

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

REDACTED RECORD ON APPEAL
PURSUANT TO SUPREME COURT ORDER DATED MAY 20, 2015

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
 DEFENDANT'S EXHIBIT # 24 (PHOTOGRAPH); ATKINS HEARING EXHIBITS:
 DEFENDANT'S EXHIBIT # 9-A (NOTEBOOK); DEFENDANT'S EXHIBIT # 9-B
 (NOTEBOOK); DEFENDANT'S EXHIBIT # 10 (BOOK)**

John Smoak - Direct examination
By Solicitor Bulsa

1 State's Exhibit 7.

2 Now, how long did this last?

3 A Less than a minute.

4 Q Less than a minute?

5 A From, from the point of confrontation to the point to
6 where we approached him.

7 Q Okay. And what happened as you approached him?

8 A As we approached the suspect, took the handgun that was
9 in his hand and placed it against his abdomen. And as we
10 approached, we kept telling him to put the gun down, put the
11 gun down. He still would not put the gun down. When I got
12 within approximately ten yards of the suspect, the gun
13 discharged and he shot himself.

14 Q Then what happened?

15 A We still kept giving him verbal commands to drop the
16 gun because he was rolling around with the gun still in his
17 hand. At that point he didn't drop the gun. A few seconds
18 later, finally the gun came loose and hit the ground, and
19 myself and Deputy Chris Leso took off after the gun at the
20 same time. I just happened to reach the gun first. I
21 scooped the gun up in my hand and kept running, and Deputy
22 Leso came behind me, crossed back behind me, and went
23 towards the suspect.

24 Q Okay. So, Mr. Blackwell wound up, I'm showing you
25 State's Exhibit 24, in the general area of this -- that this

John Smoak - Direct examination
By Solicitor Bulsa

1 photo shows?

2 A Yes, this is, this is actually the, the packaging from
3 where EMS treated the suspect from where the self-inflicted
4 shot took place.

5 Q Okay. So, you were -- recovered the pistol and what
6 did you do with it?

7 A The pistol did not leave my hand until I turned it over
8 to a forensics officer.

9 Q Okay.

10 A I opened the cylinder to check it for safety purposes.
11 They were five spent Winchester Plus P rounds in it and one
12 live round.

13 Q All right. Let me show you what's been marked for
14 identification State's 25 and 26.

15 Do you recognize those?

16 A Yes, sir, this is the, the handgun that I retrieved
17 from the suspect.

18 Q Does that show it being -- it looks like it's
19 positioned on the table of some sort?

20 A Yes, this is the picnic table that was, that was just
21 off, off of the porch, the covered carport of
22 Road. That's where we were seated. That's where I sat with
23 the weapon until that I got relieved.

24 SOLICITOR BULSA: Okay. And, Your Honor, The State
25 would offer 25 and 26 into evidence.

John Smoak - Direct examination
By Solicitor Bulsa

1 THE COURT: Any objection?

2 MR. ALLEN: No, Your Honor.

3 THE COURT: Without objection, they'll be admitted into
4 the record as marked.

5 (WHEREUPON, State's Exhibit Nos. 25 and 26 were
6 received into evidence at this time.)

7 THE COURT: You may publish if you wish.

8 Q I show you State's No. 6.

9 Is that the same weapon that was displayed in that
10 picture?

11 A Yes, sir, it is.

12 Q State's 25, State's 26 shows the cylinder.

13 How many rounds had been fired?

14 A Five.

15 Q All right. Who did you turn this gun over to?

16 A I turned it over to Forensic Tech Sean Nix.

17 Q Did you have any further contact with the defendant at
18 the scene?

19 A No, sir, I had no contact with the defendant. He, he
20 never responded to any of my verbal commands, verbal or
21 otherwise.

22 Q You just witnessed him shoot himself and you grabbed
23 the gun and secured it?

24 A That's correct.

25 Q Okay. How long did it -- how much time elapsed from

John Smoak - Direct examination
By Solicitor Bulsa

1 the time you arrived on the scene to when you confronted
2 Mr. Blackwell?

3 A By my estimation, about 15 minutes.

4 Q Okay. And how long did it take you to get to the scene
5 when you heard it over the dispatch?

6 A About ten.

7 Q Okay. So, approximately 25 minutes elapsed from the
8 time they called to the time he was secured?

9 A I was in Boiling Spring whenever I, I received the
10 call.

11 Q Okay. All right.

12 All right. Officer Smoak, answer any questions the
13 defense counsel may have.

14 THE COURT: Mr. Allen, your witness.

15 MR. ALLEN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ALLEN:

18 Q Officer Smoak, of course, while this was going on, you
19 were not looking at your watch, is that correct?

20 A That's correct.

21 Q And so the, the times that you estimated, the ten
22 minutes to get to the scene, and the 15 minutes while there,
23 is your best guess, is that correct?

24 A Correct.

25 Q It could of been longer, it could of been shorter, you

John Smoak - Cross-examination
By Mr. Allen

1 don't know?

2 A (Witness nods negatively.)

3 Q Okay. Now, obviously, at that time, your interest was
4 not in the time, but in what was going on, is that correct?

5 A Yes.

6 Q Okay. Now, when you arrived, I think you indicated
7 that you saw Officer Meyer on the scene, is that correct?

8 A Yes.

9 Q And you were the second officer on the scene?

10 A I was the third officer on the scene.

11 Q Okay. Who was the other officer on the scene when you
12 arrived?

13 A Jason Watson. Jason Watson.

14 Q Watson?

15 Officer Watson?

16 A (Witness nods affirmatively.)

17 Q Okay. And that was the car that you pulled up in the
18 street behind---

19 A Yes.

20 Q ---to park?

21 Okay. Now, from the time that you took up a position
22 at the corner of the house, or excuse me, at the corner of I
23 believe it's ---

24 A Yes.

25 Q ---Road, the white home or the white -- is it a

John Smoak - Cross-examination
By Mr. Allen

1 doublewide?

2 A Yes.

3 Q Okay. At the white doublewide, until you saw or your
4 attention was directed to a person coming out of the wood
5 line, did you -- do you know how long you were there at that
6 position?

7 A I don't remember how long I was there.

8 Q Okay. Do you have an estimate?

9 A Maybe 20 minutes.

10 Q Okay. The -- when you saw Mr. Blackwell, you -- he was
11 coming out of the wood line, is that correct?

12 A Yes.

13 Q He wasn't running, right?

14 A No.

15 Q Okay. He was not walking even fast?
16 would that be correct?

17 A Yes.

18 Q You -- yes, it's correct that he was not walking fast?

19 A Yes, that's correct. He was not walking fast.

20 Q Okay. I think my question almost tripped even me up,
21 but anyway.

22 You had the -- you said he had the gun in his
23 right-hand?

24 A Yes.

25 Q And it was, it was down by his side?

John Smoak - Cross-examination
By Mr. Allen

1 A Yes.

2 Q Okay. It was not pointing out in front of him?

3 A No.

4 Q Okay. Not pointing at any of the officers?

5 A No.

6 Q Okay. Not pointing at anybody else that was out there?

7 It was down on -- towards the ground?

8 A That's correct.

9 Q Okay. Now, you said that, when he walked and got to
10 the slide -- let's see if I can -- okay. Looking at State's
11 Exhibit 23 is a sliding board that you were talking about.

12 Is that the one that's on the left of this picture?

13 A Yes.

14 Q All right. Now, orient me a little bit with this
15 picture. Do you -- which is State's Exhibit 23.

16 Where is the doublewide in connection with this
17 picture?

18 Is it over beyond -- for example, is it over beyond the
19 white garage or shed or is it---

20 A It is, it is to the left of this shed.

21 Q Okay. All right. And you could see Mr. Blackwell,
22 correct?

23 A Yes.

24 Q And when he got to the sliding board, you could even --
25 you could still see, see him, correct?

John Smoak - Cross-examination
By Mr. Allen

1 A I could see the outline.

2 Q Okay. But, of course, he was partially behind the
3 sliding board that you couldn't see part of, is that
4 correct?

5 A Correct.

6 Q Okay. Now, he was -- was he -- as we look at 23,
7 State's Exhibit 23, was he on the slide of the sliding board
8 that this camera is on or was he on the other side or on --
9 positioned some other way?

10 A He was in a position to where we could not see him.
11 Not necessarily left or right of this camera angle. But he
12 positioned himself to put the slide between myself and the
13 other officer.

14 Q Okay. And still, when he positioned himself this way,
15 he did not -- he, he kept the gun down pointed to the
16 ground, is that correct?

17 A When he got behind the slide, I could not -- I could no
18 longer tell---

19 Q Okay.

20 A ---the nature of the weapon.

21 Q All right. Now, then when -- then you said he laid
22 down, is that correct?

23 A Yes.

24 Q Now, when he laid down, he laid down with his back on
25 the ground?

John Smoak - Cross-examination
By Mr. Allen

1 would that be correct?

2 A Yes.

3 Q And he didn't lay on his front or, or anything like
4 that and put his arms out in front of him, is that correct?

5 A Yes.

6 Q He laid down on his back.

7 And all during this time, from the time that you saw
8 Mr. Blackwell till the time he was laying on the ground, he
9 didn't say a word, is that correct?

10 A Yes, that's right.

11 Q Now, you also said that he put the gun to his abdomen I
12 believe is your testimony?

13 A Yes.

14 Q And when -- now, he didn't just rest the side of the
15 gun on his abdomen, did he?

16 A No, he pointed the muzzle against himself.

17 Q Pointed the muzzle of the gun at his -- I'm gonna call
18 it stomach, but in this abdomen area I think you called it,
19 right?

20 A Yes.

21 Q And then he, with the, with his thumb, I mean -- well,
22 let me -- before I ask that question, when you saw him
23 laying on the ground, I think you said that you moved your
24 position to try to get closer?

25 A Yes.

John Smoak - Cross-examination
By Mr. Allen

1 Q Okay. And you were about ten yards away when you heard
2 the gunshot?

3 A That's correct.

4 Q Okay. And when he shot the gun, his thumb was on the
5 trigger, is that correct?

6 A Yes.

7 Q And after -- and immediately after he shot, he did not
8 drop the gun, correct?

9 A That's correct.

10 Q But eventually he did drop the gun?

11 Well, he finally dropped the gun?

12 A Yes.

13 Q Okay. It didn't just come loose, he dropped the gun,
14 is that correct?

15 A I don't know if he dropped it or if it came loose when
16 he was rolling around, but the gun was no longer in his
17 possession.

18 Q Okay. And he rolled away from you -- the gun, correct?

19 A That's right.

20 Q Okay. Now, of course, it's been some time since this
21 has occurred, right?

22 A Yes.

23 Q And you wrote a report about this case, correct?

24 A Yes.

25 Q Did you write it on the, on the 8th of July of 2009 or

John Smoak - Cross-examination
By Mr. Allen

1 did you write it the following day?

2 A I don't remember when I wrote it.

3 Q Okay. But it was around that time, correct?

4 A Yes, per policy it has to be turned in within a time
5 limit of the incident.

6 Q And that is normally how long at the outside?

7 A Usually before you -- well, usually before you secure
8 it at an incident like this.

9 Q What do you mean secure an incident like this?

10 A I'm sorry. That's -- before you go home and go
11 off-duty.

12 Q Okay. So, usually that day or while or before --
13 usually that day or if it's later in the day --

14 A Yes.

15 Q -- early hours of the following day?

16 Okay. And when you write the report, of course, this
17 was fresh in your memory, correct?

18 A Yes.

19 Q Okay. I want to bring your attention to this document,
20 this document.

21 Is this a copy of your report?

22 A Yes, it is.

23 Q Okay. I want to direct your attention to -- I'm just
24 gonna point to the line that I'm looking at when you were
25 talking about after the shot.

John Smoak - Cross-examination
By Mr. Allen

1 A Yes.

2 Q Does this refresh your memory better about what
3 happened with respect to what happened with the gun on that
4 day?

5 A I don't understand what you're asking me.

6 Q Well, you indicated in the report that he, that he
7 finally dropped the gun, correct?

8 A Yes, that's what it says here in my statement.

9 Q And---

10 A He finally dropped the gun. It rolled away from him.

11 Q Okay. That's the point I'm getting at.

12 And, of course, you were in a position of ten yards
13 away and able to see what was going on, correct?

14 A Correct.

15 MR. ALLEN: One second please, Your Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. ALLEN: That's all the questions I have for him.

19 THE COURT: Redirect.

20 SOLICITOR BULSA: Just briefly.

21 THE COURT: Yes, sir.

22 REDIRECT EXAMINATION

23 BY SOLICITOR BULSA:

24 Q Deputy Smoak, when he was rolling around, did it appear
25 that he was in pain?

John Smoak - Redirect examination
By Solicitor Bulsa

1 A Absolutely.

2 Q Okay. He actually got treatment, didn't he, from EMS?

3 A Yes, I requested a second ambulance to treat the
4 suspect.

5 Q Okay. Why didn't y'all just shoot him?

6 A Because the situation did not meet the parameters in
7 which I can use deadly force.

8 Q What would of had to of been different?

9 A He would of had to remove the muzzle of the weapon from
10 his body. Then I felt that -- then if that had happened,
11 then I would of felt that my danger and the other officers
12 danger was, was paramount from that point on, and then we
13 would of used lethal force from that point.

14 Q You used restraint in how you handled him?

15 A Yes, in, in my, in my experience, he did not meet the
16 parameter of what I needed for deadly force.

17 Q Thank you.

18 THE COURT: Anything further, Mr. Allen?

19 MR. ALLEN: No, Your Honor.

20 THE COURT: You may step down.

21 SOLICITOR BULSA: We ask that he be excused.

22 THE COURT: Any objection to his being excused?

23 MR. ALLEN: Subject to recall, but he can leave.

24 THE COURT: You can leave the courtroom, but you are
25 subject to being recalled.

1 You understand, sir?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 We're gonna break for lunch at this time.

5 Ladies and gentlemen of the jury, we are gonna break
6 for lunch at this time. I think it should be -- yours
7 should be here shortly. So, we should be able to take care
8 of that.

9 During the break, as always, I'll instruct you not to
10 discuss anything about this case until such time as I've
11 asked you to do so. We will resume, let's see, about a
12 quarter till 2:00. That will give you time to eat your
13 lunch and perhaps they can get -- allow you to get a little
14 exercise and move around some.

15 So, we'll take, take a break and we'll start at about
16 1:45.

17 Thank you very much.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. Court is in recess.

21 Thank you very much.

22 (WHEREUPON, Court was in recess for the lunch hour.)

23 SOLICITOR BARNETTE: Your Honor, may I step out for one
24 second?

25 THE COURT: Yes, sir, I'm a little early.

1 (Pause.)

2 SOLICITOR BARNETTE: We're ready, Your Honor. I was
3 just checking. Doctor Wren has called me saying three
4 autopsies. We were gonna try to get him over, but I don't
5 see him.

6 THE COURT: Okay.

7 SOLICITOR BARNETTE: We're ready with other witnesses.

8 THE COURT: All right. Defense ready?

9 MR. MCGUIRE: Yes, sir. Yes, sir.

10 THE COURT: Bring the jury in.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Thank you, Mr. Ruth.

14 The record will reflect the jury has returned to the
15 courtroom.

16 When we took our break before lunch the State was in
17 the process of calling its witnesses.

18 The State may call its next witness.

19 SOLICITOR BULSA: We call Sean Nix.

20 THE COURT: Come forward, sir, to my left to be sworn
21 please. Thank you.

22 SEAN NIX, having been first duly sworn,
23 testified as follows:

24 THE COURT: Sir, once you're seated, I'd ask that you
25 state your name for us.

Sean Nix - Direct examination
By Solicitor Bulsa

1 THE WITNESS: Yes, sir. Thank you, Your Honor.

2 Michael Sean Nix.

3 THE COURT: Thank you.

4 Mr. Bulsa, your witness.

5 DIRECT EXAMINATION

6 BY SOLICITOR BULSA:

7 Q Mr. Nix, who are you employed with?

8 A Spartanburg County Sheriff's Office.

9 Q In what capacity?

10 A I am a crime scene investigator.

11 Q How long have you been with Spartanburg County?

12 A It will be 14 years next month.

13 Q How long have you been with the crime scene?

14 A It will be seven years this past November.

15 Q What are your duties as a crime -- on the crime scene
16 team?

17 A I'm sorry?

18 Q What are your duties on a crime scene team?

19 A My duties are to document and collect evidence.

20 Q Okay. And were you called to Ridings Road area on
21 July the 8th, 2009?

22 A Yes, sir.

23 Q Approximately what time did you arrive?

24 A I believe I have it in my report as 15:15, which would
25 be 3:11PM.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q What was taking place when you arrived?

2 A When I arrived, there were other officers on the scene,
3 road patrol deputies. I arrived at and noticed
4 that the victim in this case was laying on the ground beside
5 the residence of and already had a blanket over her. I
6 then moved from over to because I was advised --
7 been advised that the subject in this case had been detained
8 at the suggested -- Investigator Brandon Letterman, he
9 wanted me try to conduct what is known as a gunshot residue
10 kit on the subject. But before I could do that, the subject
11 had already been loaded up in an ambulance and was being
12 transported to the hospital.

13 Q Okay. So, you went first to and then went over to
14 the backyard of ?

15 A To, to the general area of , yes, sir.

16 Q Okay. And the defendant had already been put in the
17 ambulance and took---

18 A Yes, sir.

19 Q ---to go get treatment?

20 A Yes, sir.

21 Q What did you do when you learned that he had left the
22 scene?

23 A When he left the scene, I was then advised that I
24 needed to collect a weapon that was possibly used in this
25 incident by -- from Deputy John Smoak.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Okay. Were you here earlier this morning?

2 A Yes, sir.

3 Q Did you see the pictures that I displayed on the
4 overhead?

5 A Yes, sir.

6 Q Was that the weapon that you recovered from Officer
7 Smoak?

8 A Yes, sir.

9 Q Did you photograph that weapon at the scene?

10 A Yes, sir.

11 Q And why would you photograph it like that?

12 A Just to show what it looks like overall.

13 Q Okay. And were you wanting to document the positioning
14 and number of shell casings that had been fired?

15 A In that photograph, yes, sir.

16 Q Okay. Now, you -- the pistol's already been entered
17 into evidence.

18 Let me show it to you to make sure that's what you
19 received from Deputy Smoak.

20 A Yes, sir.

21 Q Okay. And that's contained in a box labeled State's
22 Exhibit No. 6.

23 would you look at what's been marked for identification
24 as State's 6-A and 6-B?

25 A Yes, sir.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Do you recognize what those are?

2 A 6-A is labeled as five winchester 38SPL Plus P shell
3 casings, and State Exhibit 6-B is labeled as one winchester
4 .38 Plus, it says round, but meaning the whole bullet.

5 Q Were those items that you recovered on July 8th, 2009?

6 A Yes, sir.

7 SOLICITOR BULSA: Your Honor, the State would move 6-A
8 and B into evidence.

9 THE COURT: Any objections?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: Without objection, they'll be admitted,
12 admitted into the record as marked.

13 (WHEREUPON, State's Exhibit Nos. 6-A and 6-B were
14 received into evidence at this time.)

15 Q And are those shell casings and the round what have
16 been photographed in State's 26?

17 A Yes, sir, it is.

18 Q So, those -- that's what you actually took out of the
19 gun?

20 A Yes, sir.

21 Q Okay. All right. Once you recovered the gun from
22 Deputy Smoak, what did you do?

23 A Once I recovered the gun from Deputy Smoak I had him
24 sign over a property sheet so that it shows the transfer of
25 the gun from him to me.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Okay. And did you do any examination near where the
2 defendant had been lying after he shot himself?

3 A Yes, sir, I went and looked at the area where he had
4 been lying.

5 Q Did you collect a number of items from that location?

6 A Yes, sir, I did.

7 Q Let me start first with these four.

8 would you look at what's been marked for -- State's
9 Exhibit identifications 27 through 30?

10 A Yes, sir.

11 Q See if you recognize what's in those photographs.

12 A Yes, sir.

13 Q Okay. And I believe you actually took those pictures,
14 didn't you?

15 A Yes, I did take those pictures.

16 SOLICITOR BULSA: Okay. Your Honor, the State would
17 move those into evidence at this time.

18 THE COURT: Objections?

19 MR. ALLEN: No. No, Your Honor.

20 THE COURT: All right. Then they'll be admitted into
21 the record as marked.

22 (WHEREUPON, State's Exhibit Nos. 27 through 30 were
23 received into evidence at this time.)

24 THE COURT: You may publish if you choose to.

25 SOLICITOR BULSA: Thank you, Your Honor.

Sean Nix - Direct examination
By Solicitor Bulsa

1 THE COURT: Yes, sir.

2 Q While that's warming up, let me talk more specifically
3 about one of those items in State's 29. It looks like it's
4 noted as Exhibit No. 5.

5 Is that the wallet of Mr. Blackwell?

6 A Yes, sir.

7 Q I show you State's 31, 32, and 33 for identification.
8 Do you recognize those items?

9 A Yes, sir.

10 Q Okay. Did you collect those items and take those
11 photographs?

12 A Yes, sir, I did.

13 SOLICITOR BULSA: Your Honor, State would move these
14 into evidence at this time.

15 THE COURT: Any objection?

16 MR. ALLEN: No, Your Honor.

17 THE COURT: Without objection, they'll be admitted as
18 they've been marked.

19 (WHEREUPON, State's Exhibit Nos. 31 through 33 were
20 received into evidence at this time.)

21 THE COURT: Again, any of those items that you wish to
22 publish --

23 SOLICITOR BULSA: Yes, sir.

24 THE COURT: -- you may do so.

25 SOLICITOR BULSA: Yes, sir.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q State's 27 shows -- well, let me back up a minute and
2 show you one other picture. These have been previously
3 introduced.

4 Just to put some context, State's Exhibit 3, aerial
5 photograph, point out where, where these items were in that
6 picture.

7 A Somewhere in this general area.

8 Q Okay. That looks like it's a treeline separating the
9 property of 248 and a field?

10 A Yes, sir.

11 Q It looks like there's some Christmas trees in that
12 field, right?

13 A There is Christmas trees in that field, sir.

14 Q Okay. And State's 23 and 24 are just opposite views of
15 the particular area where these items were recovered?

16 A Yes, sir.

17 Q State's 23 and then State's 24.

18 A Yes, sir.

19 Q Point with your pointer the area in question.

20 A The items recovered are in this general area.

21 Q Okay. And State's 27 actually had placards.

22 would you describe what took place there?

23 A After locating these items and taking pictures of them
24 without placards, we typically go in and place numbered
25 placards on them and then rephotographed them and then

Sean Nix - Direct examination
By Solicitor Bulsa

1 collect them.

2 Q Okay. Is that to help later go back and identify and
3 replace them?

4 A It makes it easier to identify them, yes, sir.

5 Q Okay. State's 28, did you identify what those two and
6 three are?

7 A Let me see. Let me refer to this.

8 Number 2 would be a lock blade knife and Number 3 would
9 be a Samsung cell phone.

10 Q Okay. State's 29, would you identify what each of
11 those are?

12 A Four would be a key ring with six keys. One is a
13 wallet that contained ID, credit card, and paperwork along
14 with some money. Six is a gray and white comb and seven is
15 a amount of dollar bills. I think it's \$16 in total.

16 Q Some loose cash?

17 A Some loose cash, yes, sir.

18 Q Did the wallet contain also?

19 A The wallet did contain cash, sir.

20 Q Okay. We'll get to that in just a minute.

21 Now, State's 30, what are eight and nine showing?

22 A Eight would be a pair of sunglasses and Number 9 would
23 be a key ring with 13 keys and a charm.

24 Q Okay. And you recovered each of those items?

25 A Yes, sir.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Okay. Specifically we're interested in, at this point,
2 the wallet, State's 32. Looks like you photographed it.

3 Is that as it was -- how it looked as it was recovered?

4 A That's how it looked as I opened it up after I
5 recovered it, yes, sir.

6 Q Okay. Just for identification, so here's State's 32,
7 that was his driver's license?

8 A That was the driver's license in the wallet, sir.

9 Q Okay. And State's 33 is the wallet in the actual
10 packaging.

11 Did you remove anything out of the wallet?

12 A I removed a sum of cash out of the wallet.

13 Q And how much cash was in the wallet?

14 A I have it totaled \$1,268.

15 Q And what denominations were those in?

16 A They were -- I only have them listed as 25 assorted
17 U.S. dollar bills in various denominations. There was --
18 they're entered into evidence with a little better
19 description of what each dollar bill is.

20 Q Did you review how much money was in it---

21 A Yes, sir.

22 Q ---prior to coming to Court?

23 A Yes, sir.

24 Q And how much money is it -- was in it?

25 A In the wallet?

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Yes, sir.

2 A \$1,268.

3 Q okay. All right. Were you not mistaken?

4 It is over a thousand dollars?

5 A Just over a thousand?

6 I have it as 1,268.

7 Q okay. We'll, we'll ask Investigator Talanges.

8 A okay.

9 Q You and Talanges worked together?

10 A Yes, sir.

11 Q okay. Now, in addition to collecting those items at
12 the -- on the ground, did you also conduct a search of the,
13 of a truck that was in the carport?

14 A Yes, sir.

15 Q okay. Let me show you State's 35 and 36.

16 Do you recognize those photographs?

17 A Yes, sir.

18 Q okay. Did you take those pictures?

19 A I did, sir.

20 SOLICITOR BULSA: All right. State would mark these
21 into evidence, Your Honor.

22 THE COURT: Is defense seen them?

23 SOLICITOR BULSA: He has. They're part of the first
24 group of 35.

25 MR. ALLEN: wait a minute. I'm getting mixed up on the

Sean Nix - Direct examination
By Solicitor Bulsa

1 numbers.

2 Can I have the numbers again please?

3 SOLICITOR BULSA: 35 and 36.

4 MR. ALLEN: 35 and 36. No objection.

5 THE COURT: All right. Without objection, they'll be
6 admitted as they've been marked.

7 (WHEREUPON, State's Exhibit No. 35 and 36 were received
8 into evidence at this time.)

9 THE COURT: You may publish.

10 MR. MCGUIRE: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 Q State's 35 shows the positioning of the truck in the
13 garage or the carport?

14 A Yes, sir.

15 Q And specifically in the back, what did you recover
16 that's noted in State's 36?

17 A A gun case.

18 Q Okay. Point to what you called a gun case.

19 THE COURT: If you want us to lower the lights we can
20 do that. I don't know if you want to do that or not.
21 Anytime you need it, let us know.

22 SOLICITOR BULSA: Yes, sir.

23 THE COURT: We can do that for you.

24 Q That square box, the black box?

25 A Yes, sir.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Okay. I show you what's been marked State's for
2 identification No. 37.

3 what is that object?

4 A It looks -- that's a plastic gun case.

5 Q Okay. Would that be the gun case that's listed in
6 State's 36?

7 A State's -- oh, the picture. Yes, sir, I'm sorry.

8 SOLICITOR BULSA: Okay. Your Honor, State would offer
9 this into evidence.

10 THE COURT: Any objection?

11 MR. ALLEN: No, Your Honor.

12 THE COURT: Without objection it will be admitted as
13 it's been marked.

14 (WHEREUPON, State's Exhibit No. 37 was received into
15 evidence at this time.)

16 Q Would you open it up and take that out?

17 A Yes, sir.

18 Q Open it up please?

19 A (Witness complies.)

20 Q Is the pistol secured in State's 6?

21 Is it inside that?

22 I know it's got a safety.

23 A Yes, sir.

24 Q Okay.

25 A It's inside this, yes, sir.

Sean Nix - Direct examination
By Solicitor Bulsa

1 Q Okay. Put that back together inside the package.

2 A Yes, sir.

3 Q Do you -- did you ever actually have any contact with
4 the defendant?

5 A No, sir.

6 Q Okay. So, your role was to collect all the items and
7 then to secure them for later processing, if necessary?

8 A Yes, sir.

9 Q Okay. And you worked with Investigator Talanges on
10 this?

11 A Yes, sir.

12 Q The pistol with the rounds, was that secured in the
13 sheriff's evidence?

14 A Eventually, yes, sir.

15 Q Okay. All right. For later from processing, if
16 necessary, down at the State---

17 A Yes, sir.

18 Q ---Law Enforcement Division?

19 A Yes, sir.

20 Q Okay. All right. Thank you. That's all I have.

21 Answer any questions of Mr. Allen.

22 THE COURT: Mr. Allen, your witness.

23 MR. ALLEN: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

Sean Nix - Cross-examination
By Mr. Allen

1 BY MR. ALLEN:

2 Q With respect to the cash that you found, that, that was
3 in the wallet?

4 A Yes, sir.

5 Q In your report you did not make -- you did not specify
6 the denominations or anything like that?

7 A Individual denominations, no, sir.

8 Q Okay. And certainly -- and I -- you did you -- and you
9 didn't photograph those denominations, did you?

10 A If I did I don't recall.

11 Q Okay. I think the solicitor was, was asking you about
12 the money.

13 Is it possible that you made a simple mistake in the
14 amount of money?

15 A A clerical error is possible, sir.

16 Q Okay. A clerical error is possible?

17 A Yeah.

18 Q Okay. And then there was a separate, a little amount
19 of money found away from the wallet or, or not in the
20 wallet, but nearby, correct?

21 A Yes, sir, on the ground.

22 Q And that was \$16 I believe?

23 A Yes, sir.

24 Q Okay. You obviously came up to this scene after Mr.
25 Blackwell was in custody?

Sean Nix - Cross-examination
By Mr. Allen

1 A Yes, sir.

2 Q And after Mr. Blackwell had been taken from the scene,
3 correctly -- correct?

4 A I believe I, when I get there, he was just departing
5 the scene in an ambulance.

6 Q Okay. So, obviously you don't know how the various
7 items that you found on the ground, you know, the knife, the
8 wallet, and that kind of stuff, got there?

9 A I can't say personally, no, sir.

10 Q Okay. In the pictures, if I can find them, I'm looking
11 at State's 30. There's some other items. They look on this
12 picture like the white items. That looks like a plastic
13 covering.

14 A Yes, sir.

15 Q Do you, do you know what that is?

16 A I believe I referred to it in my report as medical
17 waste stuff that EMS left behind trying to treat the
18 defendant.

19 Q Okay. So -- and, of course, it wasn't marked or taken
20 into evidence because --

21 A No, sir.

22 Q -- you didn't view it as having any evidentiary value
23 in this particular case?

24 A Correct, sir.

25 Q Okay. It's normal procedure, when EMS is called and

Sean Nix - Cross-examination
By Mr. Allen

1 they use materials, they just put them wherever, right?

2 A Yes, sir.

3 Q Okay. And these were in the photographs simply because
4 it's near the other items that you---

5 A Yes, that's just---

6 Q ---found?

7 A ---there.

8 Q Okay. The knife that you located, which is seen in
9 state's 28, that was in a folded up position or something
10 like that or I'm gonna call it a folded up position.

11 It was folded up, right?

12 A You're correct, sir. It's folded.

13 Q The blade's not exposed?

14 A No, sir.

15 Q It was pretty much like a pocketknife, correct?

16 A I guess, sir. I don't, I don't own a knife like that.

17 Q Oh, okay. Oops. I'm having difficulties.

18 You also went into the white doublewide mobile home, is
19 that correct?

20 A Yes, sir.

21 Q And you looked around in that, that home as well for
22 other items of evidence?

23 A Yes, sir.

24 Q And it wasn't a whole lot of stuff in there, right?

25 A No, sir.

Sean Nix - Cross-examination
By Mr. Allen

1 Q Matter of fact, in -- I think in one bedroom there was
2 just like a bedframe, but no mattress or box springs, is
3 that correct?

4 A I can't recall off the top of my head, but that's
5 probably right, sir.

6 Q Okay. And also basically a number of the rooms were
7 very sparse with the furniture, is that right?

8 A Yes, sir.

9 Q Maybe a dresser or a low boy in one room, but it's
10 pretty much empty, right?

11 A Yes, sir.

12 MR. ALLEN: One second please, Your Honor.

13 (Pause.)

14 MR. ALLEN: No other questions. Thank you.

15 THE COURT: Redirect.

16 SOLICITOR BULSA: No, sir. Nothing further.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Do you wish to excuse the witness?

20 SOLICITOR BULSA: Yes, sir.

21 THE COURT: Any objections?

22 MR. ALLEN: No, Your Honor. I don't think so.

23 THE COURT: Sir, you're free to go. Thank you very
24 much. Be sure and don't take any exhibits.

25 THE WITNESS: Yes, sir.

David Wren - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: Your Honor, I'd like to call --
2 the state would like to call Doctor Wren out of order.

3 THE COURT: All right. That will be fine.

4 Doctor Wren, come forward, sir.

5 DAVID WREN, having been first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat, sir, and once you're seated,
8 state your name please.

9 THE WITNESS: My name is John David Wren.

10 THE COURT: Thank you.

11 Mr. Barnette, your witness.

12 SOLICITOR BARNETTE: Thank you, sir.

13 DIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Doctor Wren, if you would, tell us what your position
16 is, is right now.

17 A I'm laboratory medical director at Spartanburg Regional
18 Medical Center and Spartanburg Hospital Restorative Care.
19 I'm an employee of Carolinas Pathology Group, and I do
20 autopsies for the coroner in Spartanburg County and some of
21 the other counties on occasions.

22 Q How long have you done pathology work, sir?

23 A I did my first autopsy as a student in June of 1978,
24 and, since that time, I've been doing them --

25 Q Okay.

David Wren - Direct examination
By Solicitor Barnette

1 A -- regularly.

2 Q How many autopsies have you done, sir?

3 A I imagine it's about almost 5,000 by now. I stopped
4 counting when I got to about 3,000 in 1996.

5 Q And where did you go to school at, sir?

6 A Pardon?

7 Q Could you tell us about your education?

8 A I have a Bachelor's Degree, a Master's Degree, and PhD.
9 Degree from Chemical -- in chemical engineering from Clemson
10 University. I have an M.D. Degree from the Medical
11 University of South Carolina. I did a combined anatomic and
12 clinical pathology residency at the Medical University
13 finishing requirements for five years of---

14 MR. ALLEN: Your Honor?

15 A ---for certification---

16 MR. ALLEN: Your Honor, if it please, we will stipulate
17 to his qualifications as a pathologist.

18 THE COURT: Do you wish to accept the stipulation, Mr.
19 Barnette?

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: All right. As a pathologist, is that
22 correct?

23 MR. ALLEN: Yes, that---

24 THE COURT: Is that how you wish to qualify him?

25 SOLICITOR BARNETTE: Pathologist, medical doctor.

David Wren - Direct examination
By Solicitor Barnette

1 THE COURT: Okay. And a medical doctor.

2 All right. Ladies and gentlemen, let me explain to you
3 what we're going through right now so you'll have some idea
4 of what this is about.

5 Under the general rules of evidence that govern what
6 goes on in a courtroom, lay witnesses are not allowed to
7 testify concerning their opinions about things. They have
8 to testify about facts within their knowledge. There's an
9 exception to that general rule and that exception is for a
10 witness who has been declared by the Court to be an expert
11 within some science, field, or profession.

12 And as to witnesses who are designated as an expert
13 within a field or a profession, those witnesses are allowed
14 to state their opinions within their field of expertise.
15 They're also allowed to state the reasons why they hold
16 those opinions.

17 This witness is being offered as an expert witness
18 within the field of pathology and as a medical doctor.
19 Without objection, I am qualifying him as an expert within
20 that field. That will allow this witness to state opinions
21 within that field of expertise as well as the reasons why he
22 holds those opinions.

23 Later on, when I charge you concerning the law in this
24 case, I'll give you some additional information about
25 opinions stated by experts in a case. But at this point in

David Wren - Direct examination
By Solicitor Barnette

1 time, suffice it to say this gentleman has been so
2 qualified, and Mr. Barnette can examine him in that fashion.

3 You may proceed, Mr. Barnette.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 Q Doctor Wren, did you perform an autopsy on
6 Brooke ?

7 A Yes, I did an autopsy on Brooke , an
8 eight year old white female, in Spartanburg Regional Medical
9 Center autopsy room on July the 9th, 2009, beginning at
10 approximately 3:00PM.

11 Q If you would, tell the jury about that autopsy and what
12 your findings were, sir.

13 A The decedent was fully dressed in a pink short sleeve
14 pullover T-shirt with a character of a frog on the front and
15 writing including Rain Forest Cafe, Orlando on the front, a
16 pair of knee length gray sweat type pants with surf written
17 on the right side in red, aqua panties with darker designs
18 and lime color lace around the border, excuse me, and a pair
19 of pink Crocks shoes. There were resuscitation apparatus on
20 the body, and she had a, a -- two necklaces about the neck.
21 One was a silver colored chain link necklace whereas the
22 other was a rope type necklace with beads that looked like
23 to be a sharks tooth on the pendant, and there was a
24 circular defect in lower, in the lower portion of the left
25 leg of her pants beneath which there was gunshot wound, and

David Wren - Direct examination
By Solicitor Barnette

1 there was a defect in the back of the shirt where there was
2 also a gunshot wound.

3 This individual was normally developed prepubertal
4 female, 55 inches in length, and she weighed almost
5 87 pounds. There were nine gunshot wounds to the body
6 through and -- some of them were through and through and the
7 reentries. Specifically there was a gunshot wound to the
8 right side of the head that exited in the left temple.
9 There was a gunshot wound in the right cheek, a grazing
10 gunshot wound and a deep grazing wound in the right neck
11 that went under the skin and came back out and went in her
12 left arm where it fractured her humerus and I recovered a
13 bullet from that area, and then she had a gunshot wound in
14 the back that communicated with the one on her cheek, and
15 she had a through and through gunshot wound to the left leg.

16 Q Yes, sir.

17 And you was talking about, all these was through and
18 through except I guess one bullet, one bullet remained in
19 the body, and the others went -- exited the body through the
20 through and through shot?

21 A Yes.

22 Q And let me show you State Exhibit No. 5 and I'll open
23 that if you'd like to, sir. I apologize.

24 A I have a vile here that is labeled FA09139, which is
25 the autopsy number. Part of the name is smudged off, but

David Wren - Direct examination
By Solicitor Barnette

1 it's Center, H. The date is 7/9/07, left arm, and I signed
2 it myself. It also has a hospital sticker on the front. It
3 also has her name, age, and date of birth. I'm sorry.
4 Yeah, date of birth and the date that she was entered into
5 the system, and with the -- within the -- it's suppose to
6 been within the container, but it's been taken out, is a
7 copper jacketed lead bullet. It's got visible lands and
8 grooves. It's distorted on one side from probably hitting
9 the arm, the bone, which it fractured, and it's labeled on
10 the base I think nine and delta, which I scratched on it
11 with a, a stylus we have. This is the bullet removed from
12 her arm.

13 Q Let me show you State Exhibits 39 and 40, Doctor Wren.

14 Is that a picture of the bullet after y'all took it,
15 you took it from the body of Brooke ?

16 A Yes, this is.

17 Q And is this a picture of the x-ray where the bullet was
18 where it fractured her arm?

19 A Yes, the same bullet.

20 Q Do those pictures fairly represent what you saw that
21 day?

22 A Yes.

23 SOLICITOR BARNETTE: Your Honor, I'd like to move in
24 State Exhibit 39 and 40 as well as State Exhibit 5 into
25 evidence at this time.

David Wren - Direct examination
By Solicitor Barnette

1 THE COURT: Any objection?

2 SOLICITOR BARNETTE: Make sure -- let me look and see
3 here.

4 THE WITNESS: Barry?

5 SOLICITOR BARNETTE: Excuse me. Thank you, sir.

6 MR. ALLEN: No, objection.

7 THE COURT: Without objections, they'll be admitted
8 into the record as they've been marked.

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 (WHEREUPON, State's Exhibit Nos. 5, 39, and 40 were
11 received into evidence at this time.)

12 SOLICITOR BARNETTE: May I publish these to the jury,
13 Your Honor?

14 THE COURT: You may.

15 Q Showing you State Exhibit No. 5 on the Elmo, was the
16 actual bullet that was taken from Brooke 's arm, sir?

17 THE COURT: That was a question, Doctor Wren.

18 A Oh, yes. I'm sorry.

19 Q I'm sorry. I apologize.

20 And showing you State Exhibit 39 --?

21 A Photograph of the same bullet.

22 Q It's a photograph of the same bullet that was taken and
23 y'all took a picture of it after it was taken out of the
24 body?

