?

14 A Yes, sir

15 Q Let's talk about Dr Ward's testimony, there were
16 four shots that were fired into Joe Sapinoso What did
17 Dr Ward say about Joe Sapinoso and the four shots?

18 A Aside from the description of those shots and
19 what they injured and so on and so forth, and aside from
20 his opinion, of course, that the gunshot wounds to Joe
21 Sapinoso were his cause of death, his interpretation that
22 he testified to that Mr Sapinoso's head was down on the
23 floor in the living room at the time that the four shots
24 were fired into his head

25 Q Is there an alternative explanation for these
Evans versus The State - Day 4

Johrathan Arden - Direct Examination

1 four shots that your opinion is just as reasonable as to
2 the one given by Dr Ward?

3 A Yes, sir

4 Q What is that?

5 A The evidence does indeed indicate that Joe
6 Sapinoso's head was down for the three gunshot wounds that
7 were labeled Nos 1, 2 and 3, and of course the numbering
8 system is arbitrary The forensic pathologist has to
9 identify each of these gunshot wounds individual but that
10 numbering system does not imply sequence of events or
11 causation So the three that were labeled coincidentally
12 1, 2 and 3 have exit wounds on the opposite side of the
13 head All three of them have very similar trajectories
14 through the head, not identical but quite similar in terms
15 of what course they took, the directions they took through
16 the head Each of those three has an exit wound
17 corresponding on the right side of the head, roughly the
18 area of the right temple, and when I said corresponding
19 meaning corresponding the three projectiles that were
20 recovered from the floor There were photographs showing
21 the three holes in the carpet and the carpet pulled back
22 and so on So three of those do indeed fit the
23 interpretation that Dr Ward offered

24 However, Dr Ward said that all four of them
25 fit that pattern and there is actual evidence that

Johnathan Arden - Direct Examination

1 contradicts that part of his opinion

2 Q Would the exhibit that you provided to us help us
3 or do you want to get to that later?

4 A Actually, I think that exhibit would be helpful
5 at this point

6 MR NETTLES Your Honor, I have Applicant's
7 Exhibit No 63 for identification

8 BY MR NETTLES

9 Q Who prepared this document?

10 A I did

11 MR MABRY No objection

12 MR NETTLES At this time, I'd ask that this
13 document be admitted into evidence

14 (Diagram marked as Applicant's Exhibit No 63
15 for identification was admitted into evidence)

16 BY MR NETTLES

17 Q Share with us what about this document helps to
18 explain the account that we just discussed?

19 A At the point where I just stopped in the
20 discussion of the gunshot wounds and the similarities of
21 Nos 1, 2 and 3 and the difference of No 4 from the first
22 three meaning the first three numbers, the important
23 feature here is that gunshot wound labeled No 4 has a
24 decidedly different trajectory through or into the head
25 compared with those that are labeled 1, 2 and 3

Johnathan Arden - Direct Examination

1 Q What does that tell you?

2 A It tells me that the angulation of the gun at the
3 time the gun was fired was significantly -- markedly
4 different the gun the way was pointed for the one labeled
5 No 4 as compared to the ones labeled 1, 2 and 3 That
6 difference in trajectory which much reflect the relative
7 of the positioning of the gun to the target, in this case
8 the head, because the bullet travels in a straight line
9 and when it strikes the body most bullets continue in a
10 straight line into or through the body So the trajectory
11 within that portion of the body from the entrance from
12 where the bullet in this case ends up inside the chin,
13 that line if traced backwards shows you the orientation of
14 the gun to the body at the time that shot was fired

15 This orientation is substantially different
16 ---

17 Q When you say this orientation, do you mean the
18 orientation of No 4?

19 A Correct No 4, the orientation is substantially
20 different

21 Q Than the orientation of what?

22 A 1, 2 and 3 taken collectively which are all very
23 similar

24 Q You got a mark here just 3?

25 A I have only marked on them the diagram that I
Evans versus The State - Day 4

Johnathan Arder - Direct Examination

1 produced which you labeled 63, gunshots No 3 and 4
2 Numbers 1 and 2 in the left rear of the head Nos 3 & 4
3 are just left and behind the upper portion of the left
4 ear

5
6 Q But you didn't put them on there because the
7 trajectory was what, 1 and 2?

8 A Trajectory of 1 and 2 are very similar to
9 trajectory of 3, but the reason I specifically limited
10 this diagram only to those two gun shot wounds labeled No
11 3 and No 4 is because one of the basis that Dr Ward
12 cited for his opinion is that all four shots were fired
13 essentially at the same time with the head in that same
14 position No 3 and No 4 because of their very close
15 proximity indicated to him rapid fire or rapid sequence of
16 firing to get No 3 and No 4 right next to each other

17 By looking at only 1, 2 and 3 not considering
18 four you have the evidence I mentioned already of the exit
19 wounds corresponding bullets into the floor allowing you
20 to make that placement There was another feature that I
21 didn't mention and that's the shoring

22 Q We can talk about that in just a second

23 A But all of that evidence taken together actually
24 does support Dr Ward's opinion for gunshot wounds labeled
25 1, 2 and 3

Johnathar Arder - Direct Examination

1 Q So you don't disagree with Dr Ward that 1, 2 and
2 3 were done while his head was on the floor?

3 A Correct

4 Q Let's talk about shoring for a second What is
5 shoring?

6 A Shoring is the phenomenon that is seen in an exit
7 gunshot wound where that part of the body where the bullet
8 exits have some degree of support, usually the kind of
9 support you get from being against a floor, a wall, some
10 hard firm surface Occasionally you do see a shoring with
11 an area of skin that's held against very taut clothing,
12 usually something like a tight heavy leather jacket
13 Sometimes you'll see it in a woman where the part of the
14 brassier is very flush against the skin But the physical
15 features that indicate what we call shoring tell us that
16 that area of the body had some support to it such as being
17 against the floor

18 Q There was also some additional evidence, am I
19 right, of it being against the floor for the three?

20 A Yes, sir

21 Q And what was that?

22 A Primarily the fact that the three projectiles
23 have holes into the underlying carpet which were a similar
24 configuration on the right side of the temple

25 Q For the 4th shot, was there any shoring?

Johnathar Arden - Direct Examination

1 A The 4th shot is the only shot with no exit wound
2 It's the only shot where the bullet remained in the head
3 In this case, No 4 is the entry wound slightly farther
4 behind the top of the left ear, and that pathway went
5 forward and downward when the bullet came to rest just
6 inside or behind the jawbone of the chin

7 Because No 4 has no exit wound, no shoring,
8 not corresponding bullet hole in the carpet, it would
9 appear there is no evidence by which to say that this is
10 also a wound that happened when his head was down on the
11 carpet The only piece of evidence cited that was used to
12 link No 4 to Nos 1, 2 and 3 in terms of positioning was
13 the fact that No 3 and No 4 are so closely spaced that
14 Dr Ward opined that this indicates rapid fire that you
15 would have to be firing two shots in rapid sequence in
16 order for both of those entrance wounds to be so closely
17 spaced

18 Q Let me just ask you this, you talk about no exit
19 wound and no shoring How does the different angle fit
20 into the hypothesis that they were rapid fire?

21 A The different angle ---

22 Q That would be the different angle of 4 of 1, 2
23 and 3

24 A The difference in trajectory of No 4 from the
25 other three, particularly from No 3 since that is the

Johnathan Arden - Direct Examination

1 other entrance wound that is adjacent to No 4, the fact
2 that the No 4 trajectory is so markedly different from
3 No 3 and for that matter No 1 and No 2, tells me that
4 the gun had to be oriented substantially differently
5 relative to the head at the time No 3 versus No 4 were
6 fired If you do have a rapid fire sequence where two
7 shots are squeezed off quickly one right after the other
8 with the gun held at the same aiming such that the two
9 holes could be very close to each other, the entrance
10 wounds, then that tells you that the orientation of the
11 gun relative to the head has to stay approximately the same
12 from one to the next

13 There isn't enough time for the head to turn
14 or move substantially between one and the next There is
15 no reason for the orientation between the gun and the head
16 to be different if the two shots occurred very quickly,
17 and so they really must have similar trajectories if they
18 really do represent two gunshots in rapid succession

19 Q But Dr Ward said that he based his rapid
20 succession theory -- he looked at the stippling and based
21 on the stippling that all four shots were fired two to
22 three feet away in rapid succession What do you think
23 about that?

24 A The stippling does not permit you to make an
25 assessment of where these shots are in rapid succession or

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Johnathan Arden - Direct Examination

1 not The stippling allows you to make some general
2 estimates concerning the distance of the muzzle of the gun
3 from the target surface, what we call range of fire So
4 the first thing is that it only permits you in this case
5 because there is stippling with each of these wounds to
6 say that there was relatively closer rather than farther
7 distance

8 Now, there is no way to testify with
9 reasonable, medical, or scientific certainty precisely how
10 far away or how close the gun was I can give you fair
11 textbook generalizations though that to have the stippling
12 that's present in this instance, we're more likely talking
13 about something in the realm of two maybe three feet of
14 distance We're clearly not talking about something that
15 is very very close such as contact or a few inches We're
16 not talking about something that is 10 feet where there
17 would be no stippling

18 Q Let's stop right there for a second If there
19 was no stippling on 4 but stippling on 1, 2, and 3, what
20 would you be able to tell that in the distance that No 4
21 was?

22 A I think that's precisely one of the points here
23 concerning the stippling Aside from the fact that
24 stippling, per say, is not an indication of rapid fire
25 sequence, it's just an indication of distance, but 3 and 4

Jonnathan Arden - Direct Examination

1 are very very closely spaced If one of them is a wound
2 that has stippling around it and the other one doesn't,
3 when you exam that body at autopsy, at the completion of
4 the whole sequence, it would be no way to distinguish
5 whether the stippling came from gunshot wound 3 or gunshot
6 wound 4 because the entrance defects are so close to each
7 other, any stippling deposited would be in that same
8 general area

9 Q So it's like overlapping circles kind of like?
10 The stippling from one circle and you slide it close to
11 the other one, you couldn't tell which circle provided the
12 stippling?

13 A Exactly

14 Q So in your opinion, could shot No 4 have been a
15 farther distance than two or three feet?

16 A Yes, sir Because at that point if shot No 4
17 were from farther away irrespective of the sequence and
18 shot NO 3 were closer within that two to three foot range
19 that's my estimate of what that represents, then the
20 absence of stippling associated with 4 would be concealed
21 with the presence of stippling associated with 3

22 Q Thank you Mr Sapinoso, the older of the two,
23 Dr Ward said that the gunshot wound on the back right of
24 Mr Sapinoso's arm could certainly be placed in a position
25 -- he testified that the wound on the back of

Johnathan Arden - Direct Examination

1 Mr Sapinoso's arm was a defensive wound ,

2 MR MABRY Objection He said it was
3 consistent, I believe

4 BY MR NETTLES

5 Q Consistent with a defensive wound In your
6 opinion, is the wound on the right back of Mr Sapinoso's
7 arm consistent with a defensive wound?

8 A No, sir

9 Q Why is that?

10 A The term defense wound or defensive wound in
11 forensic pathology connotes an injury most commonly of the
12 hands or forearms although there are some that are
13 described on the lower extremities as well, but typically
14 hands or forearms are wounds that are interpret wounds
15 that are received in a defensive posture or a defensive
16 maneuver

17 Now, for one thing, the overwhelming
18 majority of the use of that term, defense or defensive
19 wounds, relates to sharp injuries with knives People are
20 known to through out their hands to ward off blows by a
21 knife People are known to grab a knife blade in defense
22 of themselves because getting fingers cut is better than
23 getting your chest stabbed So that's the most important
24 context for the use of that term

25 Now, it is fair to say that people describe
Evans versus The State - Day 4

Johnathan Arden - Direct Examination

1 or use the term defense or defensive wounds for wounds
2 that appear to represent the defense against other kinds
3 of injuries sometimes blunt injuries, and sometime, but
4 very rarely, related to gunshot wounds So to begin with,
5 we're dealing with an unusual use of the term defensive
6 wound given these are gunshot wounds

7 Second of all, in my opinion, if I were going
8 to interpret a wound as consistent with a defensive wound
9 relative to a gunshot, I would be looking for something
10 that shows me someone has thrown up a part of the body,
11 and again, I'm motioning from the stand with both palms up
12 in front of me, or a forearm thrown up in front of ones
13 face as I'm demonstrating here such that a wound that
14 suggests a defensive posture with a gunshot would be the
15 kind of thing that goes in the palm or in the outer edge
16 of the forearm the way one would cover oneself in the
17 defensive posture

18 The injury to the elder Mr Sapinoso on the
19 right on is simply gunshot wound in the right upper arm
20 that enters the side to rear portion, goes into the soft
21 tissue, and fractures the bone

22 If you were to ask me if there were any
23 physical possibility in the world of somebody assuming a
24 posture turning the upper right arm towards a shooter in a
25 way that could be construed as defensive, I'm sure there

Johnathan Arden - Direct Examination

1 is some possibility in the universe, but there is
2 absolutely nothing about that particular gunshot wound
3 that particular suggests a defensive posture, a defensive
4 maneuver, that is particularly consistent with the kinds
5 of wounds described in the forensic pathology textbooks as
6 being defensive wounds

7 So there's nothing about it that indicates or
8 suggests defensive activity and so some physical
9 possibility in the universe notwithstanding, I would not
10 characterize it as consistent with defensive wound because
11 of those reasons

12 Q And had you been called by defense counsel at
13 trial to testify about the wounds to the father and the
14 son, would it have been essentially what you've told us
15 today?

16 A Yes, sir

17 MR NETTLES At this time I'd like to move
18 in Applicant's 64 which is part of the trial transcript
19 It was State's Exhibit 48 I would like to move it into
20 evidence

21 MR MABRY No objection

22 THE COURT It's in evidence

23 (Portion of the trial transcript marked as
24 Applicant's Exhibit No 64 was marked for identification
25 was admitted into evidence)

Johnathan Arden - Cross-Examination

1 BY MR NETTLES

2 Q When we look at what's been marked Applicant 64,
3 you read the trial transcript and this is the State's
4 exhibit

5 A Yes, sir

6 Q On State's exhibit of what we've got here is
7 wound No 4 at a markedly different angle than what we've
8 got here?

9 A Very much so

10 Q If at trial you'd have been given the State's
11 exhibit, would you have reached the same conclusion?

12 A Yes, sir

13 Q Based on evidence provided by the State?

14 A Yes, sir

15 MR NETTLES No further questions, Your
16 Honor

17 CROSS-EXAMINATION

18 BY MR MABRY

19 Q Doctor, could you tell me your last name again

20 A Arden

21 Q I'm Anthony Mabry with the Attorney General's
22 Office Nice to meet you

23 A Yes, sir

24 Q I believe you testified you reviewed all of the
25 discovery in this case?

Johnathan Arden - Cross-Examination

1 A Yes, sir

2 Q Including Mr Evans' statement to the police
3 about how this incident happened?

4 A Yes, sir

5 Q Do you remember him telling how he got to the
6 scene?

7 A I don't remember the specific details I thought
8 he drove himself to the scene

9 Q That was my next question Do you remember him
10 testifying that he drove from his home in Greer, South
11 Carolina, all the way to Mauldin, South Carolina?

12 A Honestly, I'm sure I read that, but I don't
13 remember specifically I have no reason to doubt you but
14 I just don't recall independently

15 Q Do you know how long it would take you to drive
16 from Greer, South Carolina to Mauldin, South Carolina?

17 A No, sir

18 Q Would you argue with me if I told you 20 to 30
19 minutes?

20 A I would have no basis for argument

21 Q Now, do you remember Mr Evans telling the police
22 that he parked his up the street from Joe's house, that
23 would be Joe Sapinoso's house?

24 A Yes, sir

25 Q Have you reviewed any photographs or diagrams of
Evans versus The State - Day 4

Johnathan Arden - Cross-Examination

1 the area surrounding the Sapinoso home?

2 A My recollection is that some of the police
3 photographs showed some of the area surrounding the home

4 MR MABRY I'm going to hand up State's
5 Exhibit 40a and I'm going to show him the blow up

6 BY MR MABRY

7 Q State's Exhibit 40a, this was identified at the
8 trial as the area surrounding the Sapinoso home

9 A Yes, sir

10 Q Do you see any markings diagrams as you go up the
11 street where they live, Chetsworth Lane, do you see any
12 markings that indicated where the defendant parked?

13 A Not where you just indicated, no

14 Q Do you see anywhere on Mary Knob Court where the
15 defendant parked?

16 A No, sir

17 Q Do you see any indication on the next street in
18 the cul de sac where the defendant parked?

19 A No, sir

20 Q Do you see a star up here on Knollwood Drive?

21 A I do

22 Q And it says Evars' truck

23 A I do

24 Q Is it your opinion that he parked up the street
25 from the Sapinoso home?

Johnathan Arden - Cross-Examination

1 A I don't think I would characterize it that way,
2 no, sir

3 Q So that part of his statement is not true?

4 A Correct

5 Q In fact, he parked anywhere from a mile to a mile
6 and a half away according to the measurement at the
7 bottom?

8 A It certainly doesn't look like a mile It looks
9 like half a mile

10 Q How many feet are in a mile, you tell me?

11 A 5280

12 Q So you think half a mile

13 A Rough estimate based on just eye balling this
14 diagram for the first time

15 Q Now, once he parked his truck, did he tell the
16 police how he got down to their house, if you remember?

17 A I don't remember those details specifically

18 Q Well, if he didn't drive his truck, and he didn't
19 have a bicycle, he would have had to have walked or hiked
20 down to their house, is that correct

21 A That makes sense to me

22 Q Did he tell the police in his statement that he
23 just went down to talk to the Sapinosos?

24 A That sounds familiar, yes, sir

25 Q I'm going to show you several exhibits, State's
 Evans versus The State - Day 4

Johnathan Arden - Cross-Examination

1 Exhibit L from the trial, K from the trial, J from the
2 trial, I from the trial, H from the trial, and G from the
3 trial I'm going to ask you to look at those Are those
4 photographs consistent with the clothing you understood
5 Mr Evans was wearing on the night of the shooting?

6 A Yes, sir, within the limits of my sources of
7 information But, yes, it appears to be the same
8 clothing

9 Q And what color clothing is he wearing?

10 A Predominantly black There is some writing on
11 the sweatshirt that's in white and theres a bandanna that
12 has some white on the black, but it's predominately black

13 Q So he's wearing black pants and black sweatshirt
14 with a hood?

15 A Yes, sir

16 Q And there are some blue bandannas that he's
17 wearing with him?

18 A There is a dark-colored and white bandanna that
19 shows here I can't tell from the photographs if that's
20 black or navy blue

21 Q Hanging from his belt?

22 A Yes, sir

23 Q Now, let me ask you kind of a lay opinion, when
24 you go to talk to somebody, do you park about a half a
25 mile away from their house, dressed in dark clothing, and

Johnathan Arden - Cross-Examination

1 nike down to their house to talk to them?

2 A Well, it depends upon the circumstances of how
3 available parking is I've lived in cities where you
4 would be lucky to get a parking spot within half a mile of
5 somebody's resident, and I'm sure in suburban settings
6 like this you could probably park in front of the house
7 I don't know, I'm kind of partial to black clothing so
8 sometimes I do wear that when I got to talk to people and
9 sometimes not

10 Q I believe this is State's Exhibit 15 -- first I'm
11 going to show you a photograph State's Exhibit U, do you
12 recognize that?

13 A It appears to be one of the police photographs
14 that I saw

15 Q Did you look at that in preparation for your
16 testimony today?

17 A I did review it among all the other photographs
18 I don't think this particularly played a role in terms of
19 being a basis for my opinion, but, yes, I've seen this

20 Q Does that appear to be the same bag?

21 A I certainly looks very similar

22 Q If you would, open up that bag and take out
23 what's inside of that bag

24 MR NETTLES If it's a gun, I'm going to ask
25 that we --

Johnathan Arden - Cross-Examination

1 MR MABRY It's not

2 THE WITNESS Do you want me to take out
3 everything and describe it?

4 BY MR MABRY

5 Q Yes, sir

6 A A plastic bag with some bullets, another plastic
7 bag with some bullets, it appears to be six boxes labeled
8 to be bullets Shaking them, it sounds like bullets but
9 there is one more thing in there And there is a not very
10 high quality kitchen knife, a chef knife

11 Q Now, does that appear to be the bag that
12 Mr Evans carried down to the Sapinoso house from where he
13 parked his truck?

14 A Again, I can't say with certainty that it's the
15 same bag, but it does appear to be what's in that
16 photograph you handed me, yes

17 Q It's your understanding that Mr Evans also had
18 two handguns when he went to the Sapinoso house, is that
19 correct?

20 A Yes

21 Q So he had two handguns, a 380 pistol and a 9
22 millimeter, is that correct?

23 A Yes, sir

24 Q The eight inch knife that you have in your hand?

25 A Yes, sir

Johnathan Arden - Cross-Examination

1 Q And 140 rounds of ammunition, is that correct?

2 A Again, I haven't counted them but six boxes plus
3 whatever is in these bags

4 Q The question I have for you is, after looking at
5 that evidence, do you consider his statement that he only
6 went down to the Sapinoso house to talk with them to be
7 credible and true?

8 A I don't know that I can make an assessment of
9 that He certainly brought with him a number of items
10 that don't relate to talking Whether that means he was
11 untruthful when he said he only went to talk, I can't tell
12 you

13 Q Well, have you only gone to see somebody to talk
14 to them and carried two guns and a knife and 140 rounds of
15 ammunition?

16 A No, sir

17 Q Dressed in black?

18 A No, sir

19 Q Can you tell me if Mr Evans is left-handed or
20 right-handed?

21 A My recollection from the police documents I
22 believe that it said that he was right-handed?

23 Q Now, Mr Evans told the police that he hid in a
24 house next door for 30 minutes to an hour, is that
25 correct?

Johnathar Arden - Cross-Examination

1 A Yes, sir

2 Q And when Mr Sapinoso came home, he came out of
3 the bushes and pointed a handgun at him, is that correct?

4 A That's my recollection, yes, sir

5 Q And he forced Mr Sapinoso in the house, is that
6 correct?

7 A Yes, sir

8 Q Did you read Mr Evans' trial testimony?

9 A I remember concentrating on Dr Ward's testimony
10 and I apologize because I don't remember if I read his
11 testimony as well I believe I did because I believe I
12 had the entire transcript on the disc that was sent to me

13 Q Do you remember in his trial testimony where he
14 said that he and Joe stood on the front porch and talked
15 for some period of time?

16 A I don't remember exactly what he said I know he
17 encountered Mr Sapinoso outside, displayed his weapon,
18 and at some point was outside talking to him and they went
19 into the house together I don't specifically what he
20 said about stopping on the front porch

21 Q The record will show what it says If he
22 testified at trial that he sat on the front porch and
23 talked and he started crying and Joe said let's go in the
24 house, you don't want the neighbors seeing you crying,
25 would that differ from what he told the police happened

Johnathan Arden - Cross-Examination

1 the night the incident happened?

2 A Could I refer to the statement?

3 Q Sure

4 A Yes, that is somewhat different than what is in
5 the written statement

6 Q Are you familiar with these photographs, State's
7 Exhibit AAA, BBB and CCC -- what's in the photographs?

8 A Yes, they look familiar I believe these are
9 part of the some of photographs that were provided to me

10 Q Do you know whose vehicle that is?

11 A I don't know for sure I thought that was
12 Mr Sapinoso's vehicle

13 Q And what was found, at least if you can tell from
14 the photographs, what was found next to the vehicle?

15 A There's a bag, like a little duffel or carry bag,
16 that says sheriff on it There appears to be another bag,
17 I can't tell for sure, perhaps like a backpack and you
18 could see a cell phone sitting on top of the smaller bag

19 Q That's right next to his vehicle where his
20 vehicle was parked, isn't it?

21 A Yes

22 MR MABRY Publish these to the Court, Your
23 Honor

24 THE COURT All right

25 BY MR MABRY

Johnathan Arden - Cross-Examination

1 Q Mr Evans also told the police that at some point
2 after he went into the house he handcuffed Joe Sapinoso,
3 is that correct?

4 A Yes, sir

5 Q Once he got in the nouse with the Sapinosos then
6 a telephone call was made to Joe Sapinoso's sister
7 Christina, is that correct?

8 A I believe so, yes

9 Q And Mr Evans told her to come to the house where
10 he was and where he had her parents or at least her father
11 and her brother hostage, is that correct?

12 A Yes

13 Q now, to your knowledge, she did not come to the
14 house, she called the police)

15 A Correct

16 Q Ard do you remember Mr Evans drawing a diagram
17 for the police where he was when the shooting took place?

18 A Yes, sir

19 Q I want to show you State's Exhibit No 43a Does
20 that appear to be the diagram he drew for the police of
21 where he was at the time the shooting took place?

22 A Yes, sir

23 Q Do you remember where he indicated where he was
24 at the time the shooting took place?

25 A He indicates in this diagram that he is on the
Evans versus The State - Day 4

Johnathan Arden - Cross-Examination

1 other side of the coffee table The diagram does include
2 it but I believe there's a wall behind him and I believe
3 that's the fireplace

4 Q So he's at the end of the coffee table where the
5 fireplace is?

6 A Yes, sir

7 Q And he shows that he shot toward Joe and he shot
8 towards the father from there, is that correct?

9 A Yes, sir

10 Q Now, you looked at the photograph of the scene --
11 well, he could not have fired all four shots from there
12 into Joe Sapinoso, could he?

13 A That's correct

14 Q What did he tell the police in his statement how
15 many times he shot Joe Sapinoso and how many times he shot
16 Mr Sapinoso?

17 A I believe he said in his statement that he shot
18 Joe Sapinoso a total of three to four times I think the
19 way he phrased it was he shot him once and then he shot
20 him again two to three time Thus, one plus the three is
21 where I got the four And I believe he said and I'd have
22 to look at the statement to be sure, concerning the senior
23 Mr Sapinoso, three to four times

24 Q Well, can you find for me where it says that

25 A It says here, and this is hand labeled apparently
Evans versus The State - Day 4

Johnathan Arden - Cross-Examination

1 Page 2 in the upper right-hand corner, he's talking about
2 Joe, and he says, "I shot him first and then shot him two
3 or three more times " So that's where I got the one and
4 the two to three concerning Mr Joe Sapinoso And then he
5 says in the next sentence, "He turned to his father and he
6 shot him with the 380 three to four times " That's where
7 I got the three to four times for the elder Mr Sapinoso?

8 Q Does it say which victim he shot which gun and
9 which victim he shot the other gun with?

10 A He does,

11 Q Tell the Court what he says

12 A He said that he shot Mr Joe Sapinoso with the 9
13 millimeter pistol and the elder Mr Sapinoso with the
14 380

15 Q Is that statement correct?

16 A There is no way to answer definitively or with
17 reasonable medical or scientific certainty if it's
18 correct There's no evidence that I'm aware of that
19 contradicts that, but there's also no evidence that
20 establishes that to a reasonable medical certainty

21 Q Did you read the forensic testimony from the
22 trial?

23 A Again, I read a great deal of the testimony
24 particularly given the issues that I was asked to address
25 I particularly concentrated on Dr Ward's testimony

Jonathan Arden - Cross-Examination

1 Q Just assume a couple of facts is true, okay
2 There were three bullets found under Joe's body that were
3 9 millimeter and one in his jaw that was a 9 millimeter
4 bullet

5 A Yes

6 Q And there were two 9 millimeter bullets found in
7 the father and one 380 went into his arm Would that
8 statement be correct when he shot the father with the 380
9 and Joe with the 9 millimeter?

10 A First you're describing the bullets as opposed to
11 the guns My recollection of the ballistic testing is
12 that they could not match any of the bullets to any of the
13 guns particular such that the recovered projectiles could
14 not be limited to having come from one or the other gun
15 specifically In fact, based on the class characteristics
16 available, they could have come from any gun, I believe

17 Q Let me stop you for just a second

18 A Actually, could I finish the answer?

19 Q Sure, go right ahead

20 A Otherwise I'll lose the thought The only other
21 thing is I am not an expert in guns, but my understanding
22 of a 380 is that is actually a short 9 millimeter, and so
23 I don't know if the 380 in question could chamber a 9
24 millimeter Luger round which were the other ones in
25 question here So I don't know that the evidence

Johnathan Arden - Cross-Examination

1 conclusively tells us which gun was used for each of
2 these It does address the issue of which type of bullets
3 were used

4 Q You agree with me the record will speak for
5 itself as far as the ballistics testing

6 A Yes, sir

7 Q Assuming that the ballistics testimony was that
8 the 9 millimeter bullets taken from under Joe's body and
9 Joe's head and from his father's body did not come from
10 the 380, they had to come from the 9 millimeter By
11 exclusive, they could not have come from the 380 If the
12 testimony shows that he shot Joe with the 9 millimeter and
13 his father with the 9 millimeter, would that statement in
14 his statement that he only shot the father with the 380
15 be incorrect

16 A Yes, sir

17 Q That was my question

18 A Yes, sir

19 Q Let me show you a couple of diagrams State's
20 Exhibit 33, is that a diagram of the outside of the house
21 where the Jeep was parked?

22 A Well, it's the driveway where the Jeep is parked
23 and another vehicle, and also a part of the inside of the
24 house

25 Q And State's Exhibit 39, is that a diagram showing
Evans versus The State - Day 4

Johnathan Arden - Cross-Examination

1 where Mr Sapinoso bled and where the father bled and
2 other physical evidence that was found in the area?

3 A Yes, sir

4 MR MABRY I publish these two to the Court

5 BY MR MABRY

6 Q On that diagram, the chimney is indicated by some
7 kind of brick area

8 A That's correct

9 Q Was there any shell casings or bullets or any
10 physical evidence to your knowledge that was found
11 anywhere around the end of the coffee table where the
12 chimney was? I'm show you State's Exhibit 39a Are you
13 looking at that?

14 A Yes, sir

15 Q This would be the chimney and fireplace where
16 Mr Evans told the police where he was standing when he
17 shot them

18 A In front of that

19 Q Right Was there any physical evidence found in
20 that area?

21 A Not according to this diagram, no, sir

22 Q Where was most of the physical evidence, the
23 shell casings, the fired bullets found?

24 A Down at the other end of the couch where Mr Joe
25 Sapinoso was laying

Johnathan Arden - Cross-Examination

1 Q And then some additional shell casings -- let me
2 look Yes One shell casing over by Mr Sapinoso's body
3 and a shell casing 380 in front of the tv and another 9
4 millimeter shell casing front of the tv, is that correct?

5 A Yes, sir

6 Q Now, Mr Sapinoso's father was shot with 9
7 millimeter twice in the head and with a 380 one time in
8 the arm, is that correct?

9 A That's what you've represented to me, yes, sir

10 Q And Joe was shot four times in the head, is that
11 correct?

12 A Yes, sir

13 Q So there was a total of seven shell casing found
14 at the scene and that matches up with the bullets, is that
15 correct?

16 A Yes, sir

17 Q Now, you couldn't get the stippling on these
18 wounds from firing over where the fireplace was, could
19 you?

20 A It depends upon where the person is who is being
21 shot

22 Q Let me use the diagram I got some photographs
23 from the scene if you need to look at those

24 You're standing over by the chimney and you
25 fire, can you get the stippling on the wounds that you

Johnathan Arden - Cross-Examination

1 have in this case?

2 A It depends upon where the person is when he's
3 shot

4 Q If Joe Sapinoso is on the end of the couch where
5 the blood is on the floor, he's sitting on that end of the
6 couch or on the floor back there where he's shot, could
7 you get the stippling that you have in this case?

8 A If the shooting is standing literally at the area
9 of the fireplace and Mr Joe Sapinoso is at the far end of
10 the couch ---

11 Q Or kneeling on the floor

12 MR NETTLES Your Honor, I would just ask to
13 let him finish his answer

14 MR MABRY I'm sorry

15 BY MR MABRY

16 Q Go ahead

17 A If Mr Joe Sapinoso is at the far end of the
18 couch, then, no, I would not expect to see that stippling

19 Q Let me ask you one question I didn't ask you, no
20 matter which shot was first, would that have rendered Joe
21 unconscious?

22 A It's very likely that any of those shots would
23 have rendered him unconscious, that's correct

24 Q Underneath Joe's head they found three bullet
25 wounds in the floor, is that correct?

Johnathan Arden - Cross-Examination

1 A Yes, sir

2 Q His head was laying where I showed you the blood
3 was at the end of the couch, is that correct?

4 A Yes, sir

5 Q And underneath his head was where the three roles
6 were in the carpet?

7 A That's correct

8 Q And that's where they found the three
9 projectiles?

10 A Correct

11 Q In fact, they found two of them underneath the
12 carpet where the holes were

13 A That's exactly right, yes, sir

14 Q State's Exhibits NN and MM and I'm going to ask
15 you to look at those and tell us what those are?

16 A You've handed me State's NN and MM, these are two
17 photographs that are among the various police or crime
18 scene photographs that I saw in the materials provided to
19 me MM is taken from a little farther away but it shows
20 the section of carpet where the blood stain was related to
21 Mr Joe Sapinoso and that section having been cut and
22 turned back State's NN is the same area of the carpet
23 turned back with the blood stains and the three cotton
24 swabs sticking into the holes relating to the three
25 bullets

Johrathan Arder - Cross-Examination

1 MR MABRY I'd like to publish these to the
2 Court

3 BY MR MABRY

4 Q And Mr Sapinoso had -- did you look at the
5 autopsy photographs?

6 A Yes

7 MR MABRY Can we mark this?

8 (Autopsy photograph marked as Respondent's
9 Exhibit No 37 marked for identification)

10 BY MR MABRY

11 Q Respondent's Exhibit 37, is this an autopsy
12 photograph of Joe Sapinoso to your knowledge?

13 A Yes, sir

14 Q Does that show the three exit wounds to the right
15 side of his head that you were taking about earlier?

16 A Yes, sir, it does

17 Q With the shoring where his head was down against
18 the floor?

19 A It my opinion there is clear cut shoring in one
20 of these

21 Q Well, if you take those exit wounds, the
22 triangular -- and when I talk about triangular you've got
23 three exit wounds to this head -- and then look at the
24 holes in the carpet with the Q-tips in them, what does
25 that tell you as pathologist or in your expert opinion?

Johnatnan Arden - Cross-Examination

1 A I'd compare these to photographs previously and
2 the other ones that had measuring devices in them before,
3 the three holes in the carpet are of the same
4 configuration as far as the -- you said triangular -- I
5 think I used the term L-shaped and if you connect the
6 three holes, I will tell you that the distances in between
7 the three holes in the floor is greater than the distances
8 of holes in the exit wounds in the head the figuration are
9 very much similar

10 Q And do you believe his head was on the floor when
11 those three shots were fired?

12 A Yes, sir, I've already testified to that

13 Q If that's the case, if his head is on the floor
14 and you have the holes that you have here, Mr Evans would
15 have to have stood over Mr Sapinoso and fired three
16 bullets down into his head

17 A He would have had to have stood in some closer
18 proximity You demonstrated when you said stood over
19 firing virtually immediately down almost at your own feet
20 in terms of standing over, he wouldn't have to be
21 necessarily right over him He would have to have been up
22 somewhat closer and he would have to have had to been
23 aiming the gun at the relevant portions of his head, but
24 not quite as dramatically as you demonstrated at a 90
25 degree angle down into the floor?

Johnathan Arden - Cross-Examination

1 Q Are those Q-tips sticking down in the holes in
2 the carpet and the padding underneath not vertical in the
3 holes?

4 A The Q-tips are vertical which is irrelevant to
5 the trajectory of the bullet

6 Q But he had to walk over, because of the
7 stippling, he had to walk over somewhere close to him,
8 stand over him and fire three bullets such that they went
9 into his head and came out into the floor and made those
10 three holes, is that correct?

11 A Yes, sir

12 Q And according to your investigation in this
13 matter -- we'll call the ones that were fired down into
14 his into the floor 1, 2 and 3, is that okay?

15 A Yes, sir

16 Q Let's make sure we're clear on this, all four are
17 to the back of his head, is that correct?

18 A No, sir

19 Q Did you look at the diagrams that were introduced
20 into evidence? Maybe we're talking about semantics here,
21 but he had two bullet wounds to the back of his head right
22 where I'm pointing, is that correct?

23 A Two bullet wounds to the left rear of the head,
24 yes, sir

25 Q And two bullet wounds behind the left ear

Johnathan Arden - Cross-Examination

1 A You're point over the what we call the mastoid
2 process directly behind the ear and actually you are
3 pointing an inch or two behind your ear The other two
4 that were labeled 3 and 4 were slightly shadowed by the
5 earlobe, the upper edge of the earlobe itself, but were
6 not behind in the since of toward the rear One was
7 basically at the top of the earlobe and one was a fraction
8 of an inch behind it So wounds No 3 and 4 were actually
9 on the left side of the head and not on the back of the
10 head?

11 Q Wound No 4 is slightly behind the left ear, am I
12 correct?

13 A Correct in your words or your gesticulation?

14 Q I'm trying to point where you were pointing If
15 you go from the very top of the ear and go back, what, a
16 half an inch

17 A No even

18 Q A quarter of an inch

19 A About that

20 Q That bullet had to come from behind, didn't it?

21 A It's a different question Given the trajectory
22 it came from behind, yes, because it is going
23 predominantly forward and downward relative to his body
24 and very slightly only modestly to his right

25 Q It came into his head as you have drawn it on

Johnathan Arden - Cross-Examination

1 your diagram that has been admitted into evidence, is that
2 correct?

3 A Yes, sir

4 Q Gunshot wound No 4, I'm going to show you what
5 was admitted into the trial is State's Exhibit -- I don't
6 have an exhibit number These were the diagrams that were
7 introduced in the trial

8 MR NETTLES Well, wait a minute If they
9 don't have an exhibit number, I'm not sure we can be sure
10 -- first thing the whole thing about the bushes hasn't
11 proven to be true based on the transcript, I would kind of
12 have to ask that he shows where in the transcript this is
13 moved in Is this moved in?

14 MR MABRY I thought it was moved in I got
15 it out of the evidence, that's where I got it

16 MR NETTLES You said there wasn't an
17 exhibit number on it

18 MR MABRY It must have been a group These
19 are the diagrams that were shown to the jury by the
20 pathologist Is there any disagreement about that?