25 A Yes.

David Wren - Direct examination
By Solicitor Barnette

1 Q okay. And let me show you State Exhibit No. 40.

2 A X-ray of her left arm with the bullet still in the arm

3 --

4 Q okay.

5 A -- with the fracture of her humerus.

6 Q All right. That's the fracture where the bullet hit
7 the humerus, is that right?

8 A That's correct.

9 Q Okay. If I understood right, I just want to make sure
10 the jury understands, there was like nine different exit
11 wounds -- I guess entrance and exit wounds?

12 A That's correct.

13 Q There was, it looks like, four gunshots that was done?

14 A One to the head, one to the back, one to the leg, and a
15 grazing through the -- yes, correct.

16 Q So, you had one through the head?

17 A Yes.

18 Q Then you had the one that was in the back if I
19 understand right?

20 A Right, it came out the cheek.

21 Q Actually came out the cheek?

22 A Right cheek.

23 Q Okay. Then you had the bullet through the leg?

24 A Right, through and through to the leg.

25 Q And then you had a gunshot wound that went through the

David Wren - Direct examination
By Solicitor Barnette

1 neck?

2 A It grazed the side of the, the lower part of the cheek,
3 and dug a wide path through the side of the neck and
4 actually went into the skin for a short distance and came
5 out and then went in her arm cause her arm was up like this.

6 Q Okay. And that was the bullet -- like I say, that's
7 the one that wound up in the arm?

8 A Yes.

9 Q Is the cause of death the gunshot wounds to Brooke
10 ?

11 A Well, the immediately fatal wound was the one to the
12 head. Any, any of those individually or collectively could
13 of caused her death. If they're not immediately fatal,
14 there are lots of complications that can occur. So, we
15 actually assigned those as potentially fatal if they're not
16 immediately fatal. So, I put down the cause of death as
17 gunshot wounds to the head and body.

18 SOLICITOR BARNETTE: Okay. Thank you, Your Honor. One
19 moment, Your Honor, please.

20 (Pause.)

21 SOLICITOR BARNETTE: Please answer any questions the
22 defense may have for you. Thank you, sir.

23 THE COURT: Mr. Allen.

24 SOLICITOR BARNETTE: Thank you for coming.

25 MR. ALLEN: I got no questions for Doctor Wren.

Robert Talanges - Direct examination
By Solicitor Barnette

1 THE COURT: All right, sir. You may step down. Thank
2 you very much.

3 You wish to excuse the witness?

4 SOLICITOR BARNETTE: Yes, sir, subject to recall at a
5 later time.

6 THE COURT: Any objections?

7 MR. ALLEN: No, Your Honor.

8 THE COURT: Doctor, you're excused at this time. You
9 are subject to being recalled at a later time. Thank, you
10 sir.

11 SOLICITOR BARNETTE: All right. Your Honor, at this
12 time I'd like to call Officer Talanges to the stand please.

13 THE COURT: Sir, come forward to my left and be sworn.

14 ROBERT TALANGES, having been first
15 duly sworn, testified as follows:

16 THE COURT: Have a seat, sir, and once you're seated,
17 state your name.

18 THE WITNESS: Robert Charles Talanges.

19 THE COURT: Thank you.

20 Mr. Barnette, your witness.

21 SOLICITOR BARNETTE: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q Sir, where do you work at?

25 A Spartanburg County Sheriff's Office.

Robert Talanges - Direct examination
By Solicitor Barnette

1 Q And what is your position there, sir?

2 A I work in forensics ID.

3 Q And how long have you been in that position, sir?

4 A At the Sheriff's Office, going on nine years.

5 Q And was you in law enforcement previous to being at the
6 Sheriff's Office?

7 A Yes, sir.

8 Q And where was you at there, sir?

9 A Spartanburg Public Safety Department for 15 plus years.

10 Q And what was your position there?

11 A For seven years I was a patrol officer, and the rest of
12 the time I spent in their, their crime scene ID unit or
13 forensic unit.

14 Q The date this happened, was you called to the crime
15 scene that day, sir?

16 A Pardon me?

17 Q Was you called to the crime scene there on and
18 Ridings Road that day?

19 A I first got called by my sergeant to respond to the
20 hospital because the suspect was in transport, and he wanted
21 a GSR collected as soon as possible.

22 Q Let me ask you this question.

23 Afterwards, did, did you go to the autopsy?

24 A Yes, I did.

25 Q And matter of fact, Doctor Wren, State Exhibit 5, he

Robert Talanges - Direct examination
By Solicitor Barnette

1 collected the bullet and gave it to you, is that right?

2 A That is true.

3 Q And then you took it to the Sheriff's Department,
4 Sheriff's Department in evidence?

5 A That is correct.

6 Q And later on was transported to the State Law
7 Enforcement Division for analysis?

8 A Yes, sir.

9 Q After that -- and, of course, you took pictures at the
10 autopsy and things like that too, is that right?

11 A Yes, sir.

12 Q Okay. And later on did, did you go and do a crime
13 scene drawing of the crime scene out at and Ridings
14 Road?

15 A Yes, I did.

16 Q Okay. And when you went back out there, of course,
17 pictures had been taken and everything from there, is that
18 right?

19 A The crime scene was done -- it's the same day that
20 prior to us leaving the scene, measurements and sketchings
21 are all done there, rough sketchings.

22 Q Yeah.

23 I know Investigator Nix had testified.

24 Was you with him for some of this, sir?

25 A After --?

Robert Talanges - Direct examination
By Solicitor Barnette

1 Q You left the hospital---

2 A Hospital, yeah, him and I worked the scene together,
3 that's correct.

4 Q Okay. So, you came from the hospital back to the crime
5 scene?

6 A That's correct.

7 Q And at the crime scene, this is a diagram that you drew
8 from it, is that right, sir?

9 A Yes, sir.

10 SOLICITOR BARNETTE: Your Honor, I'd like to enter
11 State's Exhibit 38 into evidence at this time.

12 THE COURT: Show it to the defense please.

13 MR. ALLEN: No objection.

14 THE COURT: Without objections, it will be admitted as
15 it's been marked.

16 (WHEREUPON, State's Exhibit No. 38 was received into
17 evidence at this time.)

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 May I publish it to the jury?

20 THE COURT: You may publish it, yes, sir.

21 Q This is State Exhibit 38.

22 Now, I'll show you -- is this just showing the scene in
23 general?

24 A Yes, that is.

25 Q This was Ridings Road, is, is that right, sir?

Robert Talanges - Direct examination
By Solicitor Barnette

1 A Yes, sir.

2 Q And was this where Brooke was found?

3 A That's where the victim was located.

4 Q Okay. And, of course, you did measurements from to
5 ?

6 A That's correct.

7 Q And then also these are the items that was found. I
8 think Investigator Nix testified about those items.

9 A Yes, sir.

10 Q And, of course, y'all did the diagram showing the
11 measurements from, from, I guess, the carport?

12 A The carport to the outside building that---

13 Q And actually you put down the figures and numbers here,
14 is that right, sir?

15 A That is true.

16 Q Just blowup things a little bit.

17 And another thing you did too, you actually assigned
18 numbers and letters to certain items?

19 A Yes, we did.

20 Q And I guess this is the pool area that we saw on the
21 photographs earlier?

22 A Yes, sir.

23 Q I know you've been here present for a lot of the
24 testimony. So, I won't go through showing the pictures
25 again from there.

Robert Talanges - Direct examination
By Solicitor Barnette

1 That was Angie Blackwell's Kia---

2 A Yes, sir.

3 Q ---or vehicle?

4 A Yes, sir, it is.

5 Q And if I'm correct, what you did was you went back and
6 you basically used numbers to -- for measurements as well as
7 letters to show different things, different points?

8 A From each residence, that's correct.

9 Q Yes, sir.

10 Matter of fact, the evidence that was gathered, you-all
11 signed numbers -- I guess the placards and the numbers that
12 we saw in the pictures correlate to the numbers, the items
13 found on the diagram?

14 A Yes, they do.

15 Q For example, the wallet, Number 5, you can go up
16 here -- and this is not to scale, is it?

17 A No, it's not.

18 Q Okay. But you could get the approximate position where
19 it was found and it would correlate to what the pictures
20 showed?

21 A Correct.

22 Q Now, we talked about -- earlier in Investigator
23 Nix's -- the wallet that was found.

24 was there money found in that, sir?

25 A Yes, there was.

Robert Talanges - Direct examination
By Solicitor Barnette

1 Q And did you do the counting of that money?

2 A Yes, we did.

3 Q Let me show you what's been marked as State's Exhibit
4 34.

5 A Yeah, well, we both counted it and we both signed on
6 it, that's correct.

7 Q Yes, sir.

8 Was it counted correctly?

9 Let me ask that question.

10 A From what it shows here, no, it's not added up
11 correctly.

12 Q All right. How much money was actually found in Mr.
13 Blackwell's wallet?

14 A From my report as well as the property sheet and Sean
15 Nix, \$1,268.

16 Q Okay. But how much was actually found once you
17 calculated up?

18 A Calculated up, it'd be \$1,068.

19 Q So, just be an adding mistake --

20 A Correct.

21 Q -- that made it?

22 So, actually it's 1,068 even though your report shows
23 1,268?

24 A I believe it's 1,268.

25 Do I need to open it up to find out?

Robert Talanges - Direct examination
By Solicitor Barnette

1 Q Okay. Yes, sir, if you can open it up.

2 But you collected the money and you put that into
3 evidence from the wallet, is that right, sir?

4 A Yeah, with myself and Sean Nix. It's -- we both
5 counted and signed it and put it in there.

6 Got any scissors or --?

7 Q I think Officer Bishop has a knife if that would help
8 you.

9 (Pause.)

10 A It's 1,068.

11 Q 1,068?

12 A Yes, sir.

13 Q And the reason I asked you that question, if you read
14 the outside of your envelope, I know you have 1,268, but it
15 adds up to 1,069 if you add it up?

16 A That's correct. It does. Have eight \$100 bills, 13,
17 twenties, one five, and three ones. So, it should, it
18 should say 1,068.

19 SOLICITOR BARNETTE: Your Honor, like to enter this in
20 evidence at this time.

21 THE COURT: Any objection?

22 MR. ALLEN: No objection.

23 THE COURT: Without objection, it will be admitted as
24 marked.

25 (WHEREUPON, State's Exhibit No. 34 was received into

Robert Talanges - Direct examination
By Solicitor Barnette

1 evidence at this time.)

2 Q And I believe did you also have the \$16 attached to
3 that, sir?

4 A Did we --?

5 Q That is -- did you also had -- I know attached to this
6 was the \$16 that was collected at the scene.

7 A Yeah, this was laying on the ground that was inside the
8 wallet.

9 Q Yes, sir.

10 Or beside -- or outside of the wallet?

11 A Outside the wallet on the ground.

12 Q Yes, sir.

13 Your Honor, like to publish these two and that -- make
14 that the same exhibit unless you want to separate it.

15 MR. ALLEN: I'm not sure if I understand.

16 (Pause.)

17 THE COURT: Are you introducing those together as one
18 exhibit?

19 SOLICITOR BARNETTE: Yes, sir.

20 THE COURT: Is there any objection to them being
21 presented in that fashion?

22 MR. ALLEN: No, Your Honor.

23 THE COURT: They'll be accepted in that fashion.

24 SOLICITOR BARNETTE: May I present it to the jury, Your
25 Honor?

Robert Talanges - Direct examination
By Solicitor Barnette

1 THE COURT: You may.

2 Q Okay. Showing you the \$16 part of it, this was the
3 bills we saw laying out loose, is that right, sir?

4 A That's correct.

5 Q And that wound up being \$16.10, a ten, a five, and a
6 one?

7 So, it's \$16, is that right, sir?

8 A Yes, sir.

9 Q Okay. Showing you the money that was found in the
10 wallet, if you add these up together, does that add up to
11 1,268?

12 A It should be 1,068.

13 Q Right.

14 And that's what was found inside the -- I mean the
15 wallet, is that correct, sir?

16 A Yes, sir.

17 Q And matter of fact, y'all placed them into evidence and
18 it's secured in the evidence, is that right?

19 A Yes, sir.

20 Q And we just saw you open up the evidence or the plastic
21 sleeve?

22 A The sealed envelope, yes, sir.

23 SOLICITOR BARNETTE: One moment, Your Honor.

24 THE COURT: Yes, sir.

25 (Pause.)

Robert Talanges - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: If you would, please answer any
2 questions the defense may have for you. Thank you, sir.

3 Oh, one other -- just one other question.

4 This occurred in Spartanburg County too, is that
5 correct, sir?

6 A Yes, it did. It happened in Spartanburg County.

7 Q Okay. Thank you, sir.

8 THE COURT: Mr. Allen.

9 MR. ALLEN: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. ALLEN:

13 Q Now, as I understand it, the money that was found
14 inside the wallet, that \$1,068, that was in the -- I'm not
15 quite sure -- where most people put---

16 A Inside the billfold, correct.

17 Q Inside the billfold. Thank you.

18 You know, where it's sort of basically, and it was put
19 out there, you know, not folded up except when the wallet
20 was folded up?

21 A Correct.

22 Q In other words, when the wallet was unfolded, the bills
23 were unfolded, correct?

24 A That's correct.

25 Q All right. And it was just a simple mathematical error

Robert Talanges - Cross-examination
By Mr. Allen

1 when either you or Mr. Nix put the 1,268, right?

2 A That's correct.

3 Q I mean it's no question that it's 1,068?

4 A Yes, sir.

5 Q Okay. And the \$16, they were found folded up, I think
6 the picture showed, a folded -- that they were sort of
7 folded maybe one time?

8 A According to the picture, it should be folded if
9 they're on the ground, but it was folded over, that's
10 correct.

11 Q Okay. But lying separate from the wallet or not with
12 the wallet or inside the wallet?

13 A It was not in the wallet. It was on the ground.

14 Q On the ground near the wallet?

15 A Near the wallet.

16 MR. ALLEN: Okay. One second please, Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. ALLEN: No other questions.

20 THE COURT: Anything further?

21 SOLICITOR BARNETTE: Nothing. Nothing from this
22 witness, Your Honor. We ask that he be excused.

23 THE COURT: Any objections?

24 MR. ALLEN: No objection.

25 THE COURT: Sir, you step down. You're free to go.

1 Thank you for coming.

2 SOLICITOR BARNETTE: Your Honor, may we approach for a
3 second?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: All right. Ladies and gentlemen, we're
8 gonna take a short break while we get the next witness
9 ready. It shouldn't be too long, but, as always, when you
10 leave the courtroom, I'm gonna tell you not to discuss and
11 aspect of this case whatsoever until such time as I ask you
12 to do so.

13 You may retire to the jury room.

14 Thank you very much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Please remain seated until the
18 defendant is -- exited the courtroom.

19 Court's in recess.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: The State ready to proceed at this time?

22 SOLICITOR BARNETTE: I am.

23 THE COURT: Okay. Defense ready?

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: All right. Let's bring the jury in.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: Thank you, Mr. Ruth.

4 All right. The record will reflect the jury has
5 returned to the courtroom.

6 At this time the State may call your next witness.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 May it please the Court.

9 Like to call Suzanne Cromer to the stand please.

10 THE COURT: Come forward please, ma'am, to my left and
11 be sworn in.

12 SUZANNE CROMER, having been first duly
13 sworn, testified as follows:

14 THE COURT: Ma'am, once you're seated, state your name
15 please.

16 THE WITNESS: My name is Suzanne Cromer.

17 THE COURT: Thank you.

18 Mr. Barnette, your witness.

19 SOLICITOR BARNETTE: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q Ma'am, where do you work at?

23 A I'm employed with the South Carolina Law Enforcement
24 Division commonly referred to as SLED.

25 Q And could you tell the jury what that, what

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 organization that is, ma'am?

2 A SLED is an assistance organization for the State of
3 South Carolina. We are kind of the State Bureau of
4 Investigations. We offer forensic services, helicopter
5 assistance, bloodhound assistance, bomb squads, SWAT teams,
6 that sort of thing.

7 Q Okay. And what is your position with SLED, ma'am?

8 A I'm a firearm and tool mark examiner in the forensic
9 services laboratory.

10 Q And how long you been in that position, ma'am?

11 A I have been with the firearm's department 15 years.
12 I've been in my current position over 14.

13 Q Okay. If you would, tell the jury a little bit about
14 your education and expertise, ma'am.

15 A I received a Bachelor's Degree from Clemson University.
16 I have done some graduate work at the University of South
17 Carolina in criminal justice. I have completed SLED's
18 in-house training program, which is a three to five year
19 intense study program, more of an apprenticeship, if you
20 will, where we take written tests, oral tests, do practical
21 exercise, and work with and for other examiners.

22 Upon completion of the training program, we are given a
23 comprehensive final exam that is graded by our lieutenant
24 and our training officer. I've taken classes through the
25 Association of Firearms and Tool Mark Examiners. It is an

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 international profession -- excuse me. It's an
2 international professional organization that meets once a
3 year to have a week long seminar about issues in our field.
4 I have been lucky enough to attend several of those and
5 extra workshops including Glock firearms, ethics, barrel
6 making.

7 I'm also a member of the South Carolina Chapter of the
8 International Association of Identification. I've taken
9 numerous seminars with them. Most pertinent being a three
10 day shooting scene reconstruction workshop. I have taken
11 classes with the Bureau of Alcohol, Tobacco, Firearms &
12 Explosives commonly referred to as the ATF on serial number
13 restoration and the integrated ballistics identification
14 network, which is a digital database for bullets and
15 cartridge cases. Excuse me. I am the state coordinator for
16 our AFIS system and I've attended several conferences with
17 the ATF representing North and South Carolina.

18 Q And I know you've just came on the fly from Lancaster,
19 and I know---

20 MR. MCGUIRE: Your Honor?

21 A I'm sorry.

22 MR. MCGUIRE: Please the Court, we'll stipulate to her
23 qualifications.

24 THE COURT: As to her qualifications as a ballistics
25 expert?

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 MR. MCGUIRE: Ballistics or tool mark.

2 THE COURT: Okay. Do you accept that stipulation?

3 SOLICITOR BARNETTE: I do, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, again
5 then, I'm gonna qualify this witness as an expert within the
6 field of ballistics and tool marks identification and you
7 understand what that means.

8 So, now, Mr. Barnette, you may proceed.

9 Q And, ma'am, when you're talking about firearm, firearms
10 examiner, you examine like weapons that are used to bullets
11 that are found and things like that?

12 A We look at ammunition components, bullets, cartridge
13 cases, unfired cartridges, shotgun shells, to determine
14 whether they were fired by or loaded into and extracted out
15 of a specific firearm. If we don't have a specific firearm,
16 we can look at the rifling marks on that particular bullet
17 and give investigators a possible list of firearms they
18 could be looking for.

19 Q Okay. And, ma'am, was you given a weapon in this case?

20 A Yes, sir, I was.

21 Q And did you create a report from that?

22 A Yes, sir, I did.

23 (WHEREUPON, a SLED report was marked as State's Exhibit
24 No. 46 for identification purposes only at this time.)

25 Q Let me show you what's been -- State Exhibit 46.

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 Is that a copy of your report, ma'am?

2 A Yes, sir, it is.

3 SOLICITOR BARNETTE: Your Honor, I'd like to move this
4 into evidence at this time and then show---

5 MR. MCGUIRE: No objection. No objection.

6 THE COURT: Without objection, it will be and received
7 into evidence.

8 Has it been marked?

9 SOLICITOR BARNETTE: Yes, sir, it's State Exhibit 46.

10 THE COURT: All right. As marked.

11 (WHEREUPON, State's Exhibit No. 46 was received into
12 evidence at this time.)

13 THE COURT: You may proceed and publish.

14 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 Q Just to help the jury out a little bit, obviously you
17 get the, get the information and you go ahead and start
18 working on a case. This involved the case of Ricky
19 Blackwell as the subject, and Brooke is the victim
20 in this case.

21 A That's correct.

22 Q And I believe -- let me show you these exhibits.

23 You received one fired bullet that was recovered from
24 the body of Brooke ?

25 A Yes, sir, that I did.

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 Q And then you received one .357 caliber weapon in this
2 case?

3 A That's correct.

4 Q Okay. Let me let you look at State Exhibit No. 5.
5 It's already been entered into evidence, ma'am. Let you
6 look at it and see if that was the bullet you received in
7 this case.

8 A What I'm doing is I'm looking for my lab number, my
9 item number, and my initials, which are scribed on here.

10 Yes, this is what I received.

11 Q Okay. So, that's actually Item Number 5, the one fired
12 bullet?

13 A Yes, it is.

14 Q Let you -- let you look at State's Exhibit 6. It's
15 already been entered into evidence also, ma'am. Let you
16 take a look, look at that item now and see if that is the
17 Item 6 that you received, the .357 weapon in this case.

18 A And, also, again, I'm looking for where I've scribed
19 this firearm with my lab number, my item number, and my
20 initials. This was my Item Number 6 in this case.

21 Q Okay. Thank you, ma'am.

22 If you would, tell the jury a little bit about that
23 weapon, what kind of weapon it is, the model and so forth,
24 and how it works.

25 A This is a Smith and Wesson Model 686-1 double action

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 revolver, and when I say double action, it means it can be
2 fired in two different ways. When I single -- we have
3 single action and double action. Single action means I have
4 to pull that hammer back, then pull the trigger to fire.
5 Double action means two actions are performed. I just pull
6 the trigger and it will cock the hammer and fire the weapon.

7 Q Okay. In this case -- and did you do an analysis to
8 see if the bullet was fired by that weapon, ma'am?

9 A Yes, sir, I did.

10 Q And could you tell the jury the results of that
11 analysis?

12 A I determined that the bullet that I received in this
13 case was indeed fired by this firearm.

14 Q Okay. And matter of fact, on Page 2 of your report,
15 you stated that, is that right?

16 A That's correct. Actually it's on Page 1 of my report.

17 Q Page 1. I'm sorry. It was. I'm sorry.

18 So, it was right -- Item 5 was fired by Item 6?

19 A That's correct.

20 Q Okay. If you would, tell the jury -- you was talking
21 about trigger pull --

22 A That's correct.

23 Q -- about, about the double and single action.

24 How many pounds of pressure would it take to pull that
25 trigger?

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 A For single action, it was three and a quarter to
2 4 pounds. And when I give a range like that, means I've
3 cocked the hammer, and I -- what I do is I -- we have --
4 it's like a hook that we hang from the trigger and we add
5 weights to it to see when it will go off. So, when I say
6 three and a quarter to four pounds, it wouldn't go off at
7 three and a quarter. Sorry. Three and a half -- sorry. It
8 would not go off at three and a half pounds, but it would
9 always go off at four.

10 So, I'd cock the hammer back and I would test it
11 multiple times to see how much weight it would take to make
12 it fire. Then I would do it again on double action meaning
13 I don't cock the hammer. We actually hold it up right, hook
14 our little trigger pull weighing device on the fire -- on
15 the trigger where the natural place to hold it is, and we
16 test it that way. Double action, I was -- determined
17 between ten and three-fours pounds to eleven and a fourth
18 pounds meaning it would not fire at ten and three-fourths
19 pounds of pressure, but it would always fire at eleven and a
20 fourth.

21 Q And let me, ma'am, make sure I understand that
22 correctly.

23 Single action was how much?

24 A Three and a half to four pounds.

25 Q Three and a half to four pounds of pressure?

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 A That's correct.

2 Q And that's literally weights that you would put on the
3 trigger?

4 A That's correct.

5 Q Double action is where you just pull the trigger
6 itself?

7 A That's correct meaning it would do two actions, cock
8 the hammer, and fire the weapon.

9 Q How many pounds was that range, ma'am?

10 A Ten and three-fourths to eleven and a fourth and we can
11 only weigh in quarter pounding increments.

12 Q Okay. And you obviously do several trials on this
13 weapon on each part?

14 A I do at least, at least two per each cylinder and it
15 takes me a while to find where my start and where my end
16 pound of pressure where it should be.

17 Q So, this is literally dead weight that you're putting
18 on the trigger?

19 A Correct. I mean it's a little hook that hangs and
20 they're round disks. Usually one, one and a half, one, a
21 half pound, and a quarter pound, and I just keep pulling it
22 till it goes.

23 Q I got you.

24 And can you give the jury what comparisons in weights
25 to the different items they may be familiar with?

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 A Well, the three and a half to four pounds is -- I
2 usually like to use gallons of milk or half gallons. A half
3 gallon of milk weighs about four and a half pounds. So, if
4 you think it's less than a half gallon of milk for the
5 single action. I'm also a coffee addict. So, it's a little
6 more than a two pound can of coffee or maybe close to two
7 pounds cans of coffee.

8 The double action, a whole gallon of milks weighs
9 approximately nine pounds. So, for double action weight, it
10 was consistent with a gallon of milk and the two pounds of
11 coffee with one finger.

12 Q May I see that weapon for a second, ma'am?

13 A Yes, sir.

14 Q So, in order to fire this weapon, it would take ten and
15 a quarters pounds of pressure to pull it?

16 A More than ten and three quarters cause, as I said
17 before, that is where it would, would not, not go off, ten
18 and three quarters, but it would always go off at eleven and
19 a fourth.

20 Q So, to pull it, you have pull it (Solicitor Barnette
21 demonstrates)?

22 A That's correct.

23 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
24 please.

25 THE COURT: Yes, sir.

Suzanne Cromer - Direct examination
By Solicitor Barnette

1 (Pause.)

2 SOLICITOR BARNETTE: Ma'am, thank you for answering my
3 questions. Please answer any questions the defense may have
4 for you.

5 MR. MCGUIRE: No questions for Ms. Cromer.

6 THE WITNESS: Thank you.

7 SOLICITOR BARNETTE: All right, ma'am. You may step
8 down.

9 Do you wish to excuse the witness?

10 SOLICITOR BARNETTE: Yes, sir.

11 MR. MCGUIRE: No objection.

12 THE COURT: Without objection?

13 MR. MCGUIRE: No objection.

14 THE COURT: No objection?

15 MR. MCGUIRE: No objection.

16 THE COURT: You're free to go, ma'am. Thank you very
17 much.

18 THE WITNESS: Thank you, sir.

19 THE COURT: All right. State may call its next
20 witness.

21 SOLICITOR BARNETTE: Your Honor, may we check to make
22 sure with the court reporter about the exhibits?

23 THE COURT: Yes, sir, please do. Take, take a moment.

24 (Pause.)

25 SOLICITOR BARNETTE: Your Honor, the State would rest

1 at this time.

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, that completes the presentation of evidence by the
4 state in this case -- in this trial. At this point in time
5 there's some matters I have to take up with the attorneys.
6 So, again, I'm gonna ask you to step outside of the
7 courtroom. As always, I'll give you the same instructions.
8 Not to substantially discuss anything in this case until
9 such time as I advise you to do so during your
10 deliberations.

11 You may retire to the jury room at this time.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Any motions?

15 MR. MCGUIRE: For the record, we move for directed
16 verdict.

17 THE COURT: You wish to argue that motion?

18 MR. MCGUIRE: No.

19 THE COURT: All right. State wish to present any
20 argument on the motion?

21 SOLICITOR BARNETTE: No, sir, I think you've heard the
22 evidence in the case.

23 THE COURT: All right. I find that there is sufficient
24 evidence to justify the case going forward to the jury at
25 this time. Therefore, the motion is denied.

1 Now, I would like to discuss your client's right to
2 testify in this matter with him.

3 So, at this time, Madam Clerk, please swear the
4 defendant for me.

5 (WHEREUPON, the defendant was placed under oath at this
6 time.)

7 THE COURT: Please, please be seated, Mr. Blackwell.

8 Mr. Blackwell, at this time I'm going to explain to you
9 certain of your rights. If you do not understand anything
10 that I say during this explanation or if you would like
11 additional explanation when I finish, please let me know.
12 If you want me to explain it further, as I said, I'll be
13 more, more than happy to do that.

14 Do you understand what I'm doing, sir?

15 THE DEFENDANT: (Nods affirmatively.)

16 THE COURT: You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You have to answer me verbally. You
19 have -- you shook your head, but you have to answer me
20 verbally.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Thank you.

23 Now, we've reached the stage of the trial where you
24 have the right to present your defense. You have the right
25 to, at this time, claim protections which are given to you

1 by the Fifth Amendment to the United States Constitution.
2 That amendment reads, in part, that no person shall be
3 compelled, in any criminal case, to be a witness against
4 himself.

5 Now, that means that you can not be required to testify
6 in this matter. You certainly have the right to do so if
7 you wish to do that. However, no one can make you testify.
8 The right to remain silent is a personal right, and no one
9 can waive or give up that right except yourself.

10 I will advise you that, if you decide to testify, you
11 will be subject to the same rules that govern any other
12 witness who testifies in the case. That means you would be
13 examined by your attorneys and you would then be
14 cross-examined by the State's attorneys, and I will tell you
15 that, should you have any convictions on your record
16 involving dishonesty or false statements or for crimes which
17 were punishable by imprisonment for more than one year, and
18 your Court -- and the Court determines that the probative
19 value of that evidence as to your credibility outweighs its
20 prejudicial effect, then the solicitor would be able to, in
21 that situation, to introduce a criminal record to attack
22 your credibility.

23 Now, if you decide to testify in this case, this
24 decision must be freely and voluntarily made by you with
25 knowledge of those protections that I've talked to you about

1 in the Fifth Amendment and the consequences of your decision
2 to testify. I will tell you that, if you decide to testify
3 in this matter -- excuse me. If you decide not to testify
4 in this matter, then I will instruct the jurors that the
5 fact that you did not testify can not be considered by them
6 at all in reaching a verdict in this case. In fact, my
7 instruction would be that they can not even discuss that
8 matter during their deliberations.

9 Now, the decision as to whether or not to testify at
10 this stage of the proceeding is left entirely up to you.
11 You have the right to talk to your lawyers, family, friends,
12 or anyone else you'd like to talk to about this decision.
13 But then the final analysis, the decision as to whether to
14 testify in this, this stage of the proceedings or not, is
15 left entirely up to you.

16 Mr. Blackwell, do you understand what I've explained?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions of me about these
19 rights?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you want me to explain it any further?

22 THE DEFENDANT: No, sir.

23 THE COURT: Now, have you had an opportunity to discuss
24 your decision with your lawyers?

25 Have you had that chance?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you wish to talk with them or anyone
3 else at this time any further about your decision as to
4 whether or not to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. I'll be glad to give you a moment to
7 talk to your attorneys. Let me know when you're ready.

8 (Pause.)

9 THE COURT: Now, Mr. Blackwell, have you had a chance
10 to talk to your lawyers?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you need to talk with them anymore?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you wish to testify in this case---

15 THE DEFENDANT: No, sir.

16 THE COURT: ---at this time?

17 Okay. Thank you, sir.

18 Now, does the defense intend to call additional
19 witnesses in this phase of the trial?

20 MR. MCGUIRE: No, sir.

21 THE COURT: Okay. So, you'll be resting when they come
22 back?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. Then let's discuss if there's
25 any specific request for charges.

1 Any from the State?

2 SOLICITOR BARNETTE: I think your standard charges,
3 Your Honor, I've heard them before, and I assume murder and
4 kidnapping will be the two charges that will be charged in
5 this case. There's no lesser included.

6 THE COURT: Okay, sir.

7 Any specific request for charge?

8 MR. MCGUIRE: No, sir.

9 THE COURT: All right. Then I would intend to give my
10 standard charge as to the questions of murder and
11 kidnapping, and, of course, I'll give you an opportunity to
12 object once I've completed the charge.

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: Now, what we'll do is, when I call the jury
15 back in, I will give you an opportunity -- I'll call on you
16 for witnesses. I assume you'll rest on the record in front
17 of them at that time.

18 Now, it's my understanding that you will be going
19 second in the, the, the argument and I do need to make
20 Mr. Blackwell aware of his right of elocution at this time.

21 Mr. Blackwell, I will make you aware that you have the
22 right, at this point in time, to argue to the jury along
23 with your attorneys. Your attorneys would have to be given
24 the right to argue to the jury. You would have that same
25 right as well if you wish to do so. I will caution you

1 that, since you did not testify in this case, you would not
2 be allowed to offer testimony during that argument, but
3 certainly you have the right to argue the, the case along
4 with your attorneys.

5 Now, Mr. Blackwell, have you discussed that right with
6 your lawyers?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you wish to do so at this time?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 SOLICITOR BARNETTE: Your Honor, may I get some of the
12 exhibits lined up --

13 THE COURT: Yes, sir, please do.

14 SOLICITOR BARNETTE: -- while they're talking to him?
15 (Pause.)

16 THE COURT: All right. Mr. Blackwell, have you had an
17 opportunity to discuss your decision---

18 THE DEFENDANT: Yes, sir.

19 THE COURT: ---as to whether or not you wish to
20 participate in arguing -- in arguments at this time?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you wish to do so?

23 THE DEFENDANT: No, sir, I want my attorneys to do it.

24 THE COURT: And do the attorneys agree with his
25 decision in that regard, Mr. McGuire?

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: And Mr. Allen?

3 MR. ALLEN: Yes, Your Honor.

4 THE COURT: All right. All right. Also I will be
5 asking you, as I charge the jury, I will discuss with them
6 whether or not the indictments will be sent back to the
7 jury. I did not see any information in the indictments that
8 should not be presented to the jury.

9 Do you wish to look at the indictments first to be, to
10 be sure?

11 MR. ALLEN: Just to refresh my recollection.

12 THE COURT: Yes, sir, please do.

13 SOLICITOR BARNETTE: May I take a look at them too,
14 Your Honor, just to make sure?

15 THE COURT: Uh-huh. (Affirmative).

16 (Pause.)

17 THE COURT: Mr. Barnette, did you have an opportunity
18 to review the indictments?

19 SOLICITOR BARNETTE: Yes, sir, I did.

20 THE COURT: Is there any objection to them being
21 presented to the jury?

22 SOLICITOR BARNETTE: No, sir.

23 THE COURT: Mr. Allen, have you reviewed the
24 indictments?

25 MR. ALLEN: Yes, sir, Your Honor. With my memory

1 refreshed, it appears that I had seen it before and I have
2 no objection --

3 THE COURT: All right. Thank you.

4 MR. ALLEN: -- as to the indictments going back.

5 THE COURT: Thank you very much.

6 All right. Do you wish to take a short break before we
7 begin arguments or are you ready to start?

8 SOLICITOR BARNETTE: Whenever you're ready, Your Honor.

9 THE COURT: All right.

10 MR. MCGUIRE: I'm ready.

11 THE COURT: All right. Bring the jury in.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. The record will reflect that
15 the jury has returned to the courtroom.

16 When you left the State had completed the presentation
17 of its evidence in the case, and, at this time, the defense
18 has the right to call witnesses if they so desire.

19 Defense may call its first witness.

20 MR. MCGUIRE: Thank you, Your Honor.

21 We're gonna hold our witnesses for the penalty and rest
22 now.

23 THE COURT: Okay.

24 All right. That completes then the presentation of
25 evidence in this phase of the trial. I told you, at the

1 beginning, that once we completed the presentation of
2 evidence the attorneys would be given an opportunity again
3 to directly address you in their closing arguments in the
4 matter.

5 At this time, the State may proceed.

6 SOLICITOR BARNETTE: May it please the Court, Your
7 Honor?

8 THE COURT: Yes, sir.

9 SOLICITOR BARNETTE: Mr. Foreman, ladies and gentlemen
10 of the jury, you've heard some brutal evidence the past two
11 days, and you see that this is clearly a murder and
12 kidnapping case. Not beyond a reasonable doubt, beyond any
13 doubt, the man that killed an eight year old girl that day
14 was Ricky Blackwell.

15 You hear different arguments that, you know, there's
16 always doubt, there's always doubt. Ladies and gentlemen,
17 there is no doubt. You heard the terror that day. You
18 heard it through the 9-1-1 calls, what happened to that
19 eight year old girl. And if that's not malice aforethought,
20 I don't know what is.

21 I mean taking a weapon to a child, and you'll have this
22 weapon back with you. Not one shot, not two shots, not
23 three shots, but four shots.

24 That's something I'd like to talk to you about. This
25 is the only chance I get to talk to you in this part of the

1 case, but you remember the testimony and you remember it the
2 way you remember it. Not the way I remember it or anybody
3 else in this courtroom because you're the judges of the
4 facts. But it was four shots. You heard Doctor Wren talk
5 about four gunshot wounds.

6 You heard Angie Blackwell and you heard Mark Bryant
7 testify about two shots, and Angie Blackwell testified about
8 other shots that happened afterwards.

9 why would you try to finish off a little girl that
10 didn't do anything to you?

11 He made sure that that little girl was dead. Like I
12 said, he didn't shoot her one time, not two times, not three
13 times, but four times, and you've got the pictures. You've
14 got the pictures where there was five shots, and then, and I
15 submit to you, what a coward, what a coward.

16 He put a bullet through that girl's brain, and then he
17 decided to take the easy way out. He was surrounded by the
18 officers, and the officers showed unbelievable restraint in
19 this case. He decided to shoot himself. Probably so he
20 wouldn't go to jail that day. So he'd go to the hospital.

21 That's what type individual you're dealing with, ladies
22 and gentlemen. They keep talking about character and
23 everything else, about mental disabilities. In his opening
24 Mr. McGuire was telling you about that.

25 The man has a commercial driver's license. He was a

1 truck driver. And if you know anything about commercial
2 driver's license, it's not something that's not too easy to
3 get, and we'll be talking more about that perhaps down the
4 road.

5 But ladies and gentlemen, I think your verdict is very
6 clear, and the thing about this case, ladies and gentlemen,
7 it's beyond a reasonable doubt. It's beyond a shadow of a
8 doubt. Who did this, how he did it, and where he did it,
9 and how he did it.

10 I think you only have one verdict to return, ladies and
11 gentlemen. For that little girl, she deserves for you to
12 consider everything about her life down the road. She lived
13 until she was eight years old, and that man took it away
14 from her. Her dreams, her future.

15 And, like I said, he says it does change you. It does.
16 Standing up here arguing these cases of the years, it does
17 change you, and this will change you too. And I hate that
18 you're in this position, but you represent our community,
19 and, to me, there's only one verdict at this point. That's
20 guilty on both counts, and hopefully I'll see you and be
21 able to talk to you again after that verdict.

22 Thank you, again. Thank you for your time.

23 Thank you, Your Honor.

24 THE COURT: The defense, Mr. McGuire.

25 MR. MCGUIRE: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. MCGUIRE: Good afternoon.

3 You have to be thinking why am I gonna talk to you when
4 I essentially conceded guilt at the very beginning of the
5 case, and I will tell you, you're not gonna pause long in
6 your deliberations with regard to guilt for the crimes of
7 both murder and kidnapping. Go and do your duty. When you
8 do that, you will guarantee that Mr. Blackwell will be
9 sentenced to at least life without parole in prison.

10 But I want you to think a little bit now about the
11 State's star witness, Angie Davis, formerly Angie Blackwell,
12 and her version of events and there's evidence to
13 indicate -- makes it, I think clear to me, that it didn't
14 happen the way she said.

15 Remember when she testified and she wanted to even deny
16 her own signature. That's bizarre. And I think she was
17 just trying to say well, that's not my statement so I
18 couldn't ask her about it. That looked like a not very
19 credible witness to me.

20 She wanted to give you the impression that it was Ricky
21 following her around, that you couldn't talk to her without
22 Ricky being there cause he was always going to her. But
23 their witness, Mark Bryant, told you that Angie was going to
24 Ricky for furniture, take the marital furniture, and she
25 would come back frequently for money. She was going back to

1 him, not to reconcile, but to take advantage of him, and
2 then think about this.

3 In her testimony, she gave sort of a heroic speech
4 saying at the moment he pulled out the gun and had Brooke I
5 said Ricky, take me, take me instead, I'm the one you want,
6 take me, and let Heather drive Brooke home. But when you
7 listen to the 9-1-1 tape, you-all knew she's not the kind of
8 woman that would ever make that statement. That heroic
9 statement of trying to exchange her life for Brooke's, that
10 never happened. The way she spoke on the 9-1-1 tape, the
11 way she cried, it was all about her safety.

12 There's more coming, but, right now, I will tell you it
13 didn't happen the way Angie said. But go do your duty,
14 don't deliberate long, convict Ricky. He'll go to prison
15 for the rest of his life.

16 Thank you.

17 THE COURT: Ladies and gentlemen, that completes the
18 closing statements by the attorneys. At this point in time
19 it's my responsibility to charge you concerning the law to
20 be applied in this case.

21 At this point in time I'm going to go over with you the
22 two indictments in this case.

23 The first indictment I will talk about is Case Number
24 2009-GS-42-3609. That indictment is for the offense of
25 kidnapping, and I will give you these indictments. You'll

1 have those back in the jury room with you so that you can
2 look over the charges yourselves, but I'll go over them with
3 you now so that you'll be able to put the rest of my charge
4 in context with these, with these charges.

5 The indictment for kidnapping states that the
6 defendant, Ricky Lee Blackwell, Senior, did, in Spartanburg
7 County, on or about July 8th of 2009, unlawfully seize,
8 confine, inveigle, decoy, kidnap, abduct, or carry away the
9 victim, Brooke, without authority of law all
10 violation of Section 16-3-910 of the Code of Laws of South
11 Carolina, 1976, as amended, against the peace and dignity of
12 the State and contrary to the statute in such case made and
13 provided. That's the first indictment.

14 The second indictment is the Case Number
15 2009-GS-42-3610. This indictment is for the crime of
16 murder.

17 The indictment states that the defendant, Ricky Lee
18 Blackwell, Senior, did, in Spartanburg County, on or about
19 July 8th, 2009, feloniously, willfully, and with malice
20 aforethought, kill one Brooke by shooting her
21 and the victim died as a proximate result thereof all in
22 violation of Section 16-3-10 and 20 of the Code of Laws of
23 South Carolina, 1976 as amended, against the peace and
24 dignity of the State and contrary to the statute in such
25 case made and provided.

1 Now, I remind you, ladies and gentlemen, that the fact
2 that a defendant has been arrested, charged, and indicted in
3 the case is not evidence in the case. It can not be
4 considered by you as evidence of guilt in this case nor does
5 it create any presumption or inference of guilt. The two
6 documents that I just read you are simply the formal written
7 instruments that bring the cases before this Court, and it
8 informs the Court of the charges to be tried, and it informs
9 the defendant of charges lodged against him.

10 The defendant pled not guilty to those indictments, and
11 that plea puts the burden of proof upon the State to prove
12 the defendant guilty. I will tell you that a person who's
13 charged with a criminal offense, in South Carolina, is never
14 required to prove himself innocent, and I charge you that
15 it's an important rule of law that a defendant, in a
16 criminal trial, no matter what the seriousness of the crime
17 may be, will always be presumed to be innocent of the crime
18 for which the indictment has been issued until and unless
19 guilt has been proven to you, the jury, by evidence
20 satisfying you of that guilt beyond a reasonable doubt.

21 Now, the presumption of innocence that a defendant has
22 doesn't end when you begin your deliberations. It
23 accompanies the defendant throughout the trial. It
24 accompanies the defendant into your deliberations. It
25 remains with the defendant into your deliberations until

1 such time as it is been stripped from him by evidence that
2 satisfies you of the defendant's guilt beyond a reasonable
3 doubt.

4 Now, the presumption of innocence is not a mere legal
5 theory. It's not just a legal phrase. It's a substantial
6 right that every defendant is entitled to until evidence has
7 been shown to you, the jury, of the defendant's guilt beyond
8 a reasonable doubt.

9 Now, I've used the phrase proof beyond a reasonable
10 doubt about three or four times already in talking with you.
11 You may ask yourself well, what does the law mean by a
12 reasonable doubt.

13 what is a reasonable doubt under the law?

14 I will tell you that a reasonable doubt is that kind of
15 doubt that would cause a reasonable person to hesitate to
16 act, and the State has the burden of proving the defendant
17 guilty beyond a reasonable doubt.

18 Now, if you've ever been involved in a civil trial,
19 that's a case where someone is seeking monetary damages.
20 That could be for such things as someone not paying a bill,
21 someone perhaps defaulting on a contract, or someone perhaps
22 who's injured somebody and damages are claimed. Those are
23 civil cases where someone's seeking money. The standard
24 proof in those cases is proof by the greater weight of the
25 evidence sometimes described as the preponderance of the

1 evidence. That means the evidence, when weighed on one side
2 of the plaintiff or defendant in a civil case, if the, if
3 the scales tilt ever so slightly in favor of the plaintiff,
4 then the plaintiff's entitled to a verdict. By the same
5 token, if those scales tilt ever so slightly in favor of a
6 defendant, then the defendant is entitled to a verdict. So,
7 that's the standard of proof in a civil case, and I'd like
8 for you to put that particular question out of your mind
9 because the proof, in a criminal case, the proof that's
10 required is more powerful than the proof that I described.

11 Proof beyond a reasonable doubt is that kind of proof
12 that would leave you firmly convinced of the defendant's
13 guilt. I will tell you that there's very few things that go
14 on in the world that can be proven beyond any doubt
15 whatsoever, and the State's not required to offer proof that
16 overcomes every possible doubt.

17 I will tell you that if, based on your consideration of
18 the evidence, if you are firmly convinced of the defendant's
19 guilt beyond a reasonable doubt, you must find the defendant
20 guilty. But by the same token, if you, on the other hand,
21 think there's a real possibility that the defendant is not
22 guilty, then you must give the defendant the benefit of the
23 doubt and find the defendant not guilty.

24 At the beginning of the trial, I pointed out to you
25 that you and I have certain duties to perform. As the trial

1 judge, it's been my responsibility to preside over the trial
2 of the case thus, thus far, and I also have the duty of
3 ruling on the admissibility of evidence that's offered
4 during the trial.

5 I will instruct you that you are to consider only the
6 competent evidence before you that's in the record of the
7 case, and any matters that I ordered to be stricken from the
8 record of the case during the trial, you must disregard that
9 information in its entirety. You are to consider only the
10 testimony which has been presented from the witness stand in
11 this trial and any exhibits which have been made a part of
12 the record and remain a part of the record at this time as
13 well as any stipulations as to evidence by the attorneys.

14 I also have the additional duty to charge you
15 concerning the law that's applicable to this case. As the
16 presiding judge, I will tell you that I am the sole judge of
17 the law in this matter. The law as I now state it to you is
18 the law that, under your oath, you must apply it to the
19 facts as you determine those facts to be. If you came into
20 the courtroom with an idea as to what the law is or some
21 notion as to what the law ought to be, you should leave
22 those notions outside of the jury room before your
23 deliberations. You are sworn to accept the law and apply it
24 exactly as I state it to you at this time.

25 Now, in every case tried in this Court before a jury,

1 the jury is the sole and exclusive judge of the facts in
2 this case. I can not indicate or in any way tell you or
3 comment on or make any statement about the facts in this
4 case. If you take from anything that I did or have -- might
5 do or will do in the exercise of my responsibilities as the
6 presiding officer of this trial to somehow indicate to you
7 that I have an opinion as to how you should determine the
8 facts in this case, please disregard that notion. I'll tell
9 you the law doesn't allow me an opinion on that subject. I
10 have no opinion as to how you determine the facts in this
11 case. Again, you are the sole judges of the facts in this
12 matter.

13 It is your duty, as jurors, to determine the effect,
14 the value, and the weight, and the truth of the evidence
15 that's been presented to you during the trial. Now, in
16 doing that, you have the right to consider two types of
17 evidence. You may ask yourself well, what do we mean by two
18 types of evidence, and these two types of evidence that you
19 can consider in reaching a verdict are described or called
20 direct evidence or circumstantial evidence. Those are the
21 two types of evidence you have the right to consider.

22 Now, direct evidence is testimony by a witness who
23 claims to have direct knowledge of the facts about which
24 that witness testifies. That means that's a witness who
25 claims to have actually participated in the event, was an

1 eye witness to the event, or somehow has some direct
2 knowledge of the facts upon which that person testifies.
3 So, that's what we refer to as direct evidence on a point.

4 Circumstantial evidence, however, is different. It's
5 proof of a chain of facts or circumstances that indicate the
6 existence of a fact. It's been described as collateral
7 facts from which a main fact could be reasonably inferred.

8 Now, I like to use a simple example of what might be
9 meant by proof of a fact by proving collateral facts from
10 which a main fact can be inferred. That's kind of fancy
11 lawyer language to me, but I like to give you a little
12 different way of looking at it.

13 Let's say last night, before you went to bed, you
14 walked to the window, looked outside, the stars were
15 shining, it was a beautiful night out. You slept well all
16 night, didn't wake up at all, and the next morning you
17 walked to the same window, and you noticed the sun was up.
18 When you looked a little closer, you noticed there was water
19 dripping from everything outside. There were puddles in the
20 road or the driveway or in the grass in front of the
21 building that you were in.

22 Now, during that night, you slept well all night. You
23 didn't see it rain. You didn't hear it rain. But from
24 collateral facts that you know to be true, you could
25 reasonably infer another fact. That other fact is well, it

1 rained last night sometime during the night. So, that's
2 what we mean by proof of a chain of facts or circumstances
3 that indicate another fact or proof of collateral facts from
4 which a main fact might be reasonably inferred.

5 Now, the law doesn't make a distinction between the
6 weight or the value that you, the jury, can give to either
7 direct or circumstantial evidence nor is there a greater
8 degree of certainty required of circumstantial evidence than
9 that of direct. I will tell you that you should weigh all
10 of the evidence in this case, both circumstantial and direct
11 evidence, and I will tell you, after weighing all of the
12 evidence, if you're not convinced of the defendant's guilt
13 beyond a reasonable doubt, you must find the defendant not
14 guilty. On the other hand, if you're firmly convinced of
15 the defendant's guilt beyond a reasonable doubt, you must
16 find the defendant guilty.

17 In doing your job as jurors, you must determine the
18 credibility of the witnesses that you've heard during this
19 case, and credibility simply means believability. It's your
20 duty, as I told you, to analyze the evidence, evaluate the
21 evidence, and determine what evidence convinces you of its
22 truth.

23 In determining the believability of the witnesses who
24 testified in the case, you can believe one witness over
25 several or several over one. You can believe part of, all

1 of, or none of what a witness may have told you. You have
2 the right to accept one witness against all the others or
3 all the others against one. You're the sole judges of the
4 credibility of the witnesses, and you're the sole judges of
5 the, of the weight, the truth, and the value of the evidence
6 that you've heard in this case.

7 Now, ladies and gentlemen, during this trial we did
8 have a, a witness or two witnesses who testified that were
9 qualified as experts in this case, and I explained to you at
10 the time that I would talk to you in a little more detail
11 about those witnesses at a later time and I'll talk to you
12 about it right now.

13 I explained to you that generally lay witnesses are not
14 allowed to give opinions in their testimony. They're
15 required to testify concerning facts within their knowledge,
16 and I explained that an exception to that general rule
17 exists for witnesses we call expert witnesses. Those are
18 witnesses who, because of their education, experience, have
19 become experts in some art, science, or professions. They
20 are allowed to state opinions that are relevant and material
21 to the issues in the case and within in the field in which
22 they claim to be experts. They have the right also to state
23 the opinions -- reasons for their opinions.

24 Now, you should consider the testimony given by experts
25 just like any other witness or evidence in the case. You

1 give that testimony the weight you think it deserves. As
2 the sole judges of the facts, you have the right to decide
3 whether an opinion is based on sufficient education,
4 experience. You have the right to conclude the reasons
5 given in support of opinions are not sound or that the
6 opinion is outweighed by other evidence. In other words,
7 you should weigh an expert's opinion just like any other
8 evidence given by any other witness, and an expert's
9 testimony not to be given greater weight simply because the
10 witness was an expert. You're not required to accept an
11 expert's opinions even though it is not contradicted.
12 Excuse me.

13 Now, I instruct you and I will emphasize to you that
14 the fact that the defendant did not testify in this matter
15 is not a factor to be considered by you in anyway in your
16 deliberations or in your consideration of the question of
17 the guilt or innocence of the defendant. It must not be
18 considered by you in any manner whatsoever. Every defendant
19 has a constitutional right to remain silent, and the
20 assertion of that right should not be considered by you in
21 your deliberations. I repeat, under your oath as jurors,
22 you are to draw no conclusions whatsoever from the fact that
23 the defendant, in this case, did not testify.

24 The fact that a defendant did not testify in a case
25 should not even be discussed by a jury in the jury room

1 during deliberations. The defendant is not required to
2 prove himself innocent. The burden of proof is upon the
3 State and that burden is to prove -- and the State alone and
4 that burden is to prove the defendant's guilt beyond a
5 reasonable doubt.

6 Now, I went over with you the charge of murder. I'm
7 going to go over the law on that particular charge at this
8 time. I went over the indictment with you for that charge,
9 and the defendant is charged with the offense of murder.

10 The State must prove, beyond a reasonable doubt, that
11 the defendant killed another person with malice
12 aforethought. Malice is hatred, ill will, or hostility
13 toward another person. It's the intentional doing of a
14 wrongful act without just cause or excuse and with the
15 intent to inflict an injury or under circumstances that the
16 law will infer an evil intent.

17 Malice aforethought does not require that malice exist
18 for any particular time before the act is committed, but
19 malice must exist in the mind of a defendant just before and
20 at the time of the act is -- that the act is committed.
21 Therefore, there must be a combination of the previous evil
22 intent and the act.

23 Now, malice aforethought can either be expressed or
24 implied. These terms expressed or implied do not indicate
25 different kind of malices, but it indicates the manner in

1 which they might be proven or shown to exist. That is
2 malice can be proven either by direct evidence or by
3 inference. Again, circumstantial evidence from the facts
4 and circumstances which are proved to you, the jury, to have
5 existed at the time of the event.

6 Express malice is shown when a person speaks words
7 which express hatred or ill will for another person or when
8 the person prepared beforehand to do the act which was later
9 accomplished. For example, lying in wait for a person or
10 any other acts done in preparation or -- tend to go to show
11 that the deed was within the defendant's mind and would
12 constitute evidence of express malice to be weighed by you
13 along with other evidence in determining that question.

14 The other offense that's been charged in this case is
15 the offense of kidnapping. The State must prove, for
16 kidnapping, beyond a reasonable doubt, that the defendant
17 knowingly and unlawfully seized, confined, inveigle,
18 decoyed, kidnapped, abducted, or carried away another person
19 without the authority of law.

20 To do a, to do a thing unlawfully is to do it willfully
21 against the law.

22 Knowingly means within the knowledge, consciously, not
23 accidentally.

24 Seized means to take hold of suddenly or forcibly.

25 Confine means to limit, restrict, or enclose within

1 bounds, imprison, or shut or keep in.

2 Inveigle means to lure, entice, or lead astray by false
3 representation, promise, or other deceitful means.

4 Decoy means to lure or as if by decoy. A decoy is
5 something to entice a person to a trap.

6 Kidnap is to remove a person against that person's will
7 by unlawful force or by fraud.

8 Abduct means to carry off, secure -- or secretly or by
9 force for an illegal purpose.

10 Carry away means to remove.

11 Now, the defendant does not have to prove -- I mean the
12 State does not have to prove that the defendant did all of
13 the things I just listed. Instead, if you find, beyond a
14 reasonable doubt, that the defendant did any of these
15 things, then you may find the defendant guilty of the crime
16 of kidnapping.

17 Now, something is done without the authority -- that's
18 done without the authority of law is something which the law
19 does not sanction, permit, allow, condone, or provide
20 justification for. Kidnapping does not have to be for any
21 personal or monetary gain or for any particular illegal
22 purpose, but it may be for any reason whatsoever that is not
23 justified under the law.

24 Now, ladies and gentlemen of the jury, I'm going to
25 give to you the indictments. I will provide you with a

1 verdict form in just a few minutes for you to consider in
2 your deliberations. I will advise you that your verdict on
3 both counts, and there's two different charges, so they'll
4 have to be separate verdicts, those verdicts must be
5 unanimous. You should consider this case separately. You
6 have the right to convict the defendant on either or both of
7 the charges or on neither of the charges. In other words,
8 each indictment must be considered by you separately from
9 the other indictment, and a separate verdict must be
10 rendered as to each indictment without regard to your
11 verdict on the other indictment. So, each case brought
12 against the defendant must be considered by you separately
13 and a separate verdict must be rendered on each of those
14 indictments.

15 Again, before the jury can reach a verdict, there must
16 be unanimous agreement among the jury in order for a verdict
17 to be reached. All of you must agree upon the verdict
18 before the verdict is the verdict of the jury.

19 I've gone over a lot -- a good number of things with
20 you. I want to be sure that I haven't misspoken about
21 something. So, I'll talk to the attorneys about that
22 briefly.

23 Also, you're entitled to receive all of the evidence in
24 the case back in the jury room for your consideration while
25 you're in your deliberations, and so I want to be sure that

1 only the properly admitted evidence is given to you for your
2 consideration. I will go over that with the attorneys as
3 well to be sure that only the proper evidence is with you in
4 the jury room.

5 So, Mr. Foreman, I'm going to ask you, again, to take
6 the jury to the jury room, and, at this time, do not begin
7 any discussions whatsoever about the case until I bring you
8 back to the jury room for your final instructions in this
9 matter.

10 Do you understand, sir?

11 THE FOREMAN: I understand.

12 THE COURT: All right. You may retire to the jury
13 room.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. Are there any exceptions or
17 objections to the charge from the State?

18 SOLICITOR BARNETTE: No, sir.

19 THE COURT: Any from the defense?

20 MR. MCGUIRE: No, sir.

21 THE COURT: All right. I'll ask you to come forward
22 and reach an agreement as to the exhibits to be presented to
23 the jury. Be sure we have the proper exhibits segregated.
24 My law clerk will have a verdict form. Please review that
25 to see if there's any objections to the verdict form.

1 SOLICITOR BARNETTE: Your Honor, the alternates will be
2 taken out?

3 THE COURT: They'll be taken out. They're not
4 deliberating yet.

5 SOLICITOR BARNETTE: Yes, sir, that's what -- I was
6 reminding myself about that.

7 THE COURT: Oh, I'm aware of that. Not a problem.
8 (Pause.)

9 SOLICITOR BARNETTE: May we approach for one second?

10 THE COURT: Mr. McGuire, I believe he wants you to come
11 up here. Come on up.

12 SOLICITOR BARNETTE: It's related to the case.

13 (WHEREUPON, a bench conference was held at this time.)

14 THE COURT: All right. Mr. Barnette, have you and -- I
15 guess, Mr. Bulsa, you and Mr. Allen have gone over the
16 exhibits?

17 SOLICITOR BULSA: Yes, sir.

18 THE COURT: Have we segregated the exhibits that are to
19 go back to the jury?

20 SOLICITOR BULSA: Yes, sir.

21 THE COURT: And they're in the box here?

22 SOLICITOR BULSA: Yes, sir.

23 THE COURT: Do you agree?

24 MR. ALLEN: I agree.

25 THE COURT: All right. And I've had you look over the

1 verdict form I've prepared.

2 Is there an objection to the verdict form from the
3 State?

4 SOLICITOR BARNETTE: No, sir.

5 THE COURT: Any from the defense?

6 MR. MCGUIRE: No, sir.

7 THE COURT: All right. Bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect the
11 jury has returned to the courtroom.

12 Mr. Van Der Plaat, I'm gonna have Mr. Ruth hand you
13 some documents.

14 (Bailiff complies.)

15 THE COURT: All right. The top document is the verdict
16 form that will be in use for this case. The top of the
17 verdict form, if you'll take a look at it, indicates the
18 county and state that we're in, the Court that we're
19 involved in, and the caption of the case, The State against
20 Mr. Blackwell. There are two questions on that verdict
21 form. One question as to each indictment.

22 The first question is as to the charge of kidnapping.
23 The choices below that, that question are either not guilty
24 or guilty. There's a line, blank line before those two
25 verdicts. You'll either put an X or a check on the

1 appropriate verdict once the jury has unanimously reached
2 that verdict.

3 The second question is as to the charge of murder.
4 Again, the choices are not guilty or guilty, and, again,
5 once the jury's reached a unanimous verdict as to that
6 charge, you will put a check on the appropriate line in
7 front of the verdict. Then you would sign the document,
8 you'd knock on the door, and inform the, the bailiff that a
9 verdict has been reached. We will bring you back into the
10 courtroom in order to receive that verdict.

11 Do you understand the form?

12 THE FOREMAN: Yes, I do.

13 THE COURT: The other documents directly below that are
14 the two indictments in this case. I told you that I would
15 give you those so that you could take those back to the jury
16 room for your consideration.

17 Now, the exhibits have been placed in the box over
18 here. They will go back there with you.

19 There are two disks on there that would require
20 assistance in playing those disks. If you would like to
21 listen to those disks during your deliberations, Mr. Van Der
22 Plaat, if you'd let me know that you do wish to do that. We
23 will either provide you with a means of playing them or
24 would bring you back into the courtroom and allow you to
25 listen to those with, within the courtroom.

1 You have the right to review the evidence if you'd like
2 to do so. That's up to you in your deliberations as to how
3 you do that, but there's not a computer or a playing device
4 in the jury room. You would have to ask for that.

5 Do you understand that?

6 THE FOREMAN: Yes, I do.

7 THE COURT: Now, also, if the jury has any questions
8 during your deliberations, you need to agree on the form of
9 the question. The foreperson is the person who would write
10 that question on a piece of paper, knock on the door, pass
11 it to the bailiff and the bailiff will submit that question
12 to me for my review. I'm not allowed to answer every
13 question that you may have in your deliberations. I've
14 already told you I can not get involved concerning your
15 decisions on the facts. I can answer questions concerning
16 the law that I've charged, some questions, limited questions
17 about the evidence, and the procedure that we followed.

18 However, Mr. Foreman, I'm asking you not to edit any
19 question the jury might have. If the jury agrees on a
20 question, submit it to me. I'll decide the appropriate
21 answer.

22 Do you understand how that would be handled?

23 THE FOREMAN: Yes, sir, I understand.

24 THE COURT: All right. Now, the law says that the jury
25 itself, the 12 people that are on the jury, will be those

1 that carry out the deliberations.

2 For that reason, I'll ask the two alternates to remain
3 seated at this point in time.

4 I am now going to instruct the jury to go back to the
5 jury room, begin your deliberations, report to the bailiffs,
6 once verdicts have been reached.

7 You may retire at this time. Thank you very much.

8 Ma'am, you remain -- you can step out of the way. That
9 will be fine. Probably a good idea. That place wasn't
10 built for an actual person.

11 (WHEREUPON, the following takes place outside the
12 presence of the twelve jurors.)

13 THE COURT: Now, they -- close the door.

14 Now, while you're not allowed to participate in the
15 deliberations of the jury at this point the time, you're
16 still alternates on the jury because there is a possibility
17 the trial will continue. You would -- so, you would serve
18 as alternates for the remainder of the trial as well. For
19 that reason I'm going to have the bailiffs place you in a
20 different jury room where you will not be in contact with
21 anyone. You should not discuss this case among yourselves
22 still until and unless you might be placed on the jury by
23 the Court.

24 You understand my instructions thus far?

25 (WHEREUPON, both alternate jurors answer in the

1 affirmative.)

2 THE COURT: All right. At this time I'll ask the
3 bailiffs to take you to another jury room. I will be
4 getting you once a verdict's been reached.

5 Thank you very much.

6 (WHEREUPON, the following takes place outside the
7 presence of the entire jury panel.)

8 THE COURT: Any objection to my final instructions to
9 the jury from the State?

10 SOLICITOR BARNETTE: No, sir.

11 THE COURT: Any from the defense?

12 MR. MCGUIRE: No, sir.

13 THE COURT: All right. Then we will be in recess until
14 such time as we've been informed that a verdict has been
15 reached.

16 Everyone remain seated while the defendant leaves the
17 courtroom.

18 (WHEREUPON, the jury began deliberations at 4:08PM and
19 returned with a verdict at 4:29PM.)

20 THE COURT: All right. I have been informed by the
21 bailiffs that a verdict has been reached in the case.

22 I will caution anyone in the courtroom that, depending
23 on the verdict, this jury may be involved in additional
24 hearings in this case. So, therefore, the Court will not
25 tolerate any outbursts or showings of emotion during this

1 period. If you have any difficulty in controlling your
2 emotions in such a situation, I would suggest that you leave
3 the courtroom at this time because, again, the Court will
4 not tolerate any type of outbursts or emotional displays
5 during this particular phase of the hearings.

6 Anyone who wishes to leave can leave at this time.

7 (No response.)

8 THE COURT: State ready to receive the verdict?

9 SOLICITOR BARNETTE: State's ready, Your Honor.

10 THE COURT: Defense ready?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: Mr. Foreman, I've been informed that a
16 verdict has been reached.

17 Is that true?

18 THE FOREMAN: Yes, Your Honor.

19 THE COURT: Pass the form to the bailiff.

20 (Foreman complies.)

21 THE COURT: Thank you, sir.

22 You can be seated.

23 (Foreman complies.)

24 THE COURT: The form appears to be in order.

25 Madam Clerk, you may publish the verdict.

1 THE CLERK: In the State of South Carolina, County of
2 Spartanburg versus Ricky Lee Blackwell, Senior, the jury
3 unanimously finds the defendant, Ricky Lee Blackwell, Senior
4 concerning defense (sic) of kidnapping, Indictment Number
5 2009-GS-42-3609, guilty.

6 The jury unanimously finds the defendant, Ricky Lee
7 Blackwell, Senior, concerning the offense of murder,
8 Indictment Number 2009-GS-42-3610, guilty.

9 Ladies and gentlemen of the jury, if this your verdict
10 and still your verdict, if so, please raise your right-hand.

11 (WHEREUPON, all juror raise their hands at this time.)

12 THE CLERK: So say you all.

13 THE COURT: Thank you.

14 Anything further from the State before I proceed?

15 SOLICITOR BARNETTE: None from the State, Your Honor.

16 THE COURT: Anything further from the defense?

17 MR. MCGUIRE: No, sir.

18 THE COURT: All right. Now, ladies and gentlemen of
19 the jury, I'm going to ask that the bailiffs take you back
20 to the jury room. As you are probably aware, we will be
21 proceeding in this case.

22 So, at this point in time my instructions will be to
23 you, again, not to discuss this case any further among
24 yourselves at this point in time. Do not allow -- even,
25 even casual discussion between you about this matter would

1 be prohibited by my instructions.

2 Do you understand, Mr. Foreman?

3 THE FOREMAN: Yes, I do.

4 THE COURT: All right. I'm gonna ask you to step back
5 to the jury room for a few moments, and then we'll be
6 communicating with you shortly.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Anything further from the State
10 at this point in time?

11 SOLICITOR BARNETTE: Nothing from the State, Your
12 Honor.

13 THE COURT: Anything from the defense?

14 MR. MCGUIRE: No, sir.

15 THE COURT: All right. The statute provides for a
16 24-hour waiting period.

17 Any objection to my ordering the 24-hour waiting
18 period?

19 MR. MCGUIRE: We'd waive it.

20 THE COURT: So, you wish to waive that?

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: All right. In that situation, the statute
23 reads that the Court will convene the second phase of the
24 trial as soon as practicable.

25 Is there any specific request concerning when that

1 portion of the trial would begin from the State?

2 SOLICITOR BARNETTE: Your Honor, we'd like to start
3 later tomorrow just to make sure we have our witnesses lined
4 up and everything from there.

5 THE COURT: You were anticipating a 24-hour waiting
6 period?

7 SOLICITOR BARNETTE: We were, yes, sir. I just assumed
8 that the defense -- every trial I've ever had they've taken
9 the 24-hour period.

10 THE COURT: Oh, I understand.

11 And any problem with the defense if we start after
12 lunch tomorrow?

13 MR. MCGUIRE: If they need some time, that's fine.

14 THE COURT: Okay. Then I'm gonna inform the verdict
15 (sic) that we will take a short break in the trial, that we
16 do anticipate starting after lunch tomorrow and I will
17 instruct them again that they should not discuss the case
18 any further at this point in time.

19 I will need the two alternates brought in with the
20 jury. So, if you'll get them and bring them back in as
21 well.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. Ladies and gentlemen, at this
25 point in time the statute that governs these types of

1 proceedings provides for a 24-hour waiting period before the
2 second phase of the trial would begin. I'm in discussions
3 with the attorneys at this time and it may be that we will
4 shorten that period of time.

5 So -- but I will tell you that, during the waiting
6 period, you are instructed not to discuss this case any
7 further at this point in time. Your deliberations are
8 complete concerning the verdict and the issues that have
9 been placed before you, and it would be improper for you, at
10 this time, to further discuss any aspect of this case,
11 anything about this case until such time as I instruct you
12 to begin your deliberations in the second phase of the
13 trial.

14 So, do you understand my instructions, Mr. Foreman?

15 THE FOREMAN: Yes, Your Honor.

16 THE COURT: Okay. So, the jury should not discuss this
17 matter at all in any fashion with anyone or among yourselves
18 until I've asked you to do so at a future time.

19 Do you understand that?

20 (WHEREUPON, the jurors respond in the affirmative.)

21 THE COURT: Now, I'll inform your -- the people who are
22 taking care of you as to when you'll need to be back in the
23 Court. So, we'll be getting that information to you
24 shortly.

25 So, in the mean time, I'll ask that you follow my

1 instructions and I will discharge you at this time for the
2 remainder of today. You'll receive additional instructions
3 later on.

4 Thank you very much and you're free to go into
5 sequestration.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: Concerning the timing of the second
9 hearing, one thing does concern me a little bit, Mr. Allen
10 and Mr. McGuire.

11 The statute does say that the, that the defendant can
12 waive that. I would like to put on the record that
13 Mr. Blackwell understands that he has the right to request
14 that waiting period, and that he agrees with the decision
15 that you've announced to the Court.

16 So, Mr. Blackwell, you remain under oath as you were
17 sworn earlier.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Blackwell, your attorneys have
22 indicated that they, on your behalf, are willing to waive
23 all of or a portion of the 24-hour waiting period that is
24 statutorily provided for between the guilt phase and the
25 penalty phase of the trial.

1 Do you understand that the statute does provide for
2 such a waiting period?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Do -- your attorneys have
7 announced to the Court that they would like to waive that
8 24-hour period and proceed as soon as practicable.

9 Do you agree with that decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you asking the Court to proceed in
12 that fashion?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Well, given the State's request
15 for some time to get prepared and because normally this
16 would be a 24-hour waiting period, I do find that, that it
17 would be practicable to begin this hearing after lunch. I
18 expect to resume the trial at 1:30 tomorrow afternoon.

19 So, Court is in recess until that time.

20 Thank you very much.

21 SOLICITOR GHENT: Thank you, Your Honor.

22

23 (WHEREUPON, Court was in recess for the evening.)

24

25

1 Thursday, March 13th, 2014

2
3 (WHEREUPON, an indictment was marked as State's Exhibit
4 No. 47. A birth certificate was marked as State's Exhibit
5 No. 48. A death certificate was marked as State's Exhibit
6 No. 49. Five photographs were marked as State's Exhibit
7 Nos. 50 through 54. A diagram was marked as State's Exhibit
8 No 55. The juror questionnaires were marked as Court
9 Exhibit No. 9. All of the above exhibits were for
10 identification purposes only at this time.)

11 THE COURT: All right. Mr. Barnette, State ready to
12 proceed?

13 SOLICITOR BARNETTE: Yes, sir, but we do need to make a
14 motion to take everything from the guilt phase and move it
15 into evidence for the sentencing phase, Your Honor.

16 THE COURT: Any objections?

17 MR. MCGUIRE: We don't object.

18 THE COURT: Subject to your previous objections.

19 MR. MCGUIRE: Subject to previous objections, and not
20 only do we not object, we join in the motion --

21 THE COURT: All right.

22 MR. MCGUIRE: -- that all -- the jury would be able to
23 consider all evidence properly admitted in the guilt phase.

24 THE COURT: All right. I'll grant the motion subject
25 to defense's previous objections.

1 Anything further from the State at this time?

2 SOLICITOR BARNETTE: No, sir, other than, other than
3 matters I guess we'll deal with when they come up.

4 THE COURT: We will.

5 Defense ready to proceed?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: All right. Let's bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Thank you, Mr. Ruth.

11 All right. Ladies and gentlemen, the jury has returned
12 to the courtroom.

13 If any of you have had any difficulty in following my
14 instructions concerning your behavior thus far, I'd ask that
15 that juror please stand if that's the case.

16 (No response.)

17 THE COURT: It appears that all jurors have been able
18 to follow the Court's instructions thus far.

19 I trust everyone had a good evening.

20 At this point in time, the defendant, Ricky Lee
21 Blackwell, Senior, has been convicted of the crime of
22 murder. For that conviction the State seeks the imposition
23 of the death penalty. Therefore, at this time, we must
24 consider the -- conduct this additional proceeding to
25 determine the appropriate punishment that the Court is to

1 impose upon the defendant for the crime of murder.

2 I will tell you that Code Section 16-3-20 of the South
3 Carolina Code of Laws, as amended, and I'm paraphrasing from
4 that statute, provides in part that, upon the conviction of
5 a defendant for the crime of murder, and in this
6 circumstance where this penalty is being sought, the Court
7 shall conduct a separate sentencing proceeding to determine
8 the appropriate penalty, whether that should be, that should
9 be sentenced and that is to determine whether the defendant
10 should be sentenced to death or life imprisonment. Our
11 purpose in conducting the proceeding at this time is to
12 determine whether the defendant, Ricky Lee Blackwell,
13 Senior, should be sentenced by the Court to death or life
14 imprisonment.

15 Now, with respect to your particular role in this
16 proceeding, you will be asked to listen to the evidence,
17 both aggravating evidence and mitigating evidence, and to
18 recommend to the Court whether that sentence of -- should be
19 imposed. That is either death or life imprisonment.

20 You will hear testimony of aggravating circumstances,
21 if any, surrounding the murder, and you will hear testimony
22 in mitigation and extenuation. When this is done, each side
23 will present arguments for and against the, the penalty in
24 this case, and I will give you certain instructions
25 concerning the law at that time. Once you have received all

1 of the evidence, heard the arguments, and received the
2 Court's instruction on the law, you will be asked to retire
3 to deliberate whether you will return a sentence of death or
4 life imprisonment in this case.

5 At this point in time, the attorneys will make their
6 opening comments concerning this stage of the proceeding.
7 Thereafter we will receive the evidence as required by
8 statute.

9 State may proceed.

10 SOLICITOR BULSA: Thank you, Your Honor.

11 Please the Court?

12 THE COURT: Yes, sir.

13 SOLICITOR BULSA: Good afternoon, ladies and gentlemen.

14 It's a more somber moment. As I was thinking about
15 what I was gonna talk to you today about, my thoughts turned
16 to my own children. I have four. My youngest is nine, one
17 year older than Brooke was when she was murdered. My middle
18 son is 13, the age that Brooke would of been today had she
19 lived. My only daughter is sixteen -- is 15, a freshman in
20 high school. My oldest is 17 planning his future in
21 college.

22 I thought of the fine joy I have everyday walking --
23 when I go home. How my youngest rushes to tackle me and
24 wrestle me. I chuckled just last weekend when my daughter
25 shared the experience of watching the movie Frozen on a

1 little Iphone with her friend. These are experiences that
2 Brooke never had. These are experiences that Kelly
3 and Bobby Center will never cherish.

4 Thank you, ladies and gentlemen for your verdict
5 yesterday. Thank you for speaking the truth. Thank you for
6 speaking for this community and for Kelly and Bobby Center.

7 I thought back at how the trial went, as how, in the
8 opening statement by the defense attorney, he pretty much
9 conceded the guilt of Mr. Blackwell. I thought about the
10 questioning that he gave or asked of Angie Davis. I thought
11 about his closing statement, how he asked you to find a
12 quick verdict. I thought about the blame he tried to shift
13 to Angie Davis for the brutal acts of the defendant.

14 I submit to you, ladies and gentlemen, to remember
15 that. I submit to you that perhaps he asked for that brutal
16 or for that quick verdict because he didn't want you to look
17 closely at the brutality of this act. Please recall the
18 facts as they were presented yesterday.

19 There was some things that went said and some things
20 that might of flown under the radar. It was pretty ironic,
21 I thought, that Angie got out of the car to pick up a dog to
22 keep from biting Brooke when the real monster lurking was
23 the defendant. I thought it ironic that the only way we
24 could truly prove that we had the murder weapon was because
25 one of the bullets went in and out and into her arm striking

1 her bone. That's what kept it in her arm. That was the
2 only one that we had to compare to that gun.

3 Perhaps the defense attorney asked you to make such a
4 quick finding because the evidence was so overwhelming.
5 There was no doubt, there is no doubt, that he is the
6 killer.

7 But remember these facts. The defendant no longer
8 lived at Ridings Road. He did not stay at that
9 residence. He had no reason to be there at that residence.
10 The defense attorney asked both Angie and Mark about the
11 furniture being moved from that residence.

12 So, why was he there that day?

13 I submit to you Angie told you. Mark told you he came
14 looking for his medicine and a cell phone earlier in the
15 morning. He had to reason to stay because Mark didn't have
16 it. Angie said he met her at her mother's house and asked
17 her to go see the grandkids, and she went to try to do that.
18 Recall that Brooke was with Angie at her mother's house.

19 Now, it's clear that, when she arrived, the defendant
20 was there.

21 How long had he been there?

22 We don't know.

23 We know his truck was parked in the garage. We know
24 the gun case that was used to carry the gun was in that
25 truck. We know the gun was not in that case. We know the

1 defendant had to leave from if he'd been there to check
2 it out. He came over to .

3 what was he yielding?

4 A gun. That suggests planning. Looking for trouble.

5 And what does he do?

6 He grabs an eight year old little girl.

7 Ladies and gentlemen, perhaps the defense attorney
8 didn't want you to focus on the brutality of the shooting,
9 the nine bullet holes that Doctor Wren described. Perhaps
10 he didn't want you to consider and listen to those frantic
11 9-1-1 calls, but you will have all that to consider again in
12 this stage of the case.

13 At this stage, we're here, as you all were advised when
14 you were individually voir dired, asked questions, this is
15 the, of course, the penalty phase. The State will go first
16 to present the aggravating circumstances. I submit to you
17 that you pretty much already decided those, the murder of a
18 child, 11 years old or under, eight year old little girl,
19 and murdered during the commission of a kidnapping. The
20 seizing and dragging away of Brooke .

21 Now, the State will present additional evidence to
22 support those aggravators and to show you a bigger picture,
23 but the defense will submit some mitigating circumstances.
24 I'm not quite sure what they're gonna do. I, I suspect
25 they're gonna try to call some doctors to try to allege some

1 sort of mental defect or even mental retardation.

2 But I'm asking you at this point, ladies and gentlemen,
3 to view that evidence with your God given common sense. You
4 will hear how this man lived a normal life. He had
5 children. He held jobs. He's not retarded. He had no
6 mental defect. He acted out of jealousy and anger. He
7 acted out of evil. He was angry at Angie and Bobby.

8 what did the coward do?

9 He grabbed an eight year old little girl and blew --
10 literally blew her brains out.

11 Now, ladies and gentlemen, we saw a multitude of
12 pictures of the crime scene, and you saw a sheet in the
13 background. That's all you saw of Brooke .
14 You don't even know what she looks like. All we got to show
15 you was a sheet on the ground.

16 well, we're gonna pull that sheet away at this stage.
17 we're gonna introduce some victim impact on how she touched
18 her community. You're gonna hear some statements the
19 defendant made the day of this crime, and you're gonna see
20 the extent of her wounds. We will pull this sheet away and
21 show you the brutality of the defendant, and I submit to
22 you, ladies and gentlemen, that will show you his true
23 character, and why he deserves the death penalty.

24 Thank you.

25 THE COURT: Mr. Bulsa, if you'll put the exhibits back

1 with the court reporter please.

2 (Solicitor Balsa complies.)

3 THE COURT: Thank you, sir. Thank you.

4 Mr. McGuire.

5 MR. MCGUIRE: Thank you, Your Honor.

6 Good afternoon.

7 I hope everybody's doing as well as you can under these
8 circumstances. I, I told you that I was sorry at the very
9 beginning that you had to be here. Nobody volunteered for
10 this, and I am sorry that you have go through this trial.

11 I'll start with some comments that the prosecutor made
12 about a quick verdict. There was nothing to pause about
13 with regard to the guilt of Ricky Blackwell. That was
14 pretty simple. He's never -- we've never stepped away from
15 the fact that this happened that day and it's, it's tragic,
16 and I want you to know that, that, when I speak, I don't, I
17 don't speak a word against Brooke, against Brooke .
18 I'll tell you, I have two boys too, mine are six, and
19 there's no doubt that her life was precious and what
20 happened is tragic. There's, there's no doubt about that,
21 but I don't speak against Brooke in any way
22 whatsoever.

23 The, the question you have now is, is Ricky Blackwell
24 so evil, the most evil of the evil, the worst of the worst,
25 the dangerous of the dangerous?