21 MR NETTLES If the record reflects it, no,
22 I don't have any objection to it If the record reflects
23 that they weren't moved in, I will move that they be
24 stricken

25 MR MABRY All I can tell you is I got them
Evans versus The State - Day 4

Johnathan Arden - Cross-Examination

1 out of the evidence from the Clerk's Office

2 THE COURT I understand

3 BY MR MABRY

4 Q I'm going to show you diagram It says,

5 "Rear view of head of Antonio Jose Sapinoso "

6 A Yes, sir

7 Q Does that diagram show two wounds to the back of

8 Mr Sapinoso's head?

9 A It shows two wounds to the back of a computer
10 generated model of the head

11 Q Okay Of Mr Sapinoso's head?

12 A There's a label that says, "Antonio Jose
13 Sapinoso " I have a problem agreeing with it being
14 Mr Joe Sapinoso's head because they are not accurately
15 placed The gunshot wounds in this diagram do not reflect
16 what is in the autopsy report

17 Q Okay

18 A In fact, they're decidedly to the back of the
19 head which is why you kept motioning there, but the
20 autopsy report and the autopsy photographs don't agree
21 with that

22 MR MABRY If I could have just a moment,
23 Your Honor

24 THE COURT Take your time

25 MR MABRY These are without objection, Your
Evans versus The State - Day 4

Johnathar Arden - Cross-Examination

1 issue that we were discussion about the location on the
2 head of wounds labeled No 1 and No 2

3 Q Okay Come down and show us where wounds 1 and 2
4 were in your expert opinion

5 A (Witness complies) I don't know if this
6 qualifies as an expert opinion, Your Honor I'm going to
7 use the autopsy report to locate the placement of those
8 gunshot wounds relative to Mr Mabry's head as best as we
9 can

10 Gunshot wound labeled No 1 is indicated to
11 be 2 4 inches down from the top of the head and 3 5 inches
12 to the left of the posterior midline The midline is the
13 imaginary line drawn down the middle of the body We're
14 talking about 2 5 inches down to 3 5 inches to the left
15 and we start from the top of the head About 2 5 inches
16 down gets to there and then 3 5 inches puts it the sort of
17 upper left rear of the head

18 Q Where was gunshot No 2'

19 A Gunshot No 2 is described to be 3 5 inches from
20 the top of the head and 2 inches to the left of the
21 posterior midline, and so you would have to go down it's
22 going to take us down substantially farther and then 2
23 inches to the left which then takes us out to about here
24 And also left rear of the head, a little farther down and
25 not quite to the side

Rubin Gur - Redirect Examination

1 Q Those two would you describe those to be gunshot
2 wounds to the back of the head?

3 A Specifically to the left rear of the head, yes,
4 sir

5 Q Is that to the back of the head? Is that part of
6 the back of the head?

7 MR NETTLES I think that's asked and
8 answered, Your Honor Simply because the witness doesn't
9 want to give him the answer he doesn't want to hear, we
10 could be here until 6 00 asking that question and he'll
11 get the same answer

12 MR MABRY I'll move on

13 BY MR MABRY

14 Q Where were the other two gunshot wounds?

15 A The other two gunshot wounds are the ones that
16 are related to the left ear One is just above the top of
17 the left ear and one is just barely behind that and
18 actually slightly shaded by the soft part of the year, so
19 these are about right about where I'm indicating just above
20 the upper portion of your left ear

21 Q Where was the one that came in from the back?
22 According to your diagram, it came in from the back and
23 lodged in Mr Sapinoso's jaw or chin?

24 A The one labeled No 4 which is the one that was
25 slightly farther rear relative to No 3

Johnathan Arden -Redirect Examination

1 Q 1, 2 and 3 are the ones, in your opinion, his
2 head was on the floor, 4 is the one is the bullet that
3 comes in at this angle and goes through his chin, is that
4 correct?

5 A Yes, sir

6 Q My question is, is that fourth wound consistent
7 with Mr Sapinoso being on his knees and the defendant
8 being behind him shooting from the back and striking him
9 where gunshot wound No 4 struck him?

10 A Yes, sir

11 MR MABRY I don't have any further
12 questions

13 REDIRECT EXAMINATION

14 BY MR NETTLES

15 Q Can you think of anything else it's consistent
16 with?

17 A Gunshot wound No 4?

18 Q Well, those whole thing about him being on his
19 knees and -- could it be consistent with being on the
20 couch?

21 A Yes, sir

22 Q Let's be clear about something, after we went
23 through all of that, do it still your opinion to a
24 reasonable degree of forensic degree of medical certainty
25 that three shots were shot while his head was on the floor

Johnathan Arden -Redirect Examination

1 and one shot was shot before his head got on the floor

2 A Yes, sir

3 Q Now, this bag and all this evidence here, from
4 your review of the evidence, is there any evidence that
5 this knife, this bag and this bag of bullets, belonged to
6 Kamell Evans?

7 A I have no idea

8 Q In other words, you looked at his statement,
9 right?

10 A Yes

11 Q Was there anything in his statement about
12 bringing a bag?

13 A Not that I recall

14 Q Now, I'm going to ask you to publish part of the
15 record, 1364, Line 13 and ends on 20, and just publish
16 that for us

17 A You've handed me a copy that says Page 1364, you
18 asked me to start at Line 13 It says "QUESTION, I'm
19 going to also show you what's been marked as States
20 Exhibit 15 previously been identified as a nylon bag
21 collected at the scene of the Sapinoso home Did you have
22 an occasion to examine that bag and its contents?

23 "ANSWER Yes, ma'am, I did

24 "QUESTION What did you find in that bag?

25 "ANSWER I found a bag that contained a knife,
Evans versus The State - Day 4

Johnathan Arden -Recross-Examination

1 which is not firearms related "

2 Q Now, let me ask you this, there's a little bit of
3 talk about bullet cartridge location As it relates to
4 bullet cartridges on the floor such as was in this house,
5 can you draw any direct correlation to cartridge location
6 and the location from where the gun was fired?

7 A Ordinarily not at all, you can't?

8 Q Why is that?

9 A Because in semi-automatic pistols, the spent
10 cartridges eject and they typically eject with some
11 substantial speed

12 Q And they're shaped how?

13 A They're shaped like little cylinders They fly
14 through the air, strike things, bounce, roll, they
15 sometimes get kicked, so their location is very very
16 difficult at best to correlate with any specific location

17 Q Please take a look at that

18 MR NETTLES With no objection, I'm asking
19 to move Applicant 65 into evidence

20 (Photograph marked as Applicant's Exhibit No
21 65 for identification was admitted into evidence)

22 BY MR NETTLES

23 Q Assuming that was moved into evidence at trial
24 and was purported to show the location of the gunshot
25 wounds to Mr Sapinoso's head, okay Would that be

Johnathan Arden -Recross-Examination

1 consistent with the State's own autopsy report?

2 A No, sir

3 Q In other words, if this were moved in, if
4 Applicant 65 were, in fact, moved into evidence -- let's
5 look at the green hole here

6 A Yes

7 Q Do you consider that the back of the head?

8 A Yes, sir

9 Q On the autopsy results, is that green hole, the
10 one clearly dead center of the back of the head, is that
11 were the autopsy report that was done by the State's
12 witness puts the bullet hole?

13 A No, sir

14 MR NETTLES Thank you very much

15 RECROSS-EXAMINATION

16 BY MR MABRY

17 Q I'm going to show you these photographs Would
18 you agree with those?

19 A To some degree, yes

20 Q What degree do you disagree with those ---

21 MR NETTLES I think he needs to mark them
22 so we know what we're talking about

23 MR MABRY Sure, I'll mark them

24 (Photographs marked Respondent's Exhibit No
25 43 and 44 for identification)

Johnathan Arden -Recross-Examination

1 BY MR MABRY

2 Q I'm going to show you Respondent's Exhibit 43 and

3 44 Tell me what you disagree about on 43 and 44

4 A Let's start with State's 44 This is a computer
5 generated image or model or the head reportedly It says,
6 "Left rear view of head of Antonio Jose Sapinoso, Entrance
7 wound No 3," and it is indeed a left rear view The
8 first problem I have with it is that the two indications
9 of apparent entrance gunshot wounds would correspond to
10 Nos 1 and 2 in the autopsy report and photographs are
11 similarly misplaced as they were in Applicant's 65

12 Q By how much?

13 A By enough to be significant

14 Q Tell us what significance is so the record is
15 clear?

16 A I can't give you a numerical answer because this
17 is a computer generated diagram that I can't -- first of
18 all there is no measuring scale built into it which you
19 would need to do that numerically Second of all, I can't
20 vouch for, although it looks like a human head, just how
21 anatomically accurate it is What I can tell you is the
22 single most important thing is the lower down of the two
23 purported entrance wounds in the back of the head is
24 square in the posterior midline It's right down the
25 middle and that was Applicant 65 and it looks similar in

Johnathan Arden -Recross-Examination

1 BY MR MABRY

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9 of apparent entrance gunshot wounds would correspond to
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21 anatomically accurate it is What I can tell you is the
22 single most important thing is the lower down of the two
23 purported entrance wounds in the back of the head is
24 square in the posterior midline It's right down the
25 middle and that was Applicant 65 and it looks similar in

Johnathan Arden -Recross-Examination

1 State's 44 and neither one of those two wounds labeled 1
2 and 2 was in the midline Each of them was several inches
3 to the left of the midline, so that's a problem

4 Q As you described earlier using my head for the
5 Judge

6 A As long as I'm addressing State's 44, aside from
7 the similar inaccuracy of the two that purport to be Nos
8 1 and 2, this one is titled "Entrance Wound No 3," and it
9 only shows a single entrance wound in the region above the
10 left ear That's also inaccurate in a sense that we know
11 that there are two in that location, and both should be
12 visible on this photograph

13 Q Well, there may be another diagram, but you don't
14 know for sure

15 A I'm simply responding to my question You asked
16 me about each one of these diagrams what I had issue with
17 or disagree with Concerning State's 43, we now have two
18 entrance wounds near the top of the left ear The one
19 that would correspond to No 4 is actually a little
20 farther to the rear than as reflected in the report and
21 photographs And while this is a left side view of the
22 computer generated head, again, it only shows one of the
23 two wounds from the rear of the head and I think you would
24 actually see both of them if they were correctly located
25 in this diagram

Johnathan Arden -Recross-Examination

1 Q Well, what would be worse to show the jury, the
2 diagram or the actual autopsy photographs?

3 A It depends on what you mean by worse Do you
4 mean in terms of accuracy? These computer generated
5 diagrams are worse because they are inaccurate and they
6 misrepresent the evidence In terms of other significant
7 but additional collateral considerations whether you're
8 risking showing blood and something that is considered to
9 be inflammatory, gory, I'll tell you that several, a
10 substantial number of the few autopsy photographs were of
11 such a low quality and out of focus, I think they would
12 have been bad in and of themselves for those reasons,
13 technical reasons, but as a matter of accurate portrayal
14 of the location of the wounds, these would be worse, the
15 diagrams

16 Q Did you review the pathologist testimony? Did he
17 describe for the jury where the wounds were?

18 A I believe he did

19 Q As far as you were asked by Mr Nettles about the
20 defendant's story of how this thing happened just a minute
21 ago, do you believe the story of how Mr Sapinoso was shot
22 to be credible?

23 A Which Mr Sapinoso?

24 Q The father

25 A The description he gives actually gives a number

Johrathan Arden -Recross-Examination

1 of elements that are credible in terms of relative
2 locations of him versus Mr Sapinoso the father, which
3 side, the right side of Mr Sapinoso where the entrance
4 wounds were if you look at the relative locations of where
5 he said he was and where the couch was that Mr Sapinoso
6 was on, at least the generalities of the trajectory, the
7 absence of stippling or other gunshot residues, many of
8 the features are consistent, yes, sir

9 Q Did you look at the blood splatter behind the
10 father?

11 A Yes, sir

12 Q You tell me if I'm wrong and I can show you the
13 photographs, blood splatter on the wall to the right
14 behind the father, and there's also blood splatter to the
15 left on the blinds of the father

16 A Relative to if you were sitting on the couch
17 facing into the room, yes, sir, that's correct

18 Q Two wounds to the side of the head for the
19 father, correct?

20 A Yes, sir

21 Q How do you explain how do you get blood splatter
22 on the right side and how do you get blood splatter on the
23 left side with no exit wounds?

24 A Correct, no exit wounds Actually, for the
25 record what you're demonstrating on his right side is more

Johnathan Arden -Recross-Examination

1 behind the couch on the wall, same wall would be
2 fireplace The best I can tell you is that ne has three
3 gunshot wounds in total into the right side of his body
4 There's obviously been some movement of his body because
5 he ends up sitting on the floor up against the couch
6 There's also been at least some time between the shots
7 It doesn't have to be any great amount of time, but that
8 does tell me that there is some bleeding with subsequent
9 impact by a projectile, which is what causes the blood
10 splattering

11 I am not going to be able to give you and
12 opinion as to the specific trajectories and patters on tne
13 blood splattering because that's outside my area of
14 expertise

15 Q That was my question Would the photographs
16 reflect there's blood splatter to the right or the wall
17 near the mantel and blood splatter on the left where the
18 blinds are, is that correct?

19 A Yes, sir

20 MR MABRY Your Honor, I'd also attach as a
21 Court's Exhibit or we can enter them into evidence the
22 cover sheet that I've now found that goes with those
23 diagrams It says, "Demonstrative Aide for Dr Michael
24 Ward, State's Exhibit 48 " I'll just have them all
25 marked

Johnathan Arden -Recross-Examination

1 THE COURT This is Page 1386 in the
2 transcript

3 MR NETTLES No objection

4 THE COURT Without objection

5 MR MABRY There was more than just the ones
6 that he already moved in What I found was that it was a
7 Demonstrative Aide used during trial so I'll just mark
8 them collectively

9 BY MR MABRY

10 Q Mr Sapinoso, the father, none of the bullets
11 left his body, is that correct?

12 A Yes, sir

13 MR MABRY Nothing further

14 MR NETTLES I have nothing further Thank
15 you very much

16 (Witness leaves the witness stand)

17 At the time, applicant would call Dr Richard
18 Canfield

19 THE COURT How long is his testimony
20 expected to last?

21 MR NETTLES I would say about 30 minutes

22 THE COURT Where is he from?

23 MR NETTLES Ithica, New York

24 THE COURT Y'all have got to let me know

25 about these people before the trial Everybody in this
Evans versus The State - Day 4

Johnathan Arden -Recross-Examination

1 courthouse has overtime It's not something we can just
2 sit here and go all night every night

3 MR NETTLES We'll do him in the morning I
4 think he was planning on spending the night anyway

5 THE COURT Good

6 MR MABRY I'm checking on my expert, Judge
7 The one that was supposed to arrive right at 5 00 His
8 testimony, I don't plan on him being up more than 10, 15
9 minutes

10 MR NETTLES I'll be honest with you, I
11 don't think I'm going to ask him very many questions
12 because I think I'll guns are bigger than his so they can
13 put him up, but I don't think I'll be talking to him that
14 much

15 I think Mr Ehlers has got an admissibility
16 argument

17 I don't think think I have a 30 minute
18 witness

19 THE COURT We'll just have to reconvene in
20 the morning

21 MR MABRY I'll just have to ask him to come
22 back the later time I'll just tell him to come and a
23 later time

24 THE COURT We'll reconvene at 9 30 a m

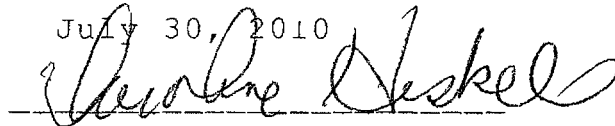
25 --END OF TRANSCRIPT RECORD FOR DAY 4, June 4, 2009 --
Evans versus The State - Day 4

Johnathan Arden -Recross-Examination

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 4th 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
15
16
17
18
19
20
21
22
23
24
25

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 -vs-)
7 State of South Carolina)
8 -----)

9 June 5, 2009
10 Spartanburg, South Carolina

11 B E F O R E

12 THE HONORABLE GARRISON HILL, Judge

13 A P P E A R A N C E S

14 WILLIAM H EHLIES, Esquire
15 WILLIAM N NETTLES, SR, Esquire
16 CHRISTOPHER SEEDS, Esquire
17 Attornies for the Applicant

18 ANTHONY MABRY, Esquire
19 MELODY BROWN, Esquire
20 Assistant Attorney Generals
21 Attornies for the State

22 CAROLINE HISKELL
23 Circuit Court Reporter
24
25

Evans versus The State

I N D E X

WITNESSES

DR CR RED REC

Richard Canfield

818 841 852 855

Renee Evans

858 873 882 884

Robyr Evans

885 911 923 925

E X H I B I T S

DESCRIPTION

ID

IN EVD

Applicant's

66 Slides

841 841

67 Evans Letter

858 ---

68 Photographs

898 898

69 Letter

903 ---

70 Affidavit

928 928

Richard Canfield - Direct Examination

P R O C E E D I N G S

(Evans versus State continued from June 3, 2009)

THE BAILIFF All rise, Court is now in session Thank you Please be seated

RICHARD CANFIELD, having been duly sworn, testified as follows

DIRECT EXAMINATION

BY MR EHLIES

Q Good morning, Dr Canfield Please state your name for us

A Richard Lane Canfield

Q And what is your current occupation

A I'm a Senior Research Associate at Cornell University?

Q And how long have you held that position?

A Approximately 20 years

Q Would you please describe your professional training for us?

A I received my undergraduate degree in Psychology and Mathematics and Literature I did my graduate and master's and Ph D at the University of Denver I specialized in Psychology and in particular child development I completed a post doctoral training in Human Development at Cornell University, and then I took an Assistant and then an Associate Professor position in

Richard Canfield - Direct Examination

1 the Department of Human Development and then moved into a
2 research position in the Nutritional Science

3 Q In your research, do you have an area of
4 specialization?

5 A My primary area of specialization is in the
6 effects of childhood lead exposure on behavior and
7 cognition

8 Q Could you describe briefly some of the research
9 you've done on lead poisoning and lead exposure?

10 A One of the major studies has been a six-year
11 longitudinal study where we followed children from birth
12 until age 6, and we tested them frequently approximately
13 every six month measuring their lead levels, measuring
14 various aspects of their family life and medical history
15 And then administering a broad range of cognitive and
16 neuro psychological tests

17 Q Are you a member of any professional societies?

18 A I'm a member of the American Psychological
19 Society, The Society for Research and Child Development,
20 and the American Association for the Advancement of
21 Science

22 Q Do you serve in any supervisor capacity?

23 A I've been in supervisor capacities as serving as
24 an expert in advisory panel for the Children's Environment
25 Health Project, a grant through the National Institutes of

Richard Canfield - Direct Examination

1 Health and Environmental Protection Agency at Mount Sinai

2 Q The study you were describing earlier and others,
3 have you published that study and other studies in peer
4 review journals?

5 A Yes, that's where my publications appear

6 MR EHLIES Your Honor, I'd like to offer
7 Dr Richard Canfield as an expert in the area of lead
8 exposure

9 MS BROWN No questions and no objection to
10 his qualifications

11 THE COURT Qualified

12 BY MR EHLIES

13 Q Dr Canfield, have you formed an opinion in this
14 case regarding the lead exposure of Kamell Evans?

15 A Yes

16 Q What material did you rely on in forming your
17 opinion?

18 A On his medical records during childhood and
19 infancy

20 Q Any other materials that you reviewed that played
21 a role in your opinion?

22 A I reviewed medical and school records in
23 Cleveland, and also school records in South Carolina

24 Q I'm going to show you what's been marked as
25 Applicant's Exhibit 48 What do those records appear to
Evans versus The State - Day 5

Richard Canfield - Direct Examination

1 be?

2 A They're pediatrician records on the front, mostly
3 well child visits

4 Q Who is the patient the records refer to?

5 A Kamell D Evans

6 Q And are these the type of records that you
7 typically rely on in your field to develop an opinion?

8 A Yes

9 Q And did you rely on these records to develop an
10 opinion in this case?

11 A Yes

12 MR EHLIES Your Honor, I'd this time, I'd
13 like to introduce Exhibit Applicant's 48 into evidence

14 MS BROWN No objection, Your Honor

15 THE COURT It's in evidence

16 (Medical records marked as Applicant's
17 Exhibit No 48 for identification and admitted into
18 evidence)

19 BY MR EHLIES

20 Q Dr Canfield, I'd like to start off and ask you
21 what is lead?

22 A Lead is a naturally occurring element It is
23 found in rock and soil It's also produced or it's mined
24 and then used in a number of industrial products, pipes,
25 paints, and gasoline has been the primary use of lead in

Richard Canfield - Direct Examination

1 this last century

2 Q How can we be exposed to lead?

3 A Well, there are a number of sources in this
4 figure I can't see it but I can list off a number of
5 them You can be exposed through paint as the primary
6 source of exposure today and that's deteriorated paint's
7 been worn off window seals and doors and that's from older
8 homes built before 1950 that contained high based lead
9 paint

10 Prior to about 1986, it was lead in gasoline
11 and the tail pipe emissions produced a large volume of
12 lead that was inhaled So there's inhalation and the
13 injection of lead is not necessarily through paint chips,
14 but the primary way of being exposed is through the dust
15 in the home that is contaminated with lead Children
16 crawl around when they're young and put their fingers in
17 their mouths and put toys in their mouths and it's through
18 that sort of ingestion that lead builds up in the body

19 Q Physiologically, what happens when lead enters
20 the body?

21 A Well, when it enters through ingestion and goes
22 into the gut, about 60 percent will get absorbed and
23 brought into the blood stream For inhalation exposure,
24 up to maybe 90 percent is absorbed and brought into the
25 blood stream After it enters the blood stream, then it

Richard Canfield - Direct Examination

1 circulates and become deposited or does become deposited
2 in soft tissues and then after a longer period of time it
3 becomes primarily deposited in bone And if the lead
4 level is high enough, then the lead that's in the bone can
5 recirculate in the body So you have calcium in your
6 bones and lead is like calcium in some ways and so it will
7 make the lead circulate again and cause re-exposure

8 Q And does figure one which we're looking at now,
9 Slide 1, does that explain what you just described to us?

10 A Yes There's more detail in the figure that I
11 can go into if you wish

12 Q How do we measure exposure to lead? How is
13 exposure to lead is measured?

14 A The most frequent way of measuring lead is
15 through a blood test, and this is often done in a
16 pediatrician's office These current days, you would give
17 a child a lead blood test at about ages 1 and 2, and
18 additional tests depending upon the results of those

19 Q Would you explain briefly the blood level
20 concentration, how it's measured?

21 A It's measured using spectrophotometry, which
22 allows -- it's a device that allows you to take any
23 compound and break it up into various kinds of elementary
24 constituents and it's read in terms of the quantity of
25 lead per amount of whole blood The way it's expressed

Richard Canfield - Direct Examination

1 typically in the US is in terms of micrograms of lead per
2 deciliter of blood That's the way the pediatrician or as
3 a researcher you would understand the value

4 Q Is there a certain level, a certain amount of
5 lead in the blood that's a cause of concern?

6 A Historically the opinion of what's been a cause
7 of concern has changed quite dramatically Until the
8 1940's or so there was no standard, it was just children
9 would come into the hospital with various complaints of
10 intestinal problems Maybe they were comatose and they
11 would be diagnosed as being lead poisoned And then there
12 became a standard of 60 micrograms per deciliter as a
13 level of concern Then as the research was advanced, you
14 can see distinct stages where the level of concern was
15 reduced more and more, and as research came in it was
16 reduced Today, it's been reduced a number of times and
17 today or at least since the 1991 CDC Panel came up with a
18 recommendation, it was 10 micrograms per deciliter that
19 was considered cause for concern and possibly follow up an
20 investigation of the child

21 Q Now, what is this slide show us about the level
22 of cause and concern in the mid 70's?

23 A In the mid 70's, around 1970, it would be able 40
24 micrograms per deciliter was a point at which a
25 pediatrician would become concerned about finding the

Richard Canfield - Direct Examination

1 source of lead that the child was being exposed to, and
2 possibly engage in a medical intervention using an agent
3 that would bind to lead so it can be excreted and try and
4 reduce the lead burden

5 As you move to the later 70's, it was reduced
6 from 40 to 30 micrograms per deciliter because it then
7 became more clear due to research that 40 micrograms per
8 deciliter was absolutely damaging And so it was reduced
9 thinking there was some safety in reducing it down to 30

10 Q And you said now the level of concern is
11 approximately 10?

12 A It is 10 micrograms per deciliter and it has been
13 since 1991

14 Q What are the effects of the exposure to lead that
15 you're talking about?

16 A If we focus only on levels of lead below 10
17 micrograms of deciliter or would you like me to go ---

18 MR EHLIES Could you back that up to Slide
19 3

20 BY MR EHLIES

21 Q I'd like to use Slide 2

22 A This figure it shows a vial of blood The view
23 at the bottom is representing a low level of exposure, a
24 low concentration of lead in blood, and the very top it
25 shows 150 micrograms per deciliter That's what the

Richard Canfield - Direct Examination

1 numbers are And if you start at the top, you can see
2 somewhere between 100 and 150 micrograms of decililiters,
3 you will likely encounter death of the child

4 As you move down to slightly less severe
5 exposure, you get encephalopathy, which is brain swelling,
6 you get kidney damage, neuropathy, and kidney damage
7 because lead competes for iron and can cause deficits in
8 available iron

9 You move down to between 50 and 100, then you
10 get colic, intestinal upset I should make it clear that
11 above -- anything that we're at like colic would include
12 everything that goes below it as well So encephalopathy
13 and colic often go together, but encephalopathy is the
14 most extreme

15 Then you move down to 40 and again you see
16 some iron problems and hemoglobin synthesis and it affects
17 oxygen carrying capacity to the blood

18 Then you get around 30, vitamin D metabolism
19 although through it's link to calcium, and you get
20 hypertension in adults at that level?

21 Q And you said 30 was considered, is it fair to
22 say, a toxic dose in 1978?

23 A Yeah So that includes 30 and everything that's
24 below it on that test as well

25 Q If you take a look at Applicant's Exhibit medical
Evans versus The State - Day 5

Richard Canfield - Direct Examination

1 records that I showed you before Do you recognize this?

2 A Yes

3 Q As an page from those medical records?

4 A Yes

5 Q Could you describe this for us?

6 A What is shows is a record from a lead test and it
7 shows the lead level screening and then it shows in the
8 result area it shows No 34 which is then followed by
9 microgram and I assume that's microgram per deciliter of
10 lead And then it goes ZMP, so Zinc Protophorrin(ph)
11 which is another measure of long term exposure, but that's
12 not used any more because it's considered less reliable
13 than the direct lead level itself

14 Q And what's the date of this medical record?

15 A November 9, 1978

16 Q The patient?

17 A It shows Kamell D Evans

18 Q Let me show you another blow up, do you recognize
19 this document?

20 A Yes

21 Q Is that from the medical records?

22 A Yes

23 Q And the exhibit we're discussing?

24 A Yes

25 Q Please describe that for us?

Richard Canfield - Direct Examination

1 A Again, it's another document that is showing the
2 result of a lead screening and a Zinc Protoporphorin
3 Screening, and it shows a blood lead level of 30
4 micrograms per deciliter

5 Q And again the date on this document?

6 A That's 11/19 and it appears to be '87

7 Q I'll ask you to look down here at the bottom, is
8 there another date on there?

9 A It appears to be December 3, 1981

10 Q And what's the difference between these two
11 dates? What does the date at the bottom reflect?

12 A That would reflect, I believe, the date that the
13 lead test was carried out

14 Q So is it possible that the date you mentioned as
15 '87 is actually '81?

16 A Yes, I think it is

17 Q I just want to back up just for a second and ask
18 you about very low exposure to lead, which you mentioned
19 briefly, but could you just tell us quickly is there a
20 safe level of exposure to lead?

21 A Well, from my research which has been the most
22 influential in this area because we've studied children
23 with very low levels of lead and from looking at the vile
24 you can see there's a 10 microgram per deciliter bar, and
25 a number of effects in terms of decreased IQ, but we found

Richard Canfield - Direct Examination

1 and the American Academy of Pediatrics concurs that there
2 is no safe level of lead

3 Q How would you characterize Mr Evans' exposure to
4 lead?

5 A It's very high Again three times or more that's
6 higher than we consider acceptable today by regulation and
7 by scientific consensus It is very very high because
8 most scientists don't believe the 10 microgram per
9 deciliter is sufficiently safe

10 Q Are you aware of when Kamell Evans was born or
11 how old he was when he had these tests?

12 A Yes He was age 2 and age 5 He was born in
13 1976

14 Q So approximately age 5 Is it likely that he had
15 high levels throughout childhood? Can you say anything
16 about that based on these two records?

17 MS BROWN Your Honor, I would object unless
18 it's to a reasonable degree of medical certainty

19 BY MR EHLIES

20 Q To a reasonable degree of medical certainty?

21 A Based on my experience of reviewing lead tests of
22 children over time, and that's based on one study that
23 looked at children, measured their blood lead levels from
24 birth to approximately age 5 and in my own work where we
25 looked at lead levels at least every six months from birth

Richard Canfield - Direct Examination

1 until age 6, and there's a figure that we can see on the
2 screen ---

3 Q This is Slide 4

4 A It shows the profile of lead exposure across the
5 child's development beginning at birth and going until 6
6 months of age to 5 years On the left axis, you can see
7 the blood lead concentration It's that scale that begins
8 at 2, 4, 6, all the way up to 30, and you have the age in
9 months of the child on the horizontal axis And the lines
10 of average birth lead levels of children four groups for
11 this study over 300 children, and they're divided into the
12 quartiles So what was considered at that time in the
13 early '90s a low level of exposure and some are higher,
14 and we can focus on the highest level of exposure in this
15 particular study My assumption or my conclusion of the
16 level of exposure as being high is based on these kinds of
17 data

18 So if we look at the top curve, you can see
19 that the child is young, and, I guess, at this case it's 6
20 months of age, they have a lead level of around 8
21 micrograms per deciliter So as the child crawls around
22 and engages in hand to mouth behavior, they ingest lead
23 and their blood lead level increases dramatically up to
24 about age 2 And for different children, that maximum
25 will occur at different ages

Richard Carfield - Direct Examination

1 Then the strongly characteristic exposure
2 pattern as you can see here is that after age 2 as a child
3 gets off the floor and there's typically better hygiene
4 and they engage in less hand to mouth behavior, the lead
5 levels decline across time And in the case that we're
6 talking about with an initial two year blood lead test of
7 34 which is off the charts of this particular figure so
8 that that's very high So at age 5, a lead level of 30 is
9 at the maximum of this figure and the flatness of that
10 interpolated curve would suggest to me based on my
11 observations of many blood lead records over time of
12 children, that there is a very high level of exposure for
13 an extended period of time

14 Q In Mr Evans?

15 A Yes

16 Q What affect do you think this level of exposure
17 had on Mr Evans' brain?

18 A Well, from the studies that we've looked at and
19 that I've conducted myself -- in fact one of the studies
20 not authored by me that this figure is based on -- shows
21 substantial behavioral damage, but in the brain I would
22 expect that the lead competed strongly for calcium It
23 turns out that both lead and calcium divalent cations
24 which means both of them have two extra electrons, there's
25 the element of lead and then there's 2+ protons, and

Richard Canfield - Direct Examination

1 calcium is also a divalent cation and so let can mimic
2 calcium some processes in the body and in tissues and in
3 cells that need calcium like in nerve transmissior where
4 calcium flows into the cell, then you can get lead that
5 comes in the cell, but it doesn't allow the next process
6 to take place So that's where you get brain damage in
7 terms of both the cells being damaged or to die, and also
8 for nerve transmission to be interrupted or disorganized

9 Q Now, what affect could this have on Mr Evans'
10 functional abilities?

11 A Lead has very very broad effects on many aspects
12 of cognitive function and that's due to ubiquity calcium
13 and calcium based processes in the brain So you would
14 expect, based on the studies I've done and others, that
15 tthere would be reduced ability to perform on intelligence
16 tests, and there would be damage physical damage to areas
17 especially in the frontal cortex in the brain and also
18 disrupted neurotransmitter function because lead can
19 disrupt the way neuro chemicals are processed in the
20 brain

21 Q And can you say to a reasonable degree of medical
22 certainty what other effects this would have on other
23 aspects of Mr Evans' functioning?

24 A On what you would see behaviorally is, for
25 example, reduced intelligence in school performance You

Richard Canfield - Direct Examination

1 would see characteristic types of behaviors that are
2 reflective in frontal lobe damage, and that would include
3 a number of processes such as reduced ability to plan,
4 reduced ability to inhibit behaviors that are
5 inappropriate. You would see a difficulty with self
6 monitoring, that is to recognize the contextual
7 appropriateness of your behavior whether the goal that
8 you're planning for if you're moving towards that goal
9 appropriately or getting off track.

10 You would see working memory deficits in
11 terms of being able to keep in mind several alternatives
12 and to be able to choose rationally among them.

13 Q You're talking about the exposure that's
14 established by these medical records for Mr. Evans?

15 A Actually I'm talking about much lower levels of
16 exposure, so I'm talking about exposure more typically in
17 the 10 microgram per deciliter range. So I expect them
18 to be substantially more damage at three times that level.

19 Q Let's talk for just a moment about the
20 intelligence test. Would you explain Slide 5 for us?

21 A This graph is not intelligence testing, per se,
22 but I can say -- do you want me to address this slide or
23 the question?

24 Q Okay. Why don't you address the question and
25 then we'll explain the slide.

Richard Canfield - Direct Examination

1 A What we find in would represent well the same
2 kind of findings that we have, in terms of just the
3 pattern and the line, what we would find with an IQ test
4 score, so if we think about the childhood blood lead
5 level, which turns out to be the horizontal axis here, and
6 if you think about the vertical axis and IQ score, what we
7 find is that for children with lower IQ scores -- I'm
8 sorry lower lead blood levels they have higher IQ scores
9 and as the levels increase, you get decreasing IQ

10 For example, if a child has a lead level of 1
11 to 2 micrograms per deciliter, you would expect them to
12 have an IQ score somewhere between 5 and 7 points higher
13 than a child who had only 10 micrograms per deciliter
14 And if you move on it would be more like 10 IQ points if
15 you got out to say 30 micrograms per deciliter and a maybe
16 10 to 15 point decline

17 Q The level is lead exposure we're talking about
18 here the Mr Evans had, would you expect effects on
19 learning disabilities?

20 A Yes And the research is clear here in a number
21 of cases There are studies where you can measure both
22 the IQ level, that would be a level of general
23 intelligence, but you also can look at achievement tests
24 so those are more closely related to how you perform in
25 school and what you learned in the school And a standard

Richard Canfield - Direct Examination

1 definition of learning disability is where you have a
2 discrepancy between intelligence and the ability to use
3 that intelligence in, let's say, a school studies

4 In a number of studies what we find is we get
5 a reduced IQ but even after you take account of the
6 reduced IQ, you still have deficits in achievement test
7 scores which would suggest that school performance would
8 not be so tightly related to the IQ test but rather more
9 related to achievement test scores

10 Q So you can have learning disabilities that would
11 be more serious than might be reflected in IQ scores?

12 A Yes

13 Q I'd like to show you what's been introduced as
14 Applicant's 1 Have you seen those records before

15 A Yes

16 Q And those are Kamell Evans' childhood school
17 records?

18 A Yes

19 Q And you've reviewed those records?

20 A Yes

21 Q And the point we were just making about learning
22 disabilities, can you explain to us based on your review
23 of those records how it relates to Mr Evans' achievement?

24 A Well, what it shows is that the teacher seemed to
25 observe specific types of disabilities in Kamell's school

Richard Canfield - Direct Examination

1 performance and one of them as we see here is problems
2 with memory, cannot remember concepts already taught
3 Then another is remembering signs I see color blindness,
4 out -- especially these needing daily re-enforcement in
5 language, auditory, visual and fine motor skills So
6 there's a number of places where you see evidence of
7 disability although this doesn't speak to intelligence

8 I see also at the time the teacher saw him as
9 happy and getting along in school and getting along well
10 with others

11 Q What grade level?

12 A This is kindergarten

13 Q Mr Evans' performance, does it change over the
14 course of the elementary school?

15 A It appeared to me from the teachers reports and
16 from the grades, report cards, that there was a decline in
17 ability falling farther behind in particularly language
18 skills, reading and processing language

19 Q What do we see in this image, Slide 6?

20 A I think we talked about this I adapted Slide 5
21 to talk about intelligence I can move on to this side

22 Q Let's back up to Slide 5 and talk about that

23 A This Slide is actually showing magnetic resonance
24 imagery showing children who are actually adults who were
25 lead poisoned at children In fact, the figure he showed

Richard Canfield - Direct Examination

1 before there were lead levels increasing and decreasing
2 over time This is data on this same children around age
3 20, and here it shows a cluster of areas in the frontal
4 cortex that's associated with various types of executive
5 functioning that along this the horizontal axis you see
6 the child's Mean blood lead level, and here going up to
7 past 35 you can see a decline here in the size that's
8 response That's the response of the MRI That shows a
9 decline in the volume that essentially a scale that is
10 representing volume of a certain area of the brain

11 And so as lead levels increases, you can
12 follow the line, you can see that the volume and this
13 cluster of frontal areas decreases

14 Q Let's move on to Slide 6

15 A That would be fine Slide 6 carries what's
16 called a functional MRI data which is to take slices of
17 the brain -- images of the brain multiple times while the
18 person is performing a given task And it really measures
19 blood flow in various regions of the brain and what you'll
20 see certain regions will be metabolically more active when
21 you're processing information related to that structure

22 So this shows again Mean blood lead level on
23 the horizontal axis and then the activation intensity in
24 terms of metabolic processes or oxygen use in that part of
25 the brain

Richard Canfield - Direct Examination

1 The part of the brain you're dealing with
2 here is in one of the language center and what we find
3 again these represent individual children, the circles,
4 and then the line is the estimated best guess of the
5 function based on the statistical estimation, you can see
6 that as the mean blood level increases up to a little pass
7 30 micrograms of deciliters, again, you see a steady
8 decrease in the metabolic activities of this language when
9 the patient is performing a language task?

10 Q Could you explain what Figure 7 is?

11 A Figure 7 is a volumetric analysis of Mr Evans'
12 MRI This is measuring the relative size or volume of
13 various areas of the brain, and you can see along the
14 horizontal axis we have different areas of the brain, and
15 you have a score on the vertical axis of the volume of a
16 particular brain structure. And there is a pattern of
17 differences in the volume of the certain structures, one
18 depending upon whether it's left or right, but also
19 depending upon what area in the brain.

20 So we see, for example, in the very first
21 area on the left where it says frontal on the horizontal
22 axis, you see an arrow that represents the left side of
23 the frontal cortex and you see a reduced volume of
24 approximately 1.75 standard deviations from what you would
25 expect from a healthy male.

Evans versus The State - Day 5

Richard Canfield - Direct Examination

1 Q And what do the asterisks represent in this
2 figure?

3 A The asterisks represent the areas of the brain
4 where research has shown deficits or either volumetric
5 differences of metabolic differences related to the slides
6 I showed before And those are just the asterisks that
7 represent different areas where you'd expect to find
8 differences that are associated with lead exposure

9 Q Now, you talked about a number of different
10 deficits and effects, would you expect someone with lead
11 exposure to have across the board deficits of everything
12 in all functional abilities or might there be deficits in
13 some areas more than others?