1 Is he a cold and calculated killer with nothing
2 redeeming in him?

3 Is he so far beyond redemption?

4 Is there not a spark of humanity in him?

5 Is he so bad that we have to kill another human being
6 and take him off the planet, to send him to a death chamber
7 for either electrocution or lethal injection?

8 That's the question. That's the question.

9 You know we all talked to you -- we talked to you in
10 voir dire about religious issues and moral issues, and, and
11 one of the things that, that's clear is that the judge was
12 very clear with everybody that you could not ever vote for
13 the death penalty automatically based on a child being the
14 victim of the crime, and you have to, the law requires you
15 to look at the man, Ricky Blackwell, and look at his life,
16 and see who he is as a human being, and look at his
17 background, his record, his character.

18 You're gonna find that he's a simple, simple man born
19 to a simple family. His father had a test and his father's
20 IQ was 60. Ricky's has been tested with a big test, a good
21 standardized test, two times, and the first score was 63,
22 and the second one was 68, and I will tell you, the
23 prosecutor said use your common sense. Well, I'll tell you
24 a cold hard fact. If you score those scores in the sixties,
25 98 percent of this country is smarter than you.

1 He's in the bottom two percent. That's science.
2 That's science telling you that, and you will hear about his
3 school and how he has what are called deficits, and when you
4 add up the, the scores on the IQ test with his deficits,
5 they equal the definition of mental retardation, and you
6 will hear doctors talk to you about that.

7 He, he didn't finish high school. He was in special
8 education classes. He was in a class called agriculture.

9 You know what they let him do?

10 He cut the grass. He cut the grass at the high school
11 cause he was so polite, he had a good temperament, but he
12 couldn't do academic work. So, they let him go cut the
13 grass during school house, and he would be excited about
14 using the, the little lawn machine to smooth out the dirt on
15 the baseball diamond. He would do that instead of academic
16 work. That's, that's the kind of student he was, but he
17 was -- they trusted him. He was nice. He was good.

18 But he couldn't finish high school. He couldn't finish
19 high school, and he had manual labor jobs. All of his jobs
20 in his life involve moving one thing from here to there and
21 sometimes it was with his hands, sometimes it was on his
22 back, sometimes it was on a forklift, and sometimes it was
23 on the back of an 18-wheeler. And you'll hear he did drive
24 18-wheelers. He went to the -- he went over the road to
25 other states, and you'll hear that a mental retardation case

1 like Ricky's he can, he can have strengths and he can
2 achieve and he definitely achieved with work. He --
3 everybody loved him at work.

4 You're gonna hear from some of his supervisors. You're
5 gonna hear from one of his supervisors where he drove the
6 forklift and she's gonna say I wish I had a hundred Ricky's.
7 He was so good. He was trustworthy. I could depend on him.
8 We talked about God and he was a Christian. He was a good
9 man and I wish I had a hundred of him, and that will be from
10 Ms. Gail Shook, one of his employers, one of his
11 supervisors.

12 But you'll hear that he can have strengths and he
13 worked hard, and when you'll hear that, when he had cancer,
14 he was out -- he was disabled for about ten years, but he
15 went back to work. When he got up, he got off the public
16 dole and he went back to work cause he was a worker and he
17 wanted to be worker. He wanted to be a good man. That's
18 who he is. These are all instances of things he's done, how
19 he's acted in the world and who he is.

20 You'll hear that he met Angie. He met Angie at church.
21 They were going to church together. He courted her at
22 church. They got married. He loved her. He adored her.
23 Everybody that knows them knows that he adored her. She was
24 the sun in his universe and the air that he breathed.

25 Unfortunately, some of the drugs that he took with

1 regard to chemotherapy and some other mental health issues,
2 they rendered him less of a man in bed. I don't know how to
3 say that otherwise, and Angie took up with Bobby Center, and
4 she started smoking and she started wearing short shorts and
5 she got a tattoo on her back, and she became this very
6 sexual being, and Ricky had to see the, the sun in his
7 universe, the woman that he adored more than anything, leave
8 him and become a fully satisfied sexual being with Bobby
9 Center.

10 You'll hear about the time where Ricky tried to commit
11 suicide in December. Remember she left him around November,
12 and, in December, she said some very mean things to, to
13 Ricky about being intimate and sexual with Bobby and made a
14 comment about we have enough insurance on you, if you die,
15 we'll retire comfortably, and Ricky -- those words, the
16 power that woman had over him, those words caused him to
17 immediately try to take his life, and he was checked into a
18 mental hospital where he couldn't leave. He was
19 involuntarily committed to a mental hospital. He couldn't
20 leave until they thought he was okay enough to, to leave.

21 You'll -- and then this incident happens just about 20
22 weeks after that. That's the state he is. He's a man in a
23 million shattered pieces. He has limited skills with his
24 intellect. With regard to his emotions, he's -- he has a
25 major depressive order. He's under a doctor's care for

1 that. He goes to his doctor and he sobs everyday about why
2 is she doing this to me, why did she leave me. He sobs to
3 his doctor. He goes to his pastor that you'll hear from,
4 and it was the same story everyday. He would just sob, why
5 won't she come back, why is she doing this.

6 The pastor, you'll hear, even harbors a little bit of
7 guilt about this because Ricky was depressed. He would
8 see -- he would see him on a regular basis, almost everyday.
9 They would call. He'd go there. And the pastor was out of
10 town when this happened.

11 He got back. He tried to call Ricky the night before,
12 and Ricky's phone didn't have any minutes on it. He
13 actually says if we would of had one of our visits, I think
14 he may of been a little stronger and this maybe not would of
15 happened. That's his pastor, Pastor Rice.

16 You'll hear that Ricky, despite his limited intellect,
17 tried to do good things and tried being a good man. You'll
18 hear from Pastor Rice that Pastor Rice came by Ricky's house
19 one time, and Ricky was trying to learn his Bible, but
20 because he had his limited intellect, he had a dictionary
21 opened, and Angie was helping him, and she had a piece of
22 paper, a pad, so they could translate some words and get
23 definitions of words. I mean that's how he had to try to
24 learn his Bible, with the help of a dictionary.

25 I, I don't have a lot of charity in my heart right now

1 for Angie. I don't. But I can tell you that everybody will
2 tell you that they seemed like a perfect happy couple, a
3 perfect happy couple with no, no hint of discord or, or any
4 problem until she just kind of left, and which you'll hear
5 is -- she was hiding bills. She was hiding credit card
6 bills and some foreclosure bills and things like that, and,
7 and basically she was spending money with Bobby Center and
8 not paying the bills. Ricky found the bills one day.
9 That's the day she walked out. That's, that's when she
10 walked out when he realized she was spending money, running
11 around with Bobby, and when he found the bills.

12 This is not a premeditated cold and calculated murder.
13 The evidence is gonna show that this is happenstance type
14 event that Angie came over. There's no planning or anything
15 else. You'll hear -- I think you'll use your good common
16 sense, and, and you'll say you know what, I want to hear
17 about that suicide around Christmas when Angie was just mean
18 in her words and cut him to the bone and he tried to kill
19 himself, and I think you'll use your common sense and say
20 this event is closer to that than anything else you can
21 imagine.

22 You'll hear Ricky's completely kind with children.
23 Everybody that knows him says not a bad word about him.
24 Nobody says any bad about him at all.

25 I can tell you that your verdict right now has already

1 guaranteed he will go to prison for the rest of his life.
2 I'm not arguing that he be shown any more leniency than to
3 just let him go to prison for the rest of his life.

4 Is there anything in him that's worth redemption, a
5 spark of humanity?

6 The answer will be yes.

7 Is he the evil of evil, the most worse of the worse,
8 the dangerous of dangerous?

9 We all agree the death penalty is the last resort.

10 Is he the kind of man that should go to prison and let
11 God take him when God wants him?

12 You're gone hear that he's a Christian man. He's got a
13 relationship with God and he's tried to be good and tried to
14 be that Christian man and he's tried to see his pastor. I
15 mean his pastor will tell you a story about he cut his hair
16 one time cause he read a passage in the Bible that said you
17 needed to cut his and he cut his hair. I mean he's that
18 literal with the Bible. And you're gonna find, when you
19 hear the evidence about his relationship with his pastor and
20 his relationship with God, you're gonna conclude that he is
21 in God's -- he's in the cradle of God's hands, and I'm gonna
22 ask you to leave him there.

23 Leave him there. Let him go to prison. One day --
24 he's 55 years old. He won't be there long. Prison is
25 rough. He won't be there long. But let him stay in the

1 cradle of God's hand until God takes him. They'll be a day
2 one time, they say roll call, come out of your cell block.
3 well, come out of your cell and he won't stir and he'll be
4 under a gray blanket and the guard will say Blackwell, roll
5 call, and God will have taken him, and that's what we need
6 to do.

7 when you look at the man as a whole, and who he is, and
8 ask yourself do you absolutely -- is he so bad where we have
9 to call him from the herd of the human race?

10 Do we have to extinguish his life and let him face
11 electrician or poison to stop his heart, and the answer is
12 no, no, no. Let God take him. Let God take him.

13 Thank you.

14 THE COURT: State may call its first witness.

15 SOLICITOR BARNETTE: May it please the Court, Your
16 Honor.

17 I want to introduce two statements that we originally
18 talked about earlier, State's Exhibit 48, which is the birth
19 certificate of Brooke , Your Honor, as well as
20 State Exhibit 49, which is the death certificate in this
21 matter.

22 THE COURT: Any objection to those documents.

23 MR. MCGUIRE: No, sir, I've seen them. We agree.

24 THE COURT: All right. They'll be admitted as marked,
25 Mr. Barnette.

1 (WHEREUPON, State's Exhibit Nos. 48 and 49 were
2 received into evidence at this time.)

3 SOLICITOR BARNETTE: And, Your Honor, if I can just
4 read off of the date of Heather's birth was September
5 th___

6 THE COURT: Yes, you may publish the documents.
7 They've been marked and received into evidence.

8 SOLICITOR BARNETTE: Thank you.

9 I just like to read to the jury. Her date of birth was
10 September th, . The date of death you already know,
11 July 8th, 2009.

12 Your Honor, like to call Mr. Sloan to the stand.

13 THE COURT: Come forward, sir. Come to my left and be
14 sworn please.

15 JOHN SLOAN, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat, sir.

18 (Witness complies.)

19 THE COURT: State your name.

20 THE WITNESS: John Sloan.

21 THE COURT: Thank you.

22 Mr. Barnette.

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q If you would, sir, please tell the jury where you live

John Sloan - Direct examination
By Solicitor Barnette

1 at, sir.

2 A Drive, Wellford, South Carolina.

3 Q And what do you do, sir?

4 A I'm a federal officer for Department of Homeland
5 Security Transportation Security Administration.

6 Q And, sir, do have any children yourself?

7 A Yes, sir, I have one.

8 Q And what's his name and how old is he, sir?

9 A H.S. . He's 13.

10 Q And did you know Brooke ?

11 A Yes, sir.

12 Q If you would, tell the jury how you knew her.

13 A I was a coach for D-5 Rebels baseball team. She played
14 for the Mets, five, five and six year olds.

15 Q Okay. And did she play with you for that season with
16 your team?

17 A Yes, sir.

18 Q If you would, tell, tell the jury about Brooke.

19 A Okay. Well, my son was playing that year. So, I
20 said -- I volunteered to be the coach or one of the coaches.
21 It was me and another coach. Brookie was our only female or
22 girl on our team, and so she was a girl playing with all
23 boys, which didn't bother her a bit. She was -- anything I
24 said for her to do she'd just look at me and smile real big
25 and she'd go do it.

John Sloan - Direct examination
By Solicitor Barnette

1 Her and my son, she took a liking to him and that was
2 his first girlfriend. They'd go out and, you know, I'd send
3 them out to the outfield because they wasn't real skilled as
4 far as catching the balls and stuff like that. So, you have
5 to protect your players. So, we'd the send the ones that
6 wasn't real good catching the ball out to the outfield and
7 keep our skilled players on the inside, and I'd look out in
8 the outfield and she'd be over there holding my son's hand,
9 you know, and I, I'd talk to them about that. You know, I'd
10 say y'all can't be holding hands in the outfield. Next time
11 they go out to the outfield, they'd be out there holding
12 hands again. That went on most of the season.

13 Now, being a coach, the hardest thing to do is not show
14 favoritism towards your own kids. So, everybody knowed me
15 as Coach John, and my son liked that because he didn't have
16 to call me dad. But him and Brookie, they exchanged
17 photographs and I know my son kept his on his nightstand
18 there and things.

19 So, whenever kids come around, and as a coach, we tried
20 to teach them to have fun, you know, when they was out there
21 playing the game and all, and it's not all about winning.
22 It's about, you know, enjoying the game.

23 So -- but we did want to win. So, we manufactured
24 runs, you know, and, by doing that we would get somebody on
25 first base and then the next guy come up and they would go

John Sloan - Direct examination
By Solicitor Barnette

1 to first base and push them around like that, and I
2 remembered the first time Brookie scored a run. She was on
3 third base. She hadn't never been to home plate before, and
4 I was the home plate coach. So, after the player would hit
5 the ball, we'd sit there and I'd be yelling, you know, run
6 to first base, and grab the bat up, and put it back out of
7 the way so that the kid coming in across home plate wouldn't
8 trip over it.

9 well, I looked up and Brookie wasn't there. She was
10 suppose to be coming from third base to home plate. So, I
11 go running down through there, and when the home plate -- I
12 mean the umpire dugout mom for the other team, she's yelling
13 she's in there. So, she left third base and she went in,
14 when they told her to go home, she went to the dugout for
15 the other team. So, we had to get her out of there, you
16 know, come on, you know, and kind of push her on down to
17 come across and she scored her first run, and it was always
18 a tradition, you know, high five to every player and
19 everything, and she just smiled with her big smile, looked
20 back up at you, you know, and then she'd go on to our
21 dugout.

22 Q Let me show you State Exhibit 50.

23 Is that a picture of the game?

24 A Yes, sir.

25 SOLICITOR BARNETTE: Your Honor, I'd like to publish

John Sloan - Direct examination
By Solicitor Barnette

1 this to the jury.

2 THE COURT: Any objection?

3 MR. MCGUIRE: No, sir.

4 THE COURT: Without objection, it will be admitted as
5 marked.

6 (WHEREUPON, State's Exhibit No. 50 was received into
7 evidence at this time.)

8 THE COURT: You may publish.

9 Q So, was y'all a t-ball league if I can ask?

10 A No, we was coaches pitch.

11 Q Coaches pitch, yes, sir.

12 And what position did she normally play, in the
13 outfield --

14 A Outfield.

15 Q -- from there?

16 And how long did y'all's season go, sir?

17 A Oh, they try to have it finished up before July when
18 everybody goes on vacation.

19 Q Uh-huh. (Affirmative).

20 A But --.

21 Q And where did -- and where is y'all's league?

22 I know it's D-5, but can you tell the jury?

23 I know some people may not be familiar with where D-5
24 is, but where the field's are exactly.

25 A Our fields are over in Reidville. There's a whole

John Sloan - Direct examination
By Solicitor Barnette

1 complex out there.

2 Q Matter of fact, now I think now a lot of the teams play
3 at Tyger River. I know they still practice at D-5, but they
4 play a lot at Tyger River complex now I believe, is that
5 correct?

6 A Yes, sir.

7 Q And after Brooke's death, did D-5 do a memorial for
8 her?

9 A Yes, sir.

10 Q Let me show you what's been marked as State Exhibit 51
11 and 52.

12 Do those pictures fairly represent --

13 A Yes, sir.

14 Q -- the memorial to her?

15 THE COURT: Do you wish to offer those?

16 SOLICITOR BARNETTE: Yes, sir, I do.

17 THE COURT: Any objection?

18 MR. MCGUIRE: No objection.

19 THE COURT: They'll be admitted as marked.

20 (WHEREUPON, State's Exhibit Nos. 51 and 52 were
21 received into evidence at this time.)

22 THE COURT: You may publish.

23 Q I'm giving you -- I know where D-5 is. I've been on
24 there.

25 Can you tell the jury where this is in relationship to

John Sloan - Direct examination
By Solicitor Barnette

1 the fields?

2 A well, they got like four fields. It's right there in
3 the center between two fields.

4 Q Uh-huh. (Affirmative).

5 And a matter of fact, there's five ball fields. I
6 believe the coaches pitch and the t-ball league are up in
7 this area.

8 wouldn't you say in that area there?

9 A Yes, sir. Well, there's a field to the right, a field
10 to the left, and back to the right there's a -- back to the
11 right there's two more fields. And if you's coming down
12 towards the front, there's a fifth field is down in the
13 hollow there.

14 Q Okay. So, this is really in the center of the complex?

15 A Yes, sir.

16 Q And a matter of fact, the parking's over in this area I
17 believe?

18 A Yes.

19 Q And let me go ahead and publish State Exhibit 52.

20 If you would, tell the jury about -- is that the
21 memorial that's there today?

22 A Yes, sir.

23 THE COURT: Okay. One moment, Your Honor, please.

24 (Pause.)

25 THE COURT: Thank you, sir. Please answer any

John Sloan - Direct examination
By Solicitor Barnette

1 questions the defense may have for you.

2 MR. MCGUIRE: Coach Sloan, I don't have any questions
3 for you. Thank you.

4 THE COURT: All right, sir. You may step down. Thank
5 you very much.

6 Do you wish to excuse the witness?

7 SOLICITOR BARNETTE: Yes, sir.

8 THE COURT: Any objections?

9 MR. MCGUIRE: No objection.

10 THE COURT: Sir, you're free to go if you'd like.
11 You're welcome to stay as well. Thank you.

12 You may call your next witness.

13 SOLICITOR BULSA: State calls Elizabeth Sima.

14 THE COURT: Come forward, ma'am, to be sworn.

15 ELIZABETH SIMA, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat please, ma'am. Once seated,
18 state your name.

19 THE WITNESS: My name is Elizabeth Sima.

20 THE COURT: Thank you.

21 Mr. Bulsa, your witness.

22 SOLICITOR BULSA: Yes, sir.

23 DIRECT EXAMINATION

24 BY SOLICITOR BULSA:

25 Q Ma'am, what, what is your occupation?

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 A I'm principal at Reidville Elementary School.

2 Q And is Reidville in Spartanburg County?

3 A Yes, sir.

4 Q Is that where Brooke went to school?

5 A Yes, sir.

6 Q When did you first meet Brooke?

7 A When she was four. She came to us as a little four
8 year old in our K-4 four program. That's a voluntary
9 program that, if parents want to give children a little
10 extra boost and a little extra strength, parents go out of
11 their way to bring them to the building. It's a half day
12 program and it's a full emergent in language and literacy
13 and learning adventures.

14 Q And how long was Brooke at Reidville Elementary School?

15 A She started in K-4 and continued through the end of her
16 second grade here. She was officially withdrawn 8/17/09 and
17 the reason that was an official withdrawal was that she had
18 deceased. She died.

19 Q Uh-huh. (Affirmative).

20 A But we had her with us for four years.

21 Q And how well did you get to know Brooke?

22 A Very well. At Reidville we're a school family. We
23 know each other. We love each other. We know if we came in
24 late. We know if we came in early. We know if we were
25 hungry. We know mom and dad. We know your brother. We

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 know each other. At Reidville, when we see each in the
2 morning, we wave hi. It's what we do and it's real.

3 We know if you're hungry and we'll make sure you're
4 fed, but we know each other very well. We know each other
5 well in the classroom. We know if they're reading issues.
6 We make sure we help fix those, fix those issues, talk with
7 mom and dad, work with the parents, if they're math issues.
8 We know them academically, socially, and emotionally.

9 Q What kind of personal contact did you have with Brooke?

10 A I had many and I was very blessed with them. I met her
11 as a little one in K-4, and I was scrambling around on the
12 rug as she was even as the tiny little one. She had many --
13 everyone loved her and I would say this if this were a
14 parent conference. That's what the hard thing is, Brooke
15 had a special spark and a special light that the children
16 felt and knew. It was very real. The parents felt and
17 knew, and honestly her teachers just loved her.

18 Throughout her years, from the time we're scrambling
19 around on the floor until in second grade, that's a very big
20 year, I watched her grow and learn and, as principal,
21 watching the children, you're almost like a second mama, and
22 I would expect parents would expect us to be.

23 That little one was driving to be a leader, and, in
24 second grade, I would say to the little ones, you know, if I
25 see that you're making great choices and showing good

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 character, even when no one else is looking, you may get to
2 be on Rocket Squad, and toward the end of our time together
3 in second grade, she said hey, Ms. Sima, I'm gonna get to be
4 on Rocket Squad. It won't be much longer. Next year is my
5 Rocket Squad year.

6 Q What traits did she possess that would put her on
7 Rocket Squad?

8 A All of the character traits are integrity, her
9 kindness, and caring. We have a big sign, Reidville
10 Elementary, The School That Cares. The children at
11 Reidville developed the rules. We said let's come up with a
12 few little rules that keep us safe and help us learn, and
13 all of the children, Brooke included, on student council,
14 brought to the big student council, their rules, and it's
15 follow your leaders directions cause your leader could be a
16 student. It's keep your hand and feet to yourself except
17 for hugs cause we do those all the time. walk quietly in
18 the hall and a rule that isn't typically a rule, but at
19 Reidville it is, and it's be kind and caring to others.
20 That's the essence of who we are. Honesty, integrity,
21 kindness.

22 Q And did those fit Brooke?

23 A It is the essence of her spirit truly, and anyone who
24 knew her would tell you that.

25 Q Let me ask you about Brooke's parents.

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 what kind of contact did you have with them?

2 A I had a lot of wonderful ongoing contact with her
3 parents. The parents at Reidville are very involved. Truly
4 we're very blessed.

5 Brooke's parents, in particular, were outstanding from
6 beginning to end, and I don't say this about every one and
7 I'm very guarded about speaking around parents. In fact,
8 there was a time when I knew that, and the only reason I
9 knew was they each came to me. I knew that they were going
10 through a hard time, and I said to them, I beg you, keep
11 this a safe place. I asked you, no matter what you deal
12 with out -- outside of here, let that little one grow and
13 learn and you keep this good and solid and I've seen folks
14 try. I have to tell you, truthfully, I've never, ever, ever
15 seen two people work so fluidly, so lovingly, and so kindly
16 around Brooke first.

17 I saw no altercations. I saw no stumbling little girl
18 crying and I've done that many a time with many another
19 child who had a hard start with mom or dad or a book bag
20 that was at one house or another and nobody could do it.
21 That's the essence of what we do a lot now.

22 I saw none of that at all and I saw love. I saw people
23 show up together and apart, be there, and I saw not a single
24 bit of negativity and a whole heck of a lot of love. She
25 saw that and felt that too.

Elizabeth Sima - Direct examination
By Solicitor Balsa

1 Q When did you learn of Brooke's death?

2 A I learned that summer. It was hard to actually -- it
3 was hard to even withdraw her for all of us. And when we
4 learned, as a faculty, we are a school family, we went to
5 the funeral and were there with our family, her family. We
6 needed some time for ourselves as a faculty because it's
7 hard kicking off a new school year when that little light of
8 hers, which was a book that we had read, was not with us any
9 longer and I mean that. We felt that and we got together,
10 as a faculty, and made some decisions and went out to a very
11 special place, Shepherd's Walk.

12 John Shepherd was a principal years ago. He died
13 during the course of his tenure there, loved children, and
14 we have a little science center out there, which she loved.
15 We have fish out there, which she loved, and we said some
16 prayers. We all had some balloons. We talked about her.
17 We shared the joy and the love of her life and her -- and
18 the essence of who she is and always will be in that
19 building, and then we released the balloons.

20 Q Just one moment, ma'am.

21 (Pause.)

22 Q I want to show you what's been marked as State's
23 Exhibit No. 53 for identification.

24 A Yes, sir.

25 Q Do you recognize that?

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 A I do.

2 SOLICITOR BULSA: Your Honor, the State would offer
3 this into evidence, State's 53.

4 THE COURT: Any objection?

5 MR. MCGUIRE: No objection.

6 THE COURT: Without objection, it will be admitted as
7 marked.

8 (WHEREUPON, State's Exhibit No. 55 was received into
9 evidence at this time.)

10 Q Ma'am, I'm gonna---

11 THE COURT: You may publish.

12 Q I'm gonna publish and have you describe it for us if
13 you would.

14 A Every year we publish an annual and in that annual we
15 publish every child and every adult that is part of our
16 Reidville School family, and, of course, she was in for all
17 of her years. Then we had a third grade year and she was
18 not in that years, but her annual, the fourth grade year,
19 the annual that would of been hers, we all voted and chose
20 to honor her with that annual in her name, and it's a very
21 small token, but she was very much a part of the hearts and
22 souls of our children. Every one of our children wanted
23 that. Every one of our teachers. All of our parents, all
24 of our family, community.

25 And if you take a look, I don't know if you can see,

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 but that is Shepherd's walk. We prayed. We talked about
2 her. We loved her. We -- I, I begged folks to try and
3 celebrate the joy of her spirit. You would look in those
4 eyes and you saw that she was amazing, the hand of God.

5 She was beautiful and, and truly people asked me about
6 behavioral reports. There were none. People asked me about
7 how she was with a new child. She was there.

8 You see that glint in her eye?

9 We picked that because that is our Brooke, and we felt
10 that and those are the balloons that hopefully she felt and
11 we truly feel she's still a part of our lives there at
12 Reidville, and we say your smile has been permanently etched
13 in our hearts. We love you. That's from each and every one
14 of us genuinely to our girl.

15 Q Thank you, ma'am.

16 Just one second.

17 (Pause.)

18 Q Ma'am, before I let you go, if you would, what kind of
19 student was Brooke?

20 What were her grades?

21 A She was a wonderful student. She had a good start.
22 Parents got her in early, K-4. She came in a very strong
23 average student, and ended up being a very strong well above
24 average, reading above grade level, doing math well above
25 grade level. Very proud of her and she was very proud of

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 herself too.

2 She worked hard to get there and she loved learning,
3 loved, loved, loved school. Couldn't wait to come.
4 Couldn't wait to be there. Emerged herself in books. Loved
5 her school family, and she went from truly a strong average
6 to between the seventieth and eightieth percentiles. Easily
7 the top seventieth to eightieth percentiles of our little
8 ones because she worked hard to do that.

9 I know that she has had a lot of experiences and I've
10 seen her out at recess, and when I see that, whether it's a
11 physical thing that she's doing or it's an academic thing
12 that this young's lady is -- was doing, she worked with
13 every ounce of her being to do as well as she could.

14 You know what?

15 If it was hard, I never saw that little girl quit.
16 Never. Not once. And if you tried to quit, she would cheer
17 you on and make darn sure you didn't with a positive,
18 optimistic attitude that said keep trying, you'll get it,
19 persevere, and that's this little girl who worked her way up
20 academically, but it wasn't just academics. It's who she
21 was and is.

22 Q What were those letter grades that she made?

23 A She has straight A's in second grade in all of her ELA,
24 and that's English/Language Arts. All of her reading and
25 writing, all straight A's, and you have to work hard for it.

Elizabeth Sima - Direct examination
By Solicitor Bulsa

1 We don't just hand them out. She worked for it. She earned
2 it. And, in math, she had an A and then she had a B, and I
3 told you, she perseveres. The next two were A's in math.
4 Strong, wonderful, capable young lady.

5 Q Is that her second grade photo?

6 A Yes, sir.

7 Q Thank you, ma'am. That's all I have. Answer anything
8 the defense may have.

9 MR. MCGUIRE: I don't have any questions for you,
10 ma'am. Thank you.

11 THE COURT: All right, ma'am. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Do you wish to excuse the witness?

14 SOLICITOR BULSA: Yes, sir.

15 THE COURT: Any objections?

16 MR. MCGUIRE: No, sir.

17 THE COURT: Ma'am, you're free to go if you'd like.
18 You're also free to stay. Thank you very much.

19 State may call its next witness.

20 SOLICITOR BARNETTE: Your Honor, our next witness is
21 Gail Moffitt. I think she may be in the Clerk's Office. We
22 may have to get her from in there. It may be a good time to
23 take a break for us to do some---

24 THE COURT: Okay.

25 All right. We'll take a short recess.

1 Ladies and gentlemen of the jury, while you step back
2 to the jury room, as always, my instructions remain the
3 same. Don't discuss any aspect of this case until such time
4 as I've asked you to begin your deliberations.

5 You may retire to the jury room at this time.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right. Court will take a short recess.

9 I'd ask that everyone remain seated as the defendant
10 leaves the courtroom.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: State ready to go forward?

13 SOLICITOR BARNETTE: Yes, sir, if I could put a few
14 things on the record before we do.

15 THE COURT: Let me check and be sure the defense is
16 ready.

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: All right. Yes, sir, Mr. Barnette.

19 SOLICITOR BARNETTE: Your Honor, I talked to Mr. Allen.
20 We had two Spartanburg County Detention Facility
21 disciplinaries. We both went through the forms. I think he
22 agrees or consents to them at this point. Obviously we'll
23 call the records keepers concerning them. It's State
24 Exhibit 56 and State Exhibit 57 are the two disciplinaries,
25 Your Honor. We went then and tried to remove anything they

1 found objectionable and we did do that. We actually
2 redacted some parts of them.

3 THE COURT: All right. Mr. Allen.

4 MR. ALLEN: That is correct. I have seen them in the
5 redacted form and do not object.

6 THE COURT: Is there an objection in their current form
7 them?

8 MR. ALLEN: No, I was---

9 THE COURT: Okay.

10 MR. ALLEN: ---trying to say that.

11 THE COURT: I'm sorry.

12 MR. ALLEN: But I do not object to them as we have, as
13 redacted.

14 THE COURT: All right.

15 MR. ALLEN: Yes, sir.

16 THE COURT: Thank you. So then they'll be admitted as
17 marked.

18 SOLICITOR BARNETTE: Your Honor?

19 (WHEREUPON, the autopsy photographs were marked as
20 Court's Exhibit No. 10 for identification purposes only at
21 this time.)

22 THE COURT: Anything else we need to take up?

23 SOLICITOR BARNETTE: One other thing, Your Honor, and
24 when Doctor Wren is called, we may need to take another
25 break at that time. I did take -- and there's 52 pages of

1 pictures that was -- that includes autopsy pictures as well.
2 Also crime scene pictures. I made those Court Exhibits.
3 So, at the appropriate time---

4 THE COURT: All right. They've been marked for
5 identification as a Court's Exhibit, not to go before the
6 jury until further ruling from this Court?

7 SOLICITOR BARNETTE: Exactly the case. If the Court
8 wants to look at and compare the pictures that we're gonna
9 introduce through Doctor Wren and through the crime scene
10 folks---

11 THE COURT: I understand.

12 SOLICITOR BARNETTE: ---and the officers, but I just
13 want -- plus for the record to have that information.

14 THE COURT: All right. You're not calling Doctor Wren
15 right now?

16 SOLICITOR BARNETTE: No, sir, we're not.

17 THE COURT: Okay. All right. So, are you ready to
18 proceed with a witness then?

19 SOLICITOR BARNETTE: Yes, sir, we are.

20 THE COURT: Okay.

21 SOLICITOR BARNETTE: Ms. Moffitt is here now.

22 THE COURT: Is defense ready for that?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. Bring the jury in.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: The record will reflect that the jury has
3 returned to the courtroom.

4 At this point in time the State may call its next
5 witness.

6 SOLICITOR BARNETTE: Your Honor, like to call Gail
7 Moffitt to the stand please.

8 THE COURT: All right, ma'am. If you'll step right
9 here to be sworn please.

10 GAIL MOFFITT, having been first duly
11 sworn, testified as follows:

12 THE COURT: Ma'am, once you're seated, state your name.

13 THE WITNESS: Gail Moffitt.

14 THE COURT: Thank you.

15 Mr. Barnette, your witness.

16 SOLICITOR BARNETTE: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Ms. Moffitt, where do you work at, ma'am?

21 A The Clerk of Court's Office, Spartanburg County.

22 Q And what is your position there, ma'am?

23 A I'm assistant clerk of court.

24 Q And how long have you been in the Clerk's Office,
25 ma'am?

Gail Moffitt - Direct examination
By Solicitor Barnette

1 A Forty-six years.

2 Q Okay. And are you a person that keeps track or one of
3 the few, one of the people that keep track of the records at
4 the, criminal records of the---

5 A We do. We're custodian of records in Family Court,
6 Circuit Court, Circuit Court including Common Pleas and
7 General Sessions records.

8 Q Thank you, ma'am.

9 Let me show you State Exhibit 47.

10 If you would, take a look at that, ma'am.

11 A (Witness complies.)

12 Q Is that an indictment on Ricky Lee Blackwell from the
13 Clerk of Court's Office?

14 A It is.

15 Q Is that a certified copy?

16 A It is.

17 SOLICITOR BARNETTE: Your Honor, I'd like to move this
18 into evidence at this time.

19 THE COURT: Any objection?

20 MR. MCGUIRE: No objection.

21 THE COURT: Without objection, it will be admitted as
22 marked.

23 (WHEREUPON, State's Exhibit No. 47 was received into
24 evidence at this time.)

25 SOLICITOR BARNETTE: Okay. May I approach the witness

Gail Moffitt - Direct examination
By Solicitor Barnette

1 again, Your Honor?

2 THE COURT: You may.

3 Q If you would, ma'am, please read what Mr. Blackwell was
4 indicted for and convicted of?

5 A Mr. Blackwell was indicted for breaking into a gasoline
6 tank and petty larceny. He entered a guilty plea to the
7 breaking into the---

8 Q I believe it was the same charge?

9 A Yeah, gasoline tank and petty larceny.

10 Q Okay. Thank you, ma'am. Like to enter that into
11 evidence, Your Honor.

12 THE COURT: I think the report is in evidence. It's
13 already in.

14 SOLICITOR BARNETTE: Okay. Thank you, ma'am. Please
15 answer any questions that they may have for you.

16 THE COURT: Mr. McGuire, your witness.

17 MR. MCGUIRE: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MCGUIRE:

21 Q Ma'am, I want to get you to tell us when that was.

22 A All right.

23 Q What year?

24 A 1981.

25 Q How many years ago is that?

Gail Moffitt - Cross-examination
By Mr. McGuire

1 I want to test your math?

2 A It's been a long time.

3 Q Yes, ma'am, it has. Thank you.

4 THE COURT: Anything further, Mr. McGuire?

5 MR. MCGUIRE: No, ma'am. Oh, no, sir.

6 THE COURT: Yes, sir.

7 SOLICITOR BARNETTE: I have nothing else, Your Honor.

8 we'd ask the witness be excused.

9 THE COURT: Any objection to her being excused?

10 MR. MCGUIRE: No, sir.

11 THE COURT: All right. Ma'am, you're free to go.

12 Thank you for coming.

13 You may call your next witness.

14 SOLICITOR BARNETTE: Your Honor, like to call

15 Lieutenant Mike Jones please.

16 THE COURT: Come forward, sir.

17 MIKE JONES, having been first duly
18 sworn, testified as follows:

19 THE COURT: Sir, have a seat, and once you're seated,
20 state your name please.

21 THE WITNESS: Michael Jones.

22 THE COURT: Thank you.

23 Mr. Barnette, your witness.

24 SOLICITOR BARNETTE: Thank you, Your Honor.

25 DIRECT EXAMINATION

Mike Jones - Direct examination
By Solicitor Barnette

1 BY SOLICITOR BARNETTE:

2 Q Where do you work at, sir?

3 A Spartanburg Detention Facility.

4 Q And what is your position there, sir?

5 A I'm custodian over the records.

6 Q And how long have you been with the department, the
7 detention center?

8 A Since 1984.

9 Q Okay. Let me show you what's been marked State's
10 Exhibit 56 and 57.

11 If you would, take a look at those, sir, and see if
12 those are the disciplinary records on Ricky Lee Blackwell?

13 A Yes, sir, they are.

14 Q Okay. And is that part of the records that y'all keep
15 at the detention center, sir?

16 A Yes, sir.

17 SOLICITOR BARNETTE: Your Honor, I'd like to move these
18 into evidence at this time.

19 MR. ALLEN: No objection.

20 THE COURT: All right. Without objection, they'll be
21 admitted as marked.

22 (WHEREUPON, State's Exhibit Nos. 56 and 57 were
23 received into evidence at this time.)

24 SOLICITOR BARNETTE: Okay. Your Honor, permission to
25 publish these to the jury?

Mike Jones - Direct examination
By Solicitor Barnette

1 THE COURT: You may.

2 Q Lieutenant Jones, if you would, just tell the jury a
3 little bit about what these forms are.

4 A This is a disciplinary hearing on what happened. It
5 goes along with the officer's report. After the officers
6 make the report, then they have a disciplinary hearing and
7 that's their findings there down below there.

8 Q And he was in possession of contraband --

9 A Yes, sir.

10 Q -- in this case?

11 And I believe that was Clorox in like a baby bottle?

12 A Yes, sir.

13 Q And I believe he was found guilty based off his own
14 admission at that point in time?

15 A Yes, sir.

16 Q Okay. And these are different forms, the findings, and
17 so forth --

18 A Yes.

19 Q -- that I believe---

20 A Yes, sir.

21 Q Okay. And this just tells the details of the incident?

22 A Yes, sir.

23 Q Actually there was a report also done --

24 A Yes, sir.

25 Q -- concerning it?

Mike Jones - Direct examination
By Solicitor Barnette

1 And this is -- the Clorox was contained in this bottle?

2 A Yes, sir.

3 Q Let me show state -- I have State Exhibit 56. This
4 will be State Exhibit 57.

5 Was this another disciplinary that was done, sir?

6 A Yes, sir, it is.

7 Q And was this a possession of contraband also,
8 unauthorized medication?

9 A Yes, sir.

10 Q And did it appear that he was hoarding his medication?

11 A Yes, sir, it did.

12 Q Matter of fact, they were kept in a candy pack --

13 A Yes.

14 Q -- and stored later?

15 And, again, you had the disciplinary hearing?

16 A Yes, sir.

17 Q And also a copy of the report?

18 A Yes, sir.

19 Q And these were the pills that were found in the M&M's
20 wrapper?

21 A Yes, sir.

22 SOLICITOR BARNETTE: One moment, Your Honor, please?

23 THE COURT: Yes, sir.

24 (Pause.)

25 Q If you would, lieutenant, what is Clorox contraband

Mike Jones - Direct examination
By Solicitor Barnette

1 for?

2 A Well, the contraband's just for -- I mean the Clorox is
3 just for cleaning. They're not to have it in their cells at
4 all for any reason.

5 Q And why is that?

6 A Well, you could throw it on an officer. You could
7 throw it on anybody, throw it in their eyes, anything like
8 that.

9 Q Okay.

10 A That's why it's, that's why it's contraband?

11 Q So, you don't allow any prisoners to have Clorox
12 period?

13 A Not to store for themselves, no, sir. Just to clean
14 the toilet maybe or the showers and that's it.

15 Q But that's where y'all watch him and make sure
16 everything's done right?

17 A Yes, sir.

18 Q Okay. Thank you, sir. Please answer any questions
19 defense may have for you.

20 THE COURT: Mr. Allen, your witness.

21 MR. ALLEN: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. ALLEN:

25 Q Lieutenant, with respect to the contraband of the, that

Mike Jones - Cross-examination
By Mr. Allen

1 being of the Clorox, I'm showing you State's Exhibit 56, and
2 I think this first page is the findings by the --?

3 A Disciplinary officer.

4 Q -- disciplinary officer?

5 And it reports here that Mr. Blackwell waived his right
6 to a hearing?

7 A Yes, sir.

8 Q You can follow with my finger I guess.

9 A Yes.

10 Q So, it -- in the disciplinary proceedings in the jail
11 that, that you give inmates a right to a hearing to, I
12 guess, hear evidence against them and that kind of stuff?

13 A Yes, sir.

14 Q And, of course, Mr. Blackwell doesn't want a hearing
15 apparently according to the record?

16 A Yes, sir.

17 Q And pled guilty to the charge meaning that he
18 acknowledged that he was in violation?

19 A Yes, sir.

20 Q Okay. And Mr. Blackwell reported that he used, to the
21 hearing officer, that he used Clorox to clean surfaces in
22 the cell?

23 A Yes, sir.

24 Q And it was explained to him that it's not to be issued
25 to inmates?

Mike Jones - Cross-examination
By Mr. Allen

- 1 A Yes, sir.
- 2 Q And was a violation of the rules of the jail?
- 3 A Yes, sir.
- 4 Q Okay. And, on the second page of this form, shows
- 5 where Mr. Blackwell indicated that he was guilty of the --
- 6 A Yes, sir.
- 7 Q -- on the rules violation?
- 8 A Yes, sir.
- 9 Q And he signed his signature here --
- 10 A Yes, sir.
- 11 Q -- where I'm pointing my finger --
- 12 A Yes, sir.
- 13 Q -- where it says inmate's signature for the record?
- 14 A (Witness nods affirmatively.)
- 15 Q Is that correct?
- 16 A Yes, sir.
- 17 Q Okay. And, again, looking at State's Exhibit 57,
- 18 looking at the first page, again, it's the findings of the
- 19 disciplinary --
- 20 A Yes, sir.
- 21 Q -- hearing officer?
- 22 And, again, Mr. Blackwell waived his right to a
- 23 hearing?
- 24 A Yes, sir.
- 25 Q He pled guilty --

Mike Jones - Cross-examination
By Mr. Allen

1 A Yes, sir.

2 Q -- to the violation and he indicated that he had been
3 given the Seroquel as medication?

4 A Yes, sir.

5 Q Okay. Of course, inmate's are not allowed to -- if
6 they're given medication, they're not allowed to keep it for
7 later, are they?

8 A No, sir, they're to take it right then.

9 Q Take it right then?

10 A Yes, sir.

11 Q You don't allow medication to go back in the cells?

12 A No.

13 Q Okay. And that's why it's a rules violation --

14 A Yes, sir.

15 Q -- cause you don't want medication back in the cells?

16 A Yes, sir.

17 Q But Mr. Blackwell was, at that time, according to your
18 records, prescribed Seroquel, correct?

19 A Yes, I guess. Yes, sir.

20 Q Okay. And, again, on the second page, there's a
21 checkmark and I am guilty?

22 A Yes, sir.

23 Q And on the third page, another checkmark with his
24 signature, correct --

25 A Yes, sir.

Mike Jones - Cross-examination
By Mr. Allen

1 Q -- where he acknowledges that he was guilty?

2 A Yes, sir.

3 MR. ALLEN: One second please, Your Honor.

4 (Pause.)

5 MR. ALLEN: Thank you. No other questions.

6 THE COURT: All right. Anything further from the State
7 for this witness?

8 SOLICITOR BARNETTE: Just one question.

9 REDIRECT EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Lieutenant Jones, obviously the container the Clorox
12 was found, that's not where you keep Clorox at?

13 A Yes, sir, that's correct.

14 Q Okay. Thank you, sir.

15 No further questions.

16 THE COURT: All right. Anything to follow-up?

17 MR. ALLEN: No, Your Honor.

18 THE COURT: Wish to excuse the witness?

19 SOLICITOR BARNETTE: Yes, sir.

20 THE COURT: Any objections?

21 MR. ALLEN: No objection.

22 THE COURT: Sir, you're free to go. Thank you very
23 much.

24 State may call its next witness.

25 SOLICITOR BARNETTE: Your Honor, like to call Irene

Irene Blackwell - Direct examination
By Solicitor Barnette

1 Blackwell to the stand please.

2 THE COURT: Come forward please to be sworn. Over here
3 to my left, ma'am.

4 IRENE BLACKWELL, having been first duly
5 sworn, testified as follows:

6 THE COURT: Please have a seat.

7 (Witness complies.)

8 THE COURT: State your name please, ma'am.

9 THE WITNESS: Mary Irene Blackwell.

10 THE COURT: Thank you.

11 Mr. Barnette, your witness.

12 DIRECT EXAMINATION

13 BY SOLICITOR BARNETTE:

14 Q Mrs. Blackwell, is Angie Davis your daughter?

15 A Yes.

16 Q Okay. And back in July of 2009, where, where did you
17 live at that time, ma'am?

18 A Road, Chesnee.

19 Q Okay. How far is that away from Ridings Road
20 approximately?

21 A I guess about three or four miles.

22 Q Okay. And back on July 8th, 2009, was you married at
23 that time, ma'am?

24 A Yes.

25 Q And who was you married to?

Irene Blackwell - Direct examination
By Solicitor Barnette

1 A Jerry Wayne Blackwell.

2 Q Okay. And that day, did Angie come visit you?

3 A Yes, sir, she did, her and Brooke.

4 Q Okay. If you would, tell the jury what happened after
5 they came on their visit to y'all's house.

6 A Well, Angie and Brooke came to the house that morning.
7 I fixed breakfast and all of us ate breakfast, and after we
8 finished breakfast, it wasn't too long till Ricky come
9 knocking on the door.

10 THE COURT: Ma'am, I don't mean to interrupt, but I
11 would ask that you speak up or move closer to the
12 microphone. We're having trouble hearing you over here.

13 Q Yes, move up or it might be better if you turn
14 sideways, ma'am.

15 Okay. There you go. Talk into the mic here.

16 MR. MCGUIRE: Judge, I think I might have a matter of
17 law to take up.

18 If we can approach briefly?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, there's a matter I will have to take up outside of
24 your hearing. As always, when you leave the courtroom, I'll
25 be asking you not to discuss any aspect of this case until

Irene Blackwell - Direct examination
By Solicitor Barnette

1 such time as I've asked you to begin your deliberations.

2 You may retire to the jury room at this time.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Mr. McGuire, you indicated you may have an
6 objection to this witness testifying. I'll be happy to hear
7 from you.

8 MR. MCGUIRE: Thank you, judge.

9 If this, if this testimony is really just to
10 corroborate a guilt phase issue, which is Angela Davis'
11 accounting of the visit that morning and the conversation
12 that happened and where they left, that sort of thing, if
13 it's merely corroborating guilt phase issues, it's not
14 relevant right now in this proceeding. I think what
15 happened is Angie did not come off that well on the stand,
16 and the State got stuck with a witness that didn't look that
17 credible, and now they're trying basically to reopen their
18 case in the guilt phase to try to corroborate and help her
19 testimony and it's not proper right now. It's not relevant.

20 SOLICITOR BARNETTE: It's very relevant, Your Honor,
21 for a couple reasons.

22 One, they admitted guilt in their opening.

23 So, why should we call every witness involved with
24 that?

25 We called the witnesses to prove the malice in that

Irene Blackwell - Direct examination
By Solicitor Barnette

1 situation. This goes to premeditation in this case showing
2 that he worked on planning, that he set up the situation
3 where he killed Brooke in this situation.
4 She does corroborate Angela Blackwell in this case or Angie
5 Davis in this case, but she also shows premeditation. She
6 was a witness and will testify to what happened over at her
7 house.

8 THE COURT: All right. So, you're offering her on the
9 subject of premeditation?

10 SOLICITOR BARNETTE: Yes, sir, which definitely goes to
11 sentencing in this situation. Didn't need her for the, for
12 the guilt phase cause they already admitted it from that
13 standpoint basically in his opening.

14 MR. MCGUIRE: It's gonna be the exact same testimony
15 with regard to malice aforethought. It's, it's duplicative.
16 It's basically letting the State reopen their case except
17 they're just sneaking it in in the penalty. It's not
18 relevant. It's not our -- appropriate right now.

19 THE COURT: Well, the questions of premeditation could
20 be relevant in this case.

21 MR. MCGUIRE: And, again, it would only -- she would
22 only corroborate the exact words that Angela Davis is
23 already spoken in this courtroom.

24 THE COURT: Well, she hadn't testified yet. I don't
25 know if she's gonna use the exact words. I wouldn't -- I

Irene Blackwell - Direct examination
By Solicitor Barnette

1 hadn't heard that yet, but --.

2 MR. MCGUIRE: Well, a summary of Ms. Davis' testimony
3 was that Ms. Davis went to her mother's house, Mr. Blackwell
4 was there, Brooke was with Ms. Davis. There was a
5 request from Mr. Blackwell to -- that Mr. Davis go see your
6 grandchildren. There was a discussion about insurance, and
7 recovering insurance based on someone taking a leave of
8 absence from work. If she doesn't have any -- if she's
9 gonna testify to something beyond that, fine. But if she's
10 gonna testify just to those items, that is exactly what Ms.
11 Davis is already testified to and this is to try to
12 corroborate a shaky witness in the guilt phase and they're
13 trying do it in the, the -- I'm sorry. A shaky witness in
14 the -- yeah, the guilt phase and they're trying to do it in
15 the penalty phase. In essence, it's backdoor reopening
16 their case to try to shore up a witness who's not credible.

17 SOLICITOR BARNETTE: No, sir, that's not what this is
18 about. This is a situation where basically he gave up
19 guilt. He now -- and he attacks Angie. He did in his
20 opening, went after Angie Davis. So, I was gonna introduce
21 a witness to further show the premeditated in this
22 situation. Also, she's a witness to what happened at her
23 house.

24 THE COURT: All right. Last shot, Mr. McGuire.

25 MR. MCGUIRE: And, judge, if, if all of that, if all

Irene Blackwell - Direct examination
By Solicitor Barnette

1 this testimony was offered in the first phrase of the trial
2 I would of had no objection. It would of been perfectly
3 appropriate, but I have a serious objection to doing it
4 right now.

5 THE COURT: All right. I'm gonna overrule the
6 objection. I'm gonna allow the testimony.

7 All right. Let's bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Thank you.

11 All right. The record will reflect the jury has
12 returned to the courtroom.

13 I have overruled an objection to this witness'
14 testimony.

15 You may proceed, Mr. Barnette.

16 SOLICITOR BARNETTE: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q Mrs. Blackwell, I think we were at the point where you
20 were gonna tell the jury what happened and would you speak
21 loud enough so they can hear you if you could.

22 A Okay. Like I said, Angie -- and Ricky came to the
23 door, knocked on the door. I opened the door and let Ricky
24 in. Ricky started talking to Angie about insurance at the
25 plant, medical insurance that she had gotten him, and her --

Irene Blackwell - Direct examination
By Solicitor Barnette

1 and Angie told Ricky, said Ricky I'm about to take a three
2 months leave, and we'll have to pay a hundred dollars a
3 piece on the insurance in order to keep it on him. And
4 Ricky told Angie, he said I don't know if I can afford that
5 or not. Angie said well, I do what I can do, and then Ricky
6 had told Angie, said you need to go over there and see the
7 grandbabies today, and then Angie told him, she said Ricky,
8 I will, and then Ricky said he's leaving to go pay some
9 bills, and he was gonna go shopping.

10 Jerry Wayne, my husband, asked him said, Ricky, why
11 don't you just stay here and play cards with me. Ricky said
12 I can't, but he said just soon as I go pay my bills and get
13 back, he said I'll come straight back over here and play
14 cards and that's all I know.

15 Q Okay. And, ma'am, is your husband still alive?

16 A No, my husband died December the 31st.

17 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
18 please.

19 THE COURT: Yes, sir.

20 (Pause.)

21 SOLICITOR BARNETTE: Thank you, ma'am. Please answer
22 any questions the defense may have for you.

23 THE WITNESS: Okay.

24 THE COURT: You may cross-examine, Mr. McGuire.

25 MR. MCGUIRE: Thank you, Your Honor.

Irene Blackwell - Cross-examination
By Mr. McGuire

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. MCGUIRE:

4 Q Ma'am, Ricky was married to Angie?

5 A Yes.

6 Q He was your son-in-law?

7 A Yes.

8 Q And he was a good son-in-law?

9 A Well, I didn't have no beef about him.

10 Q Right.

11 And he liked Jerry Wayne, your husband?

12 A Yeah.

13 Q And they were good buddies?

14 A Yeah.

15 Q And they played cards together?

16 A Yeah.

17 Q And when Angie left Ricky, Ricky would still come over
18 to the house to see mostly Jerry Wayne, right?

19 A We saw, saw more of Ricky after Angie left him then we
20 did the whole time she was married to him.

21 Q Right.

22 His routine was, almost everyday, he'd come and see you
23 and Jerry Wayne and he'd spend time with y'all?

24 A He, he come over there and sit and play cards with
25 Jerry Wayne.

Irene Blackwell - Cross-examination
By Mr. McGuire

1 Q Okay. And so---

2 A Yes, he would.

3 Q And sometimes he'd bring them like a biscuit or
4 something in the morning?

5 A No.

6 Q No.

7 But they'd have---

8 A No.

9 Q Did they have lunch together?

10 A No.

11 Q They didn't---

12 A I would always cook and Ricky would eat with us.

13 Q Okay. Okay. I mixed that up. I'm thinking about
14 somebody else.

15 So, he would have dinner with you and Jerry Wayne?

16 A Yes.

17 Q And he was very despondent, very sad about Angie
18 leaving?

19 A He didn't act too sad to me.

20 Q Okay. But you saw him---

21 A I mean he said, you know, kidding with Jerry Wayne,
22 laughing and joking and cutting up and playing cards and
23 stuff.

24 Q Sure.

25 A He didn't act, he didn't act like he was grieving that

Irene Blackwell - Cross-examination
By Mr. McGuire

1 bad.

2 Q Okay. But he sure liked Jerry Wayne?

3 A Yeah.

4 Q And they were good buddies?

5 A They were good friends, yeah.

6 Q Okay. That's all I have for you, ma'am. Thank you.

7 A Thank you.

8 SOLICITOR BARNETTE: Just one question, Your Honor, on
9 redirect.

10 THE COURT: Yes, Mr. Barnette.

11 REDIRECT EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q Ma'am, you was talking about -- you don't know what
14 kind of card games they played?

15 A They played Rummy.

16 Q Gin Rummy or Rummy?

17 A Rummy.

18 Q Okay. Thank you, ma'am.

19 A You welcome.

20 SOLICITOR BARNETTE: That's all the questions I have.

21 THE COURT: Anything further?

22 MR. MCGUIRE: No, sir.

23 THE COURT: All right. Ma'am, you may step down.

24 Do you wish to excuse the witness?

25 SOLICITOR BARNETTE: Yes, sir.

Micah Horton - Direct examination
By Solicitor Bulsa

1 THE COURT: Any objection?

2 MR. MCGUIRE: Subject to recall.

3 THE COURT: All right. Ma'am, I'll ask you to stay in
4 the courtroom or be available to -- at the call of the
5 Court.

6 THE WITNESS: Okay.

7 THE COURT: But you can step down. Thank you.

8 SOLICITOR BULSA: State calls Micah Horton.

9 THE COURT: Come forward, sir, to be sworn.

10 MICAH HORTON, having been first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat in the witness stand please.

13 (Witness complies.)

14 THE COURT: State your name.

15 THE WITNESS: It's Micah Horton.

16 THE COURT: Thank you.

17 Mr. Bulsa, your witness.

18 SOLICITOR BULSA: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR BULSA:

21 Q Whom are you employed with?

22 A Spartanburg County Sheriff's Office.

23 Q And what is your duties at Spartanburg County?

24 A I work in the investigations division.

25 Q How long have you been an officer?

Micah Horton - Direct examination
By Solicitor Bulsa

1 A I been a police officer a little over 16 years.

2 Q How many of those were with Spartanburg County?

3 A Almost nine. Coming up on nine years.

4 Q Okay. Did you respond to Ridings Road on July the
5 8th, 2009?

6 A I did.

7 Q All right. Just briefly tell us what was taking place
8 when you arrived.

9 A I got there several minutes after the incident
10 happened. When I arrived the scene had already been
11 secured, and the process had already, already began to
12 attempt to locate the suspect. So, when I got there I
13 basically made contact with Investigator Letterman who was
14 already on scene, and, you know, to, to ask what assistance
15 was needed at that time.

16 Q Did you witness the defendant shoot himself?

17 A I did, sir.

18 Q Did you go to where he was after he shot himself?

19 A Yes, sir.

20 Q Did you have any contact with Mr. Blackwell?

21 A Yes, sir, after he shot himself.

22 Q Tell us, tell us what you did when you approached him.

23 A Okay. Basically, after he, after he shot himself,
24 myself and a couple other officers approached him and
25 handcuffed him and secured him with handcuffs and searched

Micah Horton - Direct examination
By Solicitor Bulsa

1 him for any additional weapons that he may have on him.

2 Q Okay. Did you stay with him while EMS treated him?

3 A Yes, sir, I was present.

4 Q Okay. Did he make any statements while you were there
5 with him?

6 A He did.

7 Q Tell us how that occurred and what he said.

8 A Basically his statement that he made when I was
9 standing beside him, was treating him, was I shouldn't have
10 done it, not to get back at him, and he made that statement
11 while I was standing next to him while EMS was treating him.

12 Q Did you ask him any questions?

13 A No, sir, I did not speak to him the entire time.

14 Q So, he just made that statement of his own free will?

15 A Yes, sir.

16 Q Did you have an understanding of what he was talking
17 about?

18 A I can only assume he was speaking of murdering the
19 child.

20 MR. ALLEN: Objection to this, Your Honor, as being
21 speculation.

22 THE COURT: I'll sustain the objection as to
23 speculation.

24 SOLICITOR BULSA: Yes, sir.

25 Do you know who he meant by him?

Micah Horton - Direct examination
By Solicitor Bulsa

1 A At that time I did not.

2 Q Okay. But did you document in a report what he, what
3 you overheard?

4 A Yes, sir, I did.

5 Q Okay. And it was I shouldn't have done it, not to get
6 at -- back at him?

7 A Yes, sir, that's correct.

8 Q Was he then transported to the hospital?

9 A Yes, sir, once EMS moved him from the scene, that's the
10 last contact I had with him.

11 Q Okay. Thank you. Answer any questions defense counsel
12 may have.

13 THE COURT: Mr. Allen.

14 A Yes, sir.

15 MR. ALLEN: Thank you, Your Honor.

16 THE COURT: You may cross-examine. Your witness.

17 CROSS-EXAMINATION

18 BY MR. ALLEN:

19 Q Is it true that the first time you saw Mr. Blackwell
20 was while you were -- when he was coming out of that wood
21 line?

22 A Yes, sir, that's correct.

23 Q Okay. Are you one of the officers that were positioned
24 around the white doublewide trailer?

25 A Initially when we thought that he could possibly be in

Micah Horton - Cross-examination
By Mr. Allen

1 the doublewide. I was on the perimeter of that house until
2 it was -- till we were notified that he was coming out of
3 the wood line, and then I repositioned myself at the back of
4 the residence.

5 Q Okay. So you could watch and, of course, be on guard,
6 right?

7 A Yes, sir, that's correct.

8 Q Okay. And, of course Mr. Blackwell walked out of the
9 wood line?

10 A Yes, sir, he did.

11 Q Did not walk in -- at a fast pace?

12 A Not to -- not under my opinion, no, sir, he did not.

13 Q Okay. And the gun he had he had down by his side?

14 A That's correct, yes, sir.

15 Q Did not threaten or did not point it towards any of the
16 officers?

17 A No, sir, not that I saw.

18 Q Okay. Did not say -- while he was walking, he did not
19 say anything to the officers?

20 Did not yell?

21 A Not that I heard, no.

22 Q Okay. And he had a -- okay. So, he never threatened
23 the officers with the gun?

24 A No, sir.

25 Q He never threatened the officers?

Micah Horton - Cross-examination
By Mr. Allen

1 A No, sir, not to my knowledge.

2 Q Okay.

3 A Not while I was there.

4 Q And after he shot himself, he dropped the gun?

5 A Eventually. Immediately after shooting himself we
6 continued to give commands for him to drop the weapon, and
7 subsequently he did.

8 Q Okay. And he was laying on the ground when he -- he
9 was laying on the ground when he shot himself?

10 A My recollection is that he was standing up and maybe in
11 the process of, of going down. You know, a situation like
12 this, it's high stress. You know, different perspectives
13 the more people there are. My recollection, he was actually
14 standing whenever he shot himself in the stomach.

15 MR. ALLEN: Okay. One second please, Your Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. ALLEN: Thank you, Your Honor. No other questions.

19 THE COURT: Mr. Bulsa, anything to follow-up?

20 MR. MCGUIRE: No, sir, nothing further.

21 THE COURT: All right, sir. You may step down.

22 Do you wish to excuse the witness?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: Any objection?

25 MR. ALLEN: No, Your Honor.

Tim Timmons - Direct examination
By Solicitor Bulsa

1 THE COURT: You're free to go if you'd like, sir.
2 You're free to stay as well. Thank you.

3 THE WITNESS: Thank you.

4 SOLICITOR BULSA: State calls Tim Timmons.

5 THE COURT: Come forward, sir.

6 TIM TIMMONS, having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat please, sir.

9 (Witness complies.)

10 THE COURT: State your name.

11 THE WITNESS: Tim Timmons.

12 THE COURT: Thank you.

13 Mr. Bulsa, your witness.

14 SOLICITOR BULSA: Yes, sir.

15 DIRECT EXAMINATION

16 BY SOLICITOR BULSA:

17 Q Mr. Timmons, what is your occupation?

18 A I am a school teacher, a high school teacher.

19 Q And where do you teach?

20 A Chapman High School.

21 Q What's your subject?

22 A Math.

23 Q Okay. And how long have you been a teacher?

24 A Right at ten years.

25 Q Okay.

Tim Timmons - Direct examination
By Solicitor Bulsa

1 A Almost exactly.

2 Q Are you also a reserve officer?

3 A Yes, sir.

4 Q And explain to the jury what that is.

5 A The State Criminal Justice Academy has a program where
6 you can go to a course. It has to be a minimum number of
7 hours. Then you take a Criminal Justice Academy test. You
8 come to work at the department as a certified law
9 enforcement officer. You go through the field training
10 officer program, the number of hours just like a regular
11 officer, and then you can assist an officer in law
12 enforcement activities.

13 Q Okay. And which agency did you work with?

14 A Spartanburg County Sheriff's Office.

15 Q And how long have you been a resource -- reserve
16 officer?

17 A Eleven years.

18 Q What -- when do you actually perform your duties as a
19 reserve officer?

20 A You have a minimum number of hours you have to perform
21 a quarter, and it just -- they like for you to do it on
22 uniform patrol, but they task you with different areas.

23 Q And when you worked with Spartanburg County, are you
24 paired with another officer?

25 A Most of the time, yes, sir.

Tim Timmons - Direct examination
By Solicitor Bulsa

1 Q Okay. So, you, you're usually riding around with
2 another vehicle with somebody?

3 A Yes, sir.

4 Q Okay. Now, on July the 8th, 2009, were you working in
5 that capacity with Spartanburg County?

6 A I was.

7 Q And did you go to Ridings Road on that date?

8 A Yes, sir.

9 Q And, on that date, did you have occasion to come into
10 contact with the defendant?

11 A Yes, sir, I did.

12 Q Where did you come into contact with him?

13 A We were at, at -- been told he was possibly in the
14 trailer, the Ridings Road trailer, and we were kind of
15 staged at either end of the trailer staying away from the
16 windows, and this -- I saw this elderly couple drive up and
17 they were in front of the trailer, and I moved them out of
18 the way real quick, away from the windows, and was standing
19 there keeping them out of the way when I heard a command to
20 get on the ground, drop the gun, get on the ground, drop the
21 gun. I left them and went and he -- Mr. Blackwell was
22 coming out of the tree line.

23 Q Okay. So, did you witness the -- sort of the stand-off
24 and him shooting himself?

25 A Yes, sir, we approached and a couple officers were

Tim Timmons - Direct examination
By Solicitor Bulsa

1 giving the commands, get on the ground, drop the gun, as we
2 were approaching.

3 Q All right. Now, did you actually approach him at that
4 time at any point?

5 A Yes, sir.

6 Q Okay. Now, we've heard testimony about what happened
7 after he shot himself.

8 Now, specifically, did you ride with him in the
9 ambulance?

10 A After the EMT's were ready to transport him, one of the
11 sergeants there told me to ride with him and stay with him.

12 Q Did you know why you were tasked to do that?

13 A Well, he was in custody and we had to stay -- keep
14 somebody with him.

15 Q Okay. And while you were riding with him in the
16 ambulance, did you have an occasion to speak with him?

17 A Yes, sir, it was kind of a long ride from Ridings Road
18 down to the hospital, and he was in obvious distress. I, I
19 did not want him to, to die without the opportunity to make
20 a statement, and I asked the EMT to let me know if he was in
21 jeopardy of, of dying and he did.

22 And so I -- at this time Mr. Blackwell was -- I was
23 sitting at his head and he was laying in front of me. I
24 read him his rights and asked him did he understand each of
25 his rights. The EMT, Tony Patton, witnessed the

Tim Timmons - Direct examination
By Solicitor Bulsa

1 understanding that he, that he waived his rights, and I
2 said, Mr. Blackwell, can you tell me what happened.

3 Q And how did he respond?

4 A He said my ex-wife drove up and I grabbed her
5 boyfriend's little girl, and I said who was the little girl.
6 He said I called her Brooke.

7 Q Did he say anything more than that?

8 A Right after he said I called her Brooke, he became
9 unresponsive and didn't say anything else the rest of the
10 way.

11 Q All right. Thank you. That's all I have. Answer any
12 questions the defense may have.

13 THE COURT: Mr. Allen, your answer.

14 MR. ALLEN: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. ALLEN:

18 Q When you read him the rights, you were in the ambulance
19 with him --

20 A Yes, sir.

21 Q -- is that right?

22 And you had asked the EMT to tell you if things
23 would -- looked like he didn't -- that he wouldn't make it?

24 A Yes, sir.

25 Q Okay. And you asked him to do, to let you know if

Tim Timmons - Cross-examination
By Mr. Allen

1 he -- if it looked like he wasn't gonna make it so you could
2 then try to question him?

3 A Yes, sir, I didn't want to question him if he was gonna
4 make it to the hospital and, and leave it to one of the
5 investigators to do, but if he was going to die, I did not
6 want him to die without making a statement.

7 Q Okay. And then one of the EMT's alerted you that it
8 looks like things are heading south?

9 A Yes, sir.

10 Q Meaning---

11 A He was, he was in jeopardy of dying.

12 Q Okay. And it was then that you read him his rights?

13 A Yes, sir.

14 Q Okay. That was from a rights, the Miranda rights card
15 that you carried with you?

16 A I carried a Miranda rights card in my pocket and I
17 pulled it out, and at the end of every part of that I asked
18 him did he understand his right and wish to waive it.

19 Q And how did he respond?

20 A He would say I do or yes or depending on how I asked
21 him it.

22 Q Okay. You didn't ask him to explain the rights in his,
23 in his own words, for example?

24 A No, sir, but I was very clear in how I asked him.

25 MR. ALLEN: Okay. One second please.

Tim Timmons - Cross-examination
By Mr. Allen

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. ALLEN: No other questions. Thank you.

4 THE COURT: Mr. Bulsa.

5 SOLICITOR BULSA: Nothing further.

6 THE COURT: All right, sir. You may step down.

7 You wish to excuse the witness?

8 SOLICITOR BULSA: Yes, sir.

9 THE COURT: Any objections?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: You're free to go if you'd like, sir.

12 You're free to stay as well. Thank you though for coming.

13 State may call its next witness.

14 SOLICITOR BARNETTE: May it please the Court, Your

15 Honor. I'd like to call Investigator Lorin Williams to come

16 to the stand.

17 THE COURT: Come forward, sir, to be sworn.

18 LORIN WILLIAMS, having been first duly

19 sworn, testified as follows:

20 THE COURT: Have a seat please.

21 (Witness complies.)

22 THE COURT: State your name for me.

23 THE WITNESS: Lorin Williams.

24 THE COURT: Thank you.

25 Your witness, Mr. Barnette.

Lorin Williams - Direct examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, sir.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY SOLICITOR BARNETTE:

5 Q Where do you work at, sir?

6 A Spartanburg County Sheriff's Office.

7 Q And what is your position there, sir?

8 A I'm a violent crime homicide investigator with the
9 Sheriff's Office.

10 Q And how long you been in law enforcement, sir?

11 A Since '93.

12 Q All right. Going back to July 8th, 2009, was you
13 working that day, sir?

14 A Yes, sir, I was.

15 Q And did you receive a call concerning a shooting of a
16 little girl?

17 A Yes, sir.

18 Q If you would, tell the jury what happened once you
19 received that call.

20 A Myself and another investigator were actually down in
21 Laurens County on another case. Received a call by
22 telephone from our supervisor that they were responding to
23 the shooting of a child. Didn't have a lot of details at
24 that point other than the fact that the suspect was in
25 custody, and that he had suffered a self-inflicted gunshot

Lorin Williams - Direct examination
By Solicitor Barnette

1 wound. They asked that we get to Spartanburg Regional as
2 fast as we could to -- at that time we were told he was
3 being flown in the helicopter to the hospital, and to try to
4 get there in time to meet the helicopter before he was taken
5 into surgery or, or whatever happened once he arrived at the
6 hospital.

7 Q And did you go to Spartanburg Regional, sir?

8 A We, we did. We actually had a prisoner in the car
9 coming back. We met with a uniform officer, passed him off,
10 and then we got straight on 26 and came up and got to the
11 hospital just after the ambulance had arrived with him.

12 Q And who was with you?

13 A Investigator Richie Foster.

14 Q And when you arrived at Spartanburg Regional, what
15 happened next?

16 A Like I said, when we pulled up they had already
17 unloaded him from the ambulance and were going into the
18 emergency room. As we go in the back of the ER, there's
19 what they call trauma bays. They're just inside the
20 hospital before you go into the actual emergency room
21 department. We were advised, as we went in behind him, that
22 they had taken him into trauma bay due to the, the gunshot
23 wound.

24 Q And once you got to the, to the bay, could you tell the
25 jury what happened then, sir?

Lorin Williams - Direct examination
By Solicitor Barnette

1 A Well, when we walk -- anytime we go to the trauma room,
2 and the, and the trauma team is in there, and they're
3 attending to a patient, naturally the first thing that we
4 want to make sure is that patient care is not interrupted.
5 We, we don't do anything to get in the way, interfere with
6 the doctors, the nurses, or whoever trying to administer
7 care to him.

8 So, one of the big things that I always do is I try to
9 find whoever the, the lead physician is, and they're
10 normally standing back kind of overseeing everything. Asked
11 him what the condition is and is it okay, at this time, for
12 me to approach the person and try to talk to him while
13 they're working on him. The trauma team leader advised me
14 that it was, that he was stable enough for me to be able to
15 talk to him, and, at that time, I approached the suspect.

16 Q Okay. And was that Ricky Lee Blackwell that you---

17 A It was, yes, sir.

18 Q Is that the -- could you identify what he's wearing?

19 A Sitting in the middle with the blue shirt on.

20 SOLICITOR BARNETTE: Your Honor, I'd like the record to
21 reflect that he's identified the defendant.

22 THE COURT: The record shall so reflect.

23 You may proceed, Mr. Barnette.

24 SOLICITOR BARNETTE: Thank you, Your Honor.

25 What was the first thing you did before you start

Lorin Williams - Direct examination
By Solicitor Barnette

1 talking to him, sir?

2 A Well, when we first got in, like I said, we checked his
3 condition, whether or not we would be able to talk with him.
4 Asked him what, if any, medication had been administered
5 because a lot times, situations they will have been given
6 some type of pain medication, something that would keep them
7 from being able to give a, a statement or understand what
8 was going on.

9 I was advised, at that time, that he had not been given
10 any type of anesthetic or any type of a narcotic for pain.
11 He did have IV's in his arm, and that was for, the way it
12 was explained to me, was so they could, when they needed to,
13 but it was to establish that line so that they could get
14 meds to him, you know, when they, when they needed it. But
15 he had not been, not been given any.

16 So, I went ahead and introduced myself to Mr.
17 Blackwell, and I told him who I was, where I was from, why I
18 was there, and I did not know, at that point, that Officer
19 Timmons had ridden in with him, had given him his Miranda
20 warnings. At that time I advised him of his Miranda rights
21 for the second time cause we didn't know at that point, but
22 he was given Miranda again.

23 Q Okay. And where -- how do you give Miranda to them,
24 sir?

25 A I actually carry my Miranda card in the case I keep my

Lorin Williams - Direct examination
By Solicitor Barnette

1 business cards in, and that way it's always in the same
2 place, and I always read the same to everybody.

3 Q And if you would, read the jury your Miranda card, what
4 rights you read to him that day.

5 A It just simply says you have the right to remain
6 silent. Anything that you say can and will be used against
7 you in a Court of law. You have the right to talk to a
8 lawyer and have one present with you while you're being
9 questioned. If you can't afford to hire a lawyer, one will
10 be appointed to represent you before any questioning if you
11 so wish. You have the right to stop answering questions at
12 any point, and then the last line says do you understand
13 these rights.

14 Q And did you read that to him?

15 A Yes, sir, I did.

16 Q And did he understand those?

17 A He did. He indicated that he did.

18 Q Okay. What happened after that, sir?

19 A Well, I started asking him, you know, basically to tell
20 me what had happened because, like I said, we had such
21 limited information at that point. It was so early on we
22 really -- I didn't know. It hadn't been passed along to me
23 what all had happened. So, I just -- I said, you know, tell
24 me something, you know, tell me what happened, tell me why
25 this happened, and he just -- if I can refer back to my

Lorin Williams - Direct examination
By Solicitor Barnette

1 notes real quick?

2 Q Yes, sir.

3 A One of the first things that, that he told me was that,
4 that he and his wife had been having problems, and that he
5 was trying to get her to reconcile their marriage.

6 Basically that, that she was continuously throwing up her
7 boyfriend to him, and he said that, that he had been having
8 sour thoughts about how to get back at this man for breaking
9 up his marriage.

10 Q And then after that, what did he say, sir?

11 A He, he went on and I asked him about the sour thoughts.
12 I -- you know, just kind of started talking, and I told him,
13 I said, well, you know, can you -- is there something that
14 you can tell me, is there, is there a reason that you can
15 give me to help me understand, you know, how this could
16 happen to a child of this age, you know. I just -- I need
17 some help in helping me understand what, what would make you
18 do this, what, what, why would this happen. And he just
19 basically said, again, you know, that, that he was -- it was
20 his way of getting back at, at her dad for breaking up the
21 marriage, and I said, you know, is there, is there something
22 you can tell me, tell me it was an accident, tell, tell me
23 you were sorry, tell me anything like that. And he just
24 looked at me, he said the only thing that I'm sorry about is
25 that I didn't do a better job on myself.

Lorin Williams - Direct examination
By Solicitor Barnette

1 Q He didn't say about the girl or anything about her
2 condition or anything like that?

3 A No, sir, he never asked at all. Never asked me at all
4 if, if Brooke was okay, what her condition was, had, had no
5 concern and showed no concern whatsoever for anything but,
6 but his condition at that point.

7 Q So, basically he was having sour thoughts about how to
8 get back at this man for breaking up his marriage?

9 A He, he never, he never went into any further details
10 about what the sour thoughts were. He just -- that was the
11 term that he used and he said it several times.

12 SOLICITOR BARNETTE: One moment, Your Honor, please.

13 (Pause.)

14 SOLICITOR BARNETTE: Thank you, sir. If you would,
15 please answer any questions the defense may have for you,
16 sir.

17 THE COURT: Mr. McGuire.

18 MR. MCGUIRE: Thank you, Your Honor.

19 THE COURT: Your witness.

20 MR. MCGUIRE: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MCGUIRE:

24 Q You heard the other two witnesses before your
25 testimony, right?

Lorin Williams - Cross-examination
By Mr. McGuire

1 A Yes.

2 Q Okay. So, you know that Mr. Blackwell, his first words
3 to anybody that came to him, an officer, was I shouldn't of
4 done it?

5 You heard that?

6 A I did.

7 Q You heard he almost died in an ambulance?

8 A I heard what he said, yes, sir.

9 Q Okay. And you spent 11 minutes with him on his bedside
10 after he almost died?

11 A I did in the trauma bay, yes.

12 Q Right.

13 Your report indicated it's 11 minutes.

14 A Uh-huh. (Affirmative).

15 That's correct.

16 Q You agree with that?

17 A That's correct.

18 Q And did you do any follow-up, go back and see him?

19 A No.

20 Q Do you go and talk to the nurse, the doctors, to see
21 what he was talking about, see how he was doing?

22 A No.

23 Q See what his, what his demeanor was, his emotions?

24 A No.

25 Q Christian people pray when they go to the hospital.

Lorin Williams - Cross-examination
By Mr. McGuire

1 Do hospitals have chaplains?

2 Did you talk to the chaplain?

3 SOLICITOR BARNETTE: Objection, Your Honor. This isn't
4 relevant to this situation.

5 THE COURT: The question was did he talk to a chaplain,
6 chaplain, and I'll allow that question.

7 You may proceed.

8 A No, sir, I did not.

9 Q Okay. And obviously hospitals have chaplains. People
10 want to get last rights. They want to get right with God
11 before they die sometimes, right?

12 A I'm, I'm -- they have chaplains.

13 Q Okay. Did you know that -- do you know the chaplains,
14 Abigail Moon, Vicki Hess?

15 A Not at the hospital, no.

16 Q Did you know that he was praying for Bobby Center's
17 family?

18 Did you know that?

19 Did you follow-up at all?

20 I got a real problem with remorse and---

21 SOLICITOR BARNETTE: Your Honor?

22 Your Honor, I want to object to this line---

23 THE COURT: well, now, if you're asking a question, Mr.
24 McGuire---

25 MR. MCGUIRE: Yes, sir.

Lorin Williams - Cross-examination
By Mr. McGuire

1 THE COURT: ---you got to give him an opportunity to
2 answer. This is not an argument.

3 MR. MCGUIRE: I agree.

4 THE COURT: So, ask a questions. I'll, I'll be sure he
5 answers your question.

6 Q Okay. Your, your conclusion that Mr. Blackwell showed
7 a lack of remorse is based on 11 minutes at his hospital bed
8 in the emergency room after he nearly died in an ambulance,
9 is that right?

10 A No.

11 Q You did some follow-up?

12 A No, that's not what it's based on.

13 Q Okay. well, let me ask you this.

14 Did you follow-up after your 11 minute interview?

15 A No.

16 Q Okay. And you didn't go see the chaplains?

17 A Had no reason to.

18 Q Okay. And you don't know that Mr. Blackwell was
19 praying for Bobby Center's family at the hospital?

20 A I know what he told me.

21 Q Okay. That's all I have. Thank you.

22 THE COURT: Anything further?

23 SOLICITOR BARNETTE: No further questions, Your Honor.
24 We'd ask that the witness be excused.

25 THE COURT: Any objection to his being excused?

Lorin Williams - Cross-examination
By Mr. McGuire

1 MR. MCGUIRE: Subject to recall.

2 THE COURT: All right, sir. You may step down. You
3 are subject to recall---

4 SOLICITOR BARNETTE: Oh, there is one matter. Well, I
5 may -- I can recall him, Your Honor, but there is one
6 matter.

7 THE COURT: Well, if you want to ask him another
8 question since he's subject to recall, I'll let you do that
9 and I'll let Mr. McGuire follow-up, if necessary.

10 REDIRECT EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q There is one other thing, and the reason I'm doing this
13 is to clear up an issue that came up earlier.

14 In your written statements, when you do a written
15 statement with a witness, what forms do y'all use?

16 A It's a voluntary statement form that's a standard form
17 that everyone in the Sheriff's Office, both in patrol and
18 investigations, uses it.

19 Q And did you have a form with you, sir?

20 A Yes, sir, I do.

21 Q And is there -- when they write on there, is there
22 copies left?

23 I mean is copies made of the statement itself?

24 A The voluntary statement form is, is just like this or
25 this is actually one, and there are, there are three copies

Lorin Williams - Redirect examination
By Solicitor Barnette

1 that, once the statement is given, there's the -- a pink, a
2 yellow, and a, and a white copy.

3 Q So, yellow copies, a lot of times, is given to
4 witnesses giving them a copy of their statement?

5 A Yes, sir.

6 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
7 just enter this into evidence at this time just to show an
8 example of a written statement.

9 MR. MCGUIRE: No objection.

10 THE COURT: Without objection, it will be marked and
11 entered. Give her a moment to do that please.

12 (WHEREUPON, the voluntary statement form was marked as
13 State's Exhibit No. 58 and received into evidence at this
14 time.)

15 SOLICITOR BARNETTE: That will be all I have of the
16 witness. Thank you.

17 THE COURT: Do you wish to follow-up with any
18 questions?

19 MR. MCGUIRE: No, sir.

20 THE COURT: All right, sir. You're, you're free to
21 step down. You are subject to recall, however. You may
22 leave it you'd like.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Thank you.

25 State may call its next witness.

1 SOLICITOR BARNETTE: Your Honor, we're at that moment I
2 think the Court wanted us to stop and discuss something.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, there's some matters that I do need to take up with
5 the lawyers. We were aware of this earlier. So, I'm gonna
6 ask you to step outside to the jury room.