14 A Well, what we often find in lead exposure and I
15 think it would be the same, deficits in some areas and in
16 other areas or functions preserved An important aspect
17 of that, especially with respect to the frontal cortex
18 functions and the executive functions of the cortex, is
19 that you have a number of abilities that all need to be
20 coordinated in the achievement of a goal to set out and
21 you can have deficits in one area that obstruct that
22 entire process of achieving a goal So to some extent
23 your executive functioning ability is only as strong as
24 your weakest link So at times if you're situational
25 demands draw more on one kind of cognitive function and

Richard Canfield - Direct Examination

1 you have a weakness there, then you would show much
2 greater functional deficit

3 But even if you have a deficit in another
4 area, it could put you at risk for making various kinds of
5 executive or engaging in dis-executive behavior

6 Q Now, you were just looking at Kamell Evans'
7 elementary school records, is lead poisoning something
8 even after he was out of elementary school ever recover
9 from?

10 A What the research shows that even relatively low
11 levels of exposure during infancy and childhood have
12 lasting effects, and at this point the longitudinal
13 studies continued past 20 years and in fact, the data
14 represented by these asterisks and the previous two slides
15 represent data from children who are actually prenatally
16 exposed but during infancy and childhood you still see the
17 affects 20 years later

18 There's another important part of that is
19 that if you have a high level, again, you can be given a
20 drug that removes some of the lead from your body, but
21 research using that method that even though you can reduce
22 the lead levels, you don't change any of the functioning
23 deficits later in life

24 Q Thank you

25 MR EHLIES I'd like to ask that Applicant's
Evans versus The State - Day 5

Richard Canfield - Cross-Examination

1 66 be admitted

2 MS BROWN No objection

3 (Slides marked as Applicant's Exhibit No 66
4 marked for identification was admitted into evidence

5 MR EHLIES No further questions

6 THE COURT Cross-examination

7 CROSS-EXAMINATION

8 BY MS BROWN

9 Q Good morning, Doctor

10 A Good morning

11 Q I would to go back a little bit and talk about
12 the study that you referenced in your testimony You said
13 you had a six year study?

14 A What we published at this point is six years,
15 yes

16 Q So birth to age 6?

17 A We enrolled children at birth and began measuring
18 their lead levels at six months

19 Q So the testing and the results that you had
20 referenced were really contained within that age group?

21 A In the particular study that I conducted

22 Q And that's when you were talking about the IQ
23 effects?

24 A Yes

25 Q They were tested at 6 for the IQ effects?

Richard Canfield - Cross-Examination

1 A They were tested for IQ at ages 3, 5 and 6

2 Q And that's where you found deficits?

3 A In IQ that's where we found deficits

4 Q Now, I thought I understood you to say something
5 about there was less of a loss of IQ points after 10

6 A Well, I didn't say that here, but I could explain
7 that as to my research We found something that was
8 counter intuitive in our study which is it took very
9 little lead to cause initial significant damage That is
10 if you had a lead level as low as 10, you, as our
11 statistical average you would lose about 7 4 points in IQ
12 and it was a very rapid decline You continued to lose IQ
13 points as you increased in lead but just a slower rate
14 So by the time you got out to 20 micrograms per deciliter,
15 our estimate was that you would lose an additional 2 5
16 points And if you were to say you get out to 30
17 micrograms per deciliter, you lose an additional 2 5
18 points

19 Over the first 10 you lose about 7 and as you
20 continue you lose additional points

21 Q So at a level around the 30 mark you're talking
22 about 10 points roughly as a statistical average?

23 A Uh-hum

24 Q Did you make any personal evaluation of
25 Mr Evans?

Richard Carfield - Cross-Examination

1 A No, I did not

2 Q You referenced some neuro psychological testing
3 that was done prior to trial of Mr Evans?

4 A Yes

5 Q And this would be any test done by Dr Jim Evans?

6 A I did review some of that evidence I don't
7 recall if it was presented here today

8 Q Would you agree with me that neuro psychological
9 testing generally is done to discover dysfunction?

10 A Yes

11 Q And if neuro psychological testing was done
12 contemporaneous to the trial, that would be a very good
13 indication of what dysfunction level an applicant would
14 have at that time?

15 A Generally the inference would be that the
16 dysfunction are not highly time sensitive, so it would be
17 around that time

18 Q So that testing may be over a broad spectrum of
19 time

20 A It depends on the test For example, if you had
21 given an IQ test and we know from IQ testing that once you
22 reach adolescence, there is relatively little change in
23 your IQ through adulthood until you become older, and with
24 some neuro psychological tests you find either more
25 stability over time or less stability over time?

Richard Canfield - Cross-Examination

1 Q Okay Do you recall if Dr Evans from the trial
2 time tested IQ of the applicart?

3 A Yes

4 Q Do you recall what the tests results were?

5 A I believe it was a 94

6 Q Would you consider that genius levels?

7 A No

8 Q Would you consider that far below average level?

9 A No

10 Q It's pretty much in the average range?

11 A Yes

12 Q Well, let me understand, if you speculate that
13 there was a 10 point loss, it wouldn't go below 94,
14 correct?

15 A Correct

16 Q The 10 point loss you're talking about would
17 actually put him over 100, so isn't it true that the
18 difference of several IQ points can mean that someone
19 might slip into below average range?

20 A Can you repeat the question

21 Q Would you agree with me that the loss of several
22 IQ points, 10 perhaps, could lead to somebody going below
23 average range?

24 A Yes

25 Q But the inverse is also correct, the loss of 10
Evans versus The State - Day 5

Richard Canfield - Cross-Examination

1 might just be you go from genius level to very very
2 bright?

3 A Correct I agree

4 Q And the slides that you prepared for today, none
5 of these relate directly to Mr Evans, do they?

6 A The final slide, I believe, although I didn't do
7 the testing was a volumetric analysis of specific regions
8 of Mr Evans' brain and what I added is from the lead
9 exposure research and what you expect to find volumetric
10 or metabolic differences as a function of the area

11 Q I'd like to talk about that, but the other
12 slides, 1 through 6, these slides were not created just
13 for Mr Evans' results?

14 A Correct

15 Q Slide 7 you said you did not participate in the
16 review of any kind of propriety of the test or accuracy of
17 the test or anything like that?

18 A Correct

19 Q So you can't vouch for the data or the database
20 used in making those analysis?

21 A I can rely on it to the extent that I generally
22 rely on peer review research that has been replicated

23 Q But as far as that individual test

24 A No, I did not carry that out

25 Q At any rate, if we just look at it for the test
Evans versus The State - Day 5

Richard Canfield - Cross-Examination

1 results without vouching for any individual testing done,
2 what you indicated to us is those are indicators
3 themselves, correct, that there is a lower point in that
4 analysis that could or could not be related to lead
5 poisoning, is that correct?

6 A I'm not sure what you're asking me

7 Q Do you have the slides in front of you?

8 A Yes

9 Q Where the asterisks are, I understood you to say
10 that these are points of concern because they are, "known
11 to be affected by childhood lead exposure "

12 A Correct

13 Q But these are indicators?

14 A Yes

15 Q You can not tell us definitely that this proves
16 that there is some kind of dysfunction due to lead
17 exposure?

18 A Correct

19 Q Thank you, sir When we talked about disability
20 you made a statement that I'd like to ask you about, IQ
21 and achievement could be somewhat different and there's a
22 little disconnect in that?

23 A Typically that's one of the definitions of having
24 a learning disability is a difference between an IQ score
25 and an achievement score

Richard Canfield - Cross-Examination

1 Q Is that the difference between you have the
2 ability but you can't express the ability as well?

3 A It often, for example, can be related to how much
4 information you can retain and then how much you can apply
5 in a school setting And that's something we have to
6 sustain over a long period of time a level of performance
7 rather than being able to perform over a period of an hour
8 or so during an assessment

9 Q So it's fair to say there are some variables and
10 there are not absolutes?

11 A Right That's the nature of scientific research

12 Q And that's what we're talking about here, these
13 are statistical results, you're going to have individuals
14 who vary?

15 A Correct

16 Q Dr Canfield, would you agree that improvement in
17 grades could be an indicator that one is overcoming what
18 original dysfunction one would have from lead exposure?

19 A It would not correspond to the research that's
20 been done

21 Q Now, your research is from 1 to 6 years old,
22 correct?

23 A My specific research and the research of
24 colleagues and the broad amount of research that's been
25 done would conflict with that explanation because of the

Richard Canfield - Cross-Examination

1 performance of lead exposure

2 Q So it would be your opinion that one could not
3 improve at all if one had dysfunction from lead poison?

4 A I think there could be small improvements

5 Q But you would concede that if one worked hard in
6 school, one could do well, but one would always have to
7 work hard?

8 A Can I reference this case?

9 Q Absolutely Whatever you're comfortable with
10 answering

11 A What it appeared to me from reading his school
12 records is he was working very hard and very diligent and
13 well behaved earnest student during elementary school, but
14 during that time he was working very hard he seemed to be
15 falling farther behind His records during his later
16 schooling don't provide enough information -- at least I
17 don't recall much information that would relate his effort
18 to his ability

19 Q Would you agree with me that a review of the
20 total educational records you were presented with would
21 show an increase in average grades?

22 A Yes

23 Q Would you agree with me by the ninth grade,
24 Mr Evans was receiving Bs, As, and Cs?

25 A I would have to look specifically at the ninth
Evans versus The State - Day 5

Richard Canfield - Cross-Examination

1 grade transcript I don't recall all the grades in all
2 those years

3 Q Would you agree or disagree that he made an A in
4 pre calculus in the twelfth grade?

5 A I would have to look at that, but if it's in the
6 records

7 Q If it's in the records, is that some indication
8 that he was doing well with all of his effort?

9 A To the extent that the grade reflects his actual
10 performance

11 Q And in standardized testing that would be
12 included in the records that you received, if you saw an
13 increase, would that again indicate that his hard work and
14 effort was paying off, how dysfunction was being overcome
15 to some extent?

16 A Again, it depends on the standardization of
17 tests, but depending upon the achievement tests that you
18 are taking, they are renormed periodically So if you use
19 a different version of a test at one age as compared to
20 another or even the same test or a test of the same name
21 that's renormed, that's one possibility for increasing or
22 decreasing scores over time?

23 Q If he has the same test for grade four, five and
24 six, would you expect that would be a pretty good
25 indication of improvement?

Richard Canfield - Cross-Examination

1 A If it's the same version of the same test and it
2 hasn't been renormed, yes

3 Q Do you remember seeing that kind of improvement
4 in the records that you reviewed from 4, 5 and 6?

5 A I saw the back of the figure that you had there
6 that doesn't look familiar to me

7 Q Maybe I can hand this up to you to refresh your
8 memory

9 A Sure

10 Q I'd like to hand you this exhibit and see if it
11 refreshes your memory, Grade 4, 5 and then Grade 6 Would
12 you agree with me that that shows some improvement in some
13 areas?

14 A Let me just review the records here Again, I
15 don't know whether this test has been renormed, but under
16 the assumption that this is the exact same test, then I
17 would say, yes

18 Q Now, you mentioned some study that continue for
19 20 years, I believe?

20 A Yes

21 Q Did you bring any of those studies with you
22 today?

23 A The publications themselves?

24 Q Yes, sir

25 A I actually have them in my computer and I tend to
 Evans versus The State - Day 5

Richard Canfield - Cross-Examination

1 read them from the PDF files?

2 Q In those tests, do you measure dysfunction
3 levels?

4 A Me in particular?

5 Q Yes

6 A This is research done at different research
7 sites It's the standard literature in my professional
8 area

9 Q And this is quantified to lead poisoning, that's
10 what your'e looking for

11 RENE EVANS, having been duly sworn, testified as
12 follows

13 DIRECT EXAMINATION

14 BY MR NETTLES

15 Q How are you doing?

16 A Fine

17 Q Ms Evans, we've had the opportunity to speak
18 before and I just ask one thing to keep your voice up In
19 addition to wanting to see you, we need to hear you Is
20 that okay

21 A All right

22 Q How about tell us what's your name?

23 A My name is Renee Evans

24 Q And where do you live Ms Evans?

25 A Cleveland, Ohio

Richard Canfield - Cross-Examination

1 read them from the PDF files?

2 Q In those tests, do you measure dysfunction
3 levels?

4 A Me in particular?

5 Q Yes

6 A This is research done at different research
7 sites It's the standard literature in my professional
8 area

9 Q And this is quantified to lead poisoning, that's
10 what your'e looking for?

11 A Yes

12 Q Do you test for lead levels?

13 A Yes You mean me particularly taking blood?

14 Q Yes

15 A No, I don't Lead is determined in my studies at
16 Wardsworth Laboratories in New York which is a certified
17 facility for undertaking these kinds of lead
18 determinations

19 Q Did you request that any testing be done now on
20 Mr Evans?

21 A No

22 Q And you did notice a decrease in the medical
23 records which he was much much younger?

24 A Four deciliters?

25 Q Yes

Richard Canfield - Redirect Examination

1 A Yes, from age 2 to 5?

2 Q And on your direct examination, I thought that you
3 had mentioned one portion of the test you reviewed that
4 noted lead presence that was unreliable or not used any
5 more. Can you explain that?

6 A It's not the actual lead level, it's the Zinc
7 Protoporphyrin which is an obsolete. It was trying to
8 measure long term exposure and it's subsequent during that
9 period of time. We measure micrograms per deciliter and
10 that's a standard. So mentioned that to explain what that
11 other number was on the page, but the focus of my comments
12 is exclusively the lead and micrograms per deciliter.

13 Q And, again, your testimony is based on research
14 and study and we have to remember that every individual is
15 different, correct?

16 A Correct.

17 MS BROWN No further question.

18 REDIRECT EXAMINATION

19 BY MR. EHLIES

20 Q Dr. Canfield, is there a concept associated with
21 intelligence testing known as the Practice Effect?

22 A Yes.

23 Q Could you explain that?

24 A Give that intelligence testing are all structured
25 fairly similarly, for example, once one has seen a block

Richard Canfield - Redirect Examination

1 test where you have to match to configuration or a pattern
2 or sort of a puzzle piece, you know how the test is done
3 so the novelty -- you don't have to spend your time and
4 mental effort understanding the general structure of the
5 test You can anticipate it when possible

6 Q So if a person is given the same version of the
7 same test on multiple occasions, might there be some
8 practice effect?

9 A There would be some practice effect, yes

10 Q And that would increase their scores?

11 A Yes

12 Q Is it possible that occurred with Kamell Evans
13 standardized test scores that respondent showed you
14 earlier?

15 A Yes, to the extent of shared content and even
16 shared testing method that could be involved here

17 Q Now, you didn't do all the tests that we spoke
18 about this morning?

19 A I relied on other research

20 Q Can you tell us what peer review and it's role in
21 your field?

22 A When one carries out a study and writes up the
23 results, it's submitted to a journal editor The journal
24 editor selects other scientists with expertise in that
25 particular area to review the manuscript for

Richard Canfield -Recross-Examination

1 methodological errors, errors of interpretation and
2 general quality and accuracy of the conclusions that are
3 reached

4 The reviewers critique the article and write
5 a sometimes length response detailing the various flaws or
6 potential flaws that need to be addressed before it can be
7 published. The editor coordinates this process and
8 provides the authors a summary and recommendations and
9 also includes those original reviewers. Then the author
10 has to go back and incorporate those and deal with the
11 criticism in a way that's satisfactory to the reviewers
12 and the editors

13 It may happen multiple times, typically
14 twice, three times and sometimes more, and at that time
15 they will make a decision as to whether they would accept
16 that publication of that paper or reject

17 Q In the peer review literature in your field, is
18 there a well documented correlation between lead exposure,
19 high levels of lead exposure, and brain dysfunction?

20 A Yes

21 Q One last question, you mentioned how Kamell
22 Evans' level of exposure when he was two was 34 micrograms
23 per deciliter and it was 30 micrograms of deciliter when
24 he was five. If lead levels -- if his lead level exposure
25 decreased, would the damage done by any prior high level

Richard Canfield -Recross-Examination

1 of lead exposure remain?

2 A Especially with exposures that high and by two
3 years of age having a level of 30, a lot of permanent
4 damage would already have been done by the age of 5 years

5 MR EHLIES No further questions

6 RECROSS-EXAMINATION

7 BY MS BROWN

8 Q Dr Canfield, you were just asked about practice
9 effects Do you have any indication in any of the
10 materials that you were given to review that applicant had
11 been tested repeatedly for IQ?

12 A Not for IQ

13 Q So you wouldn't have any reason to believe that
14 94 would be affected by practice effect?

15 A Not the IQ, possible for the achievement

16 Q And you were asked about a documented correlation
17 between dysfunction and lead poisoning?

18 A It's somewhat more than a correlation I would
19 say I can explain In this area of research with
20 humans, it's of course not possible to do a true
21 experiment, which would require you to actual dose
22 children some with lead and some without lead and track
23 the difficulties We can't do that so what we do in
24 standard methodology is measure the exposure of children
25 and measure the outcome in terms of cognitive performance

Richard Carfield -Recross-Examination

1 And then we want to make sure there aren't confounding
2 factors and that is maybe a reason the IQ is low is due to
3 a socio-economic status low, intellectual stimulation in
4 the home Maybe it's due to a low birth weight We're
5 concerned about those and many others is what we try to do
6 is try to establish a correlation and then we'll measure a
7 broad range of factors that might also explain a low IQ
8 And so in all the research that I've discussed today,
9 there has been a very strong effort to measure, sometimes
10 dozens of other factors, that could contribute to a low IQ
11 and the results reported are after we've taken the
12 correlation and tested that correlation against, I think
13 in my study I used 15, possible confounders and tested
14 whether they had an affect on the outcome

15 Often they do have an affect, but the lead is
16 over and above any and above those factors So it's not
17 just a correlation which would assume it's just one
18 variable like lead correlated with another variable like
19 IQ

20 Q Isn't that essentially the difference between
21 statistics and research and diagnostics?

22 A No, I don't think so

23 Q Would you agree with me that in those statistics,
24 you're going to have individual characteristics that you
25 just referenced on cross-examination?

Richard Canfield -Recross-Examination

1 A That I just referenced the previous statement?

2 Q To my questioning before

3 A Before the re-direct?

4 Q Yes

5 A Okay Yes, there are individual differences

6 Q And isn't it true that one thing that you looked
7 at was a testing of the brain volume? That was the last
8 slide that we saw?

9 A Yes I am reporting on the test of brain volume
10 that has been done in this peer review manner by other
11 researchers

12 Q And on there we had that these areas have been
13 tested and shown to have some correlation with lead
14 poisoning?

15 A Correlation in the sense that I just discussed

16 Q And reduced brain volume actually can be caused
17 by other things, right?

18 A Correct

19 Q It can be caused by MS or Alzheimer's or
20 concussion in contact sports, correct?

21 A Yes

22 Q So there are a variety of factors there?

23 A Uh-hum

24 Q And again what we had on that chart were just
25 indicators, it could correlate or maybe it doesn't?

Reree Evans - Direct Examination

1 A It does correlate

2 Q In statistical research not to this individual
3 applicant

4 A If I understand the question, there is a
5 demonstrated correlation between brain volume -- what's
6 the correlation that you're talking about? I don't think
7 I'm getting the question

8 Q I think we're getting close there

9 A It feels like it

10 Q You're testimony is based on research which
11 compiles results from numerous individual records

12 A Correct

13 Q This is not individualized You have not made an
14 opinion that lead poisoning absolutely caused a
15 dysfunction in this particular area in this particular
16 applicant?

17 A Correct

18 Q Thank you, sir, I appreciate it

19 MS BROWN No further questions

20 THE COURT Thank you, Dr Canfield

21 (Witness leaves the witness stand)

22 MR NETTLFS Could you mark this for ID

23 (Letter marked Applicant's Exhibit No 67 for
24 identification)

25 RENEE EVANS, after having been duly sworn,
Evans versus The State - Day 5

Renee Evans - Direct Examination

1 testified as follows

2 DIRECT EXAMINATION

3 BY MR NETTLES

4 Q How are you doing?

5 A Fine

6 Q Ms Evans, we've had the opportunity to speak
7 before and I just ask one thing to keep your voice up In
8 addition to wanting to see you, we need to hear you Is
9 that okay

10 A All right

11 Q How about tell us what's your name?

12 A My name is Renee Evans

13 Q And where do you live Ms Evans?

14 A Cleveland, Ohio

15 Q What relation are you to that young man over
16 there?

17 A That's my son, Kamell

18 Q You are his biological mom?

19 A Yes

20 Q We'll talk a little bit about him later, but now
21 I'd like to lay a little ground work on his family Okay

22 A Yes

23 Q Share with me who Kamell Evans' daddy is?

24 A Barry Evans

25 Q That would be the same Barry Evans that testified
Evans versus The State - Day 5

Renee Evans - Direct Examination

1 in here yesterday

2 A Yes?

3 Q Share with me where you met Barry Evans?

4 A I met him in Glennville High School

5 Q In Cleveland, Ohio?

6 A Yes

7 Q And what grade were y'all in?

8 A Eleventh grade, twelfth grade We graduated

9 together in 1972

10 Q Did something happen in your life in 1972 that
11 changed the relationship between you and Mr Evans

12 A Yes, it did 1972 I found out that I was
13 pregnant and I informed him

14 Q Just take your time We don't have to take about
15 this now, we've got plenty of time Who were you pregnant
16 with

17 A Barry Evans and I was pregnant with Shatima

18 Q And who is Shatima?

19 A My daughter

20 Q And she is how much older than Kameil?

21 A Five years older

22 Q Now, when you found out that you were pregnant
23 with Shatima, did you share this information with
24 Mr Evans?

25 A Yes, I did

Renee Evans - Direct Examination

1 Q What happened after you told him?

2 A He wasn't happy with finding out the information
3 and ne got very angry and lashed out at me

4 Q Wnat were his plans for after high school?

5 A He was going to go to college

6 Q Tell us a little bit about his athletic ability?

7 A In high school he played many sports He
8 excelled very well in football and track and field

9 Q Was there a possibility of him receiving a
10 scholarship?

11 A Yes, it was

12 Q Now, you had Shatima?

13 A Yes, I did

14 Q She's in the courthouse today?

15 A Yes, she is

16 Q And she's a hairraesser, right

17 A Yes, she is

18 Q Here in South Carolina?

19 A Yes

20 Q When you had Shatima, was Mr Barry Evans there
21 to help you?

22 A No, he was not

23 Q What did you do after you had Shatima and sne had
24 kind of beer born for a little bit, where did your family
25 send you?

Renee Evans - Direct Examination

1 A They sent me to New York

2 Q Why?

3 A So that I can get myself together and be away
4 from Barry Evans

5 Q Let me ask you this, was it your plan to have a
6 child in high school?

7 A No, it was not

8 Q What was your plan?

9 A My plan was to graduate and then go into
10 business?

11 Q Now, while you were in New York, how did you
12 become re-acquainted with Barry Evans?

13 A I came home on the weekends

14 Q And based on that what happened between the two
15 of you?

16 A We ended up getting married

17 Q And this would have been about -- how old was
18 Shatima?

19 A One

20 Q I'm going to talk to you a little bit about the
21 relationship between you and Barry and Shatima What was
22 the relationship like in the household, and we'll talk
23 about Kamell a little later on, but what was the family
24 like the three of y'all? Was it harmonious?

25 A Well, we stated on Kimberly off 105 in Cleveland,
Evans versus The State - Day 5

Renee Evans - Direct Examination

1 Ohio It was just the three of us in the household, and
2 it wasn't very happy

3 Q Why is that?

4 A I wasn't allowed to work

5 Q Is that something you wanted to do?

6 A Yes, it was

7 Q Why?

8 A Because there things that I needed as well as my
9 child and it was very physical

10 Q When you say physical, are you talking about your
11 work?

12 A No, Barry Evans was He was very abusive
13 physically and verbally

14 Q I know this is very difficult, but when you say
15 physical abuse, what do you mean?

16 A I was beaten almost daily I was not allowed
17 finances or to leave the house I had to make sure
18 everything was done inside the home and his meals had to
19 be done

20 Q Share with me about that What do you mean by
21 that?

22 A If he come to the house and I've already eaten
23 and my daughter, and if he comes in and there's nothing
24 out, then he would get angry and he takes it out on me

25 Q When you say he takes it out on you, what do you

Renee Evans - Direct Examination

1 mean?

2 A He gets to screaming and hollering first and then
3 he hits me like I'm a man He punches me

4 Q When you say hits you like a man, what do you
5 mean by that? What's the difference between hitting you
6 like a man and woman?

7 A Because if you hit someone so hard you can hear
8 it, that's hard

9 Q Ms Evans, there are those that say, certainly
10 not me, that sort of abuse must not have taken place if
11 there's not a police report Would there be a police
12 report for this?

13 A No

14 Q Why not?

15 A Well, one, if I did that, the repercussions would
16 be twice as bad Two, I didn't let a lot of people know
17 what was going on in the household

18 Q Why is that? How does it make one feel to be in
19 a relationship like that

20 A It's belittling You lose your self-control and
21 your self-esteem and you become null and void as an
22 individual There's nothing that I could do at that
23 particular time so I just suppressed it It's very
24 embarrassing when people see you

25 Q Ms Evans, at some point have a beautiful young
Evans versus The State - Day 5

Renee Evans - Direct Examination

1 baby boy?

2 A Yes

3 Q What was his name?

4 A Kamell DeShawn Evans

5 Q Is he in the courtroom today?

6 A Yes, he is

7 Q The abuse that you've been so kind to share with
8 us, did that stop after Kamell was born?

9 A No, it did not

10 Q Was the abuse which you have shared with us, did
11 Kamell see that abuse?

12 A Yes, he did

13 Q Was there times that Kamell and his sister tried
14 to stop it?

15 A Yes, they did

16 Q What would happen when they tried to stop it?

17 A When they tried to stop their dad, the anger he
18 turned and he would throw them across the room, and then
19 he would tell them to get out of there, but they were
20 children Kamell would withdraw and my daughter, she
21 tries to do a little bit more and then she tries to
22 protect him while they're trying to protect me

23 Q Did there come a time when the abuse got so bad
24 and so persistent that you called your sister to come get
25 you?

Renee Evans - Direct Examination

1 A Yes

2 Q Did it happen more than once?

3 A Many times

4 Q And what would they do?

5 A They would go to call the police and then come
6 over to help assist me

7 Q When they assist you, what would that typically
8 involved?

9 A Nine times out of ten when somebody shows up,
10 he'll stop If I had to leave the household, they would
11 help me

12 Q Ms Evans, did there come a time where -- did
13 Mr Evans have a gun?

14 A Yes, he did

15 Q Was there a particular incident where the
16 combination of his anger and his violence with a gun in
17 the house cause you significant concern?

18 A Yes, it did

19 Q Share that with us, please

20 A This is one of times he was actually home before
21 I was and when I entered the house, apparently I don't
22 know exactly what was going through his mind, but he
23 lashed out in anger with me that I was with somebody else,
24 then he took the gun out and he shot it

25 Q Shot it

Renee Evans - Direct Examination

1 A Yes, he did He pointed it towards my ankles,
2 but he shot it in the house and it went across the room
3 through the way?

4 Q Did that scare you?

5 A Yes, it did

6 Q Why?

7 A Because I knew something tragic was going to
8 happen and one of us would end up dead, and I also had my
9 children in the house They were in the other room?

10 Q Did you ultimately divorce him?

11 A Yes, I did

12 Q And what were the grounds for the divorce?

13 A What was the grounds?

14 Q Why did you ask the court for a divorce?

15 A Because of his anger the abuse that I was going
16 through

17 Q Ms Evans, share with us one thing, do you
18 remember taking your son and getting him tested for lead
19 poisoning?

20 A Yes, I do

21 Q And why did you do that?

22 A I take both of my children to the doctor for
23 regular doctor visits, baby visits, and it was detected
24 through one of his baby visits when he was getting his
25 shots

Renee Evans - Direct Examination

1 Q Now, at some point after Barry left and at some
2 point down the road where did Kamell go about the seventh
3 grade?

4 A He left and came down the South Carolina

5 Q In the summertime would Kamell come back and
6 spend the summer with you?

7 A No, he did not

8 Q Did Kamell regularly come and visit you?

9 A No, he did not

10 Q Ma'am, as the birth mother of Kamell Evans, when
11 is the first time that you met face to face with a member
12 of his defense team, that would include investigator,
13 social worker, lawyer? When was the first time you met
14 with any of them?

15 A It was the day before the trial

16 Q Tell me about that meeting?

17 A There was a young lady that came to my daughter's
18 house and asked questions and asked a little bit about my
19 background

20 Q This was the day before the trial started?

21 A Yes

22 Q She was asking about what?

23 A She was asking about some background and myself
24 in Cleveland, Ohio and my personal background

25 Q When she was there asking you about your personal
Evans versus The State - Day 5

Renee Evans - Direct Examination

1 background, what did you tell her about the personal
2 relationship between you and Barry Evans?

3 A I told her how abusive he was

4 Q Did you give her, at that time, and I have to
5 refer to it by this little sticky thing here, did you give
6 her what's been marked Applicant's 67?

7 A Yes, I did

8 Q On the day before your son's death penalty trial
9 starts, you get to meet with somebody from his team,
10 right?

11 A Correct

12 Q And when you finally got the chance to meet
13 somebody from his team, you shared with them about the
14 abuse?

15 A That is correct

16 Q Who wrote what's been marked Applicant's 67?

17 A I did

18 Q When did you give it to the member of the defense
19 team?

20 A The day before the trial

21 MR NETTLES At this time I'd like to ask
22 that Applicant's 67 be moved into evidence

23 MR MABRY I have no objection, Your Honor

24 THE COURT It's in evidence

25 (Letter marked as Applicant Exhibit No 67
Evans versus The State - Day 5

Renee Evans - Direct Examination

1 for identification was admitted into evidence)

2 BY MR NETTLES

3 Q Ma'am, that's the document you gave to a lady
4 with white hair Does the name Lenora Topp sound
5 familiar?

6 A I didn't remember her name

7 Q But it was a female?

8 A Yes, it was

9 Q And would you please read for us the document
10 that you gave to your son's defense team the day before
11 trial started? Can you do it for us? What's the title of
12 that?

13 A "Bad temper My ex-husband has a bad temper,"
14 and this is the title and I did the brain storming when I
15 wrote it down

16 Q Right

17 A And it says, "Every other word that comes out of
18 his mouth is a cursing word He gets loud and embarrasses
19 people in public He throws objects anything that he can
20 get his hands on He assaulted people with firearms, tree
21 limbs in his hands "

22 Q Can I stop you right there Who is the person he
23 assaulted with a tree limb?

24 A It was me He picked it up and he hit me across
25 my left leg

Renee Evans - Direct Examination

1 Q And what condition were you in when that
2 happened?

3 A He was very angry and he told me to get home
4 before he got there and if I didn't, I would be in
5 trouble

6 Q Were you pregnant when that happened?

7 A Yes

8 Q Go ahead

9 A He would leave when he gets jealous and he gets
10 angry wher I ask him for money He would get angry and
11 then he would storm out of the house in rage So I then
12 wrote down, "My ex-husband has a bad temper that is only
13 one of mary reasons why I had to leave him Not orly did
14 I fear for my life on several occasions, but I also tried
15 my best to shelter my cnildren from being exposed to his
16 ironic behavior and his multi mood swings It doesn't
17 take much to tick him off, but when he was mad, he was in
18 real rare form When he was in conflict with someone from
19 his job, an associate from the streets, or just pissed off
20 by the other woman, he would storm irtto a house like a
21 lion screaming and cursing like a sailor Once he came
22 home after an evening of heavy drinking and he was hungry,
23 it was late and my children and I had already eaten and in
24 bed When he walkea through the kitchen and didn't see
25 any food, he exploded and erupted like a volcano My head

Renee Evans - Direct Examination

1 hit the floor "

2 Q What caused your head to hit the floor?

3 A He took my head and kept bashing it into the
4 floor

5 Q Ms Evans, do you want to finish reading that?

6 A "My head hit the floor and my children yelled in
7 fright As they ran to get the phone to call for help, my
8 ex-husband pulled the plug right out of the wall and he
9 threw it across the room Another time I'll family was at
10 a cabaret party I love to dance A young man asked me
11 to dance and I was delighted I danced the first record
12 and the music went into another song When the third song
13 began, my ex-husband walked up to me and tapped me on the
14 shoulder and said sit down He didn't stutter nor did he
15 blink I swear you could see the steam come from out of
16 his nose and out of his ears I guess I didn't move fast
17 enough for him, he pulled me by my hair and snatched it
18 out of my head My friends and family were there and I
19 was so embarrassed In his rage, he told me that I'd
20 better arrive home -- I'd better get home the best way I
21 could and I'd better be there before I got there When I
22 arrived home, he was walking our dog down the street and I
23 was scared to leave my girlfriend (inaudible) But
24 wait, there's more My ex-husband took a stick that fell
25 from the tree and he hit me with it just because it was

Renee Evans - Direct Examination

1 the closest thing to him and he was upset I couldn't
2 tell you what provoked him at that particular time I
3 just curled up and scurried into the house, and you
4 wouldn't believe what happened the very next day This
5 time I came into the house and he was already there in the
6 bedroom but not sleep He assaulted my self-esteem until
7 I became helpless as he slung me across the top of the bed
8 and he began hitting me I ended up with bruises on my
9 body and my face was re-arranged, then the unexpected
10 happened He pulled out the gun and threatened to shoot
11 me because he thought I was fooling around with another
12 man He fired all three shots at random, and there's a
13 hole still in the wall from where one of the bullets had
14 entered My children were asleep in the room across from
15 ours and by the grace of God, they didn't hear a thing
16 that night At that point, I woke up mentally and my
17 inner self told me it was time to do something about this
18 dilemma that I was faced with If I stayed in this
19 relationship, one of us would end up dead or seriously
20 hurt I tried to deal with his insecurities and bad
21 temper but enough was enough "

22 Q Thank you, Ms Evans

23 MR NETTLES I have no further questions

24 CROSS-EXAMINATION

25 BY MR MABRY

Evans versus The State - Day 5

Renee Evans - Cross-Examination

1 Q Ms Evans, are you prepared to go forward?
2 A Yes
3 Q Would it be fair for me to say you've had some
4 difficulty talking about this today?
5 A Yes
6 Q In fact, you've been very emotional and at times
7 unable to speak during this testimony?
8 A My chest is hurting
9 Q Is that a correct statement?
10 A Yes
11 Q Have you talked to your ex-husband this week
12 while you've been here?
13 A No
14 Q How about last week?
15 A No
16 Q You don't speak to your ex-husband?
17 A He does not speak to me
18 Q You don't speak to him?
19 A No, I do not
20 Q Was that the case back at the time this case was
21 tried in 2004?
22 A That's correct
23 Q In fact, there was a lot of resentment between
24 your family and his family, is that correct?
25 A Yes

Renee Evans - Cross-Examination

1 Q Would it also be fair to say that there was some
2 resentment between your family and Kamell for moving down
3 here with your ex-husband, Barry?

4 A I wouldn't say resentment I would say that when
5 he came down, it broke the family bond

6 Q And you didn't understand why he left Cleveland
7 and came down here to live with your ex-husband?

8 A You'll have to ask my husband that part because I
9 do not know why he came up to get him

10 Q No, I'm asking to you, you were hurt and
11 resentful of the fact that Kamell left you and went to
12 South Carolina?

13 A Yes, I was

14 Q And that resentment also involved your whole
15 family and Kamell to some extent?

16 A Yes, it does

17 Q Now, the question was asked did Kamell come to
18 see you during the summer breaks and the Christmas breaks
19 Did Kamell come to see you after he moved down here with
20 his father?

21 A No, he did not

22 Q Did he come down here during Christmas breaks?

23 A No, he did not

24 Q Did he ever come down in the summer or Christmas
25 and stay with our mother, his grandmother?

Renee Evans - Cross-Examination

1 A He may have visited her, but I don't believe he
2 stayed there

3 Q Well, tell me, did he come home in the summer or
4 Christmas ---

5 A I have no idea, sir The had broken ties with me
6 during that particular part of his life And when their
7 family went on vacation, they went on vacation I have no
8 contact with them at all?

9 Q I understand with Barry's family but I'm talking
10 about did Kamell come to Cleveland in the summers or
11 Christmas or whenever he have some kind of break and stay
12 with your mother, his grandmother?

13 MR NETTLES That's been asked and answered
14 He's asked it twice and she's answered it twice

15 THE WITNESS No

16 MR MABRY She just said no, Your Honor

17 MR NETTLES No, what she said before that
18 she may have and she asked and answered it

19 THE COURT Overruled Go ahead

20 BY MR MABRY

21 Q Did he ever come and stay with your sister?

22 A I have no idea, sir

23 Q How far did you live from your sister after he
24 moved away?

25 A I stayed in the inner city

Renee Evans - Cross-Examination

1 Q And she stayed in a different part?

2 A That's correct

3 Q Did Kamell come to Shatima's wedding in
4 Cleveland?

5 A Yes, he did

6 Q How did he get there?

7 A I have no idea how he got there

8 Q This occasion that you described, I believe it
9 was some type of party or wedding --

10 A That was a cabaret party

11 Q Did anyone at this party call the police?

12 A No, sir

13 Q Do you know why there are no police reports
14 regarding any of these incidents that you've been talking
15 about?

16 A Because I didn't file any If I had of filed
17 any, it would have been worse than it was

18 Q Did any of your family file?

19 A No, they did not

20 Q Did you keep a copy of Kamell's elementary school
21 records and Shatima's school records?

22 A Yes, I did

23 Q Did you keep those from when they were young
24 children?

25 A All those that were left in the house, yes, I
Evans versus The State - Day 5

Renee Evans - Cross-Examination

1 did

2 Q So you had a copy of Kamell's elementary school
3 records?

4 A All that were left in the house, yes

5 Q And did you turn those records over the Kamell's
6 attorney before the trial in 2004?

7 A Nobody asked me for records

8 Q Nobody asked you for any records at all?

9 A No, sir

10 Q But you had his school records?

11 A Yes, I did

12 Q That would be first through the seventh grade?

13 A The records that I did have is what I accumulated
14 -- I believe it goes up to Caledonia and the other records
15 I had to reconstruct because they were taken by his dad

16 Q His dad had some of the records?

17 A They were in the house when we moved and he was
18 still in the house so I'm assuming that he had them

19 Q And prior to his hearing, you turned over those
20 school records to Drucey Glass and their investigator?

21 A That's correct

22 Q But you didn't turn those records over to
23 Mr Sumner prior to the first trial?

24 A Nobody asked me

25 Q Nobody asked you And those records showed that
Evans versus The State - Day 5

Renee Evans - Cross-Examination

1 Karell had been held back in kindergarten?

2 A Yes, sir

3 Q And they also showed the difficulties he had in
4 elementary school?

5 A Yes, sir

6 Q Now, did anybody ask you to get any medical
7 records of Kamell?

8 A No, sir

9 Q I'm not talking about this hearing Prior to his
10 trial back in 2004, did anybody from the defense team call
11 you and ask you to get medical records on Kamell?

12 A No

13 Q Did anybody call and ask for your help in finding
14 medical records?

15 A No

16 Q If you had testified -- you ex-husband, Barry
17 testified at Kamell's trial, is that correct?

18 A Yes

19 Q If he told Mr Sumner and Mr Goldsmith that
20 there was no physical abuse in your home, would that be an
21 untrue statement?

22 A That would be an untrue statement

23 Q If you would have testified, you would have
24 testified to what you testified here to today?

25 A That's correct

Renee Evans - Cross-Examination

1 Q And that testimony that you have given us today
2 would not have put your ex-husband in a very good light
3 would it?

4 A He's never been in a good light

5 Q Would that have put him in a very good light in
6 front of the jury?

7 A No

8 Q One moment, I think that's all I have

9 Did anybody from the defense team, your son's
10 lawyers back then, Mr Sumner or Mr Goldsmith, contact
11 you about coming down here for the trial?

12 A No

13 MR MABRY Can I approach the witness, Your
14 Honor?

15 THE COURT Certainly

16 BY MR MABRY

17 Q Ma'am, I'm going to show you this document and
18 asks if that refreshes your memory If you don't
19 remember, that's fine, or whatever

20 A I don't remember this

21 Q Okay

22 A And I definitely don't remember anything about a
23 Greenville College

24 Q Okay

25 MR MABRY I'd like to publish this to the
Evans versus The State - Day 5

Renee Evans - Cross-Examination

1 Court, Your Honor

2 MR NETTLES No, no, no, it's not in
3 evidence You can't publish that to him

4 MR MABRY I thought you said no objection

5 MR NETTLES You thought I said no
6 objection

7 MR MABRY I thought that's what you said

8 MR NETTLES If he's moving that in, I
9 object

10 MR MABRY We'll bring that in at a later
11 time

12 BY MR MABRY

13 Q Do you remember a Ms Lenora Topp contacting you
14 about obtaining any kind of records?

15 A No, I do not remember her

16 Q Do you remember a telephone call from Dale Davis?

17 A I don't remember the name at this point in time
18 I don't remember his name

19 Q A female named Dale Davis

20 A I don't know if it's a guy or a girl

21 Q I think it's a lady Do you remember a call from
22 her about obtaining some records?

23 A No

24 Q Thank you, ma'am

25 MR MABRY No further questions
Evans versus The State - Day 5

Reree Evans - Redirect Examination

REDIRECT EXAMINATION

BY MR NETTLES

Q He asked you on cross you said that you -- you had records of your son's at your house?

A Yes, I did

Q So that house would have been in what city?

A Cleveland, Ohio

Q And in 2004, you had what records in Cleveland, Ohio?

A The records for Kamell when he was living in Cleveland, Ohio

Q Would you have had them in 2003?

A Yes

Q What would you have done if somebody would have bothered to come to your house and said, Ms Evans, it's 2003 and your son is facing the death penalty, would you please give us these records, would you have given them to them?

A Yes, I would have

Q As a matter of fact, that man with the beard right there, do you recognize him?

A Yes

Q Did he come to your house?

A Yes, he did

Q The lady right there in the white shirt, did she Evans versus The State - Day 5

Renee Evans - Redirect Examination

1 come to your house?

2 A Yes

3 Q Where?

4 A In Cleveland

5 Q Whenever they came to your house in Cleveland,
6 Ohio, how did you react to it?

7 A It was very open and honest and I gave them
8 everything that they asked for

9 Q So when you came to South Carolina in 2004 for
10 his first trial, what did his lawyers or investigator tell
11 you to bring with you

12 A They didn't tell me anything I didn't see them
13 until the beginning of the trial

14 Q Did they subpoena you to come in and testify?

15 A No, they didn't

16 Q Let's talk about one other thing real quick, have
17 you and I ever met?

18 A Yes

19 MR MABRY I'm going to object It's not
20 proper redirect I hadn't asked anything about
21 Mr Nettles

22 BY MR NETTLES

23 Q How long did you ---

24 THE COURT I'm sorry He objected What's
25 our response?

Robyn Evans - Direct Examination

1 MR NETTLES It's responsive to the fact
2 that his whole point of his cross was that she's
3 unresponsive and that she couldn't be managed and all this
4 stuff, and I'm going to put that in context as not true

5 THE COURT Okay Go ahead

6 BY MR NETTLES

7 Q When did you and I first meet?

8 A The exact day, I don't know the ---

9 Q Was it this week

10 A Tuesday

11 Q How long did you and I meet for?

12 A Forty-five minutes

13 Q And after meeting forty-five minutes, I called
14 you to the witness stand?

15 A That's correct

16 RECROSS-EXAMINATION

17 BY MR MABRY

18 Q Do you remember in July or August of 2004 sending
19 a birth certificate to Dale Davis, a criminal mitigation
20 investigator?

21 A I don't remember that

22 Q Could you have?

23 A It's possible but I don't remember I don't know
24 who Dale Davis

25 Q You were asked if somebody came to Cleveland and
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 asked for school records If somebody called you prior to
2 this trial and asked for those school records that you
3 had, would you have provided them?

4 A Yes, I would have

5 Q But your testimony is nobody asked for them

6 A Nobody

7 MR MABRY No further questions

8 THE COURT Thank you You can step down,

9 ma'am

10 Okay, we're going to take a break

11 (Witness leaves the witness stand)

12 (Whereupon, there was a brief break)

13 ROBYN EVANS, having been duly sworn,

14 testified as follows

15 DIRECT EXAMINATION

16 BY MR SEEDS

17 Q We have a lot of folks by the name Evans Would
18 it be okay if I called you Robyn?

19 A Yes

20 Q And if you would, when you refer to folks, would
21 you refer by first name?

22 A Yes

23 Q Robyn, tell us how old you are?

24 A I am 50 years old

25 Q And when were you born?

Robyn Evans - Direct Examination

1 A In Dayton, Ohio

2 Q Where were you raised?

3 A Alderado(ph), Ohio

4 Q How far did you go in school?

5 A I have a Master's Degree I finished to high
6 school and went on to college and got a Bachelor's and now
7 a Master's

8 Q You're going to have to tell us about your
9 Bachelor's Degree because it's impressive What is it in?

10 A It's in Electrical Engineering

11 Q And that means you can do math?

12 A Yes

13 Q And you did a lot of math to get that?

14 A Yes

15 Q And after that, you were an employee for a while
16 in the technical area?

17 A I had several jobs I worked for the City of
18 Pasadena I did co-oping I worked for Diconix in Dayton
19 and I worked for Grimes Aerospace

20 Q What did you do at Grimes Aerospace?

21 A I was a test engineer and then I moved into
22 product development and design engineer

23 Q And after that you did continue your education
24 and you got a Master's Degree?

25 A That's correct after I moved down here in South
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 Carolina

2 Q But the Master's Degree is not in Engineering?

3 A It's in Organizational Management

4 Q Now, while you were working at Grimes Aerospace,
5 did you come to meet Mr Barry Evans?

6 A Yes, I did

7 Q At that point had you been married?

8 A No

9 Q And did you have children?

10 A No

11 Q Tell us how things went with Barry Evans?

12 A Well, Barry came, I'm not sure when he came to
13 work there, but he worked in a different department that
14 occasionally see each other in the hallways and probably
15 exchanged words here and there, and then I met him maybe
16 after work, co-workers, we would get together and I saw
17 him there probably in July was the first time in 1986

18 Q And did it progress into a more formal
19 relationship?

20 A Yes, we started dating in August We got married
21 July 8, 1988

22 Q During that ---

23 A We got married in 1987

24 Q During that period of time, did you meet Barry
25 Evans' childrer?

Robyn Evans - Direct Examination

1 A Yes We started dating in August and then I
2 first met them Labor Day in September that same fall, and
3 I met Shatima and Kamell at their great grandfather's
4 house in Dayton

5 Q Did you meet them more than once?

6 A Yes After that it was about a four hour drive
7 from where he lived in Springfield to Cleveland, but he
8 had holiday visits and weekend visits so I would go up
9 there with them and he would visit the kids when he was
10 there And if they had holidays then they would come down
11 to ---

12 Q Come down to South Carolina

13 A Come down to Springfield and stay, this is still
14 in Ohio They came down and spent Christmas and I was
15 there with Barry and with them

16 Q Now, after you were married, your job situation
17 changed, is that correct?

18 A Yeah

19 Q And left Grimes Aerospace?

20 A Yes

21 Q Where did you go?

22 A I went to work for Honeywell out of the Charlotte
23 office in North Carolina and that was in June of 1988

24 Q Did Barry later come?

25 A He came three months later and he was employed by
 Evans versus The State - Day 5

Robyn Evars - Direct Examination

1 Champion Aviation in Liberty

2 Q Where did you take up residence ultimately?

3 A We lived in an apartment for a short while in
4 Spartanburg and then we purchased a home in February '89
5 in Greer, South Carolina

6 Q Tell us then how your domestic situation
7 improved? I think you had a child of your own, is that
8 correct?

9 A Yes

10 Q What was her name and when was she born?

11 A Britney was born February 1, 1990

12 Q And after that as things went, did Kamell ever
13 come to visit during the summer vacations?

14 A He came down over the Christmas holidays Even
15 when we were in Spartanburg both of their children,
16 Shatima and Kamell, spent time there And then Kamell
17 would come down, Barry's family came down and he would
18 come with them He came down and stayed with Shatima and
19 a relative, a younger boy, that was a relative at that
20 time and they stayed probably for a week during the
21 Christmas holiday or spring break and then in the
22 summertime, he would come down and stay

23 Q All summer?

24 A Yeah, most of the summer

25 Q Did there come a time when he actually moved into
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 your nousehold?

2 A Yes

3 Q And was that a good thing for you?

4 A Yes

5 Q Personally, were you encouraging of that?

6 A Yes, he wanted to come and we were thankful to
7 have him and it was a great thing

8 Q How was it great?

9 A He was a very likable child and very easy to
10 please He was very good to Britney and that added to our
11 family and he was always laughing and smiling and he was
12 just a fun child, and he was just easy to like and love

13 Q Was he involved in athletics at that time?

14 A Yes He had played football in Cleveland in
15 junior high

16 Q What grade was he in when he came to live in your
17 nousehold in Greer?

18 A He was in the middle of the seventh grade, early
19 February, and he would have been in the seventh grade at
20 that time

21 Q I think we had someone testify earlier that he
22 was in the seventh grade but playing eigtrh grade ball,
23 did you know that?

24 A He probably was I'm not sure about that

25 Q Did he continue to play ball when he got there?

Robyn Evans - Direct Examination

1 A Wher he got here, he did not play basketball.
2 because that was over, but he did get on tne Rack Little
3 League that spring into the summer The coach was great
4 and he loved it It was his first time playing baseball,
5 so he did real well He just was as natural athlete and
6 it seemed like ne could do anything that he tried We
7 went to his games and so we had fun doing that Britney
8 loved -- it was just a family thing that we could do
9 together

10 Q Did that open up other opportunities for you as a
11 family with a community through Kamell's sports?

12 A It started to and ther it really when that summer
13 the coaches started calling him immediately before summer,
14 and they were warted to get him involved in the high
15 school programs at Greer High

16 Q Greer athletic programs?

17 A Yes

18 Q And is it fair to say that throughout the high
19 school years, he was an attractive prospect for athletic
20 purposes?

21 A Definitely

22 Q And was he actively recruited by athletic people
23 and folks?

24 A Oh, yeah, definitely warted to Kamell to be a
25 part of -- Greer is very well knowr for their football

Robyn Evans - Direct Examination

1 program

2 Q Yellow Jacket?

3 A Yes They definitely try to get the kids on
4 board as soon as possible and Kamell started playing with
5 the high school that -- started practicing with them that
6 first summer and started lifting weights

7 Q Eighth grade year?

8 A It would have been the summer before his eighth
9 grade year He would ride his bike to weight lifting, and
10 he went to the fall practice in August and started playing
11 on the high school team

12 Q Did his progress in athletics transcend all the
13 way through high school and into college?

14 A Yes By the time he was a freshman he was
15 starting for the running back on that team and it seemed
16 like everyone knew Kamell in the community They knew
17 him They didn't really know us, but it was a way that we
18 started beginning to connect to the community by going to
19 games and so forth, but I guess everyone knew -- they
20 followed football They knew Kamell even though they
21 didn't know us, but they knew him

22 Q ~ I'm trying to get to the attractive candidate at
23 the college level in athletics?

24 A Yes

25 Q In his college prospect was he recruited, from

Robyn Evans - Direct Examination

1 the athletic prospective, as an attractive prospect?

2 A Yes

3 Q And had opportunities and recruitment
4 opportunities?

5 A Yes, he was receiving letters from Florida State
6 and other colleges

7 Q What we all Division One schools?

8 A Yes

9 Q But associated with that was an academic aspect
10 as well?

11 A Yes

12 Q How long was Kamell in your family before you
13 recognized the academic situation and tell us what it was

14 A He struggled in school and when he first came
15 down he had Ds and Fs, so we needed to get involved
16 immediately to try to see what the problem was and try to
17 help him

18 Q And did you do that?

19 A Yes

20 Q And by that did you mean personally take on the
21 objective of tutoring Kamell or did you take on other
22 tutors and hired that out?

23 A No, I worked with Kamell myself

24 Q About how many hours a day did you do that?

25 A I would say at least maybe two hours every night

Robyn Evans - Direct Examination

1 Monday through Thursday He was in the lower level
2 classes so they didn't assign homework usually on the
3 weekends

4 Q What do you mean lower level?

5 A Well, at Greer, they called it college prep but
6 that was the lowest level as far as academic abilities so
7 he was in those classes or regular classes And then they
8 had three levels and sometimes four levels, and at that
9 time they called it college prep was the lowest then
10 advance I'm not sure if it's honors at that time, but
11 most of the college bound students would have been in
12 honors classes There was even AP classes at that time

13 Q When you worked with Kamell did you keep track of
14 the actual work he was doing and turning in and grading?

15 A Not every paper, but I worked with him at home on
16 homework and then followed up with test grades you would
17 see and his progress report and his grade reports, and if
18 there was any communication that needed to be done with
19 the teachers and counseling and that type of thing

20 Q And did you do that?

21 A Yes

22 Q And was there any issue that gave you concern
23 about grades in relation to his work?

24 A Well, his report card grades were very high
25 compared to the work that I felt that he get at home, that

Robyn Evans - Direct Examination

1 he was capable of doing at home And then, on his report
2 cards, they would give an exam For example, in Algebra
3 1, he did well as far as his grade for the nine weeks, but
4 yet his semester exam and final exam he did not pass He
5 had a B and an F

6 Q Did you have reason then to seek some sort of
7 conference about disparity in the grades and the work he
8 was turning in?

9 A Eventually, when he was a junior, it really
10 concerned me because I felt definitely his plan would be
11 to go and play college football That's what he wanted to
12 do

13 Q Do you know if he had actually selected a
14 specific Division One school at that time in his career?

15 A His SAT scores were low

16 Q We can get to that in a minute

17 A I think Florida State or Ohio State he would have
18 loved to play for

19 Q Tell us what happened in the conference when you
20 went to the conference?

21 A I took an English paper there because when he
22 looked at his report card or class schedule, it said
23 college prep So to him that meant, you know, he was in
24 classes preparing him for college and he brought a paper
25 home one day that he was very proud of the paper He had

Robyn Evans - Direct Examination

1 gotten a B+ on it, but when I read it, I noticed that
2 there were no corrections on grammar, spelling or sentence
3 structure, just basic English, what I would say would be
4 required to put together a memo or anything like that
5 There was just no corrections at all.

6 Q Was that an isolated event where the paper didn't
7 match the grade or was that a common occurrence?

8 A I think the work that he did, did not match the
9 grade that he got I always thought his grades were
10 inflated

11 Q And did you report that in the conference with
12 the folks at Greer High School?

13 A I called to the district curriculum person and
14 she explained that ---

15 MS BROWN Objection to hearsay

16 MR SEEDS Thank you

17 BY MR SEEDS

18 Q You reported that to and had conferences with
19 district representatives, correct?

20 A Yes

21 Q For the Greer High School?

22 A Yes

23 Q As a consequence of that, were any charges made
24 to Kameil's curriculum?

25 A No

Robyn Evans - Direct Examination

1 Q And did he undertake to take the SAT to get into
2 one of these Division One colleges?

3 A Yes, he did He took the PSAT his junior year,
4 and the scores were very low

5 Q And the SAT?

6 A He took the SAT the following -- he was in a
7 tutorial program that summer before his senior year and
8 his scores were still very low They probably had
9 practice tests The report that we got his scores were so
10 low he took the SAT several times that next year

11 Q And I believe they were still low, is that
12 correct?

13 A They were still -- yeah

14 Q And did that knock him out of contention for
15 playing the Division One college school?

16 A And Division Two like Newberry College

17 Q What other remedy regarding the SAT and training
18 and practice did you put into place?

19 A We, around Christmas time, went to Huntington
20 Learning Center to see if they had something that they
21 could work with him and give him a test where they was and
22 see what they could give him to help him So they did
23 that and he worked there throughout the second half of the
24 school year and into the summer with them

25 Q And how many times did he take the SAT with
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 Huntington Learning Center assistance and training?

2 A I'm not sure but I think it was four times after
3 they started

4 Q What was his highest score after all that taking
5 the SAT?

6 A 600 and something

7 Q Did he ever obtain an 800?

8 A Not that I'm aware of, no

9 Q As a consequence of that, I think he wound up did
10 he not at North Greenville?

11 A Yes

12 Q And did he play ball there?

13 A Yes

14 Q And I'm going to show you -- you had mentioned
15 that he was kind of a happy guy and pleasant to have
16 around I think we shared these with counsel I think
17 the best way to do this is staple them and put a single
18 identifier on them because it's a package of photographs

19 MS BROWN No objection, Your Honor

20 (Photographs marked Applicant's Exhibit No 68
21 for identification and admitted into evidence)

22 BY MR SEEDS

23 Q I'm going to show you what we have now marked
24 Applicant's 68 and this package of photographs could you
25 take a real quick look at them I think you provided them

Robyn Evans - Direct Examination

1 to us Just make sure you recognize every photograph
2 that's in that package 68, and when you looked at it just
3 tell me you have?

4 A Yes, I recognize them all

5 Q In the very first photograph, is that Kamell in
6 the red shorts?

7 A Yes, it is

8 Q And it looks to me like a swimming pool?

9 A It's at our house on a basketball slab We got a
10 slab where they play basketball

11 Q I notice there are two people in the background,
12 do you know whether they are?

13 A I know the boy played basketball with Kamell, but
14 the only I don't know because I can't see his face, but
15 they were classmates at Greer High

16 Q I notice, at least in these photographs, there
17 are no tattoos on Kamell?

18 A No

19 Q About how old is Kamell?

20 A He is probably 17

21 Q In this photograph?

22 A Uh-hum

23 Q And the rest of these photographs are just of
24 family events and family integrated things and activities,
25 is that correct?

Robyn Evans - Direct Examination

1 A Yeah, just family pictures, family vacations

2 Q About the fifth one back, I can't resist because
3 there's a really young girl on the left hand side, who is
4 that?

5 A That's me

6 Q Is the beginning of your relationship?

7 A Yes

8 Q With Kamell?

9 A And Shatima, right

10 Q It's about the fifth one I think down is that
11 correct?

12 A Yes

13 Q Was there any time up until the time North
14 Greenville College was Kamell a problem for you in your
15 household?

16 A Nothing being out of the ordinary Of course, he
17 wasn't a perfect child

18 Q He was able was he not to play ball at North
19 Greenville College?

20 A Yes

21 Q How did that end, his career at North Greenville
22 College and when?

23 A He went two years and he played football two
24 years there

25 Q Why did he leave, if you know?

Robyr Evans - Direct Examination

1 A He was struggling, definitely struggling

2 Q Struggling in what?

3 A Academically It was just hard and I think he
4 thought he could do as well just getting a job

5 Q Did you continue to assist him academically even
6 after he got into North Greenville and provide tutorial
7 services and that sort of thing?

8 A I can't remember specifics I would have been
9 available but I can't remember any specifics

10 Q At the time that he lived in your household, did
11 you see anything that scarred you with regard to gang and
12 gang activities?

13 A No

14 Q Now, after college and after leaving college, I
15 think he got to be an older person and moved out of the
16 house, is that correct?

17 A Well, he came home during the summer his first
18 year and he moved in and out of the home, yeah, off and
19 on

20 Q But at no time was he a problem for you
21 discipline wise personally?

22 A No, he was always very kind and respectful I
23 never thought there was ever a problem

24 Q However, there were some problems in your
25 household, is that correct?

Robyn Evans - Direct Examination

1 A Yeah, there were problems

2 Q In what regard were they related to Barry? Barry
3 now is your husband, Kamell's father?

4 A He's very impatient and he yells He's a yeller
5 and he uses profanity so that's not -- I'm used to my
6 father was like that He yelled, but I'm used to the
7 profanity and that always has bothered me that he has to
8 cuss

9 Q Would you consider it abuse in your household?

10 A There have been occasions where I would consider
11 verbal abuse Not frequently, but I would may be say more
12 disrespect and moodiness, negative, critical, a
13 complainer Maybe one would say it's all verbal, but he's
14 definitely very negative and he definitely has little
15 patience and he does get upset easily and he does yell

16 Q Now, would it be fair to say that you were an
17 advocate for Kamell through his academic career in high
18 school and college?

19 A Yes

20 Q And I think that you later came to be involved in
21 Kamell and his defense when he was charged with capital
22 murder, is that correct?

23 A Yes

24 Q I need you to tell me what you did in regards to
25 contacting the attorneys and what the relationship was

Robyn Evans - Direct Examination

1 there?

2 A The first meeting I remember with his attorney
3 Mr Richey was very upsetting

4 Q And how so?

5 A Well, he basically said he ---

6 MR MABRY Objection, hearsay

7 THE COURT Sustained

8 (Letter marked as Applicant's Exhibit No 69
9 for identification)

10 BY MR SEEDS

11 Q As a result of the conversations you had -- can
12 you tell us what time that was, what date? April 2, 2003,
13 I'll offer to you

14 A We met with him in July of 2004

15 Q And as a consequence of that meeting, was anyone
16 else there?

17 A Barry was there initially

18 Q As a consequence of that meeting, what was your
19 impression about Kamell's defense? What was your concern?

20 A That he was not going to get a fair trial

21 MR MABRY Objection to the legal conclusion
22 by the witness She is not an expert

23 THE COURT Overruled

24 BY MR SEEDS

25 Q Your concern?

Robyn Evans - Direct Examination

1 A That he was not going to get a fair trial because
2 he was not going to have adequate representation through
3 the public defense system

4 Q Was funding an issue?

5 A That's what we were told

6 Q What did you do regarding funding after that
7 conversation?

8 A Well, I went home and I done some research in May
9 of that year, so I looked at that I had printed off
10 national standards and state standards, not South
11 Carolina, there was nothing there that I could find, but
12 other states I did find in South Carolina that there was
13 a Public Defender

14 Q I'm going to show you what's been marked for
15 identification as A-69 and ask you if you recognize that
16 document?

17 A Yes

18 Q And if you will take a look at that privately
19 Does the name Harry Desk ring a bell?

20 A Yes, I'm fairly certain that's the person that I
21 talked with

22 Q And what was the substance of your conversation?

23 A Whether funding was available

24 Q What did you do after having that conversation?

25 A We had a conference with Mr Ricney after that
 Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 Q What did you tell Mr Richey at the second
2 conference?

3 A There were funds available

4 Q What else did you tell Mr Richey at the second
5 conference?

6 A Well, it was over the phone It was a telephone
7 conversation between Kamell, Mr Richey and myself

8 Q What did you tell him other than the funds were
9 available? Let me ask you this, the exhibit regarding the
10 visitor's log that is in evidence here reflects that on
11 the second day of incarceration a man by the name of Danny
12 Hyatt Do you know who Danny Hyatt is?

13 A Yes

14 Q Who is he?

15 A He's an investigator for an attorney in
16 Greenville

17 Q Do you know the attorney's name?

18 A Mr Warder

19 Q Richard Warder?

20 A Yes

21 Q And as a consequence then of having these
22 conversations with Mr Richey, did you visit with
23 Mr Danny Hyatt?

24 A Yes, he advised me to ---

25 MR MABRY Objection
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 BY MR SEEDS

2 Q It's okay Did you visit with Mr Danny Hyatt?

3 A Yes

4 Q Did you discuss with Mr Danny Hyatt you
5 concerns?

6 A Yes

7 Q As a consequence of that, what did you do?

8 A I purchased a book on mitigation and I sent that
9 to Kamell

10 Q What was the nature of the book on mitigation?
11 Did you look at it?

12 A I had it sent directly from Barnes and Nobles
13 because you couldn't send books, so what I did was I
14 looked -- I used the Internet as a resource to read about
15 mitigation and then Kamell was supposed to when we knew
16 that he could get that book back to us He was supposed
17 to get it back to me so I could have that book as a
18 resource after he had read it

19 Q Did that ever happen?

20 A No

21 Q Did you ever see the book for the first time?

22 A No

23 Q After the telephone conversation, what is the
24 next meeting you had with Mr Richey?

25 A We did not meet after that

Robyn Evans - Direct Examination

1 Q Wher was the next meeting you had with ary
2 lawyer?

3 A I called Steve Sumner to see if I could come in
4 and talk with him

5 Q Was that after he had been appointed?

6 A Yes

7 Q And Mr Richey was no longer on the case?

8 A No

9 Q You nave looked at A-69 marked for
10 identification, is that correct?

11 A Yes

12 Q And what is that?

13 A This is a letter I wrote for Kame11 to Judge Cole
14 about concerns that we had with Mr Richey's overall
15 strategy about the case or mishandling about the case

16 Q What was the strategy? Did he express his
17 strategy to you, the lawyer nandling ---

18 MR MABRY Objection, hearsay

19 THE COURT Sustained

20 BY MR SEEDS

21 Q Do you recognize the letter?

22 A Yes

23 Q Are the context true and accurate?

24 A Yes

25 Q And what was done with that letter to your
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 knowledge?

2 A I faxed it the office and then mailed a copy of
3 this address that's here

4 Q Does it show a copy on the second page?

5 A Yes, and I also copied Mr Goldsmith, Rodney
6 Richey, John Mauldin, Denise Williams, Lottie Gibson,
7 Barry Evans and myself

8 Q Everyone including the trial lawyers in this case
9 got this letter?

10 MR SEEDS We're offering this into
11 evidence

12 MR MABRY We object, Your Honor It
13 contains layers of hearsay and conclusions of this witness
14 who is not an expert There are references to what they
15 told her, what somebody said She's testified she wrote a
16 letter about what her concerns were, but there are many
17 things in here that are not admissible

18 MR SEEDS Your Honor, it forms the basis of
19 the trial lawyers file, their information about what to
20 do, who to talk to, what the concerns of what the family
21 was

22 MR MABRY There has been no testimony from
23 any trial lawyer about this document that he's
24 referencing

25 MR SEEDS The testimony is it was sent to
Evans versus The State - Day 5

Robyn Evans - Direct Examination

1 him The person who authored it is here and testified she
2 sent it to him

3 MR MABRY It still contains hearsay and
4 legal conclusions It's objectionable and not admissible

5 THE COURT I sustain the objection

6 BY MR SEEDS

7 Q What was the next meeting that you had with
8 Mr Sumner?

9 A It was the Wednesday before the jury selection of
10 Kamell's trial

11 Q And you offered any concerns yourself to
12 Mr Goldsmith?

13 A I had never met Mr Goldsmith or talked to him

14 Q When was the first time you met Mr Goldsmith?

15 A At the trial the first day Barry and I arrived

16 Q Did you make an effort to contact Mr Goldsmith?

17 A I don't know

18 Q Did you meet with Mr Sumner in his office?

19 A Yes

20 Q And tell us what you did in that meeting?

21 A I expressed my concerns about based on what I had
22 read about standards of what would need to be done, that
23 there hadn't been much done at all

24 Q Did you make a specific request yourself that the
25 lawyers seek a continuance?

Robyn Evans - Direct Examination

1 A I told him -- I don't know if I used those words,
2 but I did say how can you be ready to go to trial

3 Q And did it go to trial?

4 A Yes

5 Q In spite of your request?

6 A Yes

7 Q And did you have any contact from other defense
8 team members prior to the trial?

9 A Yes

10 Q And who would that have been and when did it
11 occur?

12 A Lenora Topp She came to the home a couple of
13 times maybe four weeks before the trial It was a very
14 short time period It was just a few weeks before

15 Q How many meetings did you have with her?

16 A I believe two

17 Q Did you alert her to academic issues, learning
18 issues with Kamell?

19 A We talked about that

20 Q And did she make any specific requests that you
21 get early education records from the school districts in
22 Cleveland?

23 A Not that I'm aware of

24 Q Nobody asked you to get those records?

25 A Not that I'm aware of

Robyn Evans - Cross-Examination

1 Q Thank you

2 MR SEEDS Your Honor, I'm going to leave
3 A-69 with the court reporter and just have it as a proper
4 as of a record of our request that it be admitted

5 THE COURT Yes, sir

6 CROSS-EXAMINATION

7 BY MR MABRY

8 Q Mrs Evans, is that correct?

9 A Yes

10 Q I heard you discussing some things about your
11 husband earlier You haven't left him have you?

12 A No

13 Q You're still married?

14 A Yes

15 Q How many years have you and Mr Evans been
16 married?

17 A We were married in '87 It will be 22 years

18 Q Would you describe it as a happy marriage?

19 A No

20 Q You wouldn't?

21 A No

22 Q But you haven't left him?

23 A No

24 Q I'm looking at the photographs that you looked at
25 a minute ago and would you agree with me that Kamell was

Robyn Evans - Cross-Examination

1 provided with a loving and stable home once he moved to
2 South Carolina?

3 A We tried We made an effort to do that That
4 was one thing that was a priority for both of us

5 Q Well, I don't see any photos in here where Kamell
6 is upset or appears to be abused, do you, in that stack in
7 front of you?

8 A No

9 Q In fact, it appears that Kamell pretty much had
10 it all as a teenager, didn't he?

11 A He didn't have it all He didn't have his
12 mother

13 Q But he had a stepmother that loved him, right?

14 A Yeah, he did, but that's not the same as a
15 mother

16 Q Did you love him?

17 A I love Kamell

18 Q You still love him?

19 A Yes

20 Q Now, you talked about his grades when he came
21 down here I want to talk to you a little bit about his
22 school grades Do you remember, I'm looking at his
23 seventh grade coming down here to South Carolina, okay?

24 A Uh-hum

25 Q At Greer Middle School Y'all made him go to

Robyn Evans - Cross-Examination

1 school every day, right?

2 A Pretty much

3 Q Language Arts, first quarter, a B, do you
4 remember that?

5 A The first nine weeks?

6 Q Yes He had a B in Language Arts, is that right?

7 A If you have it there, I'm sure that's right

8 Q Let me share that with you

9 A Right His first quarter grade was as B,

10 Q What was the second quarter grade?

11 A Wait He wasn't here for the first quarter

12 Q Well, I'm looking at the records that was
13 provided

14 A That was in Cleveland I don't know how they
15 would have had a first quarter and second quarter because
16 he didn't come down until February, and his third quarter
17 there's a D, and the fourth quarter a C I don't know why
18 they would have that I'm not sure?

19 Q Does this say Greer Middle School 1990 to '91,
20 Grade 7, Kamell D Evans?

21 A I don't understand that?

22 Q Let's go to Home Arts, what was his grade third
23 quarter and fourth quarter?

24 A That would have been like Home Economics, he had
25 a C the third quarter and a B the fourth quarter and a C on

Robyn Evans - Cross-Examination

1 his exam

2 Q What's the next subject on that sheet?

3 A Leading Exploratory, which was probably remedial
4 He had a B the third quarter, a C the fourth quarter and a
5 B on his exam

6 Q And what did he make in Social Studies?

7 A He made a D the third quarter, a C the fourth
8 quarter, a D on his exam

9 Q What about Life Sciences or Science?

10 A That regular science so that would have been the
11 low class

12 Q What did he make?

13 A He made a B the third quarter, a C fourth quarter,
14 and a C for the second semester

15 Q In Math, what did he make?

16 A He was in regular math and he made Bs

17 Q B the third quarter and B the fourth quarter?

18 A Yes

19 Q What did he make in Music?

20 A B, third quarter, and an A fourth quarter

21 Q What did he make in Physical Education?

22 A He made an A

23 Q What did he make in fourth quarter?

24 A An A

25 Q Literature?

Robyn Evans - Cross-Examination

1 A Regular literature, he made a C third quarter, B
2 forth quarter, and a C for semester

3 Q Can you tell me anywhere in those grades when he
4 came to South Carolina that he made an F?

5 A No

6 Q He did not make an F in the seventh grade?

7 A Yes, he made an F on progress reports not on his
8 grade reports, but on intern reports he made Fs

9 Q He wasn't playing high school football in the
10 seventh grade, was he?

11 A No

12 Q I'm going to read you his ninth grade and tell me
13 if you think this is correct or not, English a B,
14 Government a B, PE an A, art an A, Algebra 1 a B-, Physics
15 a C, and Pre-Algebra a C, does that sound about right?

16 A Your reading the transcript which doesn't show
17 what he scored on his exams and if you have children in
18 public schools, the schools that I'm familiar with a lot
19 of the grades are based on homework and very few times
20 does a teacher just go by test grades Also, effort
21 counts for quite a bit especially when your children are
22 in the lowest level class available

23 Q And Grade 10, does this sound about right, C in
24 English, D+ in Western History, C in Biology, C in
25 Geometry, A in PE, and a D+ in Spanish, does that sound

Robyn Evans - Cross-Examination

1 about right?

2 A I haven't looked at his grades

3 Q Let's go to the eleventh grade, English a B, US
4 History a C, Algebra 2 a B, Chemistry a C, and Spanish a
5 C, does that sound about right?

6 A If you have the report there, I'm sure it's
7 right

8 Q Let's go to the twelfth grade, English a C, Art a
9 B, some type of computer program C, some type of business
10 BUSCOMAP -- I don't know what that is

11 A It would be business something

12 Q That was a C, Social-something C, pre-Calculus A,
13 and Keyboarding a C, does that sound about right?

14 A Yeah, Kamell was definitely an overachiever based
15 on his grades

16 Q We reviewed the ninth, tenth, eleventh and
17 twelfth grades In any of those grades, did you hear me
18 say he made an F in any class?

19 A Not based on the grade report you're reading,
20 based on transcripts

21 Q Did he graduate approximately 61st out of 140
22 people and I'm saying approximate In the middle of his
23 high school class that's where he graduated?

24 A I don't know

25 Q Do you know what his GPR was at North Greenville
Evans versus The State - Day 5

Robyn Evans - Cross-Examination

1 College?

2 A It wasn't very good

3 Q Would you disagree with me if I said it was
4 approximately 2 1 GPR?

5 A No, I wouldn't

6 Q Do you remember Kamell being convicted with
7 assault and battery on February 27, 1997?

8 A I was no aware he was convicted of assault and
9 battery

10 Q Were you aware he was convicted of possession
11 with intent to distribute marijuana and possession of a
12 pistol?

13 A Yes

14 Q Was he living with y'all at the time that
15 happened?

16 A I don't think he was I'm not sure

17 Q Isn't it true that Kamell and Mr Evans had a
18 falling out about three or four years before these murders
19 happened?

20 A No

21 Q When did the falling out occur?

22 A It was not just Barry, it was me and Barry and
23 Kamell It was Thanksgiving 2001, 2002, something like
24 that, probably like 18 months

25 Q And Kamell was, I believe, how old when this
Evans versus The State - Day 5

Robyn Evans - Cross-Examination

1 crime occurred, do you remember?

2 A He was born in '76, so 27 He would have been
3 26

4 Q Okay So when he was around 24 or 26, there was
5 some kind of falling out between he and his father?

6 A And me too

7 Q And y'all kind of loss touch with him?

8 A We did not talk a lot We would see him He
9 didn't come to our home, but Shatima lives next door and
10 so he would see Shatima and he would see Britney and
11 Whitney still And we would see him maybe at DJ's
12 basketball games, at Shatima's birthday party We went to
13 a family reunion in Mississippi in July and we were all
14 together there We stayed at the same hotel there and we
15 were at their reunion together for a few days We didn't
16 really talk a lot but we still saw him

17 Q From time to time

18 A And I would try to talk to him or I talked to him
19 on the phone a couple of times, but the relationship was
20 strained?

21 Q And tell me if I'm wrong, but there was also a
22 strained relationship between Kamell and Barry and the
23 family of his mother, Renee, up in Ohio?

24 A Not during that time She was down here
25 visiting She visited Kamell a lot during that time

Robyr Evans - Cross-Examination

1 Q Renee did?

2 A Uh-hum

3 Q Did he go up to Cleveland and visit her?

4 A No

5 Q Did he go up to Cleveland and visit his
6 grandmother?

7 A When are you talking about?

8 Q I'm talking about this time period you're talking
9 about this strained ---

10 A No He did go up and visited Barry's mother, but
11 it was before he drove up the first time, that was before
12 this happened His mother would come down and visit him
13 She would stay with Shatima and she would visit Kamell and
14 his grandmother Georgia that's here

15 Q Let me ask you this, after Kamell moved down her
16 to South Carolina first he moved in with y'all

17 A Uh-hum

18 Q From that time that he was living with you, even
19 though, I guess, he left y'all's home, did he go back and
20 visit his mother or his grandmother or his aunt or his
21 uncle?