7 Again, don't discuss any aspect of the case until I've
8 asked you to do so during your deliberations. So, at this
9 time, if you would, step back to the jury room. Thank you.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Mr. Barnette.

13 SOLICITOR BARNETTE: Your Honor, the next two witnesses
14 will be the crime scene officer as well as Doctor Wren for
15 the autopsy. We had several pictures we were going to
16 introduce. I did show that to the Court, and we went back
17 in chambers. Defense was there also.

18 Your Honor, what I did is Court Exhibit 10 consists of
19 52 pages, autopsy pictures, and crime scene pictures. We're
20 not gonna introduce those, but those are the type of
21 pictures we have available to us.

22 THE COURT: So, you're entering those as a Court
23 Exhibit for purposes of illustrating photos that were
24 available to the state?

25 SOLICITOR BARNETTE: Yes, sir, and we're not gonna move

1 those in because, like I said, I understand the Court, the
2 Court's been very cautious in the past concerning things.

3 THE COURT: Yes, sir.

4 SOLICITOR BARNETTE: Your Honor, I do have several
5 pictures. I want to mark those with the court reporter at
6 this time. I think -- I don't know specifically what their
7 objections are. I guess they'll put those on the record.
8 Let me go ahead and pre-mark them.

9 THE COURT: Let's mark them for identification purposes
10 at this time so that we can refer to them by specific
11 exhibit numbers.

12 Have they been marked already?

13 SOLICITOR BARNETTE: No, sir, I was gonna hand those to
14 Mrs. Green.

15 THE COURT: All right. Then we'll take a moment while
16 she marks them.

17 (WHEREUPON, fourteen photographs were marked as State's
18 Exhibit Nos. 59 through 72 for identification purposes only
19 at this time.)

20 SOLICITOR BARNETTE: Your Honor, can I make a general
21 announcement to our side of the crowd just for a second?

22 (Pause.)

23 SOLICITOR BARNETTE: Thank you, ma'am.

24 THE COURT: They've been marked for identification
25 purposes as?

1 SOLICITOR BARNETTE: Yes, sir.

2 THE COURT: Can you tell me the numbers?

3 SOLICITOR BARNETTE: Yes, sir. The crime scene
4 pictures are 59 through 64 in this case, and then 65 to 72
5 is the autopsy pictures, Your Honor, that we intend to
6 introduce.

7 THE COURT: All right.

8 SOLICITOR BARNETTE: Your Honor, just for information
9 purposes, cause the only colored one is the first one, State
10 Exhibit 59, and the reason why is it would be very hard to
11 see black and white where she urinated herself.

12 THE COURT: I see.

13 SOLICITOR BARNETTE: The rest of them are in black and
14 white, Your Honor. We have one at the scene where she was
15 found. We have them with the shot in the back of the shirt
16 where the red spot where the officer had talked about. Also
17 with the shirt pulled up showing the angle of the bullet
18 going on as best we could in black and white. The shot of
19 the knee through the leg, Your Honor, which is State Exhibit
20 63, and State Exhibit 64, Your Honor, is showing the wounds
21 to the neck as well as through her cheek and face in this
22 case, and what I did, I actually cropped out her face trying
23 to do the best way I can about that, Your Honor, trying to
24 be as cautious as I can about that. Let me hand these to
25 Mr. McGuire and then he can state his objections to each

1 one---

2 THE COURT: All right.

3 SOLICITOR BARNETTE: ---or which ones he doesn't object
4 to.

5 THE COURT: Yeah, let's take a moment. They're two
6 different groups.

7 These are the crime scene photos, is that correct?

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: All right.

10 MR. MCGUIRE: I can't -- I don't, in good faith, have
11 an objection to No. 59.

12 THE COURT: Do not have an objection?

13 MR. MCGUIRE: No, sir.

14 Judge, do you want to see them as we're talking about
15 them?

16 SOLICITOR BARNETTE: We can approach the bench if you
17 want to?

18 THE COURT: You might want to approach the bench, but
19 we'll have to put it on the record. So, you talk out loud.

20 MR. MCGUIRE: Judge, I'm gonna pass up to the Court
21 what's been marked No. 59.

22 THE COURT: There's no objection to that one, is that
23 correct?

24 MR. MCGUIRE: That's correct.

25 THE COURT: All right. Yes, sir.

1 MR. MCGUIRE: We object to No. 60.

2 THE COURT: All right. Specific objection is?

3 MR. MCGUIRE: It would be a 403, danger of unfair
4 prejudice with no probative value offered by the photograph.
5 In this case, we specifically have a concession of guilt.
6 We've already had crime scene photographs that have depicted
7 the victim, location of the victim. There's, there's
8 nothing -- there's nothing that photograph does to move the
9 ball forward on any issue that's disputed.

10 THE COURT: I'll hear from the State.

11 SOLICITOR BARNETTE: Your Honor, the reason why we
12 introduced that picture is just to show where she was, how
13 she was placed. With officers -- and the crime scene
14 officers can testify to whatever she was and how she was at
15 the time they got to her.

16 THE COURT: All right. So, it's -- is it your position
17 then that this would show the circumstances of the crime?

18 SOLICITOR BARNETTE: Yes, sir. And, Your Honor, we do
19 have other pictures.

20 THE COURT: I understand.

21 And -- all right. It's taken from a distance that I
22 find it not to be unduly prejudiced, prejudicial. I do find
23 that it would be probative on the questions concerning the
24 circumstances of the crime. Also it would serve to
25 corroborate testimony previously entered into the record as

1 to the dress, the clothing worn by the victim, as well as
2 the circumstances under which the body was located.

3 So, I will -- I find that it is not unduly prejudicial,
4 and the probative value does outweigh the prejudicial
5 effect.

6 MR. MCGUIRE: And if I could add just one thing with
7 regard to Exhibit No. 60?

8 THE COURT: Sixty, yes, sir.

9 MR. MCGUIRE: Is that, as I recall the testimony, all
10 of the responding officers indicated that the victim was
11 face down. She's clearly face up in that photograph. So,
12 it can not be the circumstances under which the defendant
13 left the victim. It's actually -- which would -- I mean
14 obviously that is a ground that the State can use to get a
15 photograph in, but she's actually not in the same condition.
16 This is a different condition. I would move to exclude it
17 on that basis as well.

18 THE COURT: Mr. Barnette, I'll be glad to hear from
19 you.

20 SOLICITOR BARNETTE: Your Honor, he is right. I'm not
21 gonna suggest that's the position she was at the scene. I
22 was just entering it to show the pictures, what she was
23 wearing to try to corroborate that, but that's not the
24 position she was found at when they got there originally.

25 THE COURT: As I recall the testimony, there was some

1 testimony about efforts to determine whether or not she was
2 breathing and also to attempt to take a pulse from her. I
3 didn't hear testimony as to when the body was actually moved
4 --

5 SOLICITOR BARNETTE: Yes, sir.

6 THE COURT: -- in that effort. However, it does show
7 the location right beside -- the basketball goal base is
8 shown and it does show the, the clothing that she was
9 wearing at that time, and I do not find that it is unduly
10 prejudicial. I will still admit it for that purpose.

11 MR. MCGUIRE: And, Your Honor, State's Exhibit No. 61,
12 it would be the same, same objection. That it, it has no
13 probative value. The girl's clothing is not in dispute. We
14 don't dispute that she was wearing those clothes. We don't
15 dispute where the body was found. We've already had
16 pictures of it. We don't dispute gunshots, that our client
17 is the, is the shooter. I mean there's zero probative value
18 in all of these photographs showing these close-up wounds of
19 the victim.

20 THE COURT: All right. So, you're objecting to the
21 group -- tell me which number, 61?

22 MR. MCGUIRE: That objection would apply to sixty --
23 I'm sorry. 61.

24 THE COURT: 61, 62?

25 MR. MCGUIRE: And 63.

1 THE COURT: 63.

2 MR. MCGUIRE: And certainly 64.

3 THE COURT: And 64.

4 I'll hear from the State in regard to those
5 photographs.

6 SOLICITOR BARNETTE: Your Honor, the -- basically it's
7 showing what happened in this crime, what happened to the
8 victim in this case. The gunshot wounds, the one in the
9 back -- and it's gonna be hard to tell cause I'd rather use
10 the color picture than the black and white picture, but
11 actually the angle of the bullet coming up through her
12 actually came up from the back and came up through her cheek
13 through there, and testimony will show that there's an angle
14 showing that, showing that she was probably falling down
15 when that shot was fired into her back.

16 Then the -- you have the shot in the leg. That's
17 showing it's through and through there as well as the State
18 Exhibit 64, Your Honor, is the shot on her neck. There's
19 actually a char mark from there that will be testified to by
20 Doctor Wren. The charred mark would show that that was a
21 contact wound to her neck. That bullet actually went
22 through her neck, actually blew out the side of her neck,
23 Your Honor, went through and hit her arm, and where the
24 bullet was lodged in there.

25 I think it shows obviously the circumstances of the

1 crime showing that he definitely intended to kill her in
2 this situation, definitely had a contact wound at that time
3 from there, and I'll be honest with you, I'm gonna argue
4 that it -- obviously she was moving trying to get away from
5 him at some point from this, from the pattern of the bullets
6 that were shot.

7 THE COURT: All right. I'll review that.

8 Yes, sir, any others that you object to?

9 MR. MCGUIRE: No, sir.

10 THE COURT: Have we gone through the group?

11 SOLICITOR BARNETTE: No, we have not went through the
12 autopsy ones yet, Your Honor.

13 THE COURT: All right. I'll consider these and
14 announce a decision shortly.

15 SOLICITOR BARNETTE: Okay, Your Honor. Sixty-five---

16 THE COURT: Let me be sure.

17 In looking at those photographs, I want to be sure
18 there's none that are duplicitous. The only two that would
19 be possibly so would be 62 and 61. Those are both shots of
20 the --.

21 SOLICITOR BARNETTE: Of the back.

22 THE COURT: -- of the victim's back. So, that would be
23 same wounds shown in both, but one's with clothing over the
24 wound and the other's clothing not over the wound.

25 SOLICITOR BARNETTE: Exactly, yes, sir.

1 THE COURT: Okay.

2 SOLICITOR BARNETTE: With the shirt pulled up and one's
3 down.

4 THE COURT: I'll consider those.

5 SOLICITOR BARNETTE: Your Honor, State Exhibit 65
6 through 72 is the autopsy pictures. State's 65, Your Honor,
7 is the actual -- and what I can do is hand them to Mr.
8 McGuire and let him note his objections.

9 MR. MCGUIRE: Same objection. No probative value.
10 It's a danger of unfair prejudice. It's certainly not the
11 condition the body was left in at the scene.

12 SOLICITOR BARNETTE: Your Honor, this is autopsy
13 pictures showing -- Doctor Wren will testify to these
14 wounds. That is actually the entrance wound into her head,
15 the gunshot wound, Your Honor. I have State Exhibit 66,
16 which is gonna be the exit wound on that, Your Honor, from
17 that case, and I assume he'll say the same objection up
18 there to those.

19 MR. MCGUIRE: Same objection. The only thing I would
20 add is that while generally a rule of evidence issue is a
21 state court issue, I would ask -- I would also argue that
22 some of the photos -- all -- I would actually say that all
23 these photographs with the -- depicting these wounds on this
24 very young child, they all invoke the Fourteenth Amendment,
25 due process clause, because they're so prejudicial and it

1 renders the, the penalty phase fundamentally unfair.

2 SOLICITOR BARNETTE: Your Honor, State Exhibit 67, Your
3 Honor, is actually the bullet wounds where the bullet went
4 from the neck into the arm, Your Honor.

5 State Exhibit 68 is where the bullet is actually taken
6 from the arm of Brooke by Doctor Wren.

7 State Exhibit 69, Your Honor, is actually the gunshot
8 wound into the leg, the through and through shot there.

9 State Exhibit 70, Your Honor, is actually -- what I've
10 done is actually had her face and I actually cropped her
11 face out of it. That is the neck wound where the bullet
12 went through, and then, of course, you can also see the
13 cheek where the one from the back went up through and
14 actually went through her cheek.

15 State Exhibit 71, Your Honor, is actually the gunshot
16 wound in her back at the angle I was talking about where she
17 had to be falling down, and that would be the State's
18 position in this case.

19 State Exhibit 72, Your Honor, is showing the path of
20 the bullet. I did cut it off where you can't see her face
21 where you actually see the rod or this through her head
22 showing the through and through through her head.

23 THE COURT: All right. Objections, all of the same?

24 MR. MCGUIRE: All the same, that particularly -- I
25 mean -- to make sure we're covered for the record, the

1 objection is the same as to all, all photographs, crime
2 scene and autopsy, depicting the wounds close-up. They --
3 they're calculated to arouse the passion and the prejudice
4 and inflame the jury, and that, in that circumstance, the,
5 the test is whether they are necessary to prove something
6 material, and, in this case, with the concession of guilt,
7 they're not necessary to prove anything at all.

8 So, there's essentially no probative value to any of
9 the photographs. The danger of unfair prejudice is high.
10 In fact, it's so high I would say that to admit the
11 photographs would, would invoke a Fourth Amendment due
12 process, due process analysis and that it would render Mr.
13 Blackwell's trial fundamentally unfair, the penalty portion
14 that is.

15 THE COURT: All right. Anything further?

16 MR. MCGUIRE: And that we would -- I'm sorry. And that
17 we would stand on the cases of Collins and Torres. We have
18 copies for both the---

19 THE COURT: I have Torres in my hand now.

20 MR. MCGUIRE: Okay. And we have a copy of Collins and
21 Torres for the State.

22 SOLICITOR BARNETTE: I'm very familiar with Torres.

23 THE COURT: We'll take Collins. I'm also considering
24 them in the light of State versus Nance, State versus
25 Rosemond, State versus Burkhardt, State versus Sutherland.

1 SOLICITOR BARNETTE: And, Your Honor, just for -- to
2 respond too, obviously the probative value of this would be
3 also the premeditation, shooting four times in such a manner
4 that he shot her at. I'd ask the Court to take that into
5 consideration also.

6 THE COURT: Okay. If you'll give me a few minutes,
7 I'll take them back to chambers and review them.

8 Court will be in recess briefly.

9 (WHEREUPON, a short recess was taken at this time.)

10 SOLICITOR BARNETTE: Your Honor, I think Mr. McGuire
11 wants to approach you a second about a matter.

12 THE COURT: Sure.

13 (WHEREUPON, a bench conference was held at this time.)

14 THE COURT: All right. My ruling as to the photographs
15 that have been tendered into evidence at this point in time,
16 State's Exhibit No. 59 is not objected to and it will be
17 admitted.

18 (WHEREUPON, State's Exhibit No. 59 was received into
19 evidence at this time.)

20 THE COURT: State's Exhibit 60, 61, 63, and 64, and 62,
21 of those photographs I will allow State's Exhibit No. 60,
22 which is a photograph which does indicate the location of
23 the body at the scene. It also indicates the clothing that
24 the, that the victim was wearing at this time. That
25 corroborates other testimony that is heretofore not been

1 corroborated and it does provide certain probative value
2 that outweighs the prejudicial effect of the Court's
3 opinion. Therefore, those will be admitted.

4 (WHEREUPON, State's Exhibit No. 60 was received into
5 evidence at this time.)

6 THE COURT: Exhibits -- the other exhibits that I just
7 mentioned, 61, 62, 63, and 64, I will exclude those, those
8 photographs. Those are photographs of specific wounds to
9 the victim's body. I find those to be duplicative of
10 photographs that were taken at the autopsy of the same
11 wounds in that they do not have the probative value that
12 perhaps the photographs that are taken at the autopsy would
13 have.

14 As to State's Exhibits 67, 68, 69, 70, 71, and 72, I am
15 not ruling those out of evidence at this time. However, I
16 am not ruling them into evidence at this time.

17 what I am going to state is that what I am looking for
18 is that our Courts have stated, in the past, that autopsy
19 photographs of victims are admissible in the sentencing
20 phase of a capital murder prosecution for use by the doctor
21 who performed the autopsy in illustrating the following
22 possible things:

23 The number of injuries, the locations of the injuries,
24 and the manner in which the injuries were committed.

25 Also, other cases -- that's from the Torres case.

1 Also from State versus Rosemond and State versus
2 Burkhart, there is also authority that autopsy photographs
3 may be presented to the jury in an effort to show the
4 circumstances of the crime, and, in this case, if the doctor
5 who performed the autopsy is able to state reasoning or
6 information that would indicate that these photographs are
7 either illustrated of -- illustrative of the number of
8 injuries, the locations of the injuries, and/or the manner
9 in which the injuries were committed, at that time the State
10 will consider their probative value as against their
11 prejudicial effect, and will make a ruling once I've heard
12 the testimony of the doctor concerning what they might
13 illustrate.

14 Does the State understand my ruling at this time?

15 SOLICITOR BARNETTE: Yes, sir.

16 THE COURT: Defense understand?

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: All right. All right. So, these -- let's
19 see. Mr. Barnette, do you want the ones that I have ruled
20 out, which are 61 through---

21 SOLICITOR BARNETTE: If I can hand those to the---

22 THE COURT: If you'll hand those down. The court
23 reporter can hold those over. Those will be marked for
24 identification only at this time.

25 SOLICITOR BARNETTE: Yes, sir.

1 THE COURT: The other photographs are also marked for
2 identification with the exception of State's No. 59. It is
3 in evidence because it's not objected to.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 THE COURT: The others I will rule on as we proceed
6 with the testimony.

7 SOLICITOR BARNETTE: Yes, sir.

8 THE COURT: Anything further before we bring the jury
9 back from the State's prospective?

10 SOLICITOR BARNETTE: No, sir, we're gonna call Doctor
11 Wren first out of order to get him back.

12 THE COURT: All right. Anything further from the
13 defense?

14 MR. MCGUIRE: No, sir.

15 THE COURT: Also I'll note, in making the ruling, that
16 the State has shown restraint in presenting the photographs
17 that they have presented by offering black and white
18 photographs of the appropriate situations, and also not a
19 seeking to introduce a rather large number of similar
20 photographs in the case. The Court does note that in making
21 its ruling.

22 Bring the jury in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: Thank you, Mr. Ruth.

1 All right. The record will reflect the jury has
2 returned to the courtroom.

3 Thank you for your patience. I have completed my
4 discussions with the lawyers concerning some issues.

5 At this time the State may call its next witness.

6 SOLICITOR BARNETTE: Like to call Doctor Wren to the
7 stand, Your Honor, call him back.

8 THE COURT: All right. Sir, if you'll come forward.

9 SOLICITOR BARNETTE: Your Honor we're calling him out
10 of order to try to get him back to the hospital.

11 THE COURT: Doctor Wren, come forward and be sworn for
12 this hearing.

13 DOCTOR DAVID WREN, having been first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat, and, again, state your name
16 for me.

17 THE WITNESS: John David Wren.

18 THE COURT: All right. Let me, let me ask, is there a
19 stipulation from counsel as to the expert status of the
20 witness from the State?

21 SOLICITOR BARNETTE: I'm assuming, Your Honor, they
22 would stipulate again since they did before.

23 THE COURT: Stipulate---

24 MR. ALLEN: Yes, sir.

25 THE COURT: ---again to that?

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1 MR. ALLEN: Yes, Your Honor.

2 THE COURT: All right. This witness has been
3 previously recognized as an expert within the field of being
4 a medical doctor as well as a pathologist. That designation
5 continues at this time.

6 You may proceed, Mr. Barnette.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR BARNETTE:

10 Q Doctor Wren, I know you -- we know that you performed
11 the autopsy. What I'd like you to do is go into detail
12 about the wounds, if they were contact wounds, non-contact
13 wounds, how many there was, and what angles they came from.

14 A Okay. As we're describing wounds on a body, we start
15 from top to bottom and front to back. So, in other words,
16 if you have a wound in your lower back, and one in your
17 forehead, you would label number -- gunshot wound number one
18 is the one in the forehead, and the one in the lower back
19 will be number two. If you had two in the front and one in
20 the back, it -- all of them in the front would be described.

21 Q And, Doctor Wren, if I could hand to you State Exhibit
22 55 as well as State Exhibit 65 through 72. Let you look
23 through those real quickly, sir.

24 would that help explain to the jury about the angles of
25 the bullets as well as the contact wounds as well as the

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1 number of injuries in this case?

2 A Yes, it would.

3 Q Okay. And would you be able to show them the angles
4 and things through these pictures and through your diagram?

5 A Yes.

6 SOLICITOR BARNETTE: Your Honor, I would like to move
7 State Exhibit 55 as well as I think it's 67 through 72 into
8 evidence.

9 THE COURT: Continuing objections?

10 MR. ALLEN: Yes, Your Honor. Object to all those
11 photographs on the---

12 THE COURT: And would you like to state anything in
13 addition at this time?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: All right. I'll find that the, the
16 probative value does outweigh its prejudicial effect based
17 on the testimony of the expert witness. They'll be admitted
18 at this time --

19 SOLICITOR BARNETTE: Thank you, sir.

20 THE COURT: -- provided I believe he took the
21 photographs, is that correct?

22 SOLICITOR BARNETTE: He was there, Your Honor.

23 Do these, these photographs represent what you saw
24 there that day?

25 A I point out what they should be taking.

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1 Q Yes, sir.

2 THE COURT: All right. I'll, I'll admit them.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 (WHEREUPON, State's Exhibit No. 55 was previously
5 admitted into evidence, and State's Exhibit Nos. 67 through
6 72 were received into evidence at this time.)

7 SOLICITOR BARNETTE: May I publish State Exhibit 55 to
8 the jury, Your Honor?

9 THE COURT: You may.

10 Q If you would, doctor, I'm gonna hand you a pointer here
11 and there's a button on top.

12 A Okay.

13 Q Let you point out and describe the, the bullets and the
14 injuries to the jury.

15 A All right. Gunshot numbers one and two, from top to
16 bottom, is a entrance gunshot wound to the right side of the
17 head, and the exit is in the left temporal region just in
18 the hairline. There was hair intervening between these
19 wounds. So, a lot of times, when there is, when there are
20 intervening objects or clothing, it destroys some of the
21 evidence. In this case, there was no evidence of a contact
22 wound and a contact wound means that -- you can have two
23 types of contact wounds. You can have what's called tight
24 contact and what is called loose contact.

25 A tight gunshot wound is meant that the, the end of the

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1 barrel is pressed into the skin, and when the weapon is
2 discharged, gases and soot leave the barrel and go in behind
3 the bullet and they actually tear around the skin and come
4 and, and blow it apart as it goes in. So, it makes a
5 stellate type wound. Sometimes when you have a tight
6 gunshot wound you can see the imprints of the barrel.

7 In this case, it was slightly irregular, but I could
8 not tell the distance. I know it wasn't tight contact, and
9 I couldn't tell whether it was loose contact or not. But
10 nevertheless, the entrance's on the, on the left side -- I
11 mean the right side because the bone, as it goes through the
12 bone, it bores its way in, and when it breaks through the
13 other side, the, the, the exit side is bigger around than
14 the entrance.

15 In this case, that was the characteristics of the bone
16 beneath that, and then, on the other side, as it goes
17 through and comes out the other side, the bigger area of the
18 bigger diameter's on the outside. We call that inward
19 beveling if it's a -- if the beveling is -- if it's an
20 entrance wound. It's outward beveling if it's exit.

21 In this case, the gunshot wound was traveling slightly
22 forward, slightly downward, and from her right to her left.
23 That was the first -- was a gunshot wound. That doesn't --
24 the numbering does not indicate order of infliction.

25 Q Let me show you what's marked State Exhibit 65 in this

Doctor David Wren - Direct examination
By Solicitor Barnette

1 case.

2 Could you tell the jury what this is, sir?

3 A That's the entrance wound as the hair is pulled away
4 from it. As I told you, it was slightly irregular, but
5 mostly round. There's no evidence that the soot or powder
6 was inside that wound. So, it could of been very -- it was
7 probably very close, but not tight contact and most probably
8 not loose contact.

9 Q Let me show you what's State Exhibit 66.

10 If you would, tell the jury what this is, sir.

11 A That's the exit wound on the other side right there,
12 and you can tell an entrance from an exit wound in that,
13 when the -- when a bullet passes into skin, it bores it's
14 way in, but it tears itself out. So, if you take a gunshot
15 wound, if it's an entrance wound, you can not place it back
16 together. They'll be a hole there regardless of what you
17 do.

18 If it's an exit wound, as it comes out, it tears itself
19 out. So, you can place all the little pieces of tissue back
20 together and it will still be a, a flat surface there.

21 So, if you, if you are -- if I were a neurosurgeon -- I
22 mean a plastic surgeon, I could suture that back together
23 and you could not tell it was there. So, that was the exit
24 in her temporal area. The entrance was in the -- what we
25 call the parietal area, a little bit further back on the

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1 side of the head.

2 Q Doctor Wren, let me show you State Exhibit 72.

3 If you would, tell the jury what this is, sir.

4 A That's the -- a probe passing through the wound. It,
5 it passed through the, the brain, the frontal portion,
6 portion, the portion of the brain and it actually transected
7 the superior portion of the brain from the interior portion.
8 So, that gunshot wound would of been immediately fatal, and
9 it actually would of -- of course, the heart can beat for a
10 little bit after that. It doesn't mean that everything
11 stops. It just means that it's immediately fatal as far as
12 brain function is controlling -- control is concerned, and
13 it caused radiating fractures in the base of the skull and
14 from the entrance wound into the skull.

15 As it was discharged into the skull through the bone
16 it, it, it fractured the skull and actually caused what's
17 called a hinge fracture, fracture. It means that we can
18 take the face and move it -- the head and move it back and
19 forth and it actually will -- is not stable anymore. So,
20 that was gun -- one gunshot wound.

21 Q Yes, sir, let me go back to the diagram. Let you go
22 ahead back to that, sir.

23 A I didn't do one from the side, but that is, like I
24 said, it went slightly downward, transected the brain at the
25 base of the cerebrum it's called, the upper portion of the

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By Solicitor Barnette

1 brain between that and the brain stem, which is where the
2 brain nicks down and then it was above the cerebellum.

3 Now, the next set of wounds is, is a little bit more
4 complicated in that -- I have to refer to my chart here.
5 Gunshot wound number three was in the right cheek. It was
6 an exit wound with the same characteristics that I told you
7 before, and it actually communicated with the gunshot wound
8 in the back, which is gunshot wound number seven there.

9 The, the gunshot wound passed into the back, went
10 through the soft tissues of the back, did not enter the
11 chest cavity. It actually grazed the side of C-5, the fifth
12 cervical vertebra, and passed on up and passed out through
13 the cheek in approximately this position.

14 Q Yes, sir. Let me---

15 A And we have, we have a probe and a photograph of that.

16 Q Let me -- yes, sir, let me go ahead -- we been
17 referring to State Exhibit 15, the diagram. This is State
18 Exhibit 71.

19 If you would, please tell the jury what that is, sir.

20 A This is the entrance in the back slightly to the --
21 this is the midline of the back right about there slightly
22 to the right of the midline, and you can't see it very well,
23 but there's a grazing area. There's a -- if a bullet does
24 not pass directly into skin, it will cause a, an abrasion in
25 the direction it's coming from. And if you can imagine this

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1 being a slightly oval wound where the probe is, and below
2 there you can see a little bit of discoloration, that is
3 actually, as the bullet passed through that area, it
4 actually caused an abrasion of the skin and it gives an
5 indication of which, where the bullet was coming from.

6 So, this bullet was actually, if the person was
7 standing up, it was coming from either any, any area you can
8 imagine a gun being applied where the barrel would be
9 perpendicular -- I mean parallel to this probe, and it could
10 be from any of those -- any place along that probe there,
11 but it would have to be parallel. The, the barrel itself
12 would have to be parallel to that probe.

13 Q Doctor Wren, if I can ask you, would this be consistent
14 with somebody bent over or starting to fall down?

15 A It could be, yes, or if she were -- if the person were
16 lying on the ground and the person would have to be back a
17 good ways from them to get that angle.

18 Q So, it was either from -- angled from far away---

19 A Yes.

20 Q ---or the person was actually falling down?

21 A Be closer, yes.

22 Q Yes, sir.

23 And I'll show you the out -- the exit wounds actually
24 of another wound. So, we'll show that in a minute.

25 If you would, go on to the next one, sir.

Doctor David Wren - Direct examination
By Solicitor Barnette

1 A Well---

2 Q This is State Exhibit 55---

3 A The next one---

4 Q ---we're referring to.

5 A The next one is actually a set of wounds that I call
6 five, four, and six, which the majority of it was in the
7 neck and the lower -- what I call the cheek, but it was
8 actually adjacent to the neck. This was a deep grazing
9 gunshot wound. It actually caused -- went into the skin a
10 little bit and then came out as it passed in that direction,
11 and there's a broke line here cause we don't have
12 photographs of the arm up. But that bullet then passed into
13 the arm, into the biceps area, and there was a bullet there,
14 and one can tell that this was a reentry because that entry
15 was, as the bullet starts tumbling, it doesn't make a nice
16 round hole there. And unless it hits something solid, it
17 will still be an intact bullet as it passes through soft
18 tissues, and so this not being regular and round, it was
19 indicative of a reentry, what we call a reentry gunshot
20 wound. So, that was five, four, and six.

21 Q Let me show you State Exhibit No. 70, sir.

22 If you would, describe what that is, sir.

23 A This is an area of charring. It's toward the backside
24 of her neck, and although it's torn up a good bit here, this
25 is a grazing wound that actually was tearing through the --

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1 just the surface of the skin. It probably went in and came
2 back out there and then kept on going into her arm.

3 Q The charring you talk about, would that be a contact
4 wound in this case?

5 A That is a contact wound there because that is
6 definitely charring and that's -- it could be from the
7 barrel or it could be from -- it's more than likely from the
8 barrel although you can't see the barrel itself or imprint
9 itself.

10 Q When you're talking about contact wound, that's where
11 the gun's in contact with the skin?

12 A Laying up against it because, as it charred it, the
13 barrel gets immediately hot and it burns the skin where it
14 goes in.

15 Q Okay. Is the other the bullet, the hole, the one from
16 the back, is it -- can you see it in this picture, sir?

17 A It's this wound here.

18 Q That's the one that came from the back and came out at
19 that area?

20 A Came out, came out on the -- came through the inside of
21 her jaw and then came out her cheek there. Her jaw runs
22 right along here.

23 Q Okay. Let me show you State Exhibit 67.

24 A That's the reentry in the left arm, and, as I told you,
25 it doesn't make a nice round hole. It's more square shaped.

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1 So, when that bullet entered the skin, it was actually
2 sideways as it went into the skin or slightly sideways. It
3 would of been -- if it were exactly sideways, it would of
4 shown you the outline of a bullet but it was tumbling as it
5 went into the skin.

6 Q Let me show you State Exhibit 68.

7 Could you tell the jury what that is, sir?

8 A Adjacent to that wound, which I believe is here, I
9 could -- she had a broken humerus. The bullet actually hit
10 her, her humerus and broke it in two, and the bullet stayed
11 in there, and that's me -- put a little slice in the skin
12 there and took the bullet out is the one I described, was
13 it, day before yesterday or whenever I testified before?

14 Q This is already been entered into evidence before cause
15 you talked about the broken humerus.

16 Is that State Exhibit 40 we're looking at?

17 A Yeah, that's the, that's the humerus. The elbow is, of
18 course, right there. There's the -- you can see the -- it
19 looked better last time you projected it.

20 Q Yes, sir.

21 A But it is---

22 Q I know it's not projecting as well. I apologize.
23 That's why I'm trying to figure out why it's not.

24 A It is fractured and there's the bullet there.

25 Q I think it's---

Doctor David Wren - Direct examination
By Solicitor Barnette

1 A Now you can see it. There's the -- one end of the bone
2 and the other end of the bone right there. It actually --
3 the -- when -- sometimes when you fracture the bone the
4 muscles contract and pull the bone overlapping.

5 Q Yes, sir.

6 I'm going back to State Exhibit 55, the diagram, if you
7 can describe the fourth wound please.

8 A The fourth wound entered the left anterior thigh and
9 passed a short distance into the thigh and exited without
10 hitting any solid tissues and probably no vital vessels.
11 They're no big vessels that run right in that area, and then
12 exited and kept going, and those were gunshot wounds eight
13 and nine.

14 Q I'm showing you State Exhibit 69.

15 what is this, sir?

16 A This is the, this is the exit gunshot wound and this is
17 the entrance.

18 Q And that's the labeling that you used?

19 A And the knee is right there, and these little dots here
20 I think are insect bites cause she -- insects, ants, and so
21 forth collect quickly, and they like to chew on skin. So,
22 those are some insect bites I think.

23 Q Yes, sir.

24 Doctor Wren, if I can ask you, in looking at the
25 pictures and the, and the diagram, some of wounds, obviously

Doctor David Wren - Direct examination
By Solicitor Barnette

1 would she of been moving or trying to move during those
2 shots?

3 A Yes, the only ones that would of, would of caused a lot
4 of difficulties, after she fractured her arm, she probably
5 could still move it, but the one through the head was -- she
6 wouldn't of been moving after that.

7 Q And would it be consistent that she was falling -- the
8 one in the back would be that -- like you say, either she's
9 falling down or it's from a distance they're being shot?

10 A It could of been even at another time. I don't -- they
11 don't -- these are not all exactly the same time. But if
12 you can imagine these and then, as the person fell, shooting
13 again, it would go the other direction.

14 Q So, it could -- very well could be consistent with all
15 four shots weren't fired at the same time?

16 A They could be, yes.

17 SOLICITOR BARNETTE: One moment, Your Honor.

18 (Pause.)

19 SOLICITOR BARNETTE: Doctor Wren, thank you for your
20 time. Please answer any questions that the defense may have
21 for you, sir.

22 THE COURT: Any questions, Mr. Allen?

23 MR. ALLEN: No, Your Honor.

24 THE COURT: All right. Bring the lights up, Mr. Ruth.

25 THE COURT: Sir, you may step down.

1 Any objection to this witness being excused from the
2 State?

3 SOLICITOR BARNETTE: None from the State, Your Honor.

4 THE COURT: Any from the defense?

5 MR. ALLEN: No, Your Honor.

6 THE COURT: All right. You're free to go, sir. Thank
7 you very much.

8 All right. Ladies and gentlemen of the jury, we've
9 reached past five o'clock at this point in time. So, we're
10 going to break for the afternoon.

11 My instructions to you, as always when you leave the
12 courthouse, is not to discuss any aspect of this case among
13 yourselves or between yourselves in any manner whatsoever.
14 I'll be checking on your ability to follow my instructions
15 tomorrow when you return.

16 Hope you have a good evening and we'll start back at
17 nine o'clock in the morning. You're free to go at this
18 time.

19 Thank you very much.

20 Everyone remain seated while the jury retires.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Court's in recess until nine o'clock in the
24 morning.

25 Everyone remain seated while the defendant leaves the

1 courtroom.

2

3 (WHEREUPON, Court was in recess for the evening.)

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1 Friday, March 14th, 2014

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3 THE COURT: State ready to proceed at this time?

4 SOLICITOR BARNETTE: State's ready, Your Honor.

5 THE COURT: Defense ready?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: All right. Let's bring the jury in.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Thank you, Mr. Ruth.

11 Good morning. I hope everyone had a good evening.

12 If there was any member of the jury panel who had any
13 difficulty in complying with my instructions during your
14 absence from the courthouse or anytime during the
15 proceedings, please stand.

16 (No response.)

17 THE COURT: It appears that all jurors have been able
18 to comply with my instructions.

19 When we broke yesterday we were in the process of
20 hearing from the State in the sentencing phase of the trial.

21 At this point in time the State may call its next
22 witness.

23 SOLICITOR BARNETTE: May it please the Court, Your
24 Honor.

25 Like to call David Hogsed to the stand. Come forward,

David Hogsed - Direct examination
By Solicitor Barnette

1 sir, to be sworn.

2 DAVID HOGSED, having been first duly
3 sworn, testified as follows:

4 THE COURT: Once seated, sir, please state your name.

5 THE WITNESS: David Hogsed.

6 THE COURT: Thank you.

7 Mr. Barnette, your witness.

8 SOLICITOR BARNETTE: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Sir, where do you work at?

12 A Spartanburg County Sheriff's Office.

13 Q And what is your position there, sir?

14 A I am sergeant over the crime scene unit.

15 Q And how long have you been in the crime scene, sir?

16 A This will be my 16th year.

17 Q And prior, prior to you working at the Sheriff's
18 Department, where did you work at, sir?

19 A Worked with the City Police Department.

20 Q Okay. So, how long have you been in law enforcement
21 total?

22 A Twenty-four and a half years.

23 Q Was you on duty July 8th, 2009, sir?

24 A I was.

25 Q If you would, tell the jury about a call that you

David Hogsed - Direct examination
By Solicitor Barnette

1 received.

2 A Actually I was -- I had just worked a burglary call at
3 the flea market on Asheville Highway. I was headed back to
4 the Sheriff's Office. This call was dispatched out to our
5 uniform patrol officers and I just immediately responded
6 there.

7 Q Okay. And what did you do once you got there, sir?

8 A The first thing we did, before I arrived, the two
9 residences, and Ridings Road, had been roped off
10 with crime scene tape. One of the first things we do is we
11 check in. Our uniform patrol division starts a crime scene
12 log. We check in with them. We get a briefing of the
13 circumstances, and then we check in with them. The second
14 thing I started doing, once I signed into the crime scene
15 log, was I got my camera and immediately started taking
16 photographs.

17 Q Okay. And did you take photographs of the crime scene
18 around Brooke ?

19 A I did.

20 Q And did you work that crime scene?

21 A Just the photography part. I actually -- our unit is
22 split up. We're about 12 people strong as far as running
23 calls. We're split up into three different homicide teams.
24 The team that I'm assigned to is not on call that day. So,
25 we called the team that was on call, which would be

David Hogsed - Direct examination
By Solicitor Barnette

1 Investigator Robert Talanges and Sean Nix.

2 Q Okay. So, they worked -- so, you had the scene at
3 and you also had the scene at ?

4 A Yes, it was actually two crime scenes in one. You
5 had -- the incident occurred at Ridings and then you had
6 the incident that happened at . So, you had two
7 residences. One large crime scene.

8 Q And you took pictures at the one at , is that right?

9 A I did.

10 Q Okay. Let me show you two pictures that were taken
11 there at that crime scene, and these are State Exhibit 59
12 and State Exhibit 60.

13 If you would, see if those photos represent what you
14 saw that day, sir.

15 A They do.

16 SOLICITOR BARNETTE: Your Honor, I'd like to enter
17 these into evidence at this time.

18 THE COURT: Subject to your prior objections?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: All right. Subject to the prior
21 objections, they'll be admitted as marked.

22 (WHEREUPON, State's Exhibit Nos. 59 and 60 were
23 previously received into evidence.)

24 SOLICITOR BARNETTE: Thank you, Your Honor.

25 I'm gonna show you State Exhibit No. 60. Show to the

David Hogsed - Direct examination
By Solicitor Barnette

1 jury at this time.

2 If you would, tell us what that picture shows, sir.

3 A That's Brooke lying on the ground after we removed the
4 sheet that was covering her body. She was covered with a
5 sheet when I first arrived. We have a protocol to where we
6 don't uncover her or anything until we're there, the
7 Coroner's Office is there, and our investigators are there.
8 Then we all approach at the same time, and once we uncovered
9 her body, I started taking 360 degree photographs of her
10 body.

11 Q Okay. And had she been moved in anyway before y'all
12 got there?

13 A Yes, in the photograph you can tell that Brooke is been
14 moved. She was moved by EMS. If you look to the left of
15 her body---

16 Q Hand this to you so you can point that out for us.

17 A Can I step down?

18 It will be a better angle.

19 Q Yes, sir, you can.

20 A (Witness comes down from the stand.)

21 Q If you look, this area right here is actually blood on
22 the ground, which indicates that she was more laying on her
23 stomach face down. You'll see a void. You don't see blood
24 right here. She was rolled in this direction over to where
25 her -- that positioning she's in now for EMS, and then

David Hogsed - Direct examination
By Solicitor Barnette

1 you'll see the leads that they put to run a heart monitor,
2 heart monitor on her.

3 Q Uh-huh. (Affirmative).

4 So, when y'all removed the sheet, that's the position
5 she was in?

6 A Yes, sir, that's the position she was in when we, when
7 I saw her.

8 Q And did you look at her body about gunshot or did the
9 crime scene team do that?

10 A Yes, we did.

11 Q And did they document the crime -- I guess what Doctor
12 Wren has also talked about?

13 A Yes, we did.

14 Q Okay. Let me show you State Exhibit 59.

15 If you would, tell the jury what this is, sir.

16 A That's, that's basically the mid section to the top of
17 her knees. You can tell that's urination, that she urinated
18 on herself at the time of the incident, and you can also
19 tell -- you can see a bullet hole in, in her left pants leg
20 or shorts.