22 A He visited Barry's side of the family

23 Q He did not visit Renee's side?

24 A Not very often A few hours here and there or he
25 may see them but not very often

Robyn Evans - Cross-Examination

1 Q Not very often
2 A He went back and stayed with Barry's mother
3 Q Now, you said you talked about meeting Mr Sumner
4 one time
5 A Uh-hum
6 Q How many times did you husband meet with
7 Mr Sumner?
8 A I don't know
9 Q You don't know ---
10 A I think one time as far as I know
11 Q One time with you?
12 A No, he didn't meet with me I called -- he
13 didn't asked to meet with me I called Mr Sumner and
14 asked to meet with him Barry met with Mr Sumner
15 Q Separate from you?
16 A Yes
17 Q And Shatima as well?
18 A Yes
19 Q How old was Kamell when he left y'all home? When
20 did he become emancipated from your home?
21 A After he quit North Greenville he came home and
22 lived with us At times he would move out and the last
23 time he lived with us was probably when Shatima was
24 settled in in her home he lived with her and he didn't
25 live with us after that I'm trying to think what year

Robyn Evans - Cross-Examination

1 that was It was in the summer probably 2002, 2001 would
2 have been the last time

3 Q Y'all didn't talk a lot, but you would see Kamell
4 from time to time?

5 A Yes

6 Q Was he carrying two pistols when you saw him?

7 A No

8 Q Did you ever see him with guns?

9 A Did I ever see him with guns, no

10 Q Did you ever see your husband Barry Evans
11 physically abuse Kamell when he was living in your home?

12 A I guess I would have to say no

13 Q Did you go to the scene that night when Kamell
14 had the Sapinosos hostage in their house?

15 A No

16 Q You did not Did you talk to Kamell on the
17 telephone?

18 A Yes

19 Q How long did you talk to him on the telephone?

20 A Probably five minutes I talked to him, Britney
21 talked to him, Whitney talked to him

22 Q So while he's in the house holding the Sapinosos
23 hostage, you talked to him, your two daughters and who
24 else?

25 A No one else because we were the only ones home
Evans versus The State - Day 5

Robyn Evans - Cross-Examination

1 Q What did you tell Kamell to do?

2 A I told him that his dad was on his way down there
3 and that he would help him Kamell said he did not know
4 what to do They were not telling him what to do and I
5 said his dad was on his way and he would help him

6 Q Did you tell Kamell to put the guns down and come
7 out of the house?

8 A I don't believe I said put the guns down and come
9 out of the house

10 Q Did you tell him in any form or fashion stop what
11 you're doing and come out of the house?

12 A No, I didn't tell him to come out of the house
13 He was calm but yet I can tell he was in trouble He
14 didn't know what to do and I don't know what I said to
15 him I don't know if I really knew what to say to him,
16 but I said just stop I think I said just stop it where
17 it is Your dad will be there and he will help you, get
18 out of the house Your dad is on his way, I'm going to
19 call your dad and he'll call you

20 Q Did you tell Kamell not to hurt the Sapinosos?

21 A I didn't think he would hurt anybody I don't
22 know that I told him not to hurt him I didn't think he
23 would hurt anybody

24 MR MABRY No further questions

25

Robyn Evans - Redirect-Examination

1 REDIRECT EXAMINATION

2 BY MR SEEDS

3 Q Let me ask you one thing You were asked about
4 the grades and how they improved over the high school
5 years, do you remember that testimony?

6 A Yes

7 Q You were going through the grades ninth, tenth,
8 eleventh, twelfth, do you remember that testimony?

9 A Yes

10 Q Is that the time he was being tutored and
11 repetitively taking the SAT and even contracted out
12 support tutorial services with Huntingdon Learning Center?

13 A Yes

14 Q Wasn't there just a barrage of support work going
15 on academically?

16 A I think so, yes

17 Q And isn't that the time frame when all that was
18 happening?

19 A Yes

20 Q And wasn't the purpose of that was to get his
21 grades up to get into a Division One school and get his
22 SAT up?

23 A We weren't confident that the grades meant
24 anything so we know that the scores were what the colleges
25 would look at ultimately He had to score at least a

Robyn Evans - Redirect-Examination

1 minimum on that and he wasn't able to do that

2 Q Based on your exposure to Kamell during that time
3 frame, you were there with him?

4 A Yes

5 Q You were there with him academically?

6 A Yes

7 Q Was he motivated to succeed?

8 A He worked very very very hard and we pushed him
9 probably too hard

10 Q Academically?

11 A Yes

12 Q Now, you were asked also I think about whether
13 Kamell was abused by Barry, do you remember that question?

14 A Yes

15 Q I'd like to broaden your definition of abuse to
16 accommodate your understanding of that word and ask you
17 whether Barry abused Kamell

18 A Did Barry abuse Kamell?

19 Q Yes, given your definition

20 A He yelled at Kamell I remember he called him
21 stupid a couple of times He was hard on Kamell He has
22 very little patience That's his personality

23 MR SEEDS Thank you

24 MR MABRY Just a few on recross

25

Robyn Evans - Recross-Examination

1 RECROSS-EXAMINATION

2 BY MR MABRY

3 Q Did he call Kamell stupid for selling drugs for
4 money?

5 A No

6 Q Do you remember Kamell making an 801 on the last
7 SAT test that he took?

8 A No

9 Q Do you think that's possible that he made an 801
10 or the last test he took?

11 A I don't remember

12 Q Did you ever tell Mr Sumner that you felt like
13 your husband verbally abused Kamell?14 A Yes, I told him there was abuse that needed to be
15 looked into Yes, I did tell him that

16 Q And when was that when you told him that?

17 A When we met in the letter that I wrote where
18 Mr Richey assumed there was no abuse That was the whole
19 point that how can you assume that when Mr Sumner hadn't
20 talked to anyone Lenora Topp knew that there was
21 violence and abuse

22 Q Did you tell Ms Topp?

23 A Yes, she knew She knew about the abuse

24 Q And your testimony is you never left your husband
25 because of any kind of abuse or verbal abuse of your

Robyn Evans - Recross-Examination

1 children?

2 A Are you saying you think I should have left?

3 Q I'm asking if you ever left your husband because
4 of verbal abuse of your children

5 A When the children were young I did leave a couple
6 of times before Kamell came for night because of the
7 verbal abuse

8 Q Okay I asked you that earlier and you said you
9 had never left your husband

10 A Well, I left for a night I thought you meant
11 did I leave him with the intent of divorcing him I'm
12 from a family that you do not divorce so that's really not
13 an option for me

14 Q Do you know what Kamell told his lawyers about
15 his relationship with his father?

16 A He loves his dad, I'm sure

17 MR MABRY No more questions

18 THE COURT Thank you, ma'am, you may step
19 down

20 MR SEEDS Excuse me, Your Honor

21 THE COURT No more questions, sir Thank
22 you can step down, ma'am

23 (Witness leaves the witness stand)

24 MR SEEDS Can I make a motion?

25 THE COURT Sure

Robyn Evans - Recross-Examination

1 MR SEEDS On that Exhibit 69, I believe the
2 door was opened and I would offer that into evidence

3 THE COURT Okay Thank you

4 MR MABRY Same objection as before, Your
5 Honor

6 THE COURT Okay Thank you

7 MR NETTLES We've got a couple of
8 affidavits that we provided and we've provided the social
9 security numbers when we got those affidavits, and that
10 would, for today, that would conclude our case

11 MS BROWN Your Honor, we have no objection
12 to the affidavit of Joanne and I'm not sure of the last
13 name

14 MR SEEDS Huntingdon Learning Center

15 MS BROWN It's essential authentication of
16 records and we don't object to the records coming in

17 THE COURT Okay

18 MS BROWN On the other affidavits, we do
19 have an objection just in general on testimony because
20 they were not presented We haven't had an opportunity to
21 run the rap sheets yet or cross-examination, obviously,
22 because they were not presented

23 We do recognize Simpson versus State were
24 affidavits were accepted at the end of the hearing, but we
25 had an objection in that case and we continue our

Robyn Evans - Recross-Examination

1 objection in that case because it doesn't give us an
2 opportunity to cross-examine the witness and allow Your
3 Honor to make his own decision on credibility So we do
4 have an objection to those affidavits coming in on that
5 basis

6 MR NETTLES We can make this a little
7 easier How about if we wait until we reconvene They
8 can run the rap sheets and we can talk about it again

9 THE COURT That's fine

10 MR NETTLES But the Huntingdon Learning
11 Center ---

12 MS BROWN We don't have any objection to
13 that

14 (Affidavit marked as Applicant's Exhibit No
15 70 for identification and admitted into evidence)

16 THE COURT' As I understand it, the Attorney
17 General is going to insure the exhibits are turned into
18 the Greenville County Clerk of Court

19 MS BROWN Yes, sir Both the trial
20 exhibits and the court reporter for this proceeding will
21 bundle up the exhibits for the PCR hearing, we will also
22 take those to Greenville and ask that they be filed in the
23 Clerk's Office in this action

24 THE COURT All right You anticipate
25 another three days to be necessary to conclude the
Evans versus The State - Day 5

Robyn Evans - Recross-Examination

1 presentation of evidence?

2 MS BROWN I think two to three days is what
3 we anticipate and the applicant's case is still open at
4 this time, right? You still have witnesses?

5 MR NETTLES I think we have three

6 MS BROWN The reason I asked is I want to
7 reserve our motions we had at the end of the case

8 THE COURT Just confer and let me know the
9 dates that you're absolutely not available so we can
10 reschedule this with Court Administration as soon as
11 possible hopefully by the end of the summer

12 I appreciate everyone's hard work and
13 dedication I know it's a massive amount of work to
14 present this amount of evidence, and I know for every hour
15 we spend in court represents a number of hours of
16 preparation so I know it's a lot of hard work, skill and
17 talent put into this So I appreciate everyone's courtesy
18 and cooperation and we're adjourned until we reconvene

19 ---END OF TRANSCRIPT RECORD---

20

21

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23

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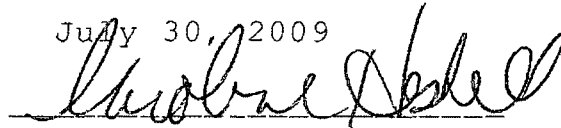
25

Robyn Evans - Recross-Examination

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 5th 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, 2009

13 

14 Caroline Hiskell
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July 9, 2009

COPY

**VIA FACSIMILE, ELECTRONIC
AND REGULAR MAIL**

Honorable D Garrison Hill
Thirteenth Circuit Judicial Circuit
Suite 213, 305 East North Street
Greenville, South Carolina 29602

Re *Kamell Delshawn Evans v State of South Carolina*
C A No 06-CP-23-7719

Dear Judge Hill

The applicant proposes to take the deposition of David L Bachman, MD, who is a Professor and Director of the Division of Neurology in the Department of Neuroscience at the Medical University of South Carolina Dr Bachman lives in Charleston and his deposition will be offered as substantive evidence on the merits of the applicant's claims Dr Bachman did a neurological examination of Kamell Evans and recommended that an MRI be obtained On September 5, 2008 an MRI was performed on Mr Evans at MUSC in Charleston, South Carolina A second MRI was conducted on November 24, 2008, in a format compatible with the quantitative analysis performed by Dr Ruben Gur The deposition will be noticed pursuant to *SCRCP*, Rule 30 and offered pursuant to Rule 32(a)(3)(B)

The State has alerted the Court in advance of the deposition that it objects to the taking of the deposition and to offering it as substantive evidence The Court has asked for a "letter brief" from each of the parties This letter is compliance with that request

The history of the relevant court rules and statutes is necessary to appreciate the applicant's position For more than one hundred years it has been recognized that, on occasion, it would be necessary to capture the testimony of a witness prior to trial in order to preserve and present that testimony as substantive evidence at the hearing on the merits¹ Over the course of time, this statutory creature came to be known as a deposition "*de bene esse*"² The deposition *de bene esse* became so popular for its convenience that

¹ See *South Carolina Revised Statutes* Title 18 section 373 (1883)

² From its literal translation "in anticipation of future needs" this phrase morphed to become "*pro opportunitate curiae*" or "for the convenience of the court"

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 July 9, 2009
 Page Two

it was codified in what older practitioners referred to as part of "Code Pleading." This, of course, pre-dates the enactment of the *Rules of Civil Procedure*. In its final form, the deposition *de bene esse* procedure was recorded as *SC Code Ann*, § 19-17-40. That section stated "In addition to the methods for taking testimony otherwise provided by law the testimony of any witness may be taken in any civil action depending in the court of common pleas for any county within this State by deposition *de bene esse* when the witness 1) Lives without the county in which such cause is to be tried or at a greater distance from the place of trial than one hundred miles." Although there was no specific statute concerning offering the testimony at the trial, it was presumed in fact that the statute anticipated such an event.³ This section was repealed when the *Rules of Civil Procedure* were enacted.

The *de bene esse* practice became the touchstone of convenience and the central feature of *SCRCP*, Rule 32(a)(3)(B). That rule tracks the provisions of *SC Code Ann*, § 19-17-40 and states "Rule 32(a) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds (B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition." The expert witness whom the applicant intends to depose is in Charleston, South Carolina a distance of more than one hundred miles from Greenville, South Carolina.

SCRCP, Rules 26 and 30(a)(1) provide that a deposition may be taken at any time after commencement of the action and in any sequence (Rule 26(d)). There is no limitation upon the party's right to take a deposition which is keyed to whether the trial of the action has commenced.

The capital post conviction process is created and governed by statute (*SC Code Ann* §§ 17-27-10 et seq) and supplemented by court rule. Those authorities provide, *enter alia*, 1) the *Rules of Civil Procedure* apply to the proceeding to the extent that they are not inconsistent with the *Act*.⁴ and 2) being long of memory, the Legislature embraced

³ *Baker v Metropolitan Life Ins Co*, 184 SC 341, 192 SE 571, 134 ALR 205 (1937) ("This section permitting the introduction of testimony thus taken merely provides a method to be pursued in the interest of economy, the convenience of the witness.")

⁴ See *SCRCP*, Rule 71 1(a)

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 Page Three

the concept of "judicial economy" by providing that "The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing."⁵ Certainly then, if the matter may be determined upon an "affidavit," which is in no way adversarial in its production, the Court may receive, and the parties engage, an adversarial deposition as substantive evidence on the merits of the issues before it. This is the express holding of the South Carolina Supreme Court.⁶ Citing *SC Code Ann*, § 17-27-80 the Supreme Court ruled that whether to accept affidavits and depositions is within the trial court's discretion.

To the extent the State seeks to compel a particular witness (Dr. Bachman) to attend a hearing, it may, of course, engage the powers of Rule 45. However, it is the applicant's position that he is entitled to take his witness's deposition and submit that testimony as substantive evidence on the merits of his claims. Not only does this process make economic sense, but it further advances the concepts of economy and convenience in the administration of justice which is the aspiration of the court, parties and witnesses and which has been fundamental in the procedural history of this State since at least the civil war era.

The State has noticed Dr. Kenneth Spicer, a Professor of Radiology at the Medical University of South Carolina as an expert witness regarding issues presented by the MRIs. The applicant intends to notice the discovery deposition of Dr. Spicer to be taken on the same day as Dr. Bachman's deposition in Charleston, South Carolina.

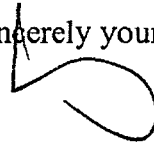
⁵ *SC Code Ann* § 17-27-80, 1976, as amended.

⁶ *Simpson v Moore*, 367 SC 587, 627 SE2d 701 (2006). In *Simpson*, the applicant offered some forty depositions and twenty-two affidavits as substantive evidence. The State objected ostensibly on the grounds that the trial court was denied the opportunity to assess the credibility of the witnesses to the prejudice of the State. Also that, as regards the affidavits, the State was denied the right to cross examine the deponents. The express holding of the Supreme Court was to allow receipt of the affidavits and depositions ("In the present case, the PCR court allowed Simpson to introduce over forty depositions and some twenty-two affidavits into evidence in lieu of live testimony. We find that this decision was within the trial judge's discretion, resulting in no prejudice to the State.") SC at 607.

Honorable D Garrison Hill
July 9, 2009
Page Four

Should there be any objection to taking Dr Spicer's deposition it is expected that the State will include that deposition in its argument regarding the deposition of Dr Bachman

Sincerely yours,



WILLIAM H EHLIES, II

/he

cc William Norman Nettles, Esq
Christopher Seeds, Esq
✓ Melody Jane Brown, Esq



HENRY McMASTER
ATTORNEY GENERAL

July 13, 2009

The Honorable D. Garrison Hill
Circuit Court Judge
Thirteenth Judicial Circuit
Suite 213, 305 East North Street
Greenville, SC 29602

Re: Kamell Evans v. State
C.A. No. 06-CP-23-7719
Capital PCR

Dear Judge Hill:

This correspondence is in response to the Court's request for a "letter brief" from each party on the issue of Applicant's request to take the de bene esse deposition of Dr. David Bachman and a discovery deposition of Dr. Kenneth Spicer after the beginning of the trial on the merits.

As you aware, the trial of this capital PCR began on June 1, 2009 and continued through June 5, 2009 in Spartanburg, South Carolina. All of the parties were well aware of this trial date in advance of the merits hearing.

In an *in-camera* hearing the Monday morning of the beginning of the PCR hearing, the State made known to the Court that it was requesting copies of the **original M R I reports** on applicant Kamell Evans from MUSC.¹ The reason this request was made was that on the same date the

¹There were two M R I's conducted on Kamell Evans, one in September 2008 and one in November 2008. In the September M R I report, the radiologist reading the M R I found *normal brain M R I*. In the original November M R I report, the radiologist reading the M R I found *Unremarkable M R I of the brain*.

previous week that the State e-filed with the Court a request to obtain the original M R I reports on applicant Evans from M U S C , the radiologist who originally issued a report in November 2008, at the request of Dr David Bachman (Applicant's expert), reviewed the M R I of Evans again and added an addendum to her November 2008 report which had stated *Unremarkable M R I of the brain*. Mr Nettles informed the Court in this *in-camera* hearing that Doctor Bachman would be testifying and would "explain all that "

Subsequently, during the trial/merits hearing itself, applicant's counsel, Mr Needs, handed to the State an affidavit from Doctor Bachman and stated that they intended to introduce the affidavit in lieu of Bachman's live testimony. The State intended to object to this affidavit on more than one ground.

Due to lack of sufficient time, the trial/merits hearing was adjourned with the agreement of the parties that we would reconvene at a time directed by the Court to complete the taking of testimony in this matter.

Subsequent to the adjournment of that hearing, collateral counsel notified the Attorney General's Office that it did not intend to call its expert David L. Bachman, MD as a live witness before the Court, even though the trial had been adjourned and no definite reconvening date set, and instead intended to take a de bene esse deposition of Bachman and submit the same into evidence. This notification was given even though neither of the parties even knew for sure when the merits hearing would reconvene.

The State immediately objected to collateral counsel's attempt to do the same. While the PCR statute and Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006) allow the Court to admit and consider deposition testimony in a capital PCR, the admission of such testimony is peculiarly within the Court's discretion. Id., citing Beckett v. State, 278 S.C. 223, 224, 294 S.E.2d 46, 47 (1982). Such testimony should not be allowed in this case for obvious reasons.

First, we are in the middle of the trial of this case. The application for PCR was filed in 2006, and Doctor Bachman has been involved in this case since at least September of 2008 with no offer or intent to take a de bene deposition prior to the beginning of this trial.

Second, this is not an instance where counsel knows the witness will be unavailable in advance, and there is a need to take a de bene esse deposition. Far from it, at this point, we do not even have a definite date of when the merits hearing will be reconvened. Furthermore, the excuse that the deposition is needed because Bachman is more than 100 miles from the deposition does not hold water because collateral counsel called Ruben Gur as a live witness where Mr Gur is from Pennsylvania, and the State intends to call Doctor Kenneth Spicer who also works at the same location as Bachman, M U S C. Additionally, applicant called a lead poisoning expert from New York and other witnesses from outside the State of South Carolina including a forensic pathologist. Finally, other than being 100 miles from the courthouse, applicant has made no showing that Dr Bachman, his own expert, is unavailable to come to court as other expert witnesses have in this case. See Rule 32(a)(3)(B) SCRPC (deposition may be used by any party for any purpose if the court finds the witness is at a greater distance than 100 miles from the place of trial, unless it appears that the

absence of the witness was procured by the party offering the deposition)

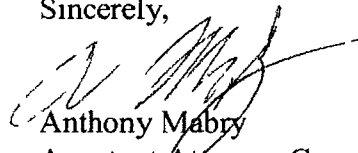
Third, collateral counsel's assertion that the de bene esse deposition is necessary in the interest of judicial economy is questionable. In order to take a de bene esse deposition, the attorneys for the parties will have to travel to Charleston, S C to take the witness' deposition, and a court reporter will have to be hired to take such testimony. The attorneys for the State are being paid by the State of South Carolina, and so are the collateral attorneys. Mr. Bachman's testimony can be taken just as economically at the merits hearing where the attorneys and a court provided court reporter will already be present, and will be required to be present.

Fourth, Doctor Bachman does not qualify as a treating physician under Rule 30(1) SCRPC. Rule 30(1) provides for the taking of trial testimony by deposition where the witness provided *actual* medical treatment to the party. Doctor Bachman is a *retained expert* of collateral counsel, and was retained by collateral counsel in anticipation of the PCR merits hearing in this case.

Fifth, this is the second attempt to avoid Doctor Bachman, applicant's own expert, having to give live testimony in this case and explain in the Court's presence why he requested another neuro-radiologist to re-review the originally unremarkable M R I of applicant Evans on the eve of trial, which resulted in the addition of an addendum to the original November M R I report. Due to this critical issue in this case, this Court should be able to view the witness, hear his live testimony, and judge his credibility accordingly. The State therefore requests that this Court respectfully deny the request to take the de bene deposition of the defense own expert witness.

Additionally, collateral counsel has requested that the Court allow Evans to take the discovery deposition of Doctor Kenneth Spicer, the State's expert. Again, this case is in the middle of trial. The State intends to call Doctor Spicer in its case in chief. Collateral counsel will be able to cross-examine Doctor Spicer before this Court.

Sincerely,


Anthony Mabry
Assistant Attorney General

cc William 'Hank' Ehlers, Esq
William Nettles Esq

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 C A No 06-CP-23 7719

Kamell Delshawn Evans,)
)
)

Applicant,)
)
)

v)
)
)

State of South Carolina,)
)
)

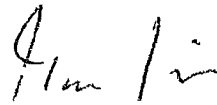
Respondent)
)
)

ORDER

Based on the specific circumstances of this PCR case, Petitioner's motion to take the de bene esse deposition of Dr. Bachman is denied. It has not been shown Dr. Bachman is unavailable to attend the trial, and his testimony is central to a key issue in this case.

The motion to conduct a discovery deposition of Dr. Spicer is granted.

IT IS SO ORDERED.



 D. Garrison Hill

Greenville, SC
 July 17, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

A 9 03

Kamell Delshawn Evans, 6016,

Applicant,

-vs-

C A No 06-CP-23-7719

State of South Carolina,

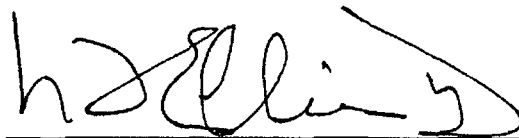
Respondent

**APPLICANT'S NOTICE AND MOTION TO AMEND
PURSUANT TO SCRCP, RULE 15(a)**

TO THE RESPONDENT AND ITS ATTORNEYS

YOU WILL PLEASE TAKE NOTICE, that the applicant hereby moves the Court to amend paragraph 10(b) of his application for post conviction relief by adding a ground charging ineffective assistance of counsel as it relates to the jury charge given at the sentencing trial. The specific jury charge and the supporting authority are cited in the amendment itself (paragraph 10(b)(12)), which is attached to and included with this motion. Counsel has alerted the attorneys for the respondent of this motion prior to its filing.

August 28, 2009



WILLIAM H. EHLIES, II
ATTORNEY FOR APPLICANT
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Greenville, South Carolina 29605
864-232-3503
hank@ehlieslaw.com

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	Case No 06-CP 23-7719
Kamell Delshawn Evans,	)	
Applicant,	)	AMENDED APPLICATION FOR
-vs-	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
Respondent	)	

- 1 Place of detention Lieber Correctional Institution, Campbell Thicket Road,
Ridgeville, SC 29472
- 2 Sentencing court Greenville County Court of General Sessions (Judge J Derham
Cole presiding)
- 3 Indictment number(s) upon which and offenses for which sentence was imposed
 - a 2003-GS-23-4083 (murder)
 - b 2003-GS-23-4088 (murder)
 - c Additional indictments for kidnapping, first-degree burglary
- 4 Date upon which sentence was imposed and terms of the sentence
 - a September 21, 2004 Death plus life imprisonment
- 5 A finding of guilty was made after a plea of not guilty
- 6 Applicant appealed from judgment of conviction and imposition of sentence
- 7 Appeals
 - a Courts to which applicant appealed
 - 1 South Carolina Supreme Court
 - b Result
 - 1 Affirmed
 - c Date of result
 - 1 November 6, 2006
 - d Citation
 - 1 371 S C 27, 637 S E 2d 313 (S C Nov 6, 2006) (No 26220)
- 8 Not applicable

9 & 10

GROUND FOR RELIEF WITH SUPPORTING FACTS

9(a) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the guilt-or-innocence phase of his capital trial

10(a) Supporting facts Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial *See Strickland v Washington*, 466 U S 668 (1984), *Ard v Catoe*, 642 S E 2d 590 (S C 2007) Counsel's acts or omissions included, but are not limited to, the following

1 Counsel failed to conduct adequate voir dire Counsel's failures include, but are not limited to, failing to ask potential jurors whether they would automatically vote to impose death where a defendant has been found guilty of murder (*see Morgan v Illinois*, 504 U S 719 (1992)), failing to ask appropriate questions of jurors regarding their views on the death penalty thus making the record unclear as to whether the jurors were qualified, failing to voir dire for racial bias as guaranteed by *Turner v Murray* in this case which involved an inter-racial murder, failing to object to the qualification of several jurors who gave disqualifying responses (e g , Juror 145 (Eddie Harvey)), and failing to exercise available peremptory strikes to dismiss jurors, ultimately seated, who gave disqualifying responses to voir dire questions (including Juror 258 (Elvis Mahaabwa), Juror 247 (Sandra Holcombe), Juror 118 (James Freeman), and Juror 281 (James Plumley))

2 Counsel failed to adequately investigate, present evidence and challenge the State's evidence in the guilt-or-innocence phase Counsel's failures include failing to adequately investigate and present evidence concerning the circumstances in which the shots were fired at the scene and failing to challenge the testimony of the State's witnesses regarding the cause and manner of death of the two victims For example, trial counsel failed to retain a pathologist prior to trial and did not cross-examine or otherwise challenge the explanation of the State's forensic pathologist Forensic evidence suggests a different scenario from the one described by the State regarding the circumstances in which the shots were fired

3 Counsel failed to effectively move for a change of venue as regards both jury selection and the physical location of the trial

9(b) Applicant was denied the right to effective assistance of counsel during the sentencing phase of his capital trial, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution

10(b) Supporting facts Trial counsel's performance during the sentencing phase was both unreasonable and prejudicial *See Rompilla v Beard*, 545 U S 374 (2005),

Wiggins v Smith, 539 U S 510 (2003), *Williams v Taylor*, 529 U S 362 (2000), *Strickland v Washington*, 466 U S 668 (1984), *Von Dohlen v State*, 602 S E 2d 738 (S C 2005) Counsel's acts or omissions included, but are not limited to, the following

1 Counsel failed to conduct an adequate voir dire *See* 9(a), 10(a)(1), *supra*

2 Counsel failed to move to quash the § 16-3-20(C)(a)(7) aggravating circumstance, which authorizes a capital sentence for "[t]he murder of a local law enforcement officer during or because of the performance of his official duties " S C Code § 16-3-20(C)(a)(7) The evidence presented at trial did not establish the aggravating factor *See* 9(d), 10(d)(1), *infra*

3 Counsel failed to object to irrelevant, unsubstantiated, and inflammatory testimony on the subject of Mr Evans' gang affiliation (*see* 9(f) and 10(f), *infra*), and failed to provide evidence clarifying the matter

4 Counsel failed to object to the testimony of State witness Lewis Edward O'Carin, which was unreliable, unscientific, exceeded the scope of the witness's expertise, and irrelevant, *see* 9(g) and 10(g), *infra*, for reasons including, but not limited to, that (a) there is no field of science for which this witness, who was allowed to render opinions concerning the defendant's future dangerousness, qualified as an expert, (b) the witness was not qualified by education, training or experience to render classification testimony, (c) the witness had no scientific or factual basis for rendering the opinions to which he testified, (d) the witness was wrongfully allowed to testify as to the appropriate sentence, that being "death", (e) the witness' testimony should have been offered with a limiting instruction that the testimony was subject to the jury's discretion and could be disregarded in its entirety, (f) the witness' testimony should have been excluded after the witness testified that he had inadequate information concerning the defendant's history and prior criminal record to form an adequate opinion on future dangerousness, (g) the witness was allowed to render an opinion regarding classification and future dangerousness utilizing the defendant's tattoos which was a violation of the defendant's rights pursuant to the First and Fourteenth Amendments to the United States Constitution and the Constitution of the State of South Carolina, and (h) counsel failed to conduct a reasonable cross-examination [Parts of this ground are alleged in Interim Amendments to Original Application for Post-Conviction Relief as Paragraph 10(b)]

5 Counsel failed to object to victim impact testimony elicited during the sentencing proceeding that exceeded the scope permitted by *Payne v Tennessee*, 501 U S 808 (1991), in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution *See* 9(d), 10(d)(5), *infra*

6 Counsel failed to object to hearsay testimony introduced during the testimony of Ms Sapinoso. South Carolina Rules of Evidence, Rule 801(c) prohibits hearsay, which it defines as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

7 Counsel failed to object to inflammatory, irrelevant and improper statements made by the prosecution in closing argument. Such statements included, but are not limited to, arguments designed to arouse the passion and prejudice of jurors, assertions substituting personal opinions as law, statements diminishing the jury’s sense of responsibility for their verdict, statements misrepresenting the proper scope of mitigating evidence, arguments that were not reasonable inferences from the record, and misrepresentations of the nature of alternative punishments. *See also* 9(d), 10(d)(4), *infra*.

8 Counsel failed to object that applicant’s prosecution violated constraints imposed by the Equal Protection components of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and South Carolina law.

9 Counsel failed to adequately investigate, present evidence and challenge the testimony of State witnesses regarding the circumstances of the shooting and the cause and manner of death of the two victims. *See* 9(a), 10(a)(2), *supra*.

10 Counsel failed to request the statutory mitigator relating to capacity, S C Code § 16-3-20(C)(b)(6). On direct appeal, the South Carolina Supreme Court held that “by failing to make a contemporaneous objection or request for the capacity mitigator, appellant did not properly preserve the issue for our review.” *State v Evans*, 637 S E 2d 313, 315 (Nov. 6, 2006). [This ground is alleged in Application for Post-Conviction Relief (Dec. 4, 2006) as Paragraph 10(a).]

11 Counsel failed to investigate, develop, and present available, relevant, and admissible mitigating evidence. Counsel’s failures in this regard include consenting to a trial date that was merely two months following counsel’s appointment to represent Mr. Evans and before starting any mitigation investigation, failing to retain or present the testimony of a social work expert to explain information gathered regarding Mr. Evans’s life history, failing to gather appropriate and relevant social history records, failing to investigate and obtain expert services on lead poisoning and its impact on Mr. Evans’s neurological, behavioral, and intellectual development even though counsel knew that Applicant tested with high levels of lead poisoning as a toddler, and failing to provide necessary background information to expert witnesses including Dr. James Evans and Dr. Elin Berg.

12 Counsel failed to object to the trial court’s instruction to the jury not to recommend a sentence of life based on mercy. *See Rosemond v. Catoe*, ___ S C ___, 680 S E 2d 5 (No. 26679) (June 29, 2009) (overruling *State v. Hughey*, 339 S C 439, 459, 529 S E 2d 721, 731 (2000)). On June 29, 2009, the South Carolina Supreme Court ruled that a trial court’s charge prohibiting the jury from considering mercy

was error and that trial counsel performed deficiently in failing to object to the charge. The trial court in *Evans* (the same as in *Rosemond*) provided exactly the same charge that the South Carolina Supreme Court rejected in *Rosemond*. In *Rosemond*, the judge instructed the jury “[Y]ou may recommend a sentence of life imprisonment for any reason or for no reason at all *other than as an act of mercy*” 680 S E 2d at 10 (emphasis in original). The South Carolina Supreme Court explained that, contrary to the trial court’s charge, the jurors were “entitled to consider [mercy]”

It is proper to instruct a jury in a capital sentencing phase that it may recommend a life sentence for any reason or no reason at all, including as an act of mercy. A jury’s consideration of mercy, if proper evidence of mercy is admitted, is well recognized in the sentencing phase of a capital case. Because a capital jury may consider properly admitted evidence of mercy in the sentencing phase, consideration of mercy is not inconsistent with the instruction that “the jury should not be guided by sympathy, prejudice, passion, or public opinion.” *State v. Singleton*, 284 S C 388, 393, 326 S E 2d 153, 156 (1985) overruled on other grounds by *State v. Torrence*, 305 S C 45, 69 n 5, 406 S E 2d 315, 328 n 5 (1991).

Rosemond, 680 S E 2d at 10-11. Here, as in *Rosemond*, the trial court also instructed the jury, “[Y]ou may recommend a sentence of life imprisonment for any reason or for no reason at all other than as an act of mercy” (R 1785). Defense counsel’s summation emphasized mercy: “I am going to ask for mercy for Kamell Evans. Mercy is unmerited favor. You can’t earn it, you don’t deserve it, but you give it to him anyway. We don’t repay evil for evil. And mercy is appropriate in this case.” (R 1770). For the reasons set forth in *Rosemond*, the identical charge in Mr. Evans’s violates South Carolina law and counsel’s failure to object to the charge (see R 1789), rejected in *Rosemond* and at odds with their defense, was deficient and prejudicial.

9(c) Applicant was denied the right to effective assistance of counsel—guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution—during the appellate phase of his trial.

10(c) Supporting facts. Counsel’s performance on direct appeal was unreasonable and prejudicial. See *Evitts v. Lucey*, 469 U S 387 (1985), *Strickland v. Washington*, 466 U S 668 (1984), *Southerland v. State*, 524 S E 2d 833 (S C 1999). Counsel’s acts or omissions included, but are not limited to, the following:

1. Appellate counsel failed to challenge the trial court’s denial of trial counsel’s request to charge the jury on voluntary manslaughter. *Hopper v. Evans*, 456 U S 605, 611 (1982), *Beck v. Alabama*, 447 U S 625, 638 (1980). “Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon

a sufficient legal provocation ” *State v Ivey*, 325 S C 137, 142, 481 S E 2d 125 (1997), *see State v Lowry*, 315 S C 396, 434 S E 2d 272, 274 (1993) The testimony at trial established the factual basis for this charge

2 Counsel failed to challenge the trial court’s denial of Applicant’s motion for a change of venue, where one of the victims was a law enforcement officer who worked regularly as security at the courthouse in which Applicant’s trial was held

9(d) Applicant’s conviction and death sentence were obtained in violation of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and South Carolina law

10(d) Supporting facts Errors at trial violated the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution and South Carolina law Those errors include, but are not necessarily limited to, the following

1 The jury was instructed on an aggravating factor (§ 16-3-20(C)(a)(7)) that, narrowly interpreted as the Eighth Amendment requires (*see Roper v Simmons*, 543 U S 551 (2005), *Godfrey v Georgia*, 446 U S 420 (1980)), was not established by the State’s evidence and therefore invalid Because the presence of the invalid sentencing factor allowed the sentencing jury to consider evidence that would not otherwise have been before it, reversal of the death sentence is mandated *See Brown v Sanders*, 546 U S 212 (2006), *Zant v Stephens*, 462 U S 862 (1983)

2 The State suppressed evidence that was both favorable to Applicant and material to Applicant’s guilt or punishment *See Banks v Dretke* 540 U S 668 (2004), *Brady v Maryland*, 373 U S 83, 87 (1963), *Simpson v Moore*, 627 S E 2d 701 (S C 2006)

3 The state presented testimony that it knew or should have reasonably known was false or misleading, including but not limited to testimony that Applicant was a member of a gang and evidence regarding whether one of the victims was in the line of official duty as a law enforcement officer at the time of his death *See Washington v State*, 324 S C 232, 235, 478 S E 2d 833, 835 (1996) *See Napue v Illinois*, 360 U S 264, 279 (1959), *State v Fullwood*, 274 S C 60, 61, 262 S E 2d 10, 11 (1979) (improper for prosecutor to argue that evidence refuted defendant’s claim that victim had knife, when prosecutor knew that law enforcement took a knife from the belongings of the deceased) There is a reasonable likelihood that the false or misleading testimony affected the judgment of the jury *See Kyles v Whitley*, 514 U S 419 (1995), *Napue, supra*

4 Applicant’s death sentence was obtained in part as a result of the State’s inflammatory, irrelevant and improper statements in closing argument *See e g Darden v Wainwright*, 477 U S 168 (1986), *Donnelly v DeChristoforo*, 416 U S 637 (1974), *State v Copeland*, 468 S E 2d 620 (S C 1996), *Thompson v Aiken*, 315

S E 2d 110 (S C 1984), *see also Weaver v Bowersox*, 438 F 3d 832 (8th Cir 2006), *cert dismissed*, 127 S Ct 2022 (2007) Such statements included, but are not limited to, arguments designed to arouse the passion and prejudice of jurors, assertions substituting his personal opinions as law, statements diminishing the jury's sense of responsibility for their verdict, misrepresenting the proper scope of mitigating evidence, arguments that were not reasonable inferences from the record, and misrepresentations of the nature of alternative punishments

5 Victim impact testimony elicited during the sentencing proceeding exceeded the scope permitted by *Payne v Tennessee*, 501 U S 808 (1991), in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution

6 The cumulative prejudicial impact of all errors during the guilt-innocence and sentencing trials resulted in a fundamentally unfair sentencing proceeding, in violation of the Due Process Clause of the Fourteenth Amendment *See Taylor v Kentucky*, 436 U S 478, 487 n 15 (1978) (concluding that “the cumulative effect” of “damaging circumstances” of case “violated the due process guarantee of fundamental fairness”)

9(e) The trial court's erroneous qualification of jurors resulted in a jury uncommonly willing to impose death and deprived Mr Evans of his right to trial by an impartial jury under the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law

10(e) Supporting facts The Sixth Amendment guarantees a capital defendant the right to a fair trial before a panel of impartial and indifferent jurors *See Morgan v Illinois*, 504 U S 719, 728 (1992), *Ross v Oklahoma*, 487 U S 81, 85 (1988), *Duncan v Louisiana*, 391 U S 145, 147-58 (1968), *Turner v Louisiana*, 379 U S 466, 471-73 (1965) *Irwin v Dowd*, 366 U S 717, 722-23 (1961) A “juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do” *Morgan*, 504 U S at 729 Further, “[a]ny juror to whom mitigating factors are irrelevant should be disqualified for cause, for [they have] formed an opinion concerning the merits of the case without basis in the evidence developed at trial” *Morgan*, 504 U S at 738-39 Therefore any juror whose predispositions about the propriety of the death penalty – either generally or related to the specific case – are such that the juror's ability to follow the trial court's instruction that he or she consider the defendant's mitigating evidence is substantially impaired, is not qualified Several jurors expressed such impairments during voir dire in this case *See* 9(a) and 10(a), *supra*

9(f) Applicant's death sentence was obtained in violation of the First, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and

South Carolina law by unsubstantiated and irrelevant testimony that Mr Evans had a gang affiliation and would therefore be a future danger in prison

10(f) Supporting facts Evidence of a defendant's political or religious or other associations or beliefs may be admitted *only* if it probatively relates to the murder, to aggravating factors such as future dangerousness, or to rebut a mitigating factor offered by the defense, otherwise, evidence of affiliation or belief, however unpalatable it may be to some, has no relevance in a capital trial, and its admission violates a defendant's First Amendment right to freedom of association and freedom of speech *Dawson v Delaware*, 503 U S 159, 163-69 (1992) There is no evidence that Evans' crime was gang-motivated, no evidence that Evans engaged in gang-related activity in or out of prison, no evidence about Evans' behavior in prison linking him to a gang The evidence lacks the necessary nexus between gang's beliefs or activities and Evans' behavior Rather than assist the jury in making an individualized determination of whether Evans deserves the death penalty, the irrelevant and unsubstantiated matter injected an arbitrary and invalid sentencing factor into Mr Evans' sentencing proceeding See *Zant v Stephens*, 462 U S 862 (1983)

9(g) The trial court erred, in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and South Carolina law, in admitting testimony from State witness Lewis Edward O'Cain

10(g) Supporting facts O'Cain provided testimony that was inadmissible for reasons including, but not limited to, that the testimony was unreliable, exceeded the scope of the witness's expertise, and irrelevant See *State v Council*, 515 S E 2d 508 (S C 1999), *State v Jones*, 259 S E 2d 120 (S C 1979), South Carolina Rules of Evidence, Rules 403, 702 See generally *Kumho Tire Co Inc v Carmichael*, 526 U S 137 (1999), *Daubert v Merrell Dow Pharmaceuticals Inc*, 509 U S 579 (1993) See 9(b) and 10(b)(4), *supra*

- 11 Applicant appealed directly to the South Carolina Supreme Court Applicant has not previously filed an application for post-conviction relief or a petition for a writ of habeas corpus in either state or federal court
- 12 Not applicable
- 13 The grounds set forth in paragraph 9 have not previously been presented to this or any other court, state or federal
- 14 Not applicable
- 15 These grounds rely on facts beyond those set forth in the record that was before the previous court
- 16 Applicant was represented by counsel during trial and appeal

17 Counsel

a Name and address of each attorney who represented appellant

- i Steve Sumner
114 Manley Street
Greenville, SC 29601
- ii James Goldsmith
PO Box 752
Hendersonville, NC 28793
- iii Rodney Richey
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603
- iv Joseph Savitz
South Carolina Office of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201

b Proceedings at which each attorney represented appellant

- i Trial
- ii Trial
- iii Trial
- iv Appeal

18 Appellant seeks relief from his conviction and sentence

19 Appellant is not under sentence from any other court

August 28, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Ehli, II", is written over a horizontal line.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Kamell Delshawn Evans 006016, 1 1 03

Plaintiff,

vs

Case No 06 CP 23 7719

State of South Carolina,

Defendant

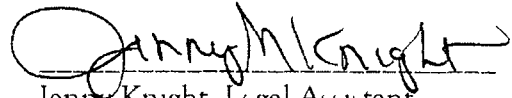
CERTIFICATE OF SERVICE

This is to certify that the undersigned did cause the following documents to be served upon the person designated herein by mailing first class mail, postage pre paid to the following

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DOCUMENT(S) SERVED Applicant's Notice and Motion to Amend Pursuant to
SCRPC, Rule 15(1)

DATE SERVED August 31, 2009



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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

KAMELL D EVANS,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT)
 _____)

2006-CP-23-7719

TRANSCRIPT OF RECORD

OCTOBER 12 - 14, 2009
SPARTANBURG SOUTH CAROLINA

BEFORE

THE HONORABLE D GARRISON HILL

APPEARANCES

ATTORNEYS FOR APPLICANT

WILLIAM N NETTLES, ESQUIRE
WILLIAM H EHLIES, II, ESQUIRE
CHRISTOPHER SEED, ESQUIRE

ATTORNEYS FOR RESPONDENT

MELODY J BROWN, ASSISTANT ATTORNEY GENERAL
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SUSAN W HUDGINS
CIRCUIT COURT REPORTER

ALICE M. G. HILL, CLERK
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1 THE COURT OKAY WE'RE BACK ON THE RECORD IN 06-CP-
2 23-7719, KAMELL EVANS VERSUS THE STATE OF SOUTH CAROLINA
3 AND, MR EHLIES

4 MR EHLIES YES, SIR GOOD MORNING, JUDGE IT
5 DOESN'T LOOK LIKE YOU HAVE ENOUGH PAPERWORK THERE SO I
6 HAVE SHARED WITH THE STATE, AND THERE'S A COPY, THAT'S OF
7 THE ---

8 THE COURT ALL RIGHT, SIR

9 MR EHLIES --- LAW ENFORCEMENT AGGRAVATOR ISSUE

10 THE COURT OKAY

11 MR EHLIES IT WAS FILED IN MAY AND SERVED ON BOTH
12 PARTIES I'M HANDING UP A -- I'M A LITTLE BEHIND ON MY
13 ADVANCE SHEETS IT'S A 2006 CASE ---

14 THE COURT ALL RIGHT

15 MR EHLIES --- FROM THE UNITED STATES SUPREME COURT
16 I'VE SHARED A COPY OF THAT CASE WITH THE STATE THAT CITE
17 PERTAINS TO THE FRAMEWORK FOR AN AGGRAVATOR THAT IS
18 DETERMINED TO BE IMPROPERLY CHARGED AND ADMITTED IT'S THE
19 SUBSTANCE OF BROWN V SANDERS ---

20 THE COURT OKAY THANK YOU, SIR

21 (PAUSE)

22 THE COURT ALL RIGHT MY NOTES ARE THAT THE LAST
23 WITNESS WE HEARD FROM WAS ROBIN EVANS AND AT THIS TIME YOU
24 MAY CALL YOUR NEXT WITNESS

25 MR NETTLES YES, SIR AND, YOUR HONOR, I SPOKE WITH

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

7

1 MS BROWN ABOUT US SORT OF LOOKING AT THE LAYOUT, SORT OF
2 THE COZY NATURE OF THIS COURTROOM AND I WAS WONDERING IF
3 IT WOULD BE OKAY FOR ME TO DO MY DIRECT SEATED, JUST BECAUSE
4 OTHERWISE I'M STANDING WITH MY BACK TO THEM, YOU KNOW,
5 THERE'S NO

6 THE COURT I DON'T HAVE ANY PROBLEM WITH THAT, SIR

7 MR NETTLES THANK YOU

8 THE COURT WHEREVER YOU ---

9 MR NETTLES I APPRECIATE IT

10 THE COURT WHATEVER BODY POSITION YOU WISH TO ---

11 MR NETTLES WELL, I THOUGHT ABOUT DOING IT ON MY
12 HEAD, BUT THEN I'D HAVE ALL MY NOTES UPSIDE DOWN THANK
13 YOU

14 THE COURT THIS IS JUST -- YOU JUST ALWAYS WANTED TO
15 BE A PHILADELPHIA LAWYER

16 MR NETTLES WELL, I'VE ACTUALLY GOTTEN A NOTE FROM MY
17 CO-COUNSEL TO STAND UP SO I'LL BE STANDING UP

18 THE COURT ALL KIDDING ASIDE, IT DOESN'T BOTHER ME ONE
19 WAY ---

20 MR NETTLES OKAY THANK YOU I APPRECIATE IT

21 THE COURT YES, SIR

22 SHATIMA MARTIN, BEING

23 DULY SWORN TESTIFIED AS FOLLOWS

24 DIRECT EXAMINATION BY MR NETTLES

25 Q HI

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

8

1 A HI

2 Q HOW YOU DOING?

3 A GOOD

4 Q IT WOULD PROBABLY HFLP YOU TO PULL THAT MICROPHONE, THE
5 BIG ONE, OVER A LITTLE BIT CLOSER TO YOUR MOUTH THERE YOU
6 GO AND I'M GOING TO ASK YOU TO INTRODUCE YOURSELF

7 A MY NAME IS SHALIMA EVANS MARTIN

8 Q OKAY SHATIMA EVANS MARTIN AND THAT'S -- THE LAST
9 NAME, MARTIN, M-A-R-T-I-N?

10 A YES, SIR

11 Q AND WHERE DO YOU LIVE?

12 A I LIVE IN GREER, SOUTH CAROLINA

13 Q GREER?

14 A YES, SIR

15 Q HOW FAR IS THAT FROM HERE?

16 A IT TOOK ME ABOUT THIRTY-FIVE MINUTES TO GET HERE

17 Q ALL RIGHT AND WHAT DO YOU DO FOR A LIVING?

18 A I OWN MY OWN DAY SPA

19 Q DAY SPA?

20 A YES, SIR

21 Q OKAY

22 A AND I'M A BEAUTICIAN

23 Q AND YOU'RE A BEAUTICIAN?

24 A YES, SIR

25 Q AND HOW MANY CHILDREN DO YOU HAVE?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

9

1 A I HAVE TWO OF MY OWN AND I'VE GOT CUSTODY OF MY STEP-
2 SON ABOUT FOUR YEARS AGO

3 Q OKAY WHO ARE YOUR PARENTS?

4 A RENEE AND BARRY EVANS AND ROBIN EVANS IS MY STEP-MOM

5 Q SO BARRY EVANS IS YOUR

6 A DAD

7 Q AND RENEE EVANS IS

8 A MY MOM

9 Q AND ROBIN EVANS IS

10 A MY STEP-MOM

11 Q OKAY NOW AND KAMELL EVANS IS WHAT RELATION TO YOU?

12 A THAT'S MY BROTHER

13 Q AND THAT'S THIS YOUNG MAN SITTING OVER HERE ---

14 A YES, SIR

15 Q --- AT THE TABLE WITH US? OKAY NOW WHAT IS -- ARE

16 YOU HIS OLDER SISTER OR YOUNGER SISTER?

17 A I'M THE OLDEST

18 Q OKAY AND HOW MUCH OLDER ARE YOU THAN KAMELL?

19 A FOUR YEARS

20 Q ALL RIGHT NOW WHERE WERE YOU BORN?

21 A I WAS BORN IN CLEVELAND, OHIO

22 Q AND IS THAT WHERE KAMELL WAS BORN?

23 A YES

24 Q WHEN YOU WERE BORN - WHAT'S THE FIRST -- JUST SO YOU

25 KNOW, THROUGHOUT THIS CASE WE HAVE SORT OF DIVIDED -- WE'VE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

10

1 BEEN ABLE TO KEEP TRACK OF WHERE WE ARE IN A TIME-LINE BY
2 WHERE IT IS Y'ALL LIVED, ALL RIGHT?

3 A YES, SIR

4 Q AND MY UNDERSTANDING IS Y'ALL LIVED FIRST IN AN
5 APARTMENT COMPLEX?

6 A YES, SIR

7 Q OR IN AN APARTMENT BUILDING, OKAY? AND WE'RE GOING TO
8 TALK ABOUT THAT FOR A LITTLE BIT, ALL RIGHT?

9 A YES, SIR

10 Q THEN WE'LL MOVE ON TO, I BELIEVE IT'S TAYLORS STREET,
11 RIGHT?

12 A IT'S TAYLORS

13 Q AND EUCLID?

14 A YES IT'S AT TAYLORS AND EUCLID

15 Q ALL RIGHT AND THEN WE'LL MOVE ON TO -- I THINK FROM
16 THERE IS ---

17 A THORNE

18 Q THORNE, THAT'S RIGHT AND THEN FROM THORNE TO SOUTH
19 CAROLINA

20 A YES, SIR

21 Q ALL RIGHT SO WE'RE GOING TO TALK -- SO WHENEVER -- SO
22 WE CAN JUST KEEP TRACK OF WHERE WE ARE IN TERMS OF KAMELL'S
23 LIFE, WE'RE GOING TO TALK ABOUT IT IN TERMS OF WHERE HE
24 LIVED IS THAT FAIR?

25 A YES, SIR

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

11

1 Q ALL RIGHT NOW SO LET'S TALK FOR A SECOND ABOUT THE
2 FIRST PLACE THAT YOU REMEMBER LIVING, WHICH WAS WHERE?

3 A IT WAS TAYLOR

4 Q TAYLOR STREET?

5 A YES

6 Q AND IS THAT THE APARTMENT ---

7 A YES, IT'S AN APARTMENT BUILDING

8 Q DID KAMELL LIVE THERE?

9 A YES

10 Q OKAY SO KAMELL CAME HOME FROM THE HOSPITAL AND HE
11 CAME HOME TO

12 A UM-HUM (AFFIRMATIVE) WE WENT TO TAYLOR

13 Q TAYLOR STREET NOW WHEN YOU LIVED IN TAYLOR STREET --
14 LET'S TALK ABOUT LIVING AT TAYLOR STREET BEFORE KAMELL WAS
15 BORN

16 A YES

17 Q ALL RIGHT DO YOU HAVE ANY MEMORIES OF THAT?

18 A YES

19 Q OKAY DO YOU HAVE GOOD MEMORIES OR BAD MEMORIES?

20 A I HAVE BOTH

21 Q OKAY SHARE WITH US FIRST YOUR GOOD MEMORIES OF LIVING
22 ON TAYLOR STREET BEFORE KAMELL WAS BORN

23 A I GOT MY FIRST TRICYCLE THERE, ---

24 Q OKAY

25 A --- AND MY FIRST SILVER DOLLAR I THOUGHT I WAS RICH

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

12

1 WHEN I GOT MY FIRST SILVER DOLLAR AND WHEN I GOT MY
2 TRICYCLE, WITHIN THE COMPLEX I COULD RIDE, YOU KNOW, FROM
3 DOOR TO DOOR AND IN THE HALLWAY

4 Q JH-HUH (AFFIRMATIVE)

5 A BUT I COULDN'T GO OUTSIDE BECAUSE WE HAD A STEEP SLOPE
6 SO MOM AND DAD WOULDN'T LET ME RIDE IT OUTSIDE

7 Q OKAY BUT YOU SAID YOU RODE IT INSIDE THE HALLWAY?

8 A YES UH-HUH (AFFIRMATIVE), YES AND LIKE OUR
9 NEIGHBORS, THEY WOULD OPEN THEIR DOOR SO I COULD JUST GO
10 FROM LIKE ROOM TO ROOM

11 Q WOW

12 A YES THEN ---

13 Q INDOOR TRACK?

14 A YES

15 Q OKAY SO -- AND THEN YOUR SILVER DOLLAR, WHO GAVE YOU
16 A SILVER DOLLAR?

17 A MR JOHN HENRY GAVE ME MY FIRST SILVER DOLLAR

18 Q AND WHO'S MR JOHN HENRY?

19 A HE WAS ONE OF OUR NEIGHBORS

20 Q OKAY OVER THERE IN THAT APARTMENT BUILDING?

21 A YES, UM-HUM (AFFIRMATIVE)

22 Q NOW YOU'RE -- NOW SORT OF -- THERE WERE ALSO SOME
23 MEMORIES THAT YOU HAD FROM THAT THAT I'M GUESSING WEREN'T SO
24 GOOD?

25 A YES, SIR

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

13

1 Q SHARE WITH ME ONE OF OR, YOU KNOW, SHARE WITH ME SOME
2 OF YOUR LESS CHEERY MEMORIES

3 A MY DAD AND MOM HAD GOT INTO AN ARGUMENT AND WHEN HE
4 CAME OVER THERE ---

5 Q HE CAME -- HE WHO?

6 A MY DAD

7 Q CAME OVER TO WHERE?

8 A TO THE -- CAME BACK TO THE HOUSE BUT YOU KNOW THOSE
9 LITTLE GATES THAT YOU PUT UP SO THE KIDS DON'T GO DOWN THE
10 STAIRS, ---

11 Q RIGHT, RIGHT

12 A --- GOING TO THE DOOR?

13 Q RIGHT, RIGHT

14 A HE WAS PULLING - HE WAS PULLING ON ME TRYING TO TAKE
15 ME

16 Q AND WHO -- WHAT WAS KEEPING HIM FROM TAKING YOU?

17 A MY AUNTIE AND THEM WAS THERE AND THEY ---

18 Q I'M SORRY, WHO?

19 A MY AUNT, ---

20 Q OKAY, YEAH

21 A --- VIRGINIA ---

22 Q WAS THERE?

23 A --- WAS THERE YES

24 Q AND WHO ELSE WAS THERE?

25 A GRANDMA

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

14

1 Q AND YOUR GRANDMA?

2 A YES

3 Q WAS YOUR MAMA THERE?

4 A YES

5 Q OKAY YOUR DADDY HAD AHOLD OF YOU DID ANYBODY ELSE
6 HAVE AHOLD OF YOU?

7 A MY AUNT AND THEM WAS PULLING ME FROM THE OTHER ANGLE
8 AND DAD WAS TRYING TO PULL ME

9 Q AND THEN WHAT HAPPENED?

10 A MY AJUNT GRABBED SOMETHING I DON'T KNOW WHAT IT WAS
11 BUT EVENTUALLY I GOT BACK ON THE SIDE OF THE GATE WHERE MY
12 MOM AND THEM WAS AT

13 Q UH-HUH (AFFIRMATIVE)

14 A AND DAD LEFT

15 Q OKAY DO YOU -- DO YOU KNOW WHAT THEY WERE FIGHTING
16 ABOUT?

17 A I DON'T KNOW I DON'T KNOW WHAT THEY WERE FIGHTING
18 OVER

19 Q DO YOU HAVE ANY IDEA ABOUT HOW OLD YOU WERE?

20 A I WAS PROBABLY ABOUT THREE OR FOUR I WAS -- I STARTED
21 WALKING I WAS ABLE TO RIDE MY TRICYCLE

22 Q REALLY?

23 A YES

24 Q DO YOU REMEMBER WHEN KAMELL WAS BORN?

25 A YES

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

15

- 1 Q OKAY TELL ME ABOUT THAT
- 2 A WHEN MOM WENT INTO LABOR THEY TOOK HIM -- TOOK MOM AND
- 3 THEM OVER THERE TO THE HOSPITAL AND THEN WHEN HE CAME HOME
- 4 I THOUGHT I HAD MY OWN LITTLE BABY DOLL
- 5 Q I GUESS YOU DID, DIDN'T YOU?
- 6 A YES
- 7 Q SO THAT WAS WHILE Y'ALL WERE STILL LIVING ON TAYLOR
- 8 STREET ---
- 9 A YES, WE WERE ---
- 10 Q OR TAYLOR AND EUCLID?
- 11 A WE WERE STILL ON TAYLOR
- 12 Q BUT HE CAME HOME TO THE SAME STREET THAT YOU HAD RIDDEN
- 13 YOUR TRICYCLE ON, GOT YOUR SILVER DOLLAR AND YOUR PARENTS
- 14 HAD FOUGHT WITH YOU OVER THE -- FOUGHT -- PULLED YOU BACK
- 15 AND FORTH OVER THE THING, RIGHT?
- 16 A YES, SIR
- 17 Q SO HE CAME HOME THERE NOW SO WHILE KAMELL WAS LIVING
- 18 ON TAYLOR STREET DID YOU EVER SEE KAMELL EATING LEAD PAINT,
- 19 EATING PAINT CHIPS?
- 20 A YES AND WHEN WE WERE PLAYING BY THE WINDOW PANE HE
- 21 WOULD EAT THE CHIPS, AND I WOULD GO TELL ON HIM BUT I ---
- 22 Q TELL WHO ON HIM?
- 23 A I WOULD TELL MY MOM AND DAD ON HIM
- 24 Q OKAY
- 25 A BUT I LIKED THE PAINT BECAUSE AS YOU KNOW I'M A

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

16

1 BEAUTICIAN

2 Q RIGHT

3 A SO I WAS A GIRLY-GIRL I WOULD PUT IT ON LIKE FAKE
4 FINGERNAIL POLISH

5 Q JUST LAY IT UP ON YOUR FINGERS?

6 A YES I WOULD PEEL IT AND PUT IT ON MY FINGERTIPS

7 Q NOW DID -- SO WHEN YOU WOULD TELL YOUR PARENTS THAT
8 KAMELL WAS EATING LEAD PAINT CHIPS, WHAT WOULD THEY DO?

9 A COME IN AND TRY TO RINSE HIS MOUTH OUT I REMEMBER ONE
10 TIME THEY RUSHED HIM IN THE BATHROOM AND TRIED TO RINSE HIS
11 MOUTH OUT AND SAID, THAT IS NASTY

12 Q OKAY OKAY LET ME ASK YOU THIS DID THEY EVER
13 ENCOURAGE HIM TO EAT PAINT CHIPS?

14 A NO

15 Q DID THEY DISCOURAGE HIM FROM EATING ---

16 A DISCOURAGED

17 Q OKAY NOW HOW LONG DID YOU LIVE -- DID YOU EVER SEE --
18 DID YOU EVER SEE -- WHEN YOU LOOK BACK ON IT NOW, OKAY, WE
19 ALL KNOW EXPOSURE TO LEAD PAINT IS A PROBLEM WHEN YOU LOOK
20 BACK ON IT NOW DID YOU EVER SEE EXAMPLES OF WHERE YOU NOW
21 REALIZE KAMELL WAS BEING EXPOSED TO LEAD PAINT?

22 A YES, SIR CAN I SAY ONE THING ---

23 Q YOU CAN SAY WHATEVER YOU WANT TO, I GUESS, ---

24 A MY YOUNGEST -- MY YOUNGEST SON WAS EXPOSED TO LEAD
25 PAINT ALSO SO NOW I REALIZE WITH HIM PUTTING THOSE HOT --

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

17

- 1 WITH KAMELL PUTTING HOTWHEELS IN HIS MOUTH, I UNDERSTAND IT
2 NOW AND HE ALSO USED TO EAT CRAYONS
3 Q ALL RIGHT NOW WE'RE TALKING ABOUT TWO DIFFERENT
4 CHILDREN SO LET'S MAKE SURE ---
5 A OH, I UNDERSTAND THAT
6 Q ALL RIGHT
7 A BUT I'M TALKING ABOUT KAMELL
8 Q I UNDERSTAND OKAY I UNDERSTAND SO TELL US WHAT
9 YOU SAW -- TELL US WHAT YOU SAW KAMELL PUTTING IN HIS MOUTH
10 THAT YOU NOW RECOGNIZE MAY HAVE CONTRIBUTED TO LEAD PAINT
11 ---
12 A HOTWHEELS
13 Q LEAD PAINT POISONING?
14 A HOTWHEELS
15 Q HOTWHEELS?
16 A YES
17 Q YOU SAW HIM -- YOU SAW WHO PUTTING HOTWHEELS ---
18 A I SAW KAMELL PUTTING HOTWHEELS IN HIS MOUTH
19 Q DID YOU EVER -- AND YOU SAW KAMELL EATING CHIPS?
20 A YES
21 Q WHICH YOU WOULD TELL HIS PARENTS? ,
22 A (AFFIRMATIVE NCD)
23 Q WHAT ELSE DID YOU SEE KAMELL PUT IN HIS MOUTH?
24 A CRAYONS, THE END OF COLORING BOOKS
25 Q NOW HOW LONG DID YOU LIVE ON TAYLOR STREET?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

18

1 A I BELIEVE I WAS GETTING READY TO GO INTO THE THIRD
2 GRADE SO I WAS ABOUT -- WHEN WE GOT TO THORNE I WAS ABOUT
3 EIGHT

4 Q EIGHT YEARS OLD?

5 A YES

6 Q ALL RIGHT AND THEN WHAT DID YOU -- SO HOW OLD WOULD
7 THAT MAKE KAMELL?

8 A HE SHOULD HAVE BEEN FOUR

9 Q THREE OR FOUR ALL RIGHT SO WHERE DID Y'ALL MOVE TO?

10 A THORNE

11 Q ALL RIGHT NOW LET'S TALK FOR A LITTLE BIT WE'VE HAD
12 SOME -- LET'S TALK FOR JUST ONE MINUTE THE DIFFERENCE
13 BETWEEN -- THE DIFFERENCE BETWEEN TAYLOR STREET AND THORNE
14 STREET, SHARE FOR THE JUDGE A LITTLE BIT ABOUT WHAT THE
15 DIFFERENCE IS BETWEEN THOSE TWO AREAS

16 A WELL TAYLORS, WE REALLY COULDN'T GO OUTSIDE AND PLAY
17 WHEN WE MOVED TO THORNE, IT WAS MORE FAMILY ENVIRONMENT WE
18 COULD GO OUTSIDE THE YARD WAS BIGGER IT DIDN'T HAVE THE
19 SLOPE WE COULD PLAY IN THE MIDDLE OF THE STREET WE COULD
20 PLAY WITH OTHER CHILDREN AND WE WERE IN A HOUSE INSTEAD OF
21 IN AN APARTMENT

22 Q A STAND-ALONE HOUSE?

23 A YES, A STAND-ALONE HOUSE INSTEAD OF AN APARTMENT

24 Q OKAY NOW AND JUST TO SORT OF FURTHER ILLUSTRATE THAT,
25 IF YOU TODAY WITH YOUR CHILDREN, IF YOU HAD THE CHOICE OF

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

19

1 LIVING ON TAYLOR STREET OR THORNE STREET WHERE WOULD YOU --

2 A I WOULD RAISE MY KIDS ON THORNE

3 Q OKAY NOW WHAT PART OF TOWN IS THORNE CONSIDERED TO BE
4 IN?

5 A CLEVELAND HEIGHTS

6 Q ALL RIGHT AND WHAT IS CLEVELAND HEIGHTS LIKE?

7 A IT'S -- I LIKE IT BECAUSE -- IT'S ALMOST LIKE ITS OWN
8 LITTLE SUBDIVISION IT WAS MORE CLASSIER

9 Q RIGHT

10 A I DIDN'T LIKE TAYLORS I LIKED THORNE BETTER I HAD
11 MORE FREEDOM I WAS ABLE TO GO OUTSIDE WE ALSO HAD LIKE A
12 SWING-SET IN THE BACK SO WE WERE ABLE TO GET MORE THINGS
13 FOR US TO PLAY WITH

14 Q RIGHT NOW IN THE HOUSE THAT Y'ALL LIVED IN CLEVELAND
15 HEIGHTS, TELL US ABOUT SORT OF SLEEPING ARRANGEMENTS WHERE
16 DID YOU AND KAMELL STAY?

17 A UPSTAIRS

18 Q UPSTAIRS?

19 A ON THE SECOND LEVEL

20 Q ON THE SECOND ---

21 A IT WAS A BASEMENT AND THEN YOU HAD A KITCHEN AND LIKE
22 TWO BEDROOMS AND A BATHROOM AND A LIVING ROOM AND A DINING
23 ROOM AND THEN THERE WAS A REAL BIG BEDROOM UPSTAIRS
24 WELL, WE TURNED IT INTO A BEDROOM

25 Q WHO STAYED UP THERE?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

20

- 1 A ME AND KAMELL
- 2 Q OKAY SO Y'ALL SHARED THIS LARGE SPACE TOGETHER?
- 3 A YES, SIR
- 4 Q OKAY NOW -- AND HOW LONG DID YOU LIVE THERE?
- 5 A THIRTEEN
- 6 Q TIL YOU WERE THIRTEEN?
- 7 A YES, SIR
- 8 Q OKAY NOW WHEN YOU WERE THIRTEEN WHAT HAPPENED?
- 9 A MY MOM AND DAD GOT DIVORCED
- 10 Q ALL RIGHT NOW LET'S TALK ABOUT -- LET'S TALK ABOUT
- 11 SOME OF THE ACTIVITIES THAT TOOK PLACE BETWEEN THE TIME
- 12 Y'ALL MOVED THERE AND THE TIME THAT THEY DIVORCED, ALL
- 13 RIGHT? AND LET ME ASK YOU THIS ONCE Y'ALL MOVED TO THORNE
- 14 DID YOU -- WAS THERE ANY VIOLENCE IN YOUR HOUSEHOLD?
- 15 A YES, SIR
- 16 Q DID THE VIOLENCE ESCALATE OR DE-ESCALATE AS TIME WENT
- 17 ON?
- 18 A ESCALATED
- 19 Q NOW WHY DID YOU AND YOUR MOM MOVE OUT OF THE HOUSE WHEN
- 20 YOU WERE THIRTEEN?
- 21 A DAD BEAT HER
- 22 Q BEAT HER ONCE?
- 23 A THAT WAS THE WORST ONE
- 24 Q WHICH ONE?
- 25 A THE LAST ONE IN THE KITCHEN

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NEITLES

21

1 Q IS THAT -- IS THAT THE BEATING THAT TOOK PLACE
2 IMMEDIATELY PRIOR TO Y'ALL LEAVING?

3 A YES, SIR

4 Q NOW I DON'T MEAN TO BE CALLOUS, BUT I'M GOING TO HAVE
5 TO ASK YOU TO TELL US ABOUT THAT

6 A I DON'T KNOW I WAS GETTING KAMELL READY FOR BED

7 Q NOW LET ME ASK YOU SOMETHING WHEN YOU SAY YOU DON'T
8 KNOW, YOU DON'T KNOW WHAT?

9 A I DON'T KNOW WHERE TO START

10 Q OKAY

11 A I DON'T KNOW HOW THE ARGUMENT STARTED BETWEEN MY
12 PARENTS ---

13 Q THAT'S WHAT I'M ---

14 A --- IS WHAT I'M TRYING TO SAY

15 Q DO YOU KNOW WHAT YOUR PARENTS WERE FIGHTING ABOUT?

16 A I DON'T KNOW I JUST HEARD YELLING

17 Q OKAY

18 A I DON'T KNOW WHAT THE ARGUMENT WAS ABOUT

19 Q OKAY OKAY

20 A SO I TOLD KAMELL TO STAY UPSTAIRS AND I WAS GOING TO
21 GO DOWNSTAIRS AND HELP

22 Q HELP WHO?

23 A MY MOM I'M SORRY

24 Q THAT'S ALL RIGHT WE'VE GOT PLENTY OF TIME

25 A SO I RAN DOWNSTAIRS MY DAD AND MY MOM -- WAS JUST

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

22

1 BEATING HER ON THE KITCHEN FLOOR WITH HIS KNEES IN HER BACK
2 AND HE PULLED ON HER HAIR AND THERE WAS A BIG OLD CHUNK ON
3 THE FLOOR

4 SO I JUMPED ONTO DADDY'S BACK AND DADDY PUSHED ME
5 REAL HARD AGAINST THE REFRIGERATOR AND BY THAT TIME KAMELL
6 CAME DOWNSTAIRS AND I TOLD HIM TO CALL 911 AND HE JUST
7 STOOD IN THE CORNER, JUST FROZE

8 SO EVENTUALLY AFTER DAD PUSHED ME AGAINST THE
9 REFRIGERATOR I GRABBED HIS HAND AND WE RAN IN ---

10 Q GRABBED WHOSE HAND?

11 A I GRABBED KAMELL'S HAND AND WE RAN IN MOM AND DAD'S
12 ROOM ON THE SIDE OF THE BED AND I GRABBED THE PHONE AND
13 CALLED OUR GRANDMA INSTEAD OF -- I DON'T KNOW WHY I DID IT,
14 BUT I CALLED GRANDMA AND GRANDMA CALLED 911

15 Q AND THEN WHAT HAPPENED?

16 A THE POLICE CAME AND WE TOOK SOME OF OUR CLOTHES AND
17 LEFT AND WENT TO GRANDMA'S HOUSE

18 Q DID YOU EVER GO BACK THERE?

19 A WHEN DAD LEFT I THINK DAD HAD MOVED AND WE WERE ABLE
20 TO MOVE BACK INTO THE HOUSE

21 Q AND SO Y'ALL DIDN'T GO BACK THERE UNTIL YOUR DAD LEFT?

22 A UNTIL DADDY LEFT

23 Q DID YOU AND KAMELL EVER TALK ABOUT THAT?

24 A (NEGATIVE NOD)

25 Q WHY NOT?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

23

1 A I DON'T KNOW I JUST TRIED TO PROTECT HIM AND TRIED TO
2 KEEP BAD MEMORIES OUT OF HIS MIND, JUST TO MOVE ON

3 Q ALL RIGHT NOW LET'S TALK ABOUT, I MEAN, SOME OF THE
4 EVENTS LEADING UP TO THAT, TO THE KITCHEN EVENT I THINK WE
5 TALKED ABOUT THAT THINGS ESCALATED AT THAT POINT, THAT WAS
6 THE POINT WHERE Y'ALL DECIDED Y'ALL HAD TO LEAVE

7 A YES

8 Q NOW LET'S GO BACK A LITTLE BIT WAS YOUR FATHER
9 SOMEONE WHO DRANK?

10 A YES

11 Q WOULD - WAS THE -- HOW DID THAT AFFECT HIM WHEN HE GOT
12 HOME?

13 A HE WOULD BE UPSET, ARGUING AND ALWAYS WANT TO FIGHT

14 Q LET ME TALK ABOUT ONE THING REAL QUICK AND LET'S GO
15 BACK TO THE KITCHEN INCIDENT WHEN YOU SAID YOUR PARENTS
16 WERE FIGHTING WERE THEY WRESTLING OR WERE THEY, I MEAN, TELL
17 ME A LITTLE BIT ABOUT HOW YOUR DAD WAS HITTING YOUR MOM

18 A MY DAD WAS HITTING WITH A CLOSED FIST AND HAD HIS KNEES
19 IN HER BACK MY MOM WAS LAYING LIKE THIS TRYING TO PROTECT
20 HERSELF

21 Q WHY DID YOU -- WHY DIDN'T KAMELL CALL 911?

22 A HE ---

23 MS BROWN OBJECTION, SPECULATION

24 THE COURT SUSTAINED

25 Q IN YOUR OPINION WHAT WOULD HAVE HAPPENED IF KAMELL HAD

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

24

1 CALLED 911?

2 A I DON'T THINK SHE WOULD HAVE TOOK THAT BEATING AS
3 WORSE I THINK THAT THE POLICE WOULD HAVE GOT THERE AND
4 SAVED HER

5 Q WHAT WOULD -- IF -- WHAT WAS YOUR DAD'S RESPONSE TO YOU
6 TRYING TO STOP IT?

7 A HE ---

8 MS BROWN OBJECTION, CALLS FOR HEARSAY

9 MR NETTLES NO, IT DOESN'T IT'S ---

10 THE COURT YEAH, OVERRULED

11 A SO I CAN ANSWER?

12 Q RIGHT YOU CAN ANSWER WHEN YOU TRIED TO STOP IT WHAT
13 DID YOUR DAD DO?

14 A HE HAD PUSHED ME OFF HIM AGAINST THE -- HE PUSHED ME
15 AGAINST THE REFRIGERATOR REALLY, REALLY HARD AND TOLD ME TO
16 GET OUT OF THERE

17 Q DID YOU?

18 A YES I RAN -- I GRABBED KAMELL'S HAND, AND I RAN TO
19 THE BFDROOM 'CAUSF HE WAS FROZE IN THE CORNER

20 Q WAS HE -- WHEN KAMELL WAS FROZEN IN THE CORNER WAS HE
21 FROZEN WITH HIS FACE IN THE CORNER OR WAS HE FROZEN WITH HIS
22 BACK IN THE CORNER?

23 A HIS BACK WAS IN THE CORNER

24 Q WAS HE FACING WHAT WAS GOING ON?

25 A YES HE WAS FACING WHAT WAS GOING ON

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NEITLES

25

1 Q IS THERE ANY DOUBT IN YOUR MIND THAT HE WITNESSED ALL
2 THIS IN VERY, I MEAN, VERY -- IT WAS VERY REAL?

3 A YES YES, SIR

4 Q I MEAN, IT WAS ALL IN THE SAME ROOM?

5 A YES, SIR

6 Q NOW DID YOUR DAD EVER BEAT KAMELL?

7 A YES

8 Q SHARE, I MEAN, WHAT'S THE DIFFERENCE IN YOUR MIND
9 BETWEEN A SPANKING AND A BEATING?

10 A I THINK TO ME A BEATING IS WHEN YOU LEAVE WELTS ON KIDS
11 AND BRUISES ON KIDS

12 Q DID YOU EVER SEE WELTS AND BRUISES ON KAMELL?

13 A YES AFTER HE WOULD GET HIS WHIPPING I WOULD TRY TO
14 CALM HIM DOWN AND GET HIM READY FOR BED AND I WOULD SEE
15 THEM ON HIM

16 Q WHAT WOULD -- WHY WOULD YOUR DAD -- CAN YOU GIVE US
17 SOME EXAMPLES OF WHY YOUR DAD ---

18 A ONE REASON ---

19 Q --- BEAT KAMELL?

20 A ONE REASON I GOT SO MAD WITH DAD IS BECAUSE HE BEAT HIM
21 FOR NOT EATING HIS EGGS

22 Q HIS EGGS?

23 A EGGS, YES

24 Q FOR BREAKFAST?

25 A LIKE THE BREAKFAST FOOD, YES, SIR ANOTHER REASON, HE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

26

1 DIDN'T ---

2 Q SO -- BEFORE WE GO -- KAMELL DIDN'T EAT HIS EGGS AND
3 YOUR DAD DID WHAT?

4 A HE BEAT HIM

5 Q YOU SAW THAT?

6 A YES, SIR

7 Q WHAT ELSE?

8 A HE DIDN'T KNOW HIS SPELLING WORDS

9 Q OKAY LET'S TALK ABOUT THAT FOR A SECOND DID KAMELL
10 TRY TO LEARN HIS SPELLING WORDS?

11 A HE TRIED BUT HE JUST WASN'T A FAST LEARNER LIKE I AM

12 Q OKAY WHO WOULD HELP HIM WITH HIS SPELLING WORDS?

13 A I TRIED

14 Q OKAY AND HOW WOULD YOU TRY TO HELP HIM WITH HIS
15 SPELLING WORDS?

16 A I WOULD KEEP GOING OVER IT AND THEN WE MADE FLASH
17 CARDS OUT OF LIKE INDEX CARDS WE WOULD KEEP -- I WOULD
18 KEEP REPEATING THEM TO HIM

19 Q RIGHT AND WHEN -- WOULD YOUR DAD TEST HIM ON THE
20 WORDS?

21 A NO WHAT -- HE'LL COME HOME AND ASK HIM WAS IT DONE
22 AND THEN HE'LL GIVE HIM A PRACTICE SPELLING TEST, BUT HE
23 WOULDN'T SPEND TIME TO KEEP GOING ---

24 Q HE BEING WHO WOULD GIVE WHO A SPELLING TEST?

25 A MY DAD WOULD GIVE KAMELL A PRACTICE TEST

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

27

1 Q RIGHT

2 A BUT NOT TO LET HIM WRITE THEM DOWN IT WOULD BE LIKE A
3 VERBAL PRACTICE TEST BUT HE WOULD NOT GO OVER THE WORDS
4 AND REITERATE THE SPELLING OF THE WORDS

5 Q RIGHT RIGHT

6 A THAT WOULD BE MY JOB

7 Q OKAY BUT -- AND IF KAMELL DIDN'T DO AS WELL AS YOUR
8 DAD WANTED HIM TO DO WHAT WOULD HAPPEN?

9 A DADDY'D GET FRUSTRATED AND BEAT HIM

10 Q WITH WHAT?

11 A A BLACK BELT WE GOT A WHIPPING WITH WITH HOLES IN IT
12 IT WAS A BLACK LEATHER BELT

13 Q WHENEVER -- DID YOU EVER GET -- DID YOUR DAD EVER BEAT
14 YOU?

15 A NO I GOT A WHIPPING, BUT I DIDN'T GET BEATINGS LIKE
16 KAMELL

17 Q AND IN YOUR MIND IS THERE A DIFFERENCE BETWEEN THE TYPE
18 OF CORPORAL PUNISHMENT YOU RECEIVED AND THE TYPE OF CORPORAL
19 PUNISHMENT THAT YOUR BROTHER RECEIVED?