21 Q Okay. And obviously y'all documented all this and then
22 she was moved and later taken to Doctor Wren for an autopsy?

23 A That's, that's correct.

24 SOLICITOR BARNETTE: One moment, Your Honor, please.

25 THE COURT: Yes, sir.

David Hogsed - Direct examination
By Solicitor Barnette

1 (Pause.)

2 SOLICITOR BARNETTE: Please answer any questions the
3 defense may have for you, sir.

4 THE COURT: Any questions by the defense?

5 MR. MCGUIRE: No questions.

6 THE COURT: All right. Bring the lights up, Mr. Ruth.
7 You wish to excuse the witness?

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: Any objections?

10 MR. MCGUIRE: No objection.

11 THE COURT: He's free to go.

12 State may call its next witness.

13 SOLICITOR BARNETTE: Like to call Ms. Nunnary to the
14 stand please.

15 THE COURT: Come forward, ma'am, to my left to be
16 sworn.

17 AMY NUNNARY, having been first duly
18 sworn, testified as follows:

19 THE COURT: Please have a seat. Once seated, state
20 your name.

21 THE WITNESS: My name is Amy Nunnary.

22 THE COURT: Thank you.

23 Mr. Barnette, your witness.

24 SOLICITOR BARNETTE: Thank you, ma'am. Thank you, sir.

25 DIRECT EXAMINATION

Amy Nunnary - Direct examination
By Solicitor Barnette

1 BY SOLICITOR BARNETTE:

2 Q Ma'am, if you would, tell the jury where you work at,
3 ma'am.

4 A I am the school nurse at Reidville Elementary School.

5 Q And how long have you been in that position?

6 A I have been there since 2005. I've been a school nurse
7 in District 5 since 2001, and I've been a nurse since 1993,
8 and I've always worked in paternal child health. Always
9 somewhere with children.

10 Q Okay. Did you know Brooke , ma'am?

11 A I did.

12 Q If you would, tell the jury about Brooke.

13 A Well, first of all, there was just her physical beauty.
14 Her long brown hair, big brown eyes. She had a beautiful
15 smile, very infectious smile. If you saw her coming down
16 the hall, you always got a smile and you couldn't help but
17 smile back at her.

18 But aside from her physical beauty, she was just a good
19 person. She was the kind of child you would want to have or
20 the kind of child that you would want your child to be
21 friends with.

22 She, she did have asthma. So, that's how Brooke and I
23 obviously got to be very close. She would have to come in
24 to my office and I would have to administer medication to
25 her. As she had gotten a little bit older, her asthma had

Amy Nunnary - Direct examination
By Solicitor Barnette

1 gotten a little bit worse. So, she had to frequent my
2 office a lot. But she, she had handled her asthma very
3 well, and I have child who has asthma. So, I, I can -- I
4 know firsthand how it feels not to be able to take a deep
5 breath and to feel like you're kind of suffocating on the
6 inside and what that medicine can mean to you. But she, she
7 did well with it.

8 She, she was very mature for her age I always thought.
9 She, she was just a gentle person. She was, she was very
10 kind to everybody. I'm sorry.

11 Q Take your time, ma'am.

12 Let me ask you. I know you said you was close to her
13 because obviously your daughter has asthma, and you would
14 see her more often I guess than other students.

15 A Uh-huh. (Affirmative).

16 Q And did you meet the parents?

17 Did you get to see the parents?

18 A Yes, her, her mom and dad were, were always available
19 if we ever got into a situation where I felt like she, she
20 might need to go home or maybe the medication I had just
21 wasn't working for her. Very protective, very caring, very
22 loving towards Brooke. Always, always there as soon as I
23 needed them.

24 Q And you never saw any problems or anything between them
25 or with her?

Amy Nunnary - Direct examination
By Solicitor Barnette

1 A I did not. If the, if there were problems going on,
2 Brooke didn't really share that with me. We just, you know,
3 when you have asthma and you're, and you're worried that you
4 can't take a deep breath, you -- we, you know, try to talk
5 about anything else other than the situations that are going
6 on that might bother you more. So to take her mind off of
7 anything else, we would talk about TV or what she liked to
8 do or she had a, had a couple little dogs that she liked to
9 play with. So, we would talk about anything at home just to
10 try to get her mind off of it.

11 Q Did y'all ever talk about flowers or anything about
12 that?

13 A She -- Brooke was -- she loved wild flowers, and, in
14 fact, I keep, I keep her original obituary. I had gone to
15 the mortuary the day, the day of the funeral, but I
16 couldn't, I couldn't make it to the funeral. It was just
17 really too hard for me, and -- but I did go a couple days
18 later to the grave site and actually her grandparents were
19 there, and they let me take some flowers, and I keep them
20 pressed in a, in a wall flower book I have at home, and not
21 long after Brooke was buried, her dad painted her house
22 bright yellow because that was her favorite color.

23 So, every morning I pass Brooke's house going to work
24 and I pass it in the afternoon and there's the bright yellow
25 house. They're always -- it brings a smile to my face

Amy Nunnary - Direct examination
By Solicitor Barnette

1 because that was the color that is representative of it
2 being happy and cheerful.

3 Q I think---

4 A But that's the kind of child she was.

5 Q I think you showed me something this morning.

6 A I do. I just got to where I keep, I keep this in one
7 of my flower books. It's just her original obituary and
8 then some flowers that I have from her grave. But I look at
9 it often just because she, she just a very, very special
10 person. She just knew that there was hope because of
11 Brooke. She was, she was truly a good child.

12 Q And obviously everybody in Reidville Elementary knew
13 each other?

14 A Uh-huh. (Affirmative).

15 Q And she was a big part of that community?

16 A She was a very big part of the community. You just --
17 you couldn't miss her. She was, she was beautiful. She was
18 just a precious, precious person and it was obviously
19 devastating for any child to pass away, but it was
20 especially hard knowing that it was Brooke.

21 Q Thank you, ma'am. They may -- I don't know. They may
22 have some questions as well.

23 A Okay. I'm sorry.

24 THE COURT: Any questions?

25 MR. MCGUIRE: I don't have any questions, ma'am. Thank

Amy Nunnary - Direct examination
By Solicitor Barnette

1 you for coming.

2 THE COURT: You may step down.

3 You wish to excuse the witness?

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: Any objection?

6 MR. MCGUIRE: No objection.

7 THE COURT: Ma'am, you're free to go if you'd like.

8 You can also stay. Thank you very much.

9 THE WITNESS: Thank you.

10 SOLICITOR BARNETTE: Like to call Ms. Alton to the
11 stand, Your Honor.

12 THE COURT: All right. Come forward please.

13 DEBBIE ALTON, having been first
14 duly sworn, testified as follows:

15 THE COURT: Please have a seat, ma'am.

16 (Witness complies.)

17 THE COURT: State your name.

18 THE WITNESS: My name is Debbie Alton.

19 THE COURT: Thank you.

20 Mr. Barnette, your witness.

21 SOLICITOR BARNETTE: Yes, sir.

22 DIRECT EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q where do you work at, ma'am?

25 A I work at Reidville Elementary School.

Debbie Alton - Direct examination
By Solicitor Barnette

1 Q And what's your position there, ma'am?

2 A I'm a second grade teacher there.

3 Q And how long have worked there, ma'am?

4 A Since 2001.

5 Q How long have you been in education, ma'am?

6 A I've been full-time about 12 years. This is going on
7 my 12th year.

8 Q Yes, ma'am.

9 Back in, I guess, it would be 2009, was you her second
10 grade teacher, Brooke's second grade teacher?

11 A Yes, I was.

12 Q And if you would, tell the jury about her and having
13 her in your class.

14 A Brooke was just absolutely precious. She would just
15 capture your heart from the minute that she walked in the
16 door. She would smile and greet me and sometimes give me a
17 hug. She was just a precious, sweet, kind, loving little
18 girl.

19 I was racking my brain even trying to think of any
20 little fault that she had and I couldn't think of any, but
21 she was just the type of little girl that you -- she -- you
22 just wanted to take home with you. She was a model student.
23 She made good grades. She always tried her best. She
24 wanted to help in anyway she could.

25 There were sometimes that I would have maybe a

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1 struggling student and I would say Brooke, would you mind go
2 helping this person, and she never said you, you know, I
3 can't do that or I don't want to. She's very helpful.
4 Always wanted to help others. She had a very big heart and
5 wanted to see not only herself succeed, but she wanted to
6 help others succeed.

7 She -- anytime I gave her a task to do, it was never,
8 you know, let me just get by with just the bare minimum.
9 She always put forth her best effort, and wanted to know how
10 she could do it better. I remember her doing a writing with
11 me, and it, it was an assignment where she had to make up
12 her own character, but it has to be made of snow, and it was
13 during the wintertime and the main assignment was for the
14 writing. They had to make up their own story and then they
15 had to, from their writing, make a model of one of their
16 characters from the story, and she wrote her story and we,
17 we talked about it.

18 I said well, let's see how we can make it better.
19 Let's try to maybe use some big third grade words, you know,
20 more meaningful words, and she took that and, as a
21 challenge, and she went, and when she turned in her story,
22 she was so proud of herself. She said Ms. Alton, did you
23 see my word glorious. I used the word glorious and I said,
24 yeah. Sorry. So --.

25 Q Do you have some of her writings that you'd---

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By Solicitor Barnette

1 A I do.

2 Q ---like you to---

3 A I do.

4 Q Would you like to share those with the jury?

5 A Sure.

6 This story is about her snow character named Snowy, and
7 the reason I even have it is she had glued her story to a
8 poster board that had her model on it, and so I asked her
9 mom if I could borrow her project and type it up so that I
10 could keep it for the next year, and maybe share it with the
11 class that was coming in and show them an example, and her
12 mother said, you know, that was fine. So, anyway, that's
13 why I still have it.

14 This is called the story of Snowy. This is written by
15 Brooke.

16 Once upon a time there lived a snow child named Snowy.
17 When the children went back inside to tell their family what
18 magical thing happened, they were so excited they could
19 hardly talk. They told their family to come outside and see
20 what glorious thing had happened.

21 When everyone got outside, when everybody got outside,
22 Snowy began to tell them how she became Snowy. Snowy said
23 the name of her story is called how I became Snowy. One
24 Saturday morning the children came outside to make a snow
25 child. Then one of the children said, well, I have a

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1 sparkly blue hat with a pretty red bow and two green limes.

2 Do you have any materials she can wear, Gloria asked
3 Frankie?

4 Yes, I think I do. I have an orange carrot and a, and
5 red lickerish.

6 Frankie asked Justin, do you have any materials we can
7 use?

8 Yes, I have some blueberries, Frankie said.

9 We can use the green limes for the eyes, the orange
10 carrot for the nose, and the red lickerish for the mouth,
11 and the blueberries for the buttons.

12 Then Gloria said, we can name the snow, the snow child
13 Snowy. Then all the children ran to get their materials.
14 When everyone got back they started to place the materials
15 on Snowy.

16 As Frankie put the red lickerish on Snowy's face,
17 Gloria said, look, the mouth is moving.

18 Justin said I think Snowy is alive.

19 The next day the children came outside to play with
20 Snowy. She was crying.

21 Then the children said, what is wrong?

22 Snowy said I'm lonesome.

23 Gloria said, we can make you a mom.

24 Frankie said, we can make you a dad.

25 Justin said, we can make you a brother.

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1 Then the children, then the children hugged Snowy.

2 Then Snowy and her family asked if they could go
3 camping. So Snowy and her family went camping in the woods.
4 The children started a campfire. Then they started to play
5 boardgames, freeze tag, and a whole lot more games, but
6 suddenly Snowy began feeling very hot.

7 The children said, you look like you're melting. So,
8 the children said, we must go home and get you better,
9 Snowy.

10 Okay, said Snowy.

11 If you really think so, said Gloria.

12 So, they went back home to pack more snow on Snowy.
13 The children said to Snowy, maybe you will feel better
14 tomorrow, and said goodnight to Snowy and her family.

15 The next morning Snowy felt much better and Snowy said,
16 maybe I shouldn't go camping again. Instead maybe I can
17 tell about the adventures that I've done and are going to
18 do.

19 Then Gloria said, and maybe Snowy can have a job.

20 Frankie, Justin, Justin, Snowy and her family said,
21 what kind of job?

22 Gloria said, a job where you can tell people about your
23 dreams and how you became you and here we are, and that is
24 the story of how I became Snowy.

25 The end.

Debbie Alton - Direct examination
By Solicitor Barnette

1 Q You was talking about the parents.

2 Did you get to meet her parents --

3 A I did.

4 Q -- Bobby and Kelly?

5 How -- what kind of parents were they?

6 A They were very supportive, very loving. She, she loved
7 her mom and dad. They're -- I saw them not, not just at
8 school, but my son played on her baseball team and I would
9 see Kelly. She would always bring Brooke to practice, and
10 get to talk to Kelly some, you know, sitting there waiting
11 on them to finish practice and got to watch Brooke play, and
12 then I -- a lot of times I saw Bobby at the games just
13 because I happen to sit near Bobby at the games. He was
14 very supportive and came to support her.

15 Q What position did Brooke play?

16 A She played right field, and which incidentally, where
17 the field was, our bleachers were right there at her
18 position in right field, and, in little league, right field
19 is not very active. You don't get a lot of action out
20 there. But she didn't care. She loved playing. She was
21 the only girl on the team.

22 She just loved it. She loved being out there, and she
23 would, anytime she would strike out, she didn't pout, you
24 know. She'd just shake it off, you know, and keep going.
25 She encouraged her teammates. She just had fun just being

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By Solicitor Barnette

1 out there. She was a great teammate shouting from the
2 bleachers, you know, for her teammates to get a good hit.

3 She was just a real great girl. Just encourage her.

4 Q Let me show you -- it's been already put into evidence,
5 State Exhibit 52.

6 Did they place a memorial for Brooke?

7 A They did. The fields out there near Reidville, I don't
8 know when they were built. They're kind of old. But at the
9 time they did not have any kind of shade for the spectators.
10 It's very hot out there sometimes during the spring.

11 So, someone, and I'm not sure who did the memorial, but
12 they built a shelter with picnic tables and covered it so
13 that the, some of the parents waiting on the games to start
14 or whatever could come, sit down, have their refreshments
15 there, and they, they did it in memory of Brooke and had a
16 plaque there.

17 Q And the school's actually right down the road?

18 A Yes, sir.

19 Q You go straight down the road, you go to the school
20 where the fields run?

21 A Yes, sir.

22 Q And I believe that's the memorial and I guess that's
23 the covering over the picnic area you was talking about too?

24 A Yes, sir.

25 Q And, like I say, it's basically in the center of the

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1 complex?

2 A It is.

3 Q Okay. One thing I think you also said Brooke liked to
4 write obviously from the stories you was telling and so
5 forth.

6 Did she write a letter?

7 A She did. She did.

8 Q Let me show you State Exhibit 54, and, if you would, is
9 that fairly -- is that a copy of the letter?

10 A It is.

11 Q Matter of fact, I think you've got the original, is
12 that right?

13 A I do.

14 SOLICITOR BARNETTE: And, Your Honor, I'd like to enter
15 this into evidence at this time.

16 THE COURT: Please show it to the defense.

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: Any objection?

19 MR. MCGUIRE: No objection.

20 THE COURT: Without objections, it will be received.
21 Has it been marked, Mr. Barnette?

22 SOLICITOR BARNETTE: Yes, sir, it's State Exhibit 54.

23 THE COURT: All right. Thank you.

24 (WHEREUPON, State's Exhibit No. 54 was received into
25 evidence at this time.)

Debbie Alton - Direct examination
By Solicitor Barnette

1 THE COURT: You may proceed. You may publish.

2 SOLICITOR BARNETTE: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 Q I don't know if the jury can read this, but, if you
5 would, tell the jury about this letter.

6 A In November we write letters to servicemen and women
7 and just thanking them for their service to our country
8 and -- I'm sorry.

9 Q Take your time, ma'am.

10 A I challenged my students to write from their heart.
11 Not just for the freedoms that our country has and that we
12 have as adults, but, but to really think about freedoms that
13 they themselves, as children, have because -- and to really
14 thank the soldiers from their heart, and that's what she
15 did. She -- do you want me to read it?

16 Q Yes, ma'am.

17 A It says -- and I'm just gonna say dear soldier. I want
18 to thank you for serving our country. Because of you I am
19 free. I can choose to play with any toy I want. I can wear
20 what I want anytime. I can choose my own school and church.
21 I can eat what I want and my, have my own religion too. I
22 can talk about what I want. Sincerely, Brooke .

23 Q And you kept this letter, is that right, ma'am?

24 A I did. It had gotten wet and I, I think I made a copy
25 of it and sent it, but it's been so long ago. But -- and

Debbie Alton - Direct examination
By Solicitor Barnette

1 sometimes I just like to keep a copy -- some of their
2 writings just to help the students for the next year know
3 what to, what to write or what it should look like. So, I
4 had, I had kept this.

5 Q If I hear you right, she's the kind of student that
6 obviously you kept things that---

7 A Yes.

8 Q ---that she did?

9 A Yes.

10 Q And that's how much you thought about her?

11 A I did. Brooke was just -- she was one of those
12 students that she got along with everybody. The kids loved
13 her. The teachers loved her. She, she didn't -- she was
14 more mature than just your typical second grader, and by
15 that I mean sometimes girls in the second grade will get
16 involved in girl drama is what we call it. They, you know,
17 so and so's not my friend or they're not playing with me or,
18 you know, just, just to create some drama, and Brooke never
19 got involved in that. She was not, she was not interested
20 in that. She wanted everybody to be friends and she was a
21 peacemaker and she, she just didn't get involved in anything
22 like that.

23 She, she holds a special place in my heart. She was so
24 talented that I, I really looked forward to seeing what she
25 would do in the future because I feel like she had such a

Debbie Alton - Direct examination
By Solicitor Barnette

1 bright future because she, she was such a special girl. I
2 really feel like anybody that knew her would say the same
3 thing. She just had a positive influence and I feel like
4 people that didn't know her were really robbed of a chance
5 to get to know of a wonderful girl.

6 Q Let me ask, obviously the school year ended I guess in
7 May or June, the first of June?

8 A (Witness nods affirmatively.)

9 Q When did you hear about her death in July?

10 A I heard that evening. So, it was the evening of her
11 death.

12 Q So, you'd kept all these things long before that you
13 heard anything had happened to her?

14 A Oh, yeah.

15 Q Obviously the month before school was out.

16 A Oh, yes.

17 Q So, that's how much she meant to you by keeping these
18 items?

19 A (Witness nods affirmatively.)

20 SOLICITOR BARNETTE: One moment, Your Honor, please.

21 THE COURT: Yes, sir.

22 SOLICITOR BARNETTE: Thank you, ma'am, for answering my
23 questions. Please answer any questions the defense may have
24 for.

25 MR. MCGUIRE: I've got no questions for you, ma'am.

1 Thank you for coming.

2 THE COURT: All right, ma'am. You may step down.

3 Do you wish to excuse the witness?

4 SOLICITOR BARNETTE: Yes, sir.

5 THE COURT: Any objections?

6 MR. MCGUIRE: No objection.

7 THE COURT: Ma'am, you're free to go if you'd like.

8 You can stay if you'd like as well. Thank you, ma'am.

9 SOLICITOR BARNETTE: Your Honor, can we take a break?

10 We just need to check on a few things and make sure---

11 THE COURT: Yes, sir, that will be fine.

12 Ladies and gentlemen, I'm gonna ask you to step back to
13 the jury room. You know every time I do that I instruct you
14 not to discuss anything about the case until I ask you to
15 begin your deliberations.

16 You may retire to the jury room.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Court will be in recess for about five
20 minutes.

21 I'd ask everyone to remain seated until the defendant
22 has left the courtroom.

23 (WHEREUPON, a short recess was taken at this time.)

24 THE COURT: State ready to proceed?

25 SOLICITOR BARNETTE: State's gonna rest, Your Honor,

1 and reserve our right for rebuttable once they put up their
2 case.

3 THE COURT: All right. Is defense ready to go forward
4 at this time?

5 You need, you need a few minutes?

6 I don't know if you were expecting that or not is the
7 reason I'm asking.

8 MR. MCGUIRE: Not expecting that. We would need some
9 time.

10 THE COURT: All right. Well, we'll continue the break.
11 Let me know when you're ready.

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: Court will continue in recess.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: All right. Before we resume I do want to
16 discuss a matter with Mr. Blackwell.

17 Mr. Blackwell, you remain under oath at this time.

18 Do you understand that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You were sworn earlier.

21 Do you remember when I talked to you earlier in the
22 trial?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: At that time I advised you of your right to
25 remain silent. It's a right embodied in the Fifth Amendment

1 to the United States Constitution. That amendment states,
2 in part, that no person can be compelled, in any criminal
3 case, to be a witness against himself.

4 As we enter into this phase of the trial, we're
5 entering into the phase where you and your attorneys will be
6 offering your defense, your defense in the sentencing phase,
7 and during this phase of the trial you also have the right
8 to testify, if you choose to do so, but I will advise you
9 that you also have the right not to testify.

10 The right to remain silent is a personal right, as I
11 told you. No one can waive it except yourself. Of course,
12 you have the right to discuss this decision as to whether
13 you'll testify in this phase of the trial with your
14 attorneys, family, or friends, but the final decision is
15 yours and yours alone.

16 Now, I won't go over with you -- there are certain
17 consequences in testifying. Of course, you'll be examined
18 by your attorneys and you'd be cross-examined by the State's
19 attorneys. I believe your, your record has already been put
20 into the record in this case. So, I'm not sure that's a
21 concern, but you can discuss that with your attorneys if
22 that's some concern that you might have.

23 But do you understand that you do have the right to
24 remain silent in this part of the trial as well?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had an opportunity to discuss with
2 your attorneys whether you wish to testify in this phase of
3 the trial or not?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you wish to discuss it any further with
6 them or anyone else, the issue of whether or not you will
7 testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: Okay. You don't need to discuss it any
10 further?

11 THE DEFENDANT: No, sir.

12 THE COURT: Now, do you intend to testify in this phase
13 of the trial?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Thank you, sir.

16 Now, is there anything else we need to take up before
17 we go forward?

18 SOLICITOR GHENT: Yes, sir.

19 THE COURT: Yes, sir.

20 SOLICITOR GHENT: At this point, Your Honor, Mr. Allen
21 and I have discussed the PowerPoint presentation that he
22 would like for his witness to make use of.

23 THE COURT: The witness, who we talking about?

24 SOLICITOR GHENT: Doctor Calloway.

25 THE COURT: All right. Yes, sir.

1 SOLICITOR GHENT: I have a number of objections to it.
2 I have discussed those with Mr. Allen, explained them to
3 him, and we would ask to be heard.

4 Does the Court have the---

5 THE COURT: I do not have it at this point in time.

6 Do you intend to call Doctor Calloway first?

7 MR. ALLEN: No, Your Honor. She's not gonna be first.
8 I think she's gonna be second.

9 Is that right?

10 THE COURT: Well, is there a copy then that you could
11 provide to the Court?

12 That would give me an opportunity to be looking at it,
13 and we can take this up before her testimony begins.

14 SOLICITOR GHENT: I thought she was gonna be first. I
15 apologize, Your Honor.

16 THE COURT: Okay. That's all right.

17 MR. ALLEN: And that change was me. I will pass up to
18 the Court, it's not in color, but the PowerPoint has some
19 colors in it, but I've got all the words here.

20 THE COURT: I understand.

21 MR. ALLEN: And the Court will bear with me another
22 moment.

23 THE COURT: Yes, sir.

24 (Pause.)

25 MR. ALLEN: I'm passing up to the Court the PowerPoint

1 and what's been added since we've printed this out was a
2 Bell Curve that's gonna show up on a slide.

3 THE COURT: All right.

4 MR. ALLEN: So, I'm gonna put that in as well.

5 THE COURT: All right. If you'll pass that up, I'll be
6 taking a look at it before she's offered.

7 Anything else the State feels we need to take up before
8 we proceed?

9 SOLICITOR BARNETTE: Not, not at this point, Your
10 Honor.

11 THE COURT: Anything from the defense prospective
12 before we proceed with the witnesses?

13 MR. MCGUIRE: Well, judge, we're ready to go forward,
14 but if you do want to take it up, I'll just give the Court a
15 heads-up on another legal matter.

16 THE COURT: Yes, sir.

17 MR. MCGUIRE: As you know, Mr. Blackwell offered, in
18 writing by way of a letter, to plead guilty to life with
19 parole, life without parole sentence about four and a half
20 years ago, and given the fact that an officer testified
21 about lack of remorse, we would move to introduce that
22 letter to indicate that he was fully prepared to take
23 responsibility for his actions and spend the rest of his
24 life in prison.

25 SOLICITOR BARNETTE: We'd object to that, Your Honor.

1 I think that's a judgment of the jury at that point from
2 that standpoint. To try to make a plea offer, I think the
3 case law and the statutory law would be very clear that plea
4 offer -- we can't even discuss, like, for example, he went
5 to plead and withdrew the plea. I had that situation happen
6 last year with a case involving a case in front of Judge
7 Cole, and we -- and he basically admitted to several things.
8 I couldn't use it because obviously it's part of the---

9 THE COURT: Yes, sir, there's Rule 410 deals with the
10 admissibility of plea and plea discussions and related
11 statements. However, in reading that, the rule -- it
12 appears that the rule provides that pleas or plea
13 discussions or related statements are not admissible in any
14 criminal or civil proceeding against the defendant who made
15 the plea or was a participate in plea discussions.

16 I take it you're not offering it against him?

17 You're offering it in his favor?

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: Is that what I'm hearing?

20 So, I think there -- I understand your position,
21 Mr. Barnette, in respect to that rule, but -- and I
22 understand why you could not use it. I don't know that that
23 rule prohibits the defense from using it.

24 Now, I do have a -- I have not seen the letter. Don't
25 know what it indicates. I don't know if it offers --

1 you're, you're saying you're offering it as a rebuttal to
2 the fact that he had not apologized?

3 MR. MCGUIRE: It's in response to testimony that
4 Mr. Blackwell showed no remorse. There was an officer who
5 testified he saw absolutely no remorse when Mr. Blackwell
6 was in the hospital.

7 THE COURT: Well, I'm not sure an offer of plea is
8 necessarily a remorseful offer. I have people, quite often
9 in my courtroom, complain about the fact someone pleads
10 guilty, but they never apologized or shown any remorse. So,
11 I'm not sure a guilty plea is tantamount to a showing of
12 remorse.

13 MR. MCGUIRE: And I---

14 THE COURT: Do you follow what I'm saying?

15 MR. MCGUIRE: I do, but it also stands on its own in
16 that he was prepared to take full responsibility for his
17 actions and give his entire life to the State behind bars.

18 THE COURT: Well, again, I'm trying to determine
19 whether the probative value for his remorse, issue of
20 remorse outweighs the prejudicial effect of allowing in plea
21 negotiations. I have a concern, Mr. McGuire, that that
22 might open the door to the State inquiring of -- maybe
23 calling witnesses to determine what went into that decision.
24 Sometimes offers of guilty pleas can be made in order to
25 avoid a higher penalty rather than any showing of remorse.

1 That happens in my courtroom quite often I believe.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: Do you follow me?

4 MR. MCGUIRE: I do.

5 THE COURT: So, it may open the door to further inquiry
6 into the defense's strategy in that offer.

7 MR. MCGUIRE: I mean I think that's a -- they did
8 respond by way of a letter indicating that they thought that
9 the appropriate course of action --.

10 THE COURT: But I'm not sure I'll limit them to the
11 letter. If they want to get into it, they may be able to
12 call witnesses who may have participated in that discussion
13 and offering that may, I'm not -- I'm saying may, it's
14 something that we should all consider, constitute a waiver
15 of privilege.

16 SOLICITOR BARNETTE: And, Your Honor, the solicitor at
17 that time that made that decision was Trey Gowdy. If they
18 want to open that door, I'll be glad to open it.

19 THE COURT: You want to think about it before you do
20 that?

21 MR. MCGUIRE: Sure.

22 THE COURT: Okay. Let's -- we're not, we're not to the
23 end of your case at this point in time. But those are some
24 factors that I would consider before I did that.

25 All right. Anything else that we need to take up

1 before we proceed?

2 MR. MCGUIRE: No, sir.

3 THE COURT: All right. I will ask you, Mr. Barnette,
4 if you have additional witnesses so that you can rest in
5 front of the jury, and they weren't present when you
6 informed me of that, and then I'll call on the defense to
7 call its first witness.

8 SOLICITOR BARNETTE: Thank you, Your Honor.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: Thank you, Mr. Ruth.

13 All right. The record will reflect that the jury has
14 returned to the courtroom.

15 When we took our break -- we thank you for your
16 patience. We had some housekeeping matters that we needed
17 to take care of in the courtroom here. But at any rate,
18 when we took our break, the State was in the process of
19 calling its witnesses.

20 State may call its next witness.

21 SOLICITOR BARNETTE: State would rest at this time,
22 Your Honor.

23 THE COURT: All right. Ladies and gentlemen, that
24 completes the presentation of the State's evidence in this
25 phase of the trial. At this time the defense has the right

1 to put up any evidence that the defense wishes to put up.

2 You may call your first witness.

3 MR. MCGUIRE: Thank you, Your Honor.

4 Defense calls Ms. Gail Shook.

5 THE COURT: Ma'am, come forward please and come to my
6 left to be sworn please.

7 GAIL SHOOK, having been first duly
8 sworn, testified as follows:

9 THE COURT: Thank you, ma'am. Have a seat please in
10 the witness stand and state your name.

11 THE WITNESS: Gail Shook.

12 THE COURT: Thank you.

13 Mr. McGuire, your witness.

14 MR. MCGUIRE: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q Ms. Shook, do you know Ricky Blackwell?

19 A Yes, I do.

20 Q And how, how do you know him?

21 A He worked for me.

22 Q And, and where did he -- where did you work?

23 A Springs.

24 Q Springs Industries?

25 A Uh-huh. (Affirmative).

Gail Shook - Direct examination
By Mr. McGuire

1 Q And Ricky was one of your employees?

2 A Yes, he was.

3 Q And what did do for you?

4 A He drove a forklift truck.

5 Q And was he a good employee?

6 A Very good.

7 Q Did you have time to talk to him about personal
8 matters?

9 A Yes, I did.

10 Q And what did y'all talk about?

11 A We talked about how much he loved his family and we
12 talked a lot about God --

13 Q Okay.

14 A -- and doing the right thing.

15 Q And what, what were Ricky's belief, beliefs in God?

16 A He believed in God and he told me he didn't go to
17 church like he should, but he knew that he should, and I
18 know he helped his mom and dad a lot around their property
19 and stuff and he loved his family.

20 Q And did Angie also work for you?

21 A Yes, she did.

22 Q And how did they strike you as a couple?

23 A They struck me as a couple in love, that loved each
24 other.

25 Q And how did Ricky treat Angie?

Gail Shook - Direct examination
By Mr. McGuire

1 A Like she was the most precious thing on this earth to
2 him.

3 Q Okay. And in terms of Ricky getting along with the
4 employees, tell us what, what he was like.

5 A Well, he got along with everybody. I never had one
6 complaint on him. Not ever.

7 Q Was he -- did he ever say a mean word about anybody
8 else?

9 A Never.

10 Q Describe his personality to the jury.

11 A Well, Ricky is actually, I would have to say, the most
12 gentle, humble man that I've ever met including my husband.
13 He didn't have a bad word to say about nobody. I never saw
14 him in a situation where he was mad at anybody. He was just
15 always talking about how much he loved his family.

16 Q Did you ever see him get emotional I think when one of
17 his grandchildren was injured?

18 A Yes, when it got burned. He was very emotional and
19 upset and crying about that.

20 Q Okay. Did you find him to be a tender person?

21 A Oh, yes, very tender hearted.

22 Q Okay.

23 A Compassionate.

24 Q And he -- in terms of reliability, trying hard, working
25 overtime?

Gail Shook - Direct examination
By Mr. McGuire

1 A Yes, anything I asked him to do, whether it's his job
2 or not, he would always do it.

3 Q Okay. Eventually you, you came to know that Angie left
4 him?

5 A Yes.

6 Q And you talked to him about that?

7 A Yes.

8 Q And tell the jury a little bit about that.

9 A He called me and asked me if I would give him---

10 SOLICITOR BARNETTE: Your Honor, at this time I'm gonna
11 object to hearsay in this situation.

12 THE COURT: Statements by the defendant?

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: I'm gonna ask the jury to step back to the
15 jury room while I have a discussion with the attorneys about
16 this matter. As always, I'll ask you not to discuss any
17 aspect of the case until I've asked you to do so in
18 deliberations.

19 You may retire.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Yes, sir, Mr. Barnette, if you'll state
23 your objection.

24 SOLICITOR BARNETTE: Your Honor, the objection is it's
25 self-serving hearsay. Without him testifying -- we have an

Gail Shook - Direct examination
By Mr. McGuire

1 exception that we can use statements against interest
2 against the defendant obviously, but they can't use them
3 unless he testifies from that standpoint. And I understand
4 that he's not gonna testify in this case.

5 I'll be glad to -- I got a folder upstairs. I didn't
6 think it was gonna be an issue, but I've got a folder
7 upstairs with several cases on that point --

8 THE COURT: All right.

9 SOLICITOR BARNETTE: -- I'll be glad to provide to the
10 Court.

11 THE COURT: All right. Mr. McGuire.

12 MR. MCGUIRE: Well, judge, as you know, this is the
13 penalty phase of a capital case where the rules are
14 understood to be relaxed and informal, and the case of, I
15 think it's Maryland versus Mills, I can get a copy as well,
16 I didn't know this issue would come up, I'm pretty sure that
17 the statement in Mills that is controlling. It's a United
18 States Supreme Court case is that no statute, Court rule, or
19 rule of evidence shall stand between mitigation evidence and
20 the sentencing body. I can get that case for you.

21 THE COURT: I think you may have to. I'll take a short
22 break.

23 Ma'am, I'll caution you not to discuss your testimony
24 with anyone during our break.

25 Can you follow that instruction, ma'am?

Gail Shook - Direct examination
By Mr. McGuire

1 THE WITNESS: I can.

2 THE COURT: All right. You can move about the
3 courtroom if you'd like. I'd ask the attorneys to bring the
4 authority to my office.

5 We're in recess until I receive that.

6 (WHEREUPON, a short recess was taken at this time.)

7 THE COURT: All right. I have reviewed the authority
8 submitted by counsel.

9 Based on my review of the authority, I, I find that the
10 State has interposed an objection concerning testimony of a
11 hearsay nature, which were statements apparently made by the
12 defendant directly to the witness who's currently
13 testifying. They object to that statement being placed into
14 the record in, in light of the fact that the defendant has
15 exercised his Fifth Amendment right to remain silent, and
16 it's their position that this is self-serving hearsay in
17 that situation and would constitute, in effect, the
18 defendant testifying when he has chosen not to testify. I
19 understand that that objection and generally that objection
20 would be a valid objection in this situation.

21 However, I note the authority that the defense has also
22 given me, which indicates that we are in the penalty phase
23 of this trial, and in the penalty phase of the trial we are
24 dealing with mitigation evidence, not guilt or innocent
25 issues, and cases have indicated that the rules of evidence

Gail Shook - Direct examination
By Mr. McGuire

1 should not be used to exclude valid mitigation evidence in
2 these circumstances and I realize the importance of that,
3 that evidence as well.

4 However, in an effort to balance those factors, and
5 also to allow the defendant to present its mitigation
6 evidence in a fashion that the jury could understand it, it
7 would be my ruling that the -- in this case, the witness
8 should not directly quote statements said by the defendant.
9 However, I will allow the witness to testify that the
10 witness did have conversations with Mr. Blackwell. I will
11 allow that witness to relate her impressions that she took
12 from those, those conversations to the Court, and it's my
13 belief that that will allow that evidence to be presented to
14 the jury and considered by the jury in mitigation without
15 directly quoting the defendant's exact statements. So, that
16 would be my ruling.

17 Now, depending -- if, if the defense is -- comes to a
18 point where there is some issue that they feel that my
19 ruling would prevent matters from being presented to the
20 jury at all, in other words it would prevent it from being
21 considered in anyway, I'll be happy to reconsider that
22 ruling depending on the facts and circumstances of the
23 particular matter. But, in this situation, I will not allow
24 the witness to directly quote statements made by the
25 defendant. However, I will allow the witness to testify

Gail Shook - Direct examination
By Mr. McGuire

1 concerning her impressions that she's taken from that
2 concerning the, the defendant's demeanor, perhaps her
3 impressions concerning his, his relationship with others
4 that she's taken from the conversations that she's had. So,
5 I believe that will not prevent that evidence from being
6 presented to the jury, but will allow it to be done in such
7 a fashion that it would not constitute the defendant
8 testifying when he is claimed the Fifth Amendment in this
9 case.

10 Any questions concerning my ruling?

11 SOLICITOR BARNETTE: No, sir, would you like me to put
12 the case law on the record and so forth just to cover that
13 part of it?

14 THE COURT: You may.

15 SOLICITOR BARNETTE: Yes, sir.

16 Your Honor, the cases we would cite is State versus
17 Cheeseboro, Your Honor, 346 S.C. Reporter 526. It is South
18 Carolina -- it's 552 S.E.2d 300, Your Honor. It's a 2001
19 case. It was a death penalty case in that situation, Your
20 Honor, and they did---

21 THE COURT: Well, I believe that was in the guilt phase
22 that that issue came up as I read it.

23 SOLICITOR BARNETTE: Yes, sir, it is in the guilt---

24 THE COURT: All right.

25 SOLICITOR BARNETTE: And I understand the Court's

Gail Shook - Direct examination
By Mr. McGuire

1 ruling. I'm just putting it for a basis for the objection,
2 Your Honor --

3 THE COURT: Yes, sir.

4 SOLICITOR BARNETTE: -- from there. I'm not arguing
5 with the Court's ruling either. Just that -- and I am
6 satisfied with that ruling in this case.

7 THE COURT: I understand. Go ahead. Put on the record
8 whatever you'd like to put on it.

9 SOLICITOR BARNETTE: Yes, sir, State versus
10 Cabrera-Pena, which is actually a case heard in Spartanburg
11 here, Your Honor. It was 361 S.C. 372, 605 S.E.2d 522, Your
12 Honor. It was a 2004 case. I believe that was Court of
13 Appeals. No, it was Supreme Court also.

14 Your Honor, we have, from the Fourth Circuit, Your
15 Honor, United States versus Flip Provera, Your Honor, that
16 was a 1999 case, Your Honor. Then also State versus
17 Goldson, Your Honor, which is also a Court of Appeals case
18 heard in 2002. It's 349 S.C. 421, 562 S.E.2d 663, Your
19 Honor.

20 Your Honor -- and Your Honor stated it correctly. In
21 this situation it would not be allowed. I understand during
22 the sentencing phase, Your Honor. I did look at the case
23 that he handed up from Georgia. It was interesting it was a
24 PCR case. It wasn't on direct appeal. But the Court did
25 say -- talk about the role of evidence rules, and I

Gail Shook - Direct examination
By Mr. McGuire

1 understand the Court's ruling with that being on the
2 cautious side to let that information in even though it
3 would still be hearsay. I think the, to that end, it would
4 be acceptable to the State.

5 THE COURT: All right. Defense wish to put its
6 authority on the record as well?

7 MR. MCGUIRE: Just that we rely on Sears versus Upton,
8 Maryland v. Mills, and Georgia v. Green that the application
9 of a, a rule of evidence that would prevent mitigation
10 evidence in reaching a sentencer would be in violation of
11 Mr. Blackwell's Eighth Amendment right.

12 THE COURT: well, again, my, my ruling is not to
13 prevent that evidence from getting to the jury, but to have
14 the manner in which it is presented. So, I will allow her
15 to state her impression, which I think is what she was going
16 to state anyway, but I will not allow her to directly quote
17 the defendant in doing that.