20 A YES

21 Q DID YOU EVER SEE AT TIMES WHEN YOUR DAD WAS DRUNK OR,
22 YOU KNOW, HAD BEEN -- HAD DRANK A FAIR AMOUNT AND WOULD COME
23 HOME AND ARGUE WITH YOUR MOM?

24 A YES, SIR

25 Q SHARE WITH US THAT

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

28

1 A ONE TIME THEY WERE ARGUING AND -- MOM AND DAD WERE
2 ARGUING

3 Q NOW IS THAT UNCOMMON FOR YOUR PARENTS TO BE ARGUING?

4 A NO, THEY ARGUED ALL THE TIME ALL THE TIME AND THEY
5 GOT INTO A FIGHT AND DAD HAD PUSHED MOM -- WE HAD A SUN
6 PORCH AND IT HAD LIKE GLASS PANES IN IT

7 Q UH-HUH (AFFIRMATIVE)

8 A AND DAD HAD PUSHED MOM INTO THERE AND BROKE TWO OF THE
9 PANES AND THEN THAT'S WHEN I CALLED 911

10 Q WHAT HAPPENED AFTER YOU CALLED 911?

11 A THE POLICE CAME

12 Q WAS IT UNCOMMON FOR THE POLICE TO COME TO YOUR HOUSE?

13 A YES IT WAS COMMON

14 Q IT WAS COMMON AND, I MEAN, WHAT WAS THE COMMON EVENT
15 THAT CAUSED THEM TO COME?

16 A MOM AND DAD ARGUING AND FIGHTING

17 Q OKAY WERE YOU THE ONLY PERSON THAT WOULD CALL 911?

18 A NO MS SHELLY AND THEM -- WELL, MS SHELLY IS ONE OF
19 OUR NEIGHBORS

20 Q UH-HUH (AFFIRMATIVE)

21 A THEY WOULD CALL 911

22 Q WHENEVER THE POLICE WOULD COME WHAT WOULD HAPPEN? I
23 MEAN, WHO ---

24 A SOMEONE WOULD HAVE TO LEAVE THE HOUSEHOLD

25 Q AND WHO WOULD THAT USUALLY BE?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

29

1 A SOMETIMES IT WAS DAD AND THEN, YOU KNOW, LIKE THE
2 KITCHEN INCIDENT, WE LEFT

3 Q AND SO WHENEVER YOUR MOM LEFT -- WELL, WHENEVER YOUR
4 DAD LEFT WOULD Y'ALL GO WITH HIM?

5 A NO

6 Q OKAY

7 A NEVER

8 Q OKAY WHENEVER YOUR MOM LEFT WOULD YOU GO WITH HER?

9 A YES

10 Q OKAY WHENEVER YOUR MOM LEFT WHERE WOULD Y'ALL GO? '

11 A WE WOULD GO TO GRANDMA'S

12 Q AND HOW LONG WOULD Y'ALL STAY GONE?

13 A A COUPLE OF DAYS

14 Q BUT THEN WHAT WOULD HAPPEN?

15 A WE WOULD COME BACK HOME

16 Q WHAT WOULD IT -- WHAT WAS IT LIKE, YOU KNOW, SHARE WITH
17 US WHAT IT'S LIKE TO GO BACK TO A HOUSE THAT, YOU KNOW, YOU
18 HAVE LEFT BECAUSE THE POLICE HAVE COME, BECAUSE YOUR PARENTS
19 ARE INVOLVED IN A PHYSICAL -- WHAT DOES IT FEEL LIKE TO GO
20 BACK INTO THE HOUSE?

21 A SCARY FOR ONE

22 Q WHY?

23 A BECAUSE YOU NEVER KNOW WHEN IT'S GOING TO HAPPEN AGAIN
24 AND THEN YOU NEVER KNOW WHEN WE'RE GOING TO GET IT I MEAN,
25 IT FELT UNSAFE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

30

1 Q DID IT -- WAS THERE EVER A TIME THAT IT FELT SAFE IN
2 THAT HOUSE?

3 A NOT TO ME

4 Q DID YOUR DADDY -- NOW WERE THERE TIMES THAT KAMELL LEFT
5 WITH YOU AND YOUR MOM?

6 A YES

7 Q AND THEN WOULD COME BACK TO THE HOUSE?

8 A WOULDN'T OR WOULD?

9 Q WOULD COME BACK WITH Y'ALL

10 A YES, HE CAME BACK WITH US

11 Q DID YOUR DAD HAVE A GUN?

12 A YES

13 Q DID YOU EVER RECALL THE GUN BEING FIRED INSIDE THE
14 HOUSE?

15 A YES

16 Q WHO FIRED THAT GUN?

17 A DADDY

18 Q WHO?

19 A MY DAD

20 Q WHERE DID YOU AND KAMELL GO WHEN THAT GUN WAS FIRED?

21 A WE RAN UPSTAIRS

22 Q ALL RIGHT AND WHAT DID YOU DO AFTER YOU GOT UPSTAIRS?

23 A BARRICADED THE DOOR

24 Q WHY DID YOU BARRICADE THE DOOR?

25 A I HEARD THEM ARGUING AGAIN BUT I HEARD LIKE RUMBLING

SHATIMA MARIIN - DIRECT EXAMINATION BY MR. NETTLES

31

1 THIS TIME SO I KNEW THAT EITHER MOM WAS GETTING PUSHED
2 AROUND OR SOMETHING WAS FALLING SO I RAN DOWNSTAIRS AND
3 I TOLD KAMELL TO STAY UPSTAIRS

4 AND WHEN I WAS RUNNING DOWNSTAIRS MOM WAS COMING AROUND
5 THE CORNER AND TO GET UP TO OUR BEDROOM, IT'S LIKE TWELVE
6 OR THIRTEEN STAIRS AND THEN YOU CAN CUT A RIGHT, AND IT'S
7 LIKE THREE STAIRS, BUT YOU COULD CLOSE THE DOOR

8 SO MOM GRABBED AHOLD OF ME, AND KAMELL WAS GETTING
9 READY TO COME DOWN THE STAIRS AND WE GRABBED HIM WE RAN
10 UPSTAIRS, CLOSED THE DOOR AND STARTED THROWING STUFF BEHIND
11 IT

12 Q OKAY

13 A SO DAD COULDN'T PUSH IT OPEN

14 Q TO BARRICADE SO YOUR DAD ---

15 A YES BUT AS WE WERE COMING -- AS MOM WAS COMING AROUND
16 AND I WAS MEETING HER DOWNSTAIRS RIGHT BY THE TABLE, THAT'S
17 WHEN YOU HEARD TWO SHOTS GO OFF

18 Q HOW OLD WAS KAMELL WHEN ALL THIS TOOK PLACE?

19 A KAMELL SHOULD HAVE -- I WAS -- I DON'T KNOW OUR
20 APPROXIMATE AGES, BUT I THINK KAMELL SHOULD HAVE BEEN ABOUT
21 SEVEN, EIGHT

22 Q HE WAS WALKING, AND HE WAS ---

23 A YEAH, HE WAS ---

24 Q --- IN SCHOOL?

25 A YEAH, HE WAS IN SCHOOL WE WERE AT CALEDONIA

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

32

1 Q HE WAS IN SOMEWHAT -- WAS HE IN ELEMENTARY SCHOOL WHEN
2 THIS TOOK PLACE?

3 A YES, IN CALEDONIA

4 Q OKAY WHEN YOUR PARENTS -- DURING THIS TIME, OKAY, I
5 MEAN, WHAT DID YOU SEE YOUR ROLE IN THE FAMILY AS?

6 A A MOM FOR ONE

7 Q MOM TO WHO?

8 A MY BROTHER

9 Q TO KAMELL?

10 A (AFFIRMATIVE NOD) AND HIS PROTECTOR 'CAUSE IT'S
11 ALWAYS BEEN US TOGETHER I'M SORRY Y'ALL

12 Q DO YOU NEED A LITTLE BIT OF WATER?

13 A NO I JUST NEED A M'NUTE

14 Q OKAY

15 (PAUSE)

16 Q YOU LET ME KNOW WHEN YOU'RE READY

17 A I'M READY

18 Q NO, NO, NO, THERE'S NO HURRY, I PROMISE YOU YOU LET
19 ME KNOW WHEN YOU'RE READY, OKAY?

20 (PAUSE)

21 MR NETTLES JUDGE, CAN WE TAKE A BREAK?

22 THE COURT SURE

23 MR NETTLES ALL RIGHT

24 Q I JUST THINK WE'RE GOING TO TAKE A LITTLE BREAK, OKAY?

25 A YES, SIR

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

33

1 Q YOU NEED -- CAN WE GET YOU SOME WATER?

2 A YES, SIR

3 THE COURT OKAY WE'LL BE IN RECESS THANK YOU VERY
4 MUCH

5 (WHEREUPON COURT WAS IN RECESS AT 10 39 AM)

6 (WHEREUPON COURT RESUMED AT 10 51 AM)

7 THE COURT YES, SIR

8 MR. NETTLES THANK YOU, JUDGE

9 DIRECT EXAMINATION BY MR. NETTLES CONTINUED

10 Q YOU DOING BETTER?

11 A YES, SIR

12 Q SHATIMA, I BELIEVE WHEN WE LEFT OFF WE WERE TALKING A
13 LITTLE BIT ABOUT YOU FELT YOUR ROLE WAS TO BE A MOTHER AND
14 PROTECTOR TO KAMELL?

15 A YES

16 Q AND, YOU KNOW, SHARE WITH US WHEN YOUR FATHER WOULD
17 COME HOME, YOU'D HEAR HIM COMING HOME, ---

18 A YES

19 Q SHARE WITH US ONE OF THE WAYS THAT YOU WOULD PROTECT
20 KAMELL

21 A I WOULD TELL HIM TO ACT LIKE HE WAS ASLEEP THAT'S ONE
22 OF THE WAYS I WOULD TELL HIM

23 Q WHY WOULD YOU TELL HIM TO ACT LIKE HE WAS ASLEEP?

24 A BECAUSE IF HE WAS AWAKE AND DIDN'T KNOW HIS SPELLING
25 WORDS OR IF IT WAS SOMETHING THAT HE DIDN'T CLEAN UP ---

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

34

1 Q OKAY YOU NEED TO SLOW DOWN A MINUTE SO IF YOUR DAD
2 CAME HOME AND WHAT?

3 A IF HE WANTED TO GO OVER KAMELL'S SPELLING WORDS ---

4 Q RIGHT

5 A --- OR ANYTHING, IF HE DID NOT KNOW WHAT HE NEEDED TO
6 KNOW, HE WOULD GET A BEATING

7 Q RIGHT BUT IF KAMELL WAS ASLEEP OR YOUR DAD THOUGHT HE
8 WAS ASLEEP WHAT WOULD HAPPEN?

9 A HE WOULDN'T BOTHER US

10 Q WHO WOULDN'T BOTHER HIM?

11 A DAD WOULD NOT BOTHER US AND WAKE US UP

12 Q SO IF KAMELL WAS UP WHEN YOUR DAD CAME HOME HE WOULD
13 WANT TO

14 A LIKE QUIZ HIM OR IT MIGHT BE SOME TOYS IN THE FLOOR
15 THAT HE DIDN'T PICK UP OR HE MIGHT HAVE HIS DIRTY CLOTHES IN
16 THE BATHROOM

17 Q AND WHAT WOULD HAPPEN IF THAT WERE THE CASE?

18 A HE WOULD GET A BEATING

19 Q BUT IF HE WAS ASLEEP WHAT WOULD HAPPEN?

20 A DAD WOULD LET US STAY ASLEEP SO WE WERE FAKING

21 Q AND YOUR ADVICE TO KAMELL WAS TO DO WHAT TO KEEP HIM
22 FROM GETTING BEAT WHEN HIS DAD CAME HOME?

23 A JUST LAY THERE AND DON'T MOVE, STAY ASLEEP, YOU KNOW,
24 ACT LIKE HE'S ASLEEP

25 Q WHAT DOES IT FEEL LIKE -- WHAT WOULD BE THE -- WHAT

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

35

1 WOULD BE THE ATMOSPHERE IN THE ROOM, Y'ALL'S ROOM, WHEN YOU
2 WOULD HEAR YOUR DAD COME HOME?

3 A TENSE I WOULD TRY TO RELAX HIM I TRIED TO STAY
4 CLOSE TO HIM SO HE WOULDN'T ---

5 Q CLOSE TO WHO?

6 A I WOULD TRY TO STAY CLOSE TO KAMELL AND LET HIM KNOW I
7 WON'T LET HIM KEEP HURTING HIM

8 Q NOW THE -- SO WHEN YOUR DAD WOULD GET HOME AND HE WOULD
9 BE -- DID THESE -- HAVE THESE EVENTS -- DO THESE EVENTS
10 AFFECT YOU TO THIS DAY?

11 A YES, SIR

12 Q HOW?

13 A THEY'RE IN MY MEMORY FOR ONE I CAN'T GET RID OF IT
14 IT'S LIKE IT JUST HAPPENED JUST YESTERDAY

15 Q RIGHT

16 A AND WITH MY MARRIAGE NOW, LIKE MY HUSBAND AND I, WE
17 WON'T -- MY HUSBAND KNOWS WHAT I'VE BEEN THROUGH SO HE
18 WON'T EVEN -- WE WON'T EVEN ARGUE HE NEVER LAID A HAND ON
19 ME WE'LL JUST SEPARATE AND THEN WHEN WE GET TOGETHER
20 WE'LL JUST TALK IT OVER

21 Q RIGHT NOW DID THERE COME A TIME WHEN YOU WERE NO
22 LONGER ABLE TO BE KAMELL'S PROTECTOR?

23 A YES

24 Q WHAT HAPPENED?

25 A I WENT TO COLLEGE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

36

- 1 Q HOW OLD WERE YOU WHEN YOU WENT TO COLLEGE?
- 2 A SEVENTEEN
- 3 Q HOW OLD WAS KAMELL?
- 4 A HE WAS ABOUT TWELVE, GOING ON THIRTEEN
- 5 Q NOW SO WHENEVER YOU LEFT WHO TOOK OVER THE JOB OF
- 6 TEACHING HIM HIS WORDS AND HELPING HIM WITH HIS SCHOOL?
- 7 A OUR MOM
- 8 Q YOUR MOM?
- 9 A YES
- 10 Q SHARE WITH US A LITTLE BIT ABOUT WHAT TYPE OF MAMA WAS
- 11 -- WAIT A MINUTE WAS THERE A TIME THAT YOU AND KAMELL
- 12 LIVED WITHOUT -- WHERE YOUR DAD HAD MOVED OUT?
- 13 A YOU TALKING ABOUT IN THE HOUSE WITH MY MOM?
- 14 Q YEAH
- 15 A YES IT WAS MY MOM, KAMELL AND I
- 16 Q OKAY AND SO THAT WOULD HAVE BEEN A TIME -- THAT WOULD
- 17 HAVE BEEN A TIME BETWEEN WHEN Y'ALL MOVED TO CLEVELAND
- 18 HEIGHTS AND WHEN YOU LEFT TO GO TO COLLEGE?
- 19 A RIGHT
- 20 Q THERE WAS A TIME IT WAS JUST THE THREE OF Y'ALL?
- 21 A YES
- 22 Q NOW BUT YOUR DAD HAD MOVED OUT?
- 23 A YES
- 24 Q WHERE DID YOUR DAD MOVE TO?
- 25 A I THINK IT'S CALLED SPRINGFIELD, OHIO

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

37

- 1 Q OKAY BUT HE WASN'T IN ---
- 2 A OH, NO HE WASN'T IN CLEVELAND HEIGHTS, NO
- 3 Q ALL RIGHT NOW DURING THAT TIME TELL JS -- TELL ME A
- 4 LITTLE BIT ABOUT THE ENVIRONMENT THEN
- 5 A WELL, MOM HAD TO WORK MORE HOURS SO IT WAS JUST
- 6 KAMELL AND I AT HOME
- 7 Q UH-HUH (AFFIRMATIVE)
- 8 A I WOULD COOK, HELP HIM WITH HIS HOMEWORK MOM WOULD DO
- 9 LIKE THE LAUNDRY AND STUFF I JUST HAD TO SEPARATE OUR
- 10 CLOTHES
- 11 Q RIGHT
- 12 A LIKE PJT HIS JP WHERE HIS BELONGED, PUT MINE UP WHERE
- 13 MINE BELONGED
- 14 Q RIGHT SO WHO WAS ESSENTIALLY RAISING KAMELL DURING
- 15 THAT TIME?
- 16 A I WAS
- 17 Q OKAY AND KAMELL -- BUT WHENEVER YOU LEFT TO GO TO
- 18 SCHOOL, THEN WHO WAS RAISING KAMELL?
- 19 A MOM STEPPED IN
- 20 Q AND HOW MANY JOBS WAS SHE WORKING?
- 21 A I DON'T KNOW HOW MANY JOBS SHE WAS WORKING I WAS
- 22 GOING TO SCHOOL
- 23 Q OKAY HOW MANY JOBS WAS SHE WORKING BEFORE YOU WENT TO
- 24 SCHOOL?
- 25 A SHE WAS WORKING AT EAST OHIO GAS COMPANY, BUT SHE WAS

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

38

1 ALSO ON THE BOWLING LEAGUE

2 Q BOWLING WHAT?

3 A BOWLING LEAGUE

4 Q WAS S-E THERE ALL THE TIME AT YOUR HOUSE?

5 A AT THE HOUSE? NO, NOT ALL THE TIME

6 Q NOW WHEN YOU LEFT FOR COLLEGE KAMELL WAS HOW OLD? I

7 KNOW I ASKED YOU THAT, BUT I JUST FORGOT

8 A HE WAS ABOUT -- GETTING READY TO TURN THIRTEEN

9 Q GETTING READY TO TURN THIRTEEN AND YOU CAME TO SCHOOL
10 DOWN HERE?

11 A NO I WENT TO ALABAMA A&M UNIVERSITY

12 Q THAT'S RIGHT ALL RIGHT NOW WAS THERE A TIME THAT
13 YOU MOVED BACK TO SOUTH CAROLINA?

14 A YES, SIR

15 Q AND AGAIN, HOW OLD WERE YOU WHEN YOU MOVED TO SOUTH
16 CAROLINA?

17 A I DON'T KNOW MY AGE, BUT I KNOW WHAT YEAR IT WAS
18 NOVEMBER THE 9TH, 1998

19 Q OKAY AND WHO DID YOU MOVE IN WITH WHEN YOU MOVED BACK
20 HERE?

21 A DAD'S HOUSE

22 Q THE SAME FATHER THAT YOU'D LIVED WITH IN ---

23 A YES, SIR

24 Q THE SAME FATHER THAT HAD BEEN, YOU KNOW, THE FATHER IN
25 THE ABUSIVE HOUSEHOLD ---

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

39

- 1 A YES, SIR
- 2 Q WAS THE HOUSEHOLD THAT YOU MOVED INTO IN SOUTH CAROLINA
- 3 THE SAME OR DIFFERENT FROM THE HOUSEHOLD THAT YOU MOVED IN
- 4 -- THAT YOU LIVED IN IN OHIO?
- 5 A IT WAS DIFFERENT
- 6 Q HOW?
- 7 A IT WASN'T ABUSIVE THE DRINKING, THAT WASN'T THERE
- 8 Q OKAY YOU DIDN'T SEE YOUR DAD DRUNK THEN?
- 9 A NO HE WOULD DRINK, NOT LIKE GETTING DRUNK
- 10 Q RIGHT
- 11 A NOT, I MEAN, HE WOULD DRINK AND HAVE A BEER AND ---
- 12 Q WOULD HE DRINK ---
- 13 A --- STUFF LIKE THAT
- 14 Q --- AND GET VIOLENT?
- 15 A WHAT? I DIDN'T HEAR YOU
- 16 Q WOULD HE DRINK AND GET VIOLENT?
- 17 A IF HE'S DRUNK
- 18 Q NO, NO BUT WHENEVER YOU SAW HIM IN THE HOUSE IN SOUTH
- 19 CAROLINA?
- 20 A OKAY
- 21 Q I'M NOT SAYING HE DIDN'T DRINK, BUT WHEN HE GOT DRUNK
- 22 -- WERE THERE THINGS HE DIDN'T DO AFTER HE'D BEEN DRINKING
- 23 IN SOUTH CAROLINA THAT HE WOULD DO IN OHIO?
- 24 A I DON'T UNDERSTAND
- 25 Q THERE'S A REASON YOU'RE NOT UNDERSTANDING

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

40

1 A I DON'T UNDERSTAND

2 Q IT'S NOT A GOOD QUESTION BUT THE, YOU KNOW, MY POINT
3 IS THIS, I'M NOT ASKING YOU -- DID YOUR DAD STILL DRINK WHEN
4 HE WAS IN SOUTH CAROLINA?

5 A YES

6 Q WOULD HE GET -- WOULD HE ACT THE SAME WAY WHEN HE GOT
7 DRUNK AS HE HAD IN OHIO?

8 A NO

9 Q OKAY IN WHAT WAY?

10 A I DIDN'T SEE HIM BEATING ON ANYONE FOR ONE

11 Q OKAY NOW WHO WAS YOUR DAD MARRIED TO IN SOUTH
12 CAROLINA?

13 A ROBIN

14 Q ALL RIGHT NOW DID -- WHERE WAS KAMELL LIVING WHEN YOU
15 MOVED BACK IN WITH YOUR DAD IN SOUTH CAROLINA?

16 A WITH DAD

17 Q OKAY SO AT THIS POINT NOW WHAT WE'VE GOT IS YOU --
18 WE'VE GOT -- LET'S MAKE SURE WE KNOW WHO'S LIVING IN THIS
19 HOUSEHOLD

20 A OKAY

21 Q IN SOUTH CAROLINA IT WOULD BE WHO?

22 A ROBIN, ---

23 Q THAT'S YOUR STEP-MOM?

24 A THAT'S MY STEP-MOM

25 Q OKAY

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

41

1 A DAD, THEN MYSELF, MY OLDEST CHILD, DJ, AND MY SISTERS,
2 BOTH OF MY SISTERS, WHITNEY AND BRITNEY

3 Q AND HOW ABOUT KAMEIL?

4 A I SAID KAMELL, DIDN T I?

5 Q OH, YOU DID? OKAY I'M SORRY

6 A I DID I SAID KAMELL

7 Q SO IN THAT HOUSEHOLD, OKAY, WAS THERE THE TYPE OF
8 VIOLENCE THAT YOU SAW IN OHIO?

9 A NO, SIR

10 Q WAS THERE THE TYPE OF TENSION THAT YOU FELT IN OHIO?

11 A NO, SIR

12 Q DID YOU FEEL THAT YOU NEEDED TO BE A PROTECTOR OF
13 KAMELL LIKE YOU DID IN OHIO?

14 A NO, SIR

15 Q ALL RIGHT NOW SO WAS THERE A TIME IN THANKSGIVING OF
16 2001 THAT THINGS CHANGED A LITTLE BIT?

17 A YES, SIR

18 Q SHARE WITH US THAT

19 A IN BETWEEN THAT TIME I HAD PURCHASED A HOUSE -- I RENT
20 A HOUSE NEXT DOOR TO MY DAD'S HOUSE SO WE WERE GOING TO
21 HAVE OUR LITTLE PARTY NEXT DOOR, PLAY CARDS, PLAY VIDEO
22 GAMES AND DAD INVITED US TO COME OVER THERE AND DO
23 EVERYTHING OVER THERE SO WE SAID OKAY, LET'S MOVE THE
24 PARTY NEXT DOOR

25 SO ONCE WE GOT OVER THERE MY STEP-MOM TOLD US THAT WE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

42

1 WERE COMING OVER BEING DISRESPECTFUL, BUT WE WERE TRYING TO
2 EXPLAIN TO HER DAD JUST CALLED US AND TOLD US TO COME OVER
3 AND SO THEN SHE SAID WE WERE BEING DISRESPECTFUL 'CAUSE WE
4 WERE BRINGING OUR FRIENDS OVER AND IT WAS THANKSGIVING

5 AND KAMELL ASKED DAD TO STEP UP AND, YOU KNOW, TELL
6 ROBIN THAT HE INVITED US OVER SO IN BETWEEN THAT THEY HAD
7 AN ALTERCATION AND THEY WERE GETTING READY TO ---

8 Q NOW ALTERCATION, SHARE WITH ME ALTERCATION WAS IT
9 PHYSICAL?

10 A THEY WERE ARGUING, GETTING READY TO FIGHT

11 Q OKAY AND WHAT HAPPENED?

12 A I GOT INTO IT I JUMPED IN THE MIDDLE OF THEM

13 Q AND DID THE ALTERCATION EVER ESCALATE INTO PHYSICAL
14 FIGHTING?

15 A NO, IT DIDN'T GET PHYSICAL

16 Q ALL RIGHT WELL, HOW DID THE ALTERCATION END?

17 A I GOT KAMELL NEXT DOOR TO MY HOUSE, AND I RAN BACK
18 OUTSIDE AND I TOLD MY HUSBAND TO STAY IN THERE WITH
19 KAMELL AND I TOLD DAD TO GO BACK IN BECAUSE AS THE WORDS
20 WERE GOING BACK AND FORTH - THEY KEPT EXCHANGING WORDS AND
21 IT WAS GETTING WORSE

22 Q RIGHT, RIGHT, RIGHT DID YOUR FATHER AND KAMELL'S
23 RELATIONSHIP CHANGE AS A RESULT OF THAT?

24 A YES, SIR

25 Q WERE YOU ABLE TO SEE THAT?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

43

1 A YES SIR

2 Q WHAT WERE YOU ABLE TO WITNESS WAS THE CHANGE IN THEIR
3 RELATIONSHIP AS A RESULT OF THAT ALTERCATION?

4 A THEY DIDN'T WANT TO BE AROUND EACH OTHER I WOULD HAVE
5 TO HAVE LIKE TWO SEPARATE CHRISTMASES, ONE WITH MY BROTHER,
6 AND THEN I'D HAVE TO GO HAVE ONE WITH MY DAD

7 Q OKAY NOW KAMELL WAS -- SO KAMELL WAS LIVING WITH YOU?

8 A YES

9 Q DID YOU -- WERE THERE RULES IN YOUR HOUSEHOLD?

10 A YES, SIR

11 Q HOW, IN YOUR OPINION, WHAT YOU'VE BEEN ABLE TO SEE
12 ABOUT PLACES KAMELL'S LIVED, YOU'VE SEEN HIM IN A NUMBER OF
13 DIFFERENT ENVIRONMENTS AT THIS POINT, RIGHT?

14 A YES, SIR

15 Q HOW DOES KAMELL DO -- DOES KAMELL DO BETTER IN A
16 CONTROLLED ENVIRONMENT OR AN UNCONTROLLED ENVIRONMENT?

17 A HE DOES BETTER IN A CONTROLLED ENVIRONMENT

18 Q OKAY WHAT UNCONTROLLED ENVIRONMENTS HAVE YOU SEEN HIM
19 IN?

20 A WHEN HE LIVED WITH HIS EX-GIRLFRIEND

21 Q OKAY HOW ABOUT BEFORE THAT?

22 A I HAVEN'T SEEN HIM IN ---

23 Q OKAY

24 A HE'S IN ---

25 Q WELL -- ALL RIGHT THEN LET'S TALK A LITTLE BIT ABOUT

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

44

1 AN UNCONTROLLED ENVIRONMENT YOU SAW AT HIS EX-GIRLFRIEND'S,
2 ALL RIGHT? WHO IS HIS EX-GIRLFRIEND WE'RE REFERRING TO?

3 A CHRISTINA

4 Q CHRISTINA WHAT?

5 A RODRIGUEZ

6 Q OKAY NOW WAS THERE A TIME THAT CHRISTINA RODRIGUEZ
7 LIVED AT YOUR HOUSE? }

8 A YES, SIR

9 Q WHO ALL WAS LIVING AT YOUR HOUSE THEN?

10 A IT WAS MY NEWBORN, CAMRY, IT WAS MY HUSBAND WE DIDN'T
11 HAVE CUSTODY OF MY STEP-SON HE WAS NOT THERE IT WAS
12 KAMELL AND MYSELF AND MY OLDEST SON, DJ

13 Q OKAY NOW AND CHRISTINA MOVED IN WITH YOU?

14 A YES

15 Q AND SHE MOVED IN WITH YOU BECAUSE WHO -- LIKE WHO
16 BROUGHT HER INTO THAT FOLD?

17 A WELL THEY BOTH SAID DOWN AND TALKED TO ME AND SAID ---

18 Q THEY BOTH BEING WHO?

19 A KAMELL AND CHRISTINA

20 Q OKAY SO -- OKAY BUT, I MEAN, I GUESS WHAT I'M
21 GETTING AT IS DID CHRISTINA COME BECAUSE SHE KNEW KAMELL?

22 A DID SHE COME BECAUSE SHE WHAT?

23 Q DID SHE COME TO LIVE WITH YOU BECAUSE SHE KNEW KAMELL?

24 A YES

25 Q I MEAN, DID YOU ASK HER TO COME LIVE ---

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

45

1 A NO, I DIDN'T ASK HER

2 Q I MEAN, KAMELL AND -- KAMEJL AND CHRISTINA DID NOT MEET
3 BECAUSE THEY WERE LIVING AT YOUR HOUSE, THEY HAD MET BEFORE
4 ---

5 A OH, NO, THEY MET PRIOR TO THAT I'M SORRY

6 Q ALL RIGHT AND WERE THEY DATING?

7 A YES, THEY WERE DATING

8 Q SO WHENEVER SHE MOVED INTO YOUR HOUSE WHAT WAS THEIR
9 RELATIONSHIP?

10 A BOYFRIEND AND GIRLFRIEND

11 Q ALL RIGHT NOW WHEN DID YOU FIRST MEET CHRISTINA?

12 A ABOUT A MONTH BEFORE MY WEDDING

13 Q OKAY NOW WHAT DID YOU NOTICE ABOUT THEIR
14 RELATIONSHIP?

15 A JUST, I MEAN, WHEN THEY FIRST GOT TOGETHER IT WAS NICE
16 I MEAN,

17 Q DID THAT STAY THE SAME OR CHANGE?

18 A IT CHANGED

19 Q HOW DID IT CHANGE?

20 A I MEAN, WELL, I -- I HAVE A SET OF RULES I DON'T ---

21 Q OKAY SHARE WITH US SOME OF THOSE RULES

22 A NO DRUGS IN MY HOUSEHOLD, NO GUNS, NO KNIVES IN THE
23 HOUSEHOLD BECAUSE I HAVE TWO BOYS

24 Q RIGHT

25 A SO THOSE WERE SOME OF THE RULES NO BAD STUFF, NO --

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

46

1 ON THE INTERNET

2 Q OKAY

3 A THOSE ARE SOME OF MY RULES AND NO ---

4 Q WELL, WHAT ARE WE TALKING ABOUT BAD STUFF? I MEAN,

5 A LIKE PORNOGRAPHY

6 Q RIGHT, RIGHT, RIGHT

7 A STUFF LIKE THAT

8 Q DID YOU EVER -- ALL RIGHT SO -- WHAT WAS YOUR

9 POSITION IN TERMS OF COMPLYING WITH THOSE RULES?

10 A YOU MEAN ---

11 Q IN OTHER WORDS, IF YOU DIDN'T COMPLY WITH THE RULES IN

12 YOUR HOUSE ---

13 A YOU HAD TO GET OUT

14 Q YOU HAD TO DO WHAT?

15 A YOU HAD TO LEAVE

16 Q OKAY NOW HOW LONG DID KAMELL AND CHRISTINA LIVE IN

17 YOUR HOUSE?

18 A NOT A FULL YEAR

19 Q NOT A FULL YEAR?

20 A NO, SIR

21 Q BUT MORE THAN A MONTH?

22 A YES, SIR YES, SIR

23 Q AND WHAT WAS IT -- WELL, WHY DID THEY HAVE TO LEAVE?

24 A FOR ONE, ---

25 Q I MEAN, DID YOU KICK THEM OUT?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

47

1 A I KICKED THEM OUT

2 Q ALL RIGHT WHY?

3 A BECAUSE THEY DIDN'T FOLLOW MY RULES

4 Q SHARE WITH ME THE RULES THAT THEY DID NOT FOLLOW OF
5 YOURS

6 A BROUGHT GUNS AND GUN HOLSTERS IN MY HOME

7 Q HAD YOU EVER SEEN KAMELL WITH A GUN PRIOR TO HIM
8 BEGINNING HIS RELATIONSHIP WITH CHRISTINA?

9 A NO, SIR

10 Q OKAY GO AHEAD

11 A THEY BROUGHT GUNS INTO MY HOUSE, A HOLSTER INTO MY
12 HOUSE AND THEY WERE ---

13 Q A HOLSTER?

14 A A GUN HOLSTER

15 Q A GUN HOLSTER, OKAY

16 A IS I GUESS ---

17 Q THAT'S FINE, THAT'S FINE GO AHEAD I JUST WANTED TO
18 MAKE SURE IT WASN'T LIKE A HAMMER HOLSTER OR ---

19 A OH

20 Q IT WAS A GUN HOLSTER?

21 A YES, SIR

22 Q OKAY ALL RIGHT

23 A AND THEY WERE ALSO LOOKING UP THINGS ON THE INTERNET
24 THAT I DON'T APPROVE OF

25 Q OKAY WHAT THINGS -- DID YOU SEE THEM LOOKING UP

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

48

1 THINGS ON THE INTERNET?

2 A YES SIR

3 Q WHAT DID YOU SEE THEM -- THEM BEING WHO?

4 A CHRISTINA AND KAMELL

5 Q WHAT DID YOU SEE THEM LOOKING UP ON THE INTERNET THAT
6 YOU DON'T APPROVE OF?

7 A GANG SIGNS AND GANG SYMBOLS

8 Q OKAY AND WAS THERE A TIME THAT YOU SAW CHRISTINA
9 TAKING NOTES WHILE LOOKING ON THE INTERNET?

10 A THAT WAS THE SECOND TIME I CAUGHT HER ON THERE DOINC
11 THAT

12 Q THE SECOND TIME YOU CAUGHT HER ON THE COMPUTER DOING
13 WHAT?

14 A THE FIRST TIME THEY WERE LOOKING THE SECOND TIME SHE
15 WAS WRITING CHRISTINA ---

16 Q WRITING ABOUT WHAT?

17 A SHE WAS WRITING DOWN THE SYMBOLS

18 Q WHAT SYMBOLS?

19 A IT WAS GANG SYMBOLS

20 Q OKAY NOW THE TIME THAT KAMELL LIVED WITH YOU AND
21 THERE WAS A TIME -- HE LIVED WITH YOU FOR A PERIOD BEFORE --
22 WELL, THERE WAS A PERIOD WHERE YOU AND KAMELL AND YOUR DAD
23 ALL LIVED IN ONE HOUSE, RIGHT?

24 A UM-HUM (AFFIRMATIVE) ,

25 Q AND THEN THERE WAS A PERIOD WHERE YOU AND KAMELL LIVED

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

49

- 1 IN ANOTHER HOUSE?
- 2 A YES
- 3 Q AND THIS IS ALL IN SOUTH CAROLINA?
- 4 A YES, SIR
- 5 Q AND THEN THERE WAS A TIME WHERE YOU AND KAMELL AND
- 6 CHRISTINA LIVED IN A HOUSE, RIGHT?
- 7 A WHEN CHRISTINA MOVED INTO MY HOUSE ---
- 8 Q WHEN CHRISTINA MOVED IN, RIGHT?
- 9 A OKAY, YES
- 10 Q RIGHT?
- 11 A YES
- 12 Q OKAY DURING ANY OF THOSE THREE TIME PERIODS DID YOU
- 13 -- DURING THOSE THREE TIME PERIODS WERE YOU EXPOSED TO
- 14 KAMELL'S FRIENDS?
- 15 A YES, SIR
- 16 Q OKAY WERE THEY -- SHARE WITH US ABOUT THAT
- 17 A THEY WOULD COME OVER AND WE ALL WOULD CHIP IN I WOULD
- 18 GO TO THE STORE AND COOK FOR THEM
- 19 Q UH-HUH (AFFIRMATIVE)
- 20 A WE WOULD PLAY VIDEO GAMES, WATCH SPORTS THEY HAD LIKE
- 21 VIDEO TOURNAMENTS, LIKE FOOTBALL TOURNAMENTS WITH THE PLAY
- 22 STATIONS
- 23 Q RIGHT
- 24 A AND WE'D ALSO PLAY CARDS WHOEVER WEREN'T ON THE VIDEO
- 25 GAMES, YOU HAD TO PLAY -- YOU'LL BE ON THE CARD TABLE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

50

1 Q NOW WERE -- WHAT WAS HIS AFFILIATION, I MEAN, WHAT WAS
2 BROUGHT, I MEAN, WHAT WAS THE COMMON -- OTHER THAN COMING TO
3 YOUR HOUSE AND DOING THOSE ACTIVITIES, WAS THERE ANOTHER
4 ACTIVITY THAT HE HAD IN COMMON WITH A LOT OF THESE
5 INDIVIDUALS?

6 A OH, FOOTBALL

7 Q YEAH

8 A YES

9 Q NOW TELL US ABOUT THE GANG MEMBERS THAT YOU SAW OVER AT
10 YOUR HOUSE

11 A I DIDN'T HAVE ANY GANG MEMBERS AT MY HOUSE

12 Q TELL US ABOUT THE TIMES THAT YOU SAW KAMELL ENGAGED IN
13 GANG ACTIVITY

14 A I DIDN'T SEE HIM INVOLVED IN ANY GANG ACTIVITY

15 Q WAS KAMELL IN A GANG?

16 A NO, SIR

17 Q DID YOU SEE CHRISTINA MAKING A POSTER AT ONE TIME?

18 A THAT'S WHEN I CAME OVER TO THEIR HOUSE

19 Q OKAY TELL US ABOUT THAT

20 A I WAS JUST COMING OVER TO CHECK UP ON THEM MOST OF
21 THE TIME I WOULD COOK FOOD AND BRING IT OVER THERE 'CAUSE
22 NEITHER OF THEM KNEW HOW TO COOK, I WOULD GLADLY SAY THAT

23 Q RIGHT, RIGHT

24 A WHEN I CAME OVER THEY HAD -- SHE HAD THIS BIG POSTER
25 AND SHE WAS LIKE, LOOK, LOOK WHAT I'VE GOT, TINA AND I WAS

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

51

- 1 LIKE, THAT'S CRAZY
- 2 Q WHAT WAS THE POSTER?
- 3 A IT WAS A POSTER OF MY BROTHER, A BIG POSTER
- 4 Q WITH HIM HOLDING GUNS?
- 5 A YES, SIR
- 6 Q ALL RIGHT THE POSE THAT HE WAS IN, HAD YOU EVER SEEN
- 7 THAT POSE BEFORE?
- 8 A YES
- 9 Q WHERE?
- 10 A I MEAN, I -- ON THE POSTER
- 11 Q OKAY HAD YOU EVER SEEN IT ON ANY RECORDS?
- 12 A NO
- 13 Q NOW ---
- 14 A CAN I SAY ONE THING?
- 15 Q YEAH, SURE
- 16 A I DON'T, I MEAN, I LISTEN TO MUSIC, BUT I DON'T REALLY
- 17 WATCH VIDEOS AND STUFF SO ---
- 18 Q OKAY
- 19 A -- I DON'T KNOW
- 20 Q I UNDERSTAND I UNDERSTAND THAT'S FINE
- 21 A OKAY
- 22 Q IT DOESN'T MAKE YOU A BETTER OR A BAD PERSON SO ALL
- 23 RIGHT NOW WHEN KAMELL AND -- SO KAMELL AND CHRISTINA MOVED
- 24 OUT OF YOUR HOUSE?
- 25 A YES, SIR

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NELLES

52

1 Q ALL RIGHT AND YOU WERE STILL, AS YOU JUST SAID, YOU
2 WOULD GO BY THERE AND TAKE THEM FOOD SO EVEN WHENEVER THEY
3 MOVED INTO THIS NEW HOUSE WERE YOU ESTRANGED FROM THEM?

4 A OH, NO I WOULD INVITE THEM OVER FOR HOLIDAYS BECAUSE
5 AT THAT TIME WE WERE STILL DOING TWO SEPARATE ---

6 Q RIGHT

7 A --- HOLIDAYS

8 Q AND WOULD YOU GO TO THEIR HOUSE?

9 A YES

10 Q OKAY SHARE WITH US THE GANG ACTIVITY YOU SAW OVER AT
11 THEIR HOUSE

12 A I DIDN'T SEE ANY GANG ACTIVITY

13 Q WHAT WAS KAMELL DOING? WAS KAMELL WORKING DURING THAT
14 TIME?

15 A YES

16 Q WHAT WAS -- WHERE WAS HE WORKING?

17 A HE WAS WORKING AT UPS AT THE TIME AND ALSO SPARTAN
18 STEEL

19 Q SO HE WAS WORKING HOW MANY JOBS?

20 A TWO

21 Q AND WAS HE STILL PLAYING FOOTBALL?

22 A YES, WITH THE SEMINOLES

23 Q OKAY NOW DURING THE TIME THAT THEY WERE AT THIS NEW
24 -- AT THEIR HOUSE, THEIR PLACE, I DON'T KNOW WHETHER THEY
25 WERE RENTING OR NOT

SHAIMA MARTIN - DIRECT EXAMINATION BY MR NETTLFS

53

1 A IT WAS AN APARTMENT

2 Q AT THEIR APARTMENT

3 A YES, SIR

4 Q DURING THE TIME THAT THEY WERE AT THEIR APARTMENT WHAT
5 DID YOU -- WERE YOU ABLE TO SEE THEIR RELATIONSHIP THEN?

6 WERE YOU ABLE TO EXPERIENCE THE RELATIONSHIP, BE AROUND THEM
7 ENOUGH?

8 A YES

9 Q YEAH

10 A YES, SIR

11 Q IN YOUR OPINION WHAT WAS THE NATURE OF THEIR
12 RELATIONSHIP ONCE THEY'D MOVED TO THEIR OWN APARTMENT?

13 A IT WAS LOVING STILL

14 Q WAS THERE ANY MONEY PROBLEMS?

15 A YES THAT CAME MORE RIGHT BEFORE THEY MOVED TO THEIR
16 HOUSE

17 Q OKAY OH, SO THEN THEY MOVED FROM THE APARTMENT TO A
18 HOUSE?

19 A YES, SIR

20 Q OKAY OKAY WELL, SHARE WITH US THE -- DID YOU SEE
21 ANY EVIDENCE OF MONEY PROBLEMS?

22 A YES, SIR

23 Q OKAY SHARE WITH US THAT

24 A ONE TIME HE CAME AND ASKED ME TO LOAN HIM SOME MONEY TO
25 PAY SOME BILLS AND ONE TIME CHRISTINA'S BROTHER CALLED ME

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

54

1 AND SAID THAT HE WAS GOING TO BRING ME SOME MONEY TO GIVE TO
2 KAMELL BECAUSE HE DIDN'T WANT TO PUT IT IN CHRISTINA'S
3 HANDS

4 Q NOW I WANT TO TALK TO YOU A LITTLE BIT ABOUT -- WE RE
5 ALMOST DONE BUT I WANT TO TALK TO YOU A LITTLE BIT ABOUT
6 APRIL 1ST OF 2003, ALL RIGHT? THAT'S THE NIGHT THAT ALL
7 THIS TRAGIC STUFF HAPPENED THAT BROUGHT US HERE TODAY, ALL
8 RIGHT?

9 A YES, SIR

10 Q NOW DID YOU RECEIVE A PHONE CALL THAT NIGHT?

11 A YES, SIR

12 Q TELL US, I MEAN, WHAT WAS THE NATURE OF THE PHONE CALL?
13 WHO CALLED YOU?

14 A I WAS ON A THREE-WAY WITH ONE OF THE COACHES AND ONE OF
15 THE FOOTBALL PLAYERS

16 Q OKAY AND AS A RESULT OF THAT PHONE CONVERSATION --
17 WHAT WAS THE NATURE OF THAT CALL?

18 A TO COME OVER TO CHRISTINA'S MOM'S HOUSE

19 Q OKAY DID YOU KNOW WHERE CHRISTINA'S MOM LIVED?

20 A NO THEY TOLD ME HOW TO GET THERE

21 Q OKAY DID YOU GO THERE?

22 A YES, SIR

23 Q OKAY SO WHEN YOU GET THERE TO CHRISTINA'S MOM'S HOUSE
24 WHAT IS HAPPENING?

25 A IT'S BARRICADED OFF AND A SHERIFF HAD -- IT WAS WHERE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

55

- 1 DUKE'S MAYONNAISE IS, IT WAS BARRICADED OFF RIGHT THERE SO
2 CHRISTINA TOLD THEM TO COME AND GET ME BECAUSE I WOULD BE
3 THE ONLY ONE TO GET HIM OUT OF THE HOUSE
4 Q OKAY SO WHO CAME AND GOT YOU?
5 A A SHERIFF I DON'T KNOW HIS NAME
6 Q A POLICE OFFICER?
7 A YES, IT WAS A POLICE OFFICER
8 Q OKAY AND WHEN THE POLICE OFFICER CAME AND GOT YOU
9 WHAT HAPPENED THEN?
10 A THEY TOOK ME DOWN TO A CUL-DE-SAC
11 Q A CUL-DE-SAC?
12 A YES, SIR
13 Q AND WHO ALL WAS AT THE -- HOW FAR WAS THE CUL-DE-SAC
14 FROM WHERE YOUR BROTHER WAS?
15 A HE WAS AT THE NEXT CUL-DE-SAC
16 Q OKAY WERE YOU -- WHO WERE YOU WITH?
17 A I WAS WITH A NEGOTIATOR, AND I WAS WITH CHRISTINA THE
18 AMBULANCE WAS OVER THERE
19 Q OKAY
20 A AND SOME OTHER SHERIFFS
21 Q OKAY NOW WHAT -- WHAT DID YOU WANT TO DO WHEN YOU
22 WERE THERE?
23 A I WANTED TO GO TO THE DOOR TO LET HIM KNOW THAT I WAS
24 ACTUALLY THERE AND I WASN'T JUST ON THE PHONE
25 Q OH, SO THEY PUT YOU ON THE PHONE WITH HIM?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

56

1 A YES, SIR

2 Q YOU GOT THE OPPORTUNITY TO TALK TO YOUR BROTHER THAT
3 NIGHT?

4 A YES, SIR

5 Q OKAY WHILE HE WAS INSIDE THE HOUSE?

6 A YES, SIR

7 Q OKAY AND WHO, I MEAN, DID THE POLICE OFFICERS
8 FACILITATE THAT?

9 A YES, SIR

10 Q OKAY AND WHAT DID YOU TELL YOUR BROTHER?

11 A TO COME OUT, AND I WOULD BE THERE FOR HIM, I WOULDN'T
12 LET THEM HURT HIM

13 Q OKAY DID YOU THINK THAT THIS WAS GOING TO END
14 PEACEFULLY?

15 A YES, SIR, 'CAUSE THEY CAME AND TOLD US THAT THEY WERE
16 COMING OUT THE NEGOTIATOR CAME BACK FROM THE CUL-DE-SAC
17 AND TOLD US THAT THEY WERE GETTING READY TO COME OUT

18 Q AT ANY POINT DURING THAT NIGHT WERE Y'ALL JOINED BY
19 CHRISTINA'S MOM?

20 A YES, SIR

21 Q OKAY WHEN D'D YOU FIRST SEE HER THAT NIGHT?

22 A WHEN SHE CAME OUT, OUT OF THE HOUSE

23 Q SO SHE HAD BEEN IN THE HOUSE WHERE THE HOSTAGE
24 SITUATION WAS TAKING PLACE?

25 A NO, SHE WAS UPSTAIRS

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

57

1 Q BUT, I MEAN, -- BUT WAS SHE IN THE SAME HOUSE THAT YOUR
2 BROTHER WAS IN?

3 A YES SHE WAS IN THE SAME HOUSE, BUT NOT IN THE SAME
4 ROOM ---

5 Q OKAY

6 A --- IS WHAT I'M TRYING TO SAY

7 Q WHAT WAS HER DEMEANOR WHEN SHE CAME OUT?

8 A SHE WAS EXCITED AND 'RAZZLED AT THE SAME TIME

9 Q OKAY AND WHAT DID SHE SAY?

10 MS BROWN OBJECTION, HEARSAY

11 MR NETTLES I MEAN, I THINK SHE ---

12 Q SHE WAS EXCITED ABOUT WHAT?

13 A CAN I

14 Q YEAH, I'M SORRY

15 MR NETTLES I MEAN, I BELIEVE IT'S EXCITED UTTERANCE

16 MS BROWN YOUR HONOR, IT SOUNDS TO ME LIKE IT WAS

17 AFTER THE EVENT

18 THE COURT RECOGNIZING THE LATITUDE THAT WE HAVE HERE,

19 I'M GOING TO ALLOW IT GO AHEAD

20 MR NETTLES AND IF I MAY ALSO ADD PRESENT SENSE

21 IMPRESSION

22 Q WHAT DID SHE SAY?

23 A THAT MEAN I CAN ANSWER?

24 Q IT DOES YOU'RE A VERY GOOD WITNESS

25 A I'M SORRY

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

58

1 Q NO, NO, NO YOU'RE DOING GOOD YOU'RE DOING GOOD,
2 YOU'RE DOING GOOD

3 A I'M SORRY

4 Q THAT DOES MEAN YOU GET TO ANSWER ---

5 A OKAY

6 Q --- IN LAYMAN'S TERMS

7 A OKAY I'M SORRY WHAT WAS THE QUESTION?

8 Q WELL, THE QUESTION WAS WHEN SHE CAME DOWN, WE TALKED
9 ABOUT THE CONDITION SHE WAS IN

10 A RICHT

11 Q WHAT DID SHE SAY -- DID SHE SAY ANYTHING TO HER
12 DAUGHTER?

13 A SHE SAID TO ---

14 Q JUST ANSWER THAT QUESTION

15 A YES, SIR

16 Q OKAY WERE YOU THERE WHEN SHE SAID IT TO HER DAUGHTER?

17 A YES, SIR

18 Q WHAT DID YOU HEAR HER SAY TO HER DAUGHTER?

19 A IT'S ALL YOUR FAULT

20 Q WHAT WAS ALL HER FAULT?

21 A I GUESS THE INCIDENT

22 Q NOW THE -- AND THEN OBVIOUSLY, WERE YOU -- DID YOU EVER
23 GET THE -- WERE YOU TOLD, AFTER ALL THIS WAS OVER, I MEAN,
24 AFTER ALL THE BAD STUFF HAPPENED, WERE YOU TOLD, GIVEN ANY
25 INSTRUCTIONS ABOUT YOUR CONTACT WITH THE VICTIM'S FAMILY?

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

59

1 A THEY SAID THAT WE -- WELL, AFTER THE INCIDENT HAPPENED
2 WE -- DAD AND I WENT TO THE HOSPITAL THAT THEY WERE IN

3 Q UH-HUH (AFFIRMATIVE)

4 A BUT AFTER THAT WE -- THEY SAID WE CAN'T HAVE ANY
5 CONTACT WITH THEM AT ALL

6 Q OKAY SO DID YOU HAVE ANY CONTACT?

7 A NO, I DIDN'T -- NO, I THOUGHT I WOULD GO TO JAIL IF I
8 TRIED TO CALL THEM

9 Q YEAH, THAT WAS -- THAT WAS GOOD THAT WAS SMART NOW
10 LET'S SHIFT FOR A SECOND CHRONOLOGICALLY, YOU KNOW, AT SOME
11 POINT OBVIOUSLY KAMELL'S GETTING READY TO GO TO TRIAL, ALL
12 RIGHT, AND HE GETS LAWYERS NOW DID YOU HAVE AN OPPORTUNITY
13 TO MEET WITH HIS TRIAL LAWYERS?

14 A YES, SIR

15 Q OKAY HOW LONG -- WHEN WAS THE FIRST TIME YOU MET WITH
16 THEM? DO YOU KNOW?

17 A A COUPLE OF WEEKS BEFORE MY -- BEFORE HIS TRIAL

18 Q A COUPLE OF WEEKS BEFORE HIS TRIAL?

19 A YES, SIR

20 Q OKAY AND WHEN YOU MET WITH THEM A COUPLE OF WEEKS
21 BEFORE TRIAL HOW LONG DID THAT MEETING LAST?

22 A I WANT TO SAY ABOUT THIRTY MINUTES, NOT EVEN AN HOUR

23 Q OKAY BETWEEN -- SO CERTAINLY LESS -- WELL, ARE YOU --
24 WAS IT MORE THAN AN HOUR?

25 A NO NO, SIR

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NETTLES

60

1 Q OKAY SO YOU SAID BETWEEN THIRTY MINUTES TO AN HOUR?

2 A YES, SIR

3 Q DURING THAT MEETING WHAT DID THEY ASK YOU?

4 A WHO I WAS, ---

5 Q NOW WHEN THEY SAID WHO YOU WERE, WHAT DID THEY MEAN BY
6 THAT? WHAT WAS YOUR ANSWER TO WHO ARE YOU?

7 A KAMELL EVANS' SISTER, OLDEST

8 Q OKAY DID THEY ASK YOU TO -- WERE YOU ASKED TO EXPAND
9 ON THAT?

10 A NO, SIR

11 Q ALL RIGHT WHAT ELSE DID THEY ASK YOU?

12 A WAS I MARRIED?

13 Q OKAY

14 A WAS I THERE THE NIGHT THE INCIDENT HAPPENED?

15 Q OKAY WERE YOU ASKED ANY QUESTIONS ABOUT KAMELL'S
16 UPBRINGING?

17 A NO, SIR

18 Q WERE YOU ASKED ANY OF THE QUESTIONS ABOUT THE ABUSE --
19 WHETHER KAMELL HAD EVER BEEN EXPOSED TO ANY ABUSE?

20 A NO, SIR

21 Q WERE YOU ASKED ANY QUESTIONS ABOUT WHETHER KAMELL HAD
22 EVER BEEN EXPOSED TO ANY SORT OF TOXINS, LEAD, ET CETERA?

23 A NO, SIR

24 Q DID THEY ASK YOU IF KAMELL WAS IN A GANG?

25 A NO, SIR, THEY DIDN'T ASK ---

SHATIMA MARTIN - DIRECT EXAMINATION BY MR. NEITLFS

61

1 Q THEY DIDN'T ASK YOU IF HE WAS IN A GANG?

2 A (NEGATIVE NOD)

3 Q OKAY HAD THEY ASKED YOU IF HE WERE IN A GANG WHAT
4 WOULD YOU HAVE TOLD THEM?

5 A NO

6 Q NOW YOU DID TESTIFY AT TRIAL?

7 A YES, SIR

8 Q AND WHEN YOU WERE ON THE WITNESS STAND AT TRIAL UNDER
9 OATH DID THE TRIAL LAWYER -- NOW DO YOU REMEMBER WHETHER --
10 DO YOU REMEMBER WHETHER YOU GOT CALLED IN THE -- THERE WERE
11 TWO PHASES TO THE TRIAL YOU REMEMBER THAT?

12 A YES, SIR

13 Q THERE WAS THE FIRST PHASE ABOUT WHETHER YOUR BROTHER
14 WAS GUILTY OR NOT

15 A RIGHT

16 Q THERE WAS A SECOND PHASE ABOUT WHETHER HE WAS GOING TO,
17 YOU KNOW, WHAT THE APPROPRIATE PUNISHMENT WAS

18 A YES

19 Q DO YOU REMEMBER WHICH PHASE YOU WERE IN?

20 A THE SECOND

21 Q SECOND NOW BETWEEN THE FIRST PHASE AND THE SECOND
22 PHASE DID THE LAWYERS BRING YOU BACK IN AND START TALKING TO
23 YOU AGAIN?

24 A NO, SIR

25 Q OKAY SO AT THE RISK OF BEING REDUNDANT, BETWEEN THE

SHATIMA MARTIN - DIRECT EXAMINATION BY MR NETTLES

62

1 FIRST PHASE AND THE SECOND PHASE DID THEY AT THAT TIME ASK
2 YOU ANYTHING ABOUT KAMELL'S UPBRINGING?

3 A NO, SIR

4 Q WHEN THEY PUT YOU ON THE WITNESS STAND IN THE SECOND
5 PHASE DID THEY ASK YOU ANYTHING ABOUT KAMELL'S UPBRINGING?

6 A NO, SIR

7 Q AFTER YOU TESTIFIED DO YOU REMEMBER SITTING IN THE
8 COURTROOM?

9 A YES, SIR

10 Q OKAY DO YOU REMEMBER A MS CATHERINE TRIPP TESTIFY?

11 A YES, SIR

12 Q WAS SHE WEARING A UNIFORM?

13 A YES, SIR

14 Q DO YOU REMEMBER A SHERIFF LOFTIS TESTIFY?

15 A YES, SIR

16 Q WAS HE WEARING A UNIFORM?

17 A I CAN'T RECALL

18 MR NETTLES IF I COULD CONSULT ---

19 THE COURT SURE

20 MR NETTLES --- WITH MY PEOPLE, I THINK WE MAY

21 (PAUSE)

22 Q I'VE NOW BEEN REMINDED OF WHAT MY TRAIN OF THOUGHT
23 LAPSE WAS OKAY DURING THE TIME THAT Y'ALL WERE LIVING ON
24 TAYLOR STREET, YEAH, TAYLOR STREET, ALL RIGHT?

25 A UM-HUM (AFFIRMATIVE)

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

63

1 Q AND THAT WOULD HAVE BEEN THE TIME FROM, YOU KNOW, WHEN
2 Y'ALL MOVED TO THE GOOD NEIGHBORHOOD, DID THE -- WHAT'S
3 CULMINATED OBVIOUSLY IN YOU, AND YOUR BROTHER, AND YOUR MAMA
4 MOVING OUT, DURING THAT TIME DID THE VIOLENCE PERPETRATED BY
5 YOUR FATHER ON KAMELL INCREASE OR DECREASE AS TIME WENT ON?

6 A IT WOULD INCREASE

7 MR NETTLES WE HAVE NO FURTHER QUESTIONS

8 THE COURT CROSS EXAMINATION

9 MS BROWN THANK YOU, YOUR HONOR

10 CROSS EXAMINATION BY MS BROWN

11 Q DO YOU PREFER MS MARTIN OR MRS MARTIN?

12 A YOU CAN CALL ME TINA IF YOU D LIKE

13 Q THANK YOU, MA'AM DO YOU REMEMBER AUGUST THE 11TH,
14 2004, AUGUST 22ND, 2004, THIS WOULD HAVE BEEN BEFORE THE
15 TRIAL, AT YOUR BUSINESS GIVING INTERVIEWS TO A MS LENORA
16 TOPP?

17 A YES

18 Q SO YOU MET WITH LENORA TOPP TWO TIMES?

19 A YES

20 Q AND WERE THESE RATHER EXTENSIVE TALKS?

21 A NO I MEAN, IT ---

22 Q HOW MUCH TIME DO YOU ESTIMATE THAT YOU SPENT WITH MS
23 TOPP?

24 A THE FIRST TIME -- IT WAS LESS THAN AN HOUR BECAUSE SHE
25 CAME IN BETWEEN MY CLIENTS

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

64

1 Q OKAY WHAT ABOUT THE SECOND TIME?

2 A IT WAS LESS THAN AN HOUR ALSO

3 Q OKAY DID YOU TRY TO ANSWER ALL OF HER QUESTIONS

4 TRUTHFULLY?

5 A YES, MA'AM

6 Q AND GIVE HER AS MUCH INFORMATION AS YOU COULD?

7 A YES, MA AM

8 Q DID YOU UNDERSTAND THAT SHE WAS COMPILING THIS

9 INFORMATION TO GIVE TO THE ATTORNEYS?

10 A YES, MA'AM

11 Q AND YOU UNDERSTOOD IT WOULD HELP TO FORMULATE THE

12 DEFENSE?

13 A I CAN'T RECALL THAT, BUT

14 Q OKAY WELL, YOU UNDERSTOOD THE ATTORNEYS ---

15 A YES

16 Q --- WERE GOING TO VIEW IT ---

17 A YES

18 Q DO YOU RECALL TELLING MS TOPP THAT THERE WAS A LOT OF

19 FIGHTING BETWEEN YOUR PARENTS IN OHIO?

20 A YES, MA'AM

21 Q A LOT OF FIGHTING AND YOU SAID VERBAL AND PHYSICAL

22 A YES

23 Q DO YOU REMEMBER TELLING MS TOPP THAT YOUR FATHER WOULD

24 SPANK BOTH OF YOU, BOTH YOU AND KAMELL WITH A BELT?

25 A YES

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

65

1 Q AND TODAY YOUR TESTIMONY WAS THAT ONLY KAMELL WAS
2 BEATEN?

3 A HE WAS BEATEN, I WAS WHIPPED I DIDN'T HAVE BRUISES
4 AND STUFF ON ME, MA'AM

5 Q BUT YOU DIDN'T MAKE THAT DISTINCTION TO MS TOPP?

6 A SHE DIDN'T ASK SHE JUST ASKED ME DID WE EVER GET HIT
7 WITH ANYTHING

8 Q OKAY AND THE FIGHTING, THE VERBAL AND PHYSICAL
9 FIGHTING, DID YOU -- YOU NEVER MENTIONED TO MS TOPP ABOUT
10 GUNFIRE?

11 A SHE NEVER ASKED I MEAN, IF SHE WOULD HAVE ASKED ME
12 WAS THERE ANY OTHER ABUSE OR THINGS THAT TRAUMATIZED ME, I
13 WOULD HAVE TOLD HER

14 Q BUT YOU TOLD HER ABOUT YOUR MOTHER BEING BEATEN IN THE
15 KITCHEN AND HER HAIR WAS PULLED?

16 A YES

17 Q AND I UNDERSTAND YOU WENT TO COLLEGE ---

18 A YES, MA'AM

19 Q --- IN ALABAMA, CORRECT?

20 A YES, MA'AM

21 Q OKAY YOU DID REALLY WELL IN SCHOOL WHEN YOU WERE IN
22 OHIO, DID YOU NOT?

23 A YES, MA'AM

24 Q AND YOU ON OCCASION HELPED YOUR BROTHER BECAUSE YOU HAD
25 THAT BACKGROUND TO DO REALLY WELL IN SCHOOL?

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

66

1 A YES, MA'AM

2 Q BUT YOU WEREN'T WITH HIM FOR SEVERAL YEARS, CORRECT?

3 A ONLY -- YOU MEAN LIKE NOT SEE HIM THE WHOLE YEAR? IS
4 THAT WHAT YOU'RE ASKING?

5 Q WELL, YOU DIDN'T LIVE WITH HIM?

6 A OH, NO NO, MA'AM

7 Q SO YOU DON'T KNOW WHAT HE WAS DOING EVERY DAY, WHO HE
8 WAS SEEING, WHO HE WAS INVOLVED WITH?

9 A WELL, I WOULD CALL AND CHECK ON HIM EVERY OTHER DAY

10 Q AND WHILE YOU WERE IN ALABAMA HOW OFTEN DID YOU SEE
11 HIM?

12 A I WOULD COME HOME PROBABLY ONCE A MONTH

13 Q LET'S GO BACK TO YOUR CONVERSATIONS WITH MS TOPP I
14 BELIEVE YOU SAID THAT YOU MOVED DOWN TO GREER TO BE CLOSER
15 TO YOUR FATHER, CORRECT?

16 A NO, TO MY FAMILY

17 Q OKAY DID YOU NOT TELL HER THAT HE HAD A STROKE AND
18 YOU FOUND OUT HE WAS DIABETIC AND YOU WANTED TO BE CLOSE TO
19 HIM?

20 A I DIDN'T KNOW THAT, MA'AM

21 Q DID YOUR FATHER HAVE A STROKE?

22 A YES I FOUND OUT LATER BUT MY DECISION TO ---

23 Q IS HE A DIABETIC?

24 A I KNOW NOW HE'S A DIABETIC, YES, MA'AM

25 Q DO YOU RECALL MS TOPP ASKING YOU ABOUT THE ALLEGATION

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

67

1 THAT MR EVANS DIDN'T HAVF FOOD IN THE HOUSE IN OHIO PRIOR
2 TO HIS MOVE TO GREER AND THAT WAS ONE OF THE REASONS HE
3 WANTED TO COME HERE?

4 A I DID NOT KNOW THAT

5 Q OKAY DO YOU REMEMBER TELLING HER THAT YOU WOULDN'T
6 HAVE ANY IDEA WHY THAT WOULD BE BECAUSE THERE WAS ALWAYS
7 FOOD IN THE HOUSE?

8 A YES

9 Q YOU REMEMBER THAT?

10 A I REMEMBER THAT

11 Q OKAY AND WHEN YOU MOVED DOWN HERE I BELIEVE YOU
12 TESTIFIED THAT YOUR FATHER AND KAMELL EVANS WERE GETTING
13 ALONG PRETTY GOOD AT THAT POINT, IS THAT CORRECT?

14 A YES, MA'AM

15 Q OKAY THERE WAS NO VIOLENCE IN THIS HOUSE THAT YOU
16 SAW?

17 A YES, MA'AM, THAT'S RIGHT

18 Q DO YOU REMEMBER TALKING TO MS TOPP ABOUT POSSIBLE DRUG
19 SALES THAT KAMELL EVANS HAD BEEN INVOLVED IN?

20 A I DON'T RECALL

21 Q YOU DON'T RECALL TALKING OR YOU DON'T RECALL ANY DRUG
22 SALES?

23 A I DON'T RECALL TALKING ABOUT THAT

24 Q OKAY WERE YOU AWARE OF ANY DRUG SALES IN HIS
25 BACKGROUND AT ALL?

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

68

1 A I KNOW HE HAD A CASE

2 Q HE HAD -- I'M SORRY?

3 A I KNOW HE HAD A PRIOR CASE

4 Q AND WHAT WAS YOUR UNDERSTANDING OF THAT CASE?

5 A I JUST KNEW THAT HE HAD A CASE, A DRUG CASE I DIDN'T
6 KNOW, I MEAN, I DON'T KNOW HOW TO ELABORATE ON THAT

7 Q OKAY DID YOU BELIEVE HIM TO BE SELLING DRUGS?

8 A NO

9 Q DID YOU BELIEVE THAT HE WAS CHARGED WITH SELLING DRUGS?

10 A YEAH HE HAD A CASE SO I'M ---

11 Q OKAY

12 A --- QUITE SURE

13 Q OKAY I NOTICED WHEN YOU STARTED OFF YOUR TESTIMONY
14 YOU WERE GIVING US A LITTLE BIT OF BACKGROUND YOU
15 IDENTIFIED YOUR PARENTS AS BARRY AND RENEE AND THEN YOU
16 VOLUNTEERED, I BELIEVE IT WAS, ROBIN IS YOUR STEP-MOM?

17 A YES

18 Q YOU CONSIDER YOURSELF A CLOSE FAMILY?

19 A YES, MA'AM

20 Q I THINK YOU TESTIFIED AT TRIAL THAT YOU WERE A CLOSE
21 FAMILY?

22 A YES, MA'AM

23 Q DO YOU STILL FEEL LIKE A PROTECTOR TO KAMELL EVANS?

24 A I MEAN, HOW CAN I PROTECT HIM NOW?

25 Q DO YOU STILL FEEL LIKE YOU SHOULD?

SHATIMA MARTIN - CROSS EXAMINATION BY MS. BROWN

69

1 A I CAN'T HOW CAN I PROTECT HIM NOW? HE'S NOT GETTING
2 BEAT BY MY DAD

3 Q AND THAT HADN'T OCCURRED FOR A LONG TIME?

4 A AS IN?

5 Q WELL, I UNDERSTOOD YOU ---

6 A I MEAN, I'M SORRY I'M NOT TRYING ---

7 Q THAT'S OKAY

8 A --- TO BE RUDE

9 Q THAT'S OKAY

10 A I'M JUST

11 Q I UNDERSTOOD YOUR TESTIMONY AS THAT THEY GOT ALONG
12 REALLY GOOD WHEN KAMELL EVANS MOVED DOWN HERE TO GREER

13 A YES

14 Q AND THERE WAS NO PHYSICAL VIOLENCE IN THE HOME AT THAT
15 POINT

16 A NOT THAT I'VE SEEN, NO, MA'AM

17 Q OKAY AND, YOU KNOW, BEING A PROTECTOR CAN TAKE MANY
18 DIFFERENT ROUTES DID YOU TALK TO HIM ABOUT THIS DRUG
19 CHARGE?

20 A NO I DIDN'T KNOW ABOUT IT TIL AFTERWARD

21 Q OKAY OKAY WHAT ABOUT CARRYING A PISTOL, DID YOU
22 TALK TO HIM ABOUT CARRYING A PISTOL?

23 A ABOUT HOW I FELT?

24 Q UM-HUM (AFFIRMATIVE)

25 A YES, MA'AM

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

1 Q DID YOU KNOW THAT HE HAD CARRIED A PISTOL TO SCHOOL
2 WHEN HE FIRST MOVED DOWN HERE?

3 A I WASN'T HERE

4 Q YOU DIDN'T ---

5 A I WASN'T IN SOUTH CAROLINA

6 Q AND YOU'D NEVER HEARD ABOUT THAT?

7 A I HEARD ABOUT IT AFTERWARDS

8 Q IS THAT ONE OF THE REASONS THAT YOU HAD SOME RULES IN
9 YOUR HOUSE ABOUT GUNS?

10 A NO I JUST KNEW THAT MY DAD HAD GUNS OUR
11 GRANDFATHER, HE WENT HUNTING HE HAD HUNTING RIFLES I
12 JUST -- I'M SCARED OF GUNS I DIDN'T WANT TO BE AROUND GUNS
13 MYSELF AND THEN WHAT I WENT THROUGH WITH MY DAD

14 Q DID YOU KNOW THAT KAMELL EVANS HAD GONE TO THE HOSPITAL
15 FOR TREATMENT IN AUGUST OF '98?

16 A I DON'T REMEMBER THAT DATE

17 Q GREENVILLE -- I BELIEVE IT'S GREENVILLE HOSPITAL
18 SERVICES IS THE -- GREENVILLE COUNTY HOSPITAL?

19 A I DON'T REMEMBER THAT ---

20 Q YOU NEVER HEARD ---

21 A --- DATE

22 Q --- THAT?

23 A I HEARD OF GREENVILLE ---

24 Q DID YOU KNOW ---

25 A --- HOSPITAL

SHATIMA MARTIN - CROSS EXAMINATION BY MS. BROWN

71

1 Q --- HE HAD A GUNSHOT WOUND TO HIS HAND?

2 A YES, MA'AM BUT I DON'T KNOW WHAT DAY THAT WAS

3 Q OKAY AND WOULD '98 HAVE BEEN THE YEAR THAT HE WAS
4 LIVING WITH YOU?

5 A '98, YES NO '98, NOVEMBER, NO, WE WERE STILL AT
6 DAD'S

7 Q YOU WERE STILL AT YOUR FATHER'S?

8 A YES

9 Q SO ---

10 A IN '99 I GOT MY HOUSE

11 Q IF YOU WERE LIVING TOGETHER YOU KNEW HE HAD A GUNSHOT
12 WOUND TO HIS HAND

13 A I KNOW HE HAD -- SOMETHING HAPPENED TO HIS HAND, IT WAS
14 A GUNSHOT

15 Q OKAY LET'S TALK A LITTLE BIT ABOUT WHEN YOU OPENED
16 YOUR HOUSE TO KAMELL EVANS AND HIS THEN GIRLFRIEND,
17 CHRISTINA RODRIGUEZ

18 A YES, MA'AM

19 Q YOU SAID THAT THEY BROUGHT A GUN IN THE HOUSE AND THEY
20 BROUGHT A HOLSTER IN THE HOUSE?

21 A THAT WAS A GIFT

22 Q THAT WAS A GIFT?

23 A YES, MA'AM

24 Q FROM WHOM?

25 A FROM MS CHRISTINA

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

72

1 Q SO THEY -- YOU KNEW THAT THEY HAD THAT IN THE HOUSE?

2 A ONCE HE OPENED ---

3 Q AND THAT DIDN'T VIOLATE YOUR RULES?

4 A ONCE THEY OPENED IT

5 Q UM-HUM (AFFIRMATIVE) AND WHAT DID YOU DO AS A RESULT
6 OF FINDING THAT THEY HAD BROUGHT A GUN AND A HOLSTER IN YOUR
7 HOUSE?

8 A I WAS UPSET ABOUT IT

9 Q WHAT ABOUT THE INTERNET? YOUR TESTIMONY IS THAT KAMELL
10 EVANS AND CHRISTINA TOGETHER LOOKED UP THINGS ON THE
11 INTERNET THAT YOU DID NOT LIKE?

12 A YES

13 Q OKAY

14 A THAT WAS MY FINAL STRAW I COULDN'T, I MEAN, YOU BREAK
15 ONE RULE, THEN YOU BREAK ANOTHER AND THEN YOU BREAK ANOTHER

16 Q AND DID THEY HAVE ANY SPECIFIC GANG SITES THAT THEY
17 WERE LOOKING AT?

18 A YES

19 Q CAN YOU REMEMBER WHAT THOSE ARE AND TELL ME ---

20 A IT'S THE BLUES, THE BLUE

21 Q OKAY AND YOU SAID THAT CHRISTINA SHOWED YOU A POSTER

22 A YES, MA'AM

23 Q AND WHO WAS PICTURED IN THAT POSTER?

24 A MY BROTHER, KAMELL EVANS

25 Q THAT WAS HIM?

SHATIMA MARTIN - CROSS EXAMINATION BY MS BROWN

73

- 1 A YES, MA'AM
- 2 Q WHAT DID HE HAVE IN HIS HANDS?
- 3 A A GUN
- 4 Q SO YOU KNEW THAT WAS A POSTER OF HIM HOLDING A GUN?
- 5 A YES, MA'AM
- 6 Q OKAY AND I WANT TO TALK TO YOU A LITTLE BIT ABOUT
- 7 YOUR TESTIMONY AT TRIAL YOU TOLD US EARLIER THAT YOU WERE
- 8 OUTSIDE OF THE HOME AFTER THE MURDERS HAD OCCURRED AND
- 9 THINGS WERE BREAKING DOWN, AND YOU HEARD MRS SAPINOSO GO TO
- 10 HER DAUGHTER AND SAY SOMETHING ALONG THE LINES OF FAULT, IT
- 11 WAS YOUR FAULT AT TRIAL DO YOU REMEMBER SPECIFICALLY
- 12 APOLOGIZING TO CHRISTINA?
- 13 A APOLOGIZING?
- 14 Q UM-HUM (AFFIRMATIVE)
- 15 A CHRISTINA WASN'T THERE WITH US
- 16 Q DO YOU RECALL SAYING I KNOW I CAN'T TALK TO HER
- 17 PERSONALLY, BUT I DID APOLOGIZE, AND THEY RELAYED THE
- 18 MESSAGE TO HER?
- 19 A YEAH, I TOLD HER THAT I DIDN'T -- SEE, CHRISTINA WAS
- 20 NOT AT TRIAL WITH US
- 21 Q OKAY
- 22 A SHE WASN'T THERE I WAS TALKING TO HER MOM
- 23 Q AND YOU WANTED TO APOLOGIZE TO THEM?
- 24 A RIGHT, BECAUSE, I MEAN, BOTH FAMILIES ARE TORN APART
- 25 AND I FELT BAD AND ME, AS BEING THE PERSON THAT I AM, I

SHALIMA MARTIN - CROSS EXAMINATION BY MS BROWN

74

1 WANTED TO APOLOGIZE TO HER MOM

2 Q LET ME ASK YOU A LITTLE BIT ABOUT MEETING WITH THE
3 ATTORNEYS DO YOU REMEMBER MR STEVE SUMNER?

4 A YES, MA'AM

5 Q AND DO YOU REMEMBER MR SKIP GOLDSMITH?

6 A YES, MA'AM

7 Q DID YOU HAVE THEIR TELEPHONE NUMBERS?

8 A YES

9 Q COULD YOU ---

10 A MY DAD HAD THEIR NUMBERS, BUT I COULD GET AHOLD OF
11 THEM

12 Q DID YOU CALL THEM AND OFFER ANY INFORMATION?

13 A NO I FELT IT WAS THEIR JOB TO -- I'M NOT A LAWYER
14 SO

15 Q SURE

16 A I DO HAIR

17 Q WELL, DO YOU ---

18 A BUT IF ---

19 Q --- REMEMBER GIVING THEM INFORMATION ABOUT LEAD
20 POISONING?

21 A NO

22 Q DO YOU REMEMBER GIVING THEM INFORMATION ABOUT YOU DID
23 NOT BELIEVE HE WAS IN A GANG?

24 A THEY ASKED ME DID I BELIEVE THAT HE WAS IN A GANG I
25 SAID NO