18 SOLICITOR BARNETTE: And, Your Honor, just for -- I
19 forgot to put this on there. In the South Carolina Rules of
20 Evidence, it's Rule 1001, Your Honor, Subsection (d)(3).
21 Normally, in sentencing, hearsay is allowed, but it did have
22 except in the phase as capital trials as required by
23 statute. We looked at the criminal -- the statutes
24 involving death penalties, Your Honor. It doesn't allow the
25 hearsay normally in this situation, but, like I say, I do

Gail Shook - Direct examination
By Mr. McGuire

1 respect the Court's ruling and I agree with it and
2 understand it.

3 THE COURT: All right. Very good.

4 Did you understand how we're gonna proceed, Mr.
5 McGuire?

6 MR. MCGUIRE: Yes, sir, I think I'm protected on the
7 record at this point.

8 THE COURT: Okay. I understand.

9 Now, if you -- I prevent the witness from talking to
10 you about her testimony, but in light of my ruling, I'll
11 give you a moment to discuss that with the witness if you'd
12 like to do that.

13 MR. MCGUIRE: I, I---

14 THE COURT: You ready to proceed?

15 MR. MCGUIRE: I'm ready to go.

16 THE COURT: Okay. Let's bring the jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Thank you.

20 Thank you for your patience, ladies and gentlemen.

21 I have made a ruling concerning the objection raised by
22 the State.

23 At this time you may resume your examination.

24 Ma'am, if you'll come forward. Resume the stand
25 please.

Gail Shook - Direct examination
By Mr. McGuire

1 (Witness returns to the stand.)

2 THE COURT: Ma'am, I remind you you're still under
3 oath.

4 Do you understand that?

5 THE WITNESS: Yes, I do.

6 THE COURT: All right. Thank you, ma'am. You can be
7 seated.

8 Mr. McGuire.

9 MR. MCGUIRE: Thank you very much, judge.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. MCGUIRE:

12 Q Ms. Shook, Ricky, Ricky called you after Angie left
13 him, is that---

14 A Yes.

15 Q Okay. And did you learn that she had met another man?

16 A Yes.

17 Q Did you learn that her behavior changed?

18 She started drinking, smoking, partying, that sort of
19 thing?

20 A Yes.

21 Q What was Ricky's emotional state when he was telling
22 you these things?

23 A Very much in anguish and crying and sobbing
24 uncontrollably.

25 Q Did you try to console him?

Gail Shook - Direct examination
By Mr. McGuire

1 A Yes.

2 Q Were you successful?

3 A I tried to quote Scripture. No, not really because he
4 was at a point that he was just devastated.

5 Q Okay. And did you find that he was -- he wanted to try
6 to find another job?

7 A Yes.

8 Q And did he ask if he could use you for a reference?

9 A He did.

10 Q Okay. And what did you say to that?

11 A I told him I certainly would give him a reference.

12 Q When you heard about what happened with, with the
13 shooting, what did you think?

14 A That---

15 SOLICITOR BARNETTE: Objection, Your Honor. That's
16 speculation at this point.

17 THE COURT: Well, he asked for her thoughts. She has a
18 right to relay her thoughts.

19 SOLICITOR BARNETTE: Okay.

20 THE COURT: Overruled.

21 A That is not the Ricky Blackwell I know. He must have
22 been taken to a place he'd never been before.

23 Q Based on your relationship with Ricky, is that a place
24 he'd ever return to?

25 A Yes.

Gail Shook - Direct examination
By Mr. McGuire

1 Q To being a gentle man?

2 A Yes.

3 Q That's who you know as Ricky Blackwell?

4 A That's who I know as Ricky Blackwell.

5 Q The person who did the shooting, is that the man you
6 knew?

7 A No.

8 Q Do you still pray for Ricky?

9 A Yes.

10 Q That's all I have for, ma'am. Thank you.

11 THE COURT: You may cross-examine.

12 SOLICITOR BARNETTE: Thank you, Your Honor.

13 May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY SOLICITOR BARNETTE:

17 Q Hey, Ms. Shook. Just a couple questions.

18 A Okay.

19 Q He was a forklift operator, is that right?

20 A Yes.

21 Q And did he work 40 hours, 37 hours a week -- a normal
22 work week?

23 A Normal work week. If I needed him for overtime he
24 would work.

25 Q Yes, ma'am.

Gail Shook - Cross-examination
By Solicitor Barnette

1 And he had a commercial driver's license, is that
2 right, ma'am?

3 A He had a forklift license.

4 Q Well, he also had a forklift license too, but did you
5 know he also had a commercial driver's license also?

6 A No, I didn't know that --

7 Q Okay.

8 A -- because I wasn't the one that give him the forklift
9 test. The safety department did that.

10 Q So, the safety department gives them a test they have
11 to go through and make sure they---

12 A Uh-huh. (Affirmative).

13 Q ---know how to operate the material---

14 A Yes.

15 Q ---the machinery and everything?

16 A Yeah.

17 Q And he has to pass that test in order to work that
18 machinery, is that right?

19 A Yes.

20 Q Okay. Thank you, ma'am, for answering my questions.

21 THE COURT: Mr. McGuire.

22 MR. MCGUIRE: That's all we have for Ms. Shook. Thanks
23 for coming.

24 THE COURT: All right. Ma'am, you may step down.

25 Do you wish to excuse the witness?

1 MR. MCGUIRE: Yes, ma'am. Yes, sir.

2 THE COURT: Any objection?

3 SOLICITOR BARNETTE: Subject to recall, Your Honor.

4 THE COURT: All right. Ma'am, you're subject to recall
5 of the Court. So, you can leave, you can stay here, but we
6 may call you back.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: Thank you, ma'am.

9 THE WITNESS: Uh-huh. (Affirmative).

10 THE COURT: Defense may call its next witness.

11 MR. MCGUIRE: Judge, the next witness is gonna involve,
12 involve some -- I think some PowerPoint presentation or
13 something on the screen. Mr. Allen's gonna handle that with
14 her.

15 THE COURT: All right. Ladies and gentlemen, this is
16 another matter I have to take up with the attorneys before
17 we go forward. I'll ask you to step back in the jury room.
18 As always, don't begin discussions till I've asked you to do
19 so.

20 You may retire to the jury room.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, sir. My understanding is that
24 the State has some objections to the PowerPoint presentation
25 to be used by Doctor Calloway.

1 SOLICITOR GHENT: Yes, sir, that's correct.

2 THE COURT: Be happy to hear from you.

3 SOLICITOR GHENT: May it please the Court.

4 Your Honor, the problem with the PowerPoint
5 presentation is I don't have any problem with using it to
6 illustrate a standard or to illustrate an incident that we
7 know occurred. They're used regularly in automobile cases
8 and such as that.

9 However, here we have a psychologist whom the Court has
10 previously heard testimony from. She can go back and she
11 can testify, and in front of the jury she can patch up the
12 holes that were in her testimony and were out of the jury's
13 presence, which the Court very assiduously pointed out in
14 its order ruling that the defendant had not proved mental
15 retardation. What she is doing with this PowerPoint is
16 acknowledging our standard while still trying to scoot
17 around, and there was a lot of that, I would respectfully
18 submit. I'm not insulting the doctor. I'm just saying.
19 She came in as an advocate. She came in a proxy. She
20 remained an advocate and a proxy throughout.

21 Now, Your Honor, in that hearing, was able to go ahead
22 and comfortably question her, cross-examine her, make points
23 with respect to things that I had tried to cover. Your
24 Honor ruled against her and I understand that this is the
25 second phase and Franklin makes very clear, in the second

1 phase, they get another bite at mental retardation, and they
2 get that other bite under the mitigating factors, and Your
3 Honor has pointed out that, while the State of South
4 Carolina has amended the law, and in a footnote the Supreme
5 Court, in Franklin, pointed out several statutes that, at
6 that time, were all consistent. What is happened is that
7 the, since then, the Legislature has gone one direction in
8 terms of what we now call intellectual disability. On the
9 other hand, the Legislature, as Your Honor pointed out, and,
10 quite frankly, I think kind of -- I think I did a double
11 take when I looked at it and said yeah, that's correct.

12 Number ten, and I'll read it for the Court, the Court's
13 got it, but just for the record, the defendant -- this is a
14 mitigating circumstance. The defendant had mental
15 retardation at the time of the crime. "Mental retardation"
16 means significantly subaverage general intellectual
17 functioning existing concurrently with deficits in adaptive
18 behavior, and this is the key word, Your Honor, manifested
19 during the developmental period.

20 Doctor Calloway is a forensic psychologist. That is
21 pretty much what she does for her livelihood. She's, again,
22 no disrespect, she's a professional witness, and she has
23 come in with smoke and mirrors to put up, but the problem I
24 got with this little display is specific. I can tell the
25 Court the parts I don't object to.

1 May I do that?

2 THE COURT: Well, I -- on the paper that's been handed
3 to me, I've got to one that says developmental disability
4 age at onset, and there's a -- two of those bullet points,
5 it says object beside it.

6 Is that where we're gonna start?

7 SOLICITOR GHENT: Actually, Your Honor, I went over
8 with -- I had time to go over with---

9 THE COURT: Yes, sir.

10 SOLICITOR GHENT: ---Mr. Allen, after reviewing more
11 thoroughly -- and this is one of the things that, again, no
12 disrespect, but the doctor starts way ahead of me, and so
13 does defense counsel. They know where they're going. I
14 have to guess at it.

15 She is a Ph.D. in Psychology, and she's a professional
16 witness, and so it took a little while to go okay, and it
17 was when it became clear just how different the definition
18 was because when it says manifested, I went to Webster's
19 Dictionary of Law, and manifest, capable of being readily
20 perceived by the senses and especially by sight, capable of
21 being easily understood or recognized, clearly evident,
22 obvious, and indisputable. Manifest, a verb, to make
23 evident or certain by showing or displaying.

24 Your Honor, my point is that, first of all, I have to
25 return to the Court's order and the sequence of events. She

1 submitted a 40-page report which Mr. Allen is also asked
2 about that report and the nine page supplement going into
3 evidence as well. We object to that.

4 I mean why not just have her walk into the jury room
5 and talk with the jurors?

6 Secondly, there were real problems with that report,
7 and the Court's order, which is sealed, I will simply say,
8 very diplomatically pointed out some of those
9 inconsistencies. I would point out one of the things that I
10 will return to, depending on her testimony, is the fact that
11 the order -- I mean the original report, which she
12 submitted, the 40-page report, which had a number of IQ
13 scores, it was changed in the supplemental report, and a
14 number of those IQ scores subsequently were taken out, and
15 the best we could get out of the good doctor is they were a
16 typo. That was never fully explained how IQ scores, taken
17 from test given years ago when this defendant was in
18 elementary school, were typos, and they -- the problem they
19 were facing is that the scores were way too high.

20 His first one, first grade, he did test very low. I
21 think it was like -- it was in the sixties.

22 THE COURT: 68 I believe.

23 SOLICITOR GHENT: Yes, sir. The school actually waited
24 to avoid that so called testing effect, and he was retested
25 after he'd been through the first and second grade.

1 Now, a great deal will be made of his home, his family.
2 There's been a great deal suggested about mental retardation
3 and genetics, and, at the last hearing, I did probably
4 ingest, but it's true, point out that years ago our country,
5 as well as some other countries, got carried away with
6 something called eugenics, and the U.S. Supreme Court had to
7 strike that down. I think it was Skinner versus Oklahoma, a
8 case where someone actually was suppose to have a criminal
9 gene. Like I said, people got carried away.

10 I probably got a little bit more -- went a little bit
11 more than I should, but the simple point is so much reliance
12 was being based on that family, a family where drug abuse is
13 rampant. I asked her about the Thorazine that the defendant
14 was taking and its effect. She never integrated the
15 Thorazine and the fact he was taking it into a report, but
16 she did say he was staring blankly at the wall, and on that
17 one, at I think 51 or 52, he did testify, excuse me, he did
18 test within the IQ range for retardation.

19 The problem I've got, Your Honor, is that she is now
20 wanting to go back and rework this so that we have a
21 display -- and does Your Honor have the full -- because I
22 will go through and---

23 THE COURT: I believe Mr. Allen is provided me with---

24 MR. ALLEN: I've made a---

25 THE COURT: ---including the Bell Curve which is the---

1 MR. ALLEN: Right, and the Bell Curve is larger than
2 what the Court has. I made the copy from the one that
3 Mr. Ghent provided me, the different---

4 THE COURT: Yes, sir, I think I have it. I guess what
5 I need to get down to, Mr. Ghent, is what's your specific
6 objections to the document.

7 SOLICITOR GHENT: The first page in terms of the
8 show---

9 MR. ALLEN: I would---

10 THE COURT: Just one second. Mr. Allen wants to be
11 heard.

12 MR. ALLEN: May I make one point of clarification---

13 THE COURT: Yes, sir.

14 MR. ALLEN: ---because a change was made on a slide
15 last night and I want both the Court and Mr. Ghent to be
16 aware of that. On the fifth slide that says---

17 THE COURT: Mine aren't numbered. So, give me a title.

18 MR. ALLEN: Definition of mental retardation, the first
19 line underneath that saying three parts.

20 THE COURT: I'm, I'm there, yes, sir.

21 MR. ALLEN: At number three, the words age of onset
22 have been taken out and the word manifest has been put in.

23 THE COURT: So, it will be manifest---

24 MR. ALLEN: Manifest prior---

25 THE COURT: ---prior to age 18?

1 MR. ALLEN: That's the way it reads currently.

2 SOLICITOR GHENT: These are not numbered.

3 So, where are we?

4 MR. ALLEN: I will show Mr. Ghent.

5 If I may approach?

6 SOLICITOR GHENT: All right.

7 MR. ALLEN: Okay.

8 THE COURT: All right. I've made that notation on my
9 copy.

10 MR. ALLEN: Thank you, Your Honor.

11 SOLICITOR GHENT: We will accept that as being an
12 appropriate correction.

13 THE COURT: All right.

14 SOLICITOR GHENT: Your Honor, on the page preceding
15 what is mental retardation, question mark, she can testify
16 to all of this, and there is no need for any of this, but to
17 have no one test or scored to say this is -- it is
18 unnecessary.

19 why not put it in red?

20 You have to take a lot of time to decide and have to
21 get a lot of information from many different places and
22 people. That's an argument and it's an argument for
23 basically what she does. She does forensic---

24 THE COURT: Well, I mean but that -- the way I
25 understand, understand the statutory definition is that it

1 is the subaverage -- significantly subaverage intelligence
2 coupled with the deficits in adaptive functioning. I would
3 agree that no one test score would -- we can't give a test
4 to someone, that I'm aware of after reading all the material
5 I read, that definitely diagnoses someone with mental
6 retardation or doesn't.

7 SOLICITOR GHENT: How about the part where it's in bold
8 and emphasized?

9 THE COURT: well, I'm not gonna, I'm not gonna rule
10 she's prepared it. She has a right to put it in bold if she
11 wants to.

12 SOLICITOR GHENT: Yes, sir.

13 THE COURT: I'm not gonna, I'm not gonna prevent her
14 from saying that, but not -- if it's a false statement we
15 might discuss it, but I don't disagree with that statement.

16 SOLICITOR GHENT: What about was is mental retardation,
17 the preceding page, the bottom, mental retardation is now
18 called intellectual disability. For purposes of this
19 hearing --.

20 THE COURT: well, again, I'm going to charge the jury
21 the statutory language.

22 SOLICITOR GHENT: Yes, sir.

23 THE COURT: If they use to use -- choose to use
24 something other than the statutory language, you certainly
25 have the right to argue that to the jury because I'm gonna

1 charge the jury that the statutory language involves mental
2 retardation, and that is defined by the statute in this
3 state. So, if they want to use that language that --
4 certainly could have the right to argue to the jury that it
5 doesn't follow the law, but I'm not gonna keep her from
6 saying that in testimony. That's -- you certainly have the
7 right to point it out in cross-examination and to argue it
8 to a jury.

9 SOLICITOR GHENT: Yes, sir.

10 significantly subaverage general intellectual
11 functioning. A score on an intelligence test, IQ test that
12 is about two standard deviations below the mean. I believe
13 it's --.

14 THE COURT: Where, where is that language?

15 SOLICITOR GHENT: That's immediately after the
16 definition of mental retardation, which is been corrected to
17 manifest---

18 THE COURT: All right.

19 SOLICITOR GHENT: ---prior to age 18. It's the next
20 page.

21 THE COURT: Yes, sir.

22 SOLICITOR GHENT: I would say that the correct
23 statement is a score on an intelligence test, IQ test, that
24 is two standard deviations below the means.

25 THE COURT: The statute doesn't define what it means by

1 the language it uses. I know what the clinicians say that
2 is, and I've considered that in my decision.

3 SOLICITOR GHENT: Yes, sir.

4 THE COURT: The statute doesn't define it and she can
5 state that's -- she is -- if she's qualified as an expert,
6 which I assume she will be, she was -- the last time she
7 testified in this Court, she has the right to state her
8 opinions based on her knowledge and education and the
9 reasons for that. If you believe that that is not based on
10 proper science or not based on the state of the art of the,
11 the kinds of factors that people in that field normally rely
12 on in formulating opinions, that's where you have the right
13 to go in cross-examination, but I don't know that I'm gonna
14 prevent her from presenting her PowerPoint. As long as her
15 testimony is consistent with this document, I'm not gonna
16 allow her to put up PowerPoints that she's not testifying to
17 obviously.

18 But if she testifies to this, then you properly have
19 the right to cross-examine her as to whether or not she's
20 using proper science or is following the proper procedures
21 used by people in her field, with the procedures they
22 normally use, or she's relying on something that people
23 don't ordinarily rely upon in her field. All of those are,
24 are ripe for cross-examination. I have no problem with
25 that, but I'm not gonna tell her she can't put up a

1 PowerPoint that's consistent with her testimony and her
2 opinion. You have the right to attack it.

3 SOLICITOR GHENT: Yes, sir. Your Honor, on the next
4 page?

5 THE COURT: Yes, sir.

6 SOLICITOR GHENT: And I think Your Honor's already
7 addressed it, but I would point out, if I may, the reason
8 I'm concerned about this---

9 THE COURT: Yes, sir.

10 SOLICITOR GHENT: ---this issue, if I'm not mistaken,
11 was argued in the U.S. Supreme Court last Monday having to
12 do with just how far the State can go in setting the limits.
13 Doctor Calloway, in her previous report, wrote that the
14 Supreme Court had embraced all of these other standards, and
15 Your Honor clarified no, the Supreme Court left it open to
16 the states. At this point that issue is before the Court,
17 and what concerns me on the next page, deficits in adaptive
18 behavior is the same thing -- I'm not arguing with the
19 Court's ruling.

20 THE COURT: Uh-huh. (Affirmative).

21 SOLICITOR GHENT: Your Honor previously said it's okay,
22 but Florida doesn't say about two standard deviations nor
23 does our statute, and that's wiggle room. Either it is or
24 it isn't.

25 THE COURT: Well, again, if that is, if that is

1 improper science or an improper statement of the way that
2 the clinicians make those judgments, then certainly you can
3 cross-examine her on that. I'm not going to prevent her
4 from, again, presenting a, a PowerPoint that mirrors her
5 testimony. You have the right to attack her testimony.
6 That's what cross-examination is all about.

7 SOLICITOR GHENT: Yes, sir.

8 Developmental disability, it would be the next one, age
9 of onset, I would object to the bold, does not have to be
10 formerly diagnosed before age 18. This man's so called
11 mental retardation was not formerly diagnosed until he
12 killed an eight year old girl and was tested by Doctor
13 Calloway while he was on Thorazine.

14 THE COURT: I will charge the statute that says it must
15 manifest itself---

16 SOLICITOR GHENT: Yes, sir.

17 THE COURT: ---before age 18.

18 SOLICITOR GHENT: Other disabilities, examples are
19 traumatic brain injury, accidents that damage the brain, I
20 would ask if counsel intends to put anything other than the
21 alleged injury where we did, he did -- he was in a -- I
22 think a four wheeler accident and he did say that he was
23 walking around -- he said he was walking around incoherent,
24 et cetera. So they gave him I think a Cat Scan and he was
25 fine and he went home. He injured something else. I think

1 his hand or his arm. But I'm just asking, I don't see why
2 those examples are necessary if they're not going to go into
3 it.

4 THE COURT: Well, again, I'm not going to allow a
5 PowerPoint that's inconsistent with her testimony.

6 SOLICITOR GHENT: Yes, sir.

7 THE COURT: So, you certainly, during the -- her
8 testimony, can object to anything that's not consistent with
9 her testimony. I don't -- are you trying -- are you seeking
10 to introduce this as evidence in the case --

11 MR. ALLEN: No, Your Honor. We're---

12 THE COURT: -- or is this gonna be used as illustration
13 during her testimony.

14 MR. ALLEN: That's correct.

15 THE COURT: Okay.

16 MR. ALLEN: That's correct, during a general discussion
17 on mental retardation, you know --

18 THE COURT: Oh, I understand.

19 But you're not seeking to put this document in
20 evidence?

21 MR. ALLEN: That is correct.

22 THE COURT: Okay.

23 MR. ALLEN: We're not seeking to put it into evidence.

24 THE COURT: All right. It will be used for illustrated
25 purposes is what I've been told.

1 SOLICITOR GHENT: May I get clarification?

2 Does that mean that Mr. Allen is withdrawing his
3 intention to try to put the report and the supplemental
4 report---

5 THE COURT: No, no, no, I asked about the PowerPoint.

6 SOLICITOR GHENT: Yes, sir.

7 THE COURT: I didn't ask about the report or anything
8 else. I thought we were dealing with the PowerPoint.

9 SOLICITOR GHENT: We are.

10 THE COURT: I'm trying to stick with that. So, let's
11 stick with the PowerPoint.

12 SOLICITOR GHENT: Adaptive behaviors---

13 THE COURT: It's being used for illustrative purposes.
14 Again, you know, we can go through all these individually.
15 If it's consistent with her testimony, then I will allow it
16 for demonstration -- you know, it's a piece of -- it's
17 demonstration. It's not evidence that's going into the
18 record.

19 SOLICITOR GHENT: Then I'll just clarify, Your Honor,
20 my position is simply that it has to also, and I understand,
21 it also has to be consistent with the evidence she's relying
22 on, with the evidence that is before the jury, and with the
23 law, and my argument was and is that I don't believe it's
24 consistent with either.

25 THE COURT: Well, I understand that, but I'm gonna give

1 her an opportunity to testify, and if you have any specific
2 objections as she does, we can deal with those.

3 SOLICITOR GHENT: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 All right.

6 SOLICITOR GHENT: Your Honor, may we ask about the
7 reports?

8 THE COURT: well, I don't know.

9 MR. ALLEN: Actually I was rising to address that so
10 that we don't have a trip sending the jury out.

11 THE COURT: Yes, sir.

12 (WHEREUPON, the reports were marked as Defendant's
13 Exhibit Nos. 2 and 3 for identification purposes only at
14 this time.)

15 MR. ALLEN: Your Honor, I'm gonna show the Court, I've
16 shown Mr. Ghent, I've previously had marked Defense Exhibits
17 2 and 3 for identification. Defense Exhibit 2 for
18 identification is the 40-page report---

19 THE COURT: Is that---

20 MR. ALLEN: ---initially issued by Doctor---

21 THE COURT: ---the first report that was rendered?

22 MR. ALLEN: The first report that we had talked about.
23 I will tell the Court that I have redacted certain portions
24 and as I've told counsel. Specifically, and I've got
25 another copy of the report that I can show the Court for

1 clarification, but I redacted the bottom half of Page 2.
2 I've covered it over because that began a section where
3 Doctor Calloway started talking about different standards
4 for mental retardation, the DSM-IV, the DSM-V, which I---

5 THE COURT: I recall that section of the report.

6 MR. ALLEN: Right.

7 THE COURT: I read it.

8 MR. ALLEN: And I -- but, again, I'm trying to keep it
9 to South Carolina law. So --.

10 THE COURT: I appreciate that. I do intend to use
11 that.

12 MR. ALLEN: Yes, sir, and I'm fully aware of that.
13 That's what we're trying to do here.

14 THE COURT: All right.

15 MR. ALLEN: And, for that reason, I've taken out Page 3
16 and most of Page 4. I left in the bottom paragraph where
17 she summarizes it. She does use language -- well, she uses
18 language significant limitations in intellectual
19 functioning, significant limitations in adaptive
20 functioning, age of onset, disability before age 18. That's
21 not quite tracking the South Carolina language. I can
22 remove that page too since that's the only thing on there if
23 I may be allowed to alter---

24 THE COURT: Well, it's not in evidence yet.

25 Is it been ID'd?

1 MR. ALLEN: For ID.

2 THE COURT: Okay. Well, any objection to him removing
3 that page?

4 SOLICITOR GHENT: Your Honor, I object to the whole
5 thing. It's putting the witness into the jury room.

6 MR. ALLEN: Okay.

7 THE COURT: Okay.

8 MR. ALLEN: And one other redaction I may want to make
9 the Court aware is on page, as I made Mr. Ghent previously
10 aware, on Page 5, redacted a line that, that below -- Page 5
11 begins her discussion of the various records and documents
12 that she considered. There was an entry about the letter
13 where he offered to plead guilty to life without parole.
14 I---

15 THE COURT: Take that out.

16 MR. ALLEN: I've redacted that.

17 THE COURT: All right.

18 MR. ALLEN: So, I will try to pull out Page 4 without
19 making this---

20 THE COURT: Well, let's, let's -- I understand why you
21 would do that, and what I may do -- let's, let's see about
22 what the objection is to the whole report going in and then
23 we'll talk about that, and---

24 MR. ALLEN: I didn't---

25 THE COURT: If it doesn't go in, you don't have to

1 redact anything, but we'll see where we are.

2 MR. ALLEN: That's correct, and then, just for the
3 record, Defense Exhibit 3, for identification, is a
4 supplemental report that was issued in January.

5 THE COURT: All right. So, those are the two reports
6 you intend to offer into evidence?

7 MR. ALLEN: I do intend to offer them into evidence.

8 THE COURT: And with the exception of the one page that
9 you would like to redact?

10 MR. ALLEN: With the additional page.

11 THE COURT: The additional page.

12 MR. ALLEN: I've already taken out---

13 THE COURT: I understand.

14 MR. ALLEN: ---the one.

15 THE COURT: I'll hear from you, Mr. Ghent.

16 SOLICITOR GHENT: Your Honor, she will be allowed to
17 give her testimony. As -- I mean now it's my turn to
18 basically say what Your Honor said. She'll be allowed to
19 give her testimony. She'll be allowed to give her opinion.

20 Taking Rule 402 and 403, balancing probative worth
21 versus potential for prejudice, this is extremely
22 prejudicial. It sends her opinion into the jury room
23 essentially sending her into the jury room. This is not a
24 statement of just facts. This is a statement of facts that
25 the Court -- some of which the Court found were not

1 consistent with each other and were not true, and the simple
2 fact is, Your Honor, that, again, Your Honor, as trier of
3 fact and law in the Atkins hearing---

4 THE COURT: Yes, sir, I was, I was weighing that
5 evidence at that time. So --.

6 SOLICITOR GHENT: Yes, sir.

7 THE COURT: I'm no longer in that position.

8 SOLICITOR GHENT: Yes, sir, the jury will be.

9 THE COURT: That's right.

10 SOLICITOR GHENT: This is highly prejudicial. This,
11 this is an opinion, and---

12 THE COURT: Is there a rule of evidence that would
13 prevent that from going in?

14 SOLICITOR GHENT: Yes, sir, the -- here's -- I don't---

15 THE COURT: Is it the weighing of the prejudice and
16 probative value?

17 SOLICITOR GHENT: It's also the hearsay rule that does
18 not -- it allows documents -- certain documents to go in,
19 but it exempts those as to opinions. That's the reason why
20 you have experts.

21 Your Honor, could I -- if we're going to have a lunch
22 period, could I have that much time to get some law because
23 I just think this, number one, she supplemented it, and,
24 number two, I'm gonna have to explain.

25 THE COURT: well, let me hear from Mr. Allen before I

1 do that.

2 Yes, sir.

3 MR. ALLEN: well, yes, we will go over a good bit of it
4 during the testimony because it's basically her
5 investigation and her examination and her evaluation. But
6 it is a report that was generated by an expert just like the
7 autopsy report was generated by Doctor Wren, which was
8 offered and admitted into evidence as well as the report of
9 Ms. Cromer, from SLED, the, the firearms, the firearms
10 ballistics examiner. So, I think the, the fact that they --
11 she's gonna testify as to the various items in the report
12 does not preclude its admission.

13 THE COURT: And it would be subject to
14 cross-examination.

15 MR. ALLEN: And there's -- of course, she's subject to
16 cross-examination on any aspect of the reports that are
17 being offered.

18 THE COURT: All right. well, what I'll do is I will
19 give you through lunch to look at it, and I'll take some
20 additional argument at that time.

21 Let me get the jury in and excuse them for lunch.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, my discussion with the attorneys is going to continue

1 for sometime. But I've been told that your lunch is here at
2 the courthouse, and so I'm gonna let you take your break for
3 lunch at this point in time. Just wanted to let you know
4 what we were doing.

5 I will instruct you, as I always do, not to discuss the
6 case during that period of time, even among yourselves. I
7 expect that we will be in a position to resume the trial of
8 the case at 1:30. As I said, we're gonna be working on some
9 things in the mean time, and then we should be in a position
10 to start back with you by that time.

11 So, thank you for your patience. The bailiffs will
12 take care of you during your lunch period and then we'll
13 resume at that time.

14 Thank you very much.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. I'll ask the attorneys to be
18 ready to continue the hearing at 1:15. That should give us
19 time to do some additional discussion before we start back
20 with the jury.

21 Court's in recess until 1:15.

22 Everyone remain seated while the defendant retires.

23 (WHEREUPON, Court was in recess for the lunch break.)

24 THE COURT: All right. We're back on the record
25 concerning the question of admission of the report of Doctor

1 calloway.

2 I'll hear from the State.

3 SOLICITOR BARNETTE: Your Honor, I'll be arguing that
4 if I could?

5 THE COURT: Yes, sir.

6 SOLICITOR BARNETTE: Your Honor, I found a case -- and
7 I knew when we had the Atkins hearing I made this argument
8 before, but I understand you were the tryer of fact in that
9 case. Obviously you can separate hearsay and everything
10 from there.

11 THE COURT: Yes, sir.

12 SOLICITOR BARNETTE: But in Allegro, Incorporated
13 versus Scully, it's a 400 S.C. Reporter 33, Page 33, and
14 it's in 733 S.E.2d 114, Your Honor. It's a 2012 case. It
15 says Rule 703, under our rules, and this is on Page 9 of it
16 and you may already have read it. I know you was handed the
17 case.

18 THE COURT: I'm there.

19 SOLICITOR BARNETTE: Allows an expert to give an
20 opinion to rely on fact or data that are not admitted into
21 evidence even admissible into evidence, and it cites Wright
22 versus Hiester Corporation Company, 389 S.C. Reporter 504,
23 and then 698 S.E.2d 822. That was also a Court of Appeals
24 case in 2010, and also cited Jones versus Doe, which is 372
25 S.C. Reporter 53, 640 S.E.2d 514, a Court of Appeals case,

1 2006.

2 It says, however, Rule 703 does not allow the admission
3 of hearsay evidence simply because an expert used it in
4 formulating his or her opinion. It only provides the expert
5 can give an opinion based off facts or data that was not
6 admitted into evidence, and our position, Your Honor, is
7 this, Your Honor.

8 She talked to several lay witnesses. Also used several
9 expert resources. In that, Your Honor -- and obviously
10 that's admissible hearsay that she would introduce in, in
11 put -- by putting her report in, that would be putting that
12 in front of the jury without the, you know, obviously having
13 the chance to cross-examine these people, and I think the
14 rule's very clear, and the case states much more precisely
15 than I tried to at the Atkins hearing, and that would be the
16 basis for us saying the report should not be admissible.

17 THE COURT: All right. Mr. Allen.

18 MR. ALLEN: Your Honor, if it please the Court.

19 I still think that it's admissible. Certainly it's a
20 summary contents under -- in a way it's a summary. You
21 know, she's reviewed a lot of records. She summarized them
22 into a record. Rule 1006 also allows for the use of
23 summaries based on information that comes from voluminous
24 reports, writings, and records, and recordings and that kind
25 of stuff.

1 THE COURT: well, my concern, Mr. Allen, is that the
2 report does contain, when she was doing these ABIS Test,
3 the -- she, she interviewed several people, I recall the
4 teacher as being one, who indicated that he didn't talk
5 much. He just sort of blended in. There were several
6 quotes in there from people who she interviewed in the
7 report, which I don't believe those people are available
8 here to testify in this hearing. The State then would not
9 be able to cross-examine them in front of the jury.

10 It seems to fall within the area where, while she has
11 the right to base her opinion on hearsay, the admission of a
12 report containing hearsay, it seems that the Allegro versus
13 scully says that that would be error to allow that to occur.

14 Now, she can, she can testify to concerning her report,
15 but just the report itself doesn't go in if it contains
16 hearsay. It would not be admissible otherwise.

17 MR. ALLEN: well, my only other point, Your Honor, if I
18 please -- if the Court please, is -- I mean, you know, as
19 the Court has heard the testimony previously about the ABIS
20 and it was a -- it's a standardized type questions and
21 answers and that kind of stuff. So, so, yes, I mean she is
22 relying on what she's being told, but this is a, this is a
23 system---

24 THE COURT: well, it's clear that the rule allows her
25 to do that.

1 MR. ALLEN: Yes, sir.

2 THE COURT: She can do that. The question is whether
3 though you can put in a report that quotes those sources
4 into evidence in front of the jury. While she has a right
5 to rely on it in forming her opinion --

6 MR. ALLEN: Yes, sir.

7 THE COURT: -- I'm not sure you can admit the
8 statements into the record, according to this case, when the
9 State has no opportunity to cross-examine those individuals
10 that are being quoted.

11 MR. ALLEN: Well, while I don't have a case
12 specifically on point on, on this particular situation, but
13 I, I would just have to disagree because, in a sense, I
14 mean, you know, what these people are telling her is the,
15 is, is why she's coming to these conclusions, and she's
16 gonna have to use some examples and explain how she arrived
17 at these scores and then made the scores as she did I mean
18 in order to arrive at the ultimate conclusion.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. ALLEN: So, I, I think the testimony and the report
21 should, should be admissible.

22 THE COURT: Well, I'm going to -- I'll, I'll allow you
23 to mark the report. I'm not going to allow it to be
24 admitted, and I will allow her to testify concerning her
25 report and her, and her findings, but I'm not gonna put the

1 report itself into evidence.

2 MR. ALLEN: Yes, sir.

3 THE COURT: Because it's my -- my recollection is that
4 it does contain numerous quotes from those people that were
5 interviewed quoting what they said.

6 MR. ALLEN: Yes, sir.

7 THE COURT: All right. All right. That's -- that will
8 be my ruling.

9 MR. ALLEN: Very well.

10 THE COURT: All right. Now, anything further before we
11 take up her testimony, from the State?

12 SOLICITOR BARNETTE: No, sir.

13 MR. ALLEN: I assume we've got the machines operating.

14 THE COURT: Are you ready?

15 MR. ALLEN: I think we're ready.

16 THE COURT: well, let's be sure.

17 MR. ALLEN: We're just waiting.

18 THE COURT: That's okay.

19 MR. ALLEN: Just trying to get our system ready.

20 THE COURT: whatever you -- let's not pop the jury in
21 and pop them back out. Let's test it first. Be sure we're
22 ready.

23 MR. ALLEN: Yes, sir, thank you.

24 THE COURT: Thank you.

25 (Pause.)

1 MR. ALLEN: Now we're ready, Your Honor. Thank you.

2 THE COURT: Okay. All right. Let's bring the jury in.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. The record will reflect the
6 jury's returned to the courtroom.

7 Hope everyone had a good lunch.

8 At this time the defense may call its next witness.

9 MR. ALLEN: Thank you, Your Honor.

10 We call Doctor Ginger Calloway to the stand.

11 THE COURT: Ma'am, if you'll come forward over to my
12 left to be sworn please, ma'am.

13 GINGER CALLOWAY, having been first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat please, ma'am. Once you're
16 seated, state your name.

17 THE WITNESS: My name is Ginger Calloway.

18 THE COURT: Thank you.

19 Mr. Allen, your witness.

20 MR. ALLEN: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. ALLEN:

24 Q Doctor Calloway, can you tell us what do you do?

25 A Yes, I'm a psychologist at this point in my career. I

Ginger Calloway - Direct examination
By Mr. Allen

1 am primarily to -- conducting evaluations in forensic
2 psychology of various types. I was a clinical psychologist
3 for a number of years and treated patients, but also have
4 had a specialty in assessment both in the clinical area as
5 well as the forensic.

6 Q Okay. And are you -- where are you from as far as
7 where your practice is?

8 A Yes, I'm from Raleigh, North Carolina.

9 Q Okay. Now, what is your education and background in
10 becoming a psychologist, a forensic psychologist please?

11 A I have an undergraduate degree from Queens College in
12 Charlotte where I earned a B.A. in Psychology. I have a
13 Master's Degree in School Psychology from North Carolina
14 State University, and I have a Ph.D. in Psychology generally
15 from North Carolina State University. I also have a
16 pre-doctoral clinical internship that I did in order to
17 become more educated in the practice of psychology, and I
18 did two years of post-doctoral work, and all that was in
19 clinical psychology.

20 To become a forensic psychologist, I've taken a number
21 of workshops, courses, engaged in consultation, and I guess
22 that would be the extent of, of the forensic psychology,
23 yes.

24 Q Okay. And your work history in, in psychology is?

25 A Well, I began a private practice in 1983 in Raleigh

Ginger Calloway - Direct examination
By Mr. Allen

1 and, at that point, I was part-time employed by a community
2 mental health center. I was also assessing children in the
3 wake County public schools for mental retardation, learning
4 disability, emotional handicaps. Any child that was in a
5 special education class has to be retested every three years
6 according to federal law, and so those were the children
7 that I would be testing.

8 I had a private practice where I was consulting with a
9 psychiatrist and evaluating children and adolescents who
10 might be going into the inpatient facilities there in
11 Raleigh. I also accepted a number of referrals from
12 counselors from the school system with children who were
13 having difficulty of one kind or another. Whether it was
14 academic or otherwise. I also worked a great deal with
15 children and families and that work ultimately led me into
16 the Court system to do what are called comprehensive child
17 custody evaluations. When parents can't agree, and they're
18 divorcing, they ask for a specialist to come in and do an
19 evaluation of the entire family. So, that's what led me
20 into the Court system.

21 Q And what types of Courts have you testified in?

22 A Well, Family Court has been the first place that I
23 started. I worked also with the federal public defender and
24 a couple of times with the federal prosecutor to evaluate
25 juveniles, and all those cases would of been heard in

Ginger Calloway - Direct examination
By Mr. Allen

1 Federal Court.

2 I've worked with the State of North Carolina, the
3 Attorney General's Office to do personal injury work.
4 Anytime that somebody would sue one of the departments that
5 the Attorney General's Office represents, then, for a
6 personal injury type matter, like sexual harassment would be
7 an example, then I have evaluated those people who have
8 served as plaintiffs against the State of North Carolina,
9 and I've -- so, I've testified in Superior Courts for
10 criminal matters, and then in Federal Court and civil courts
11 for other matters.

12 Q And are, are -- where are these courts located?

13 I mean are they primarily in one state, several states,
14 or what?

15 A Most of my work has been in North Carolina. The only
16 Federal Courts that I've testified in have been in North
17 Carolina. I have testified in some courts in other states,
18 but it's usually been through a deposition. For example, I
19 had a child custody case that was in Michigan, and I
20 testified through deposition, but it took place in Raleigh,
21 and I have testified in California in some private courts,
22 but most of my work has been done in North Carolina.

23 Q Okay. And when you've mentioned that you've testified
24 in these various courts, have you been testifying as an
25 expert in forensic psychology?

Ginger Calloway - Direct examination
By Mr. Allen

1 A Yes.

2 Q Okay. What, if any, special training have you had with
3 respect to conducting assessments and evaluations in mental
4 retardation?

5 A Well, that work actually started as a graduate student
6 because I had a, a assistantship that took me out into the
7 mountains of North Carolina to test children that might be
8 considered special education type kids, and there were no
9 services at that particular time. I entered Graduate School
10 in 1969.

11 So, at that particular point in time, those more rural
12 areas didn't have special education services and we were
13 looking at those kids out there in those western most
14 counties to see which kids might qualify and what kind of
15 intervention services could be applied through grants, for
16 example, through the N.C. State University. So, I had that
17 kind of training.

18 Then, of course, I did all the evaluations that I did
19 for the Wake County schools. I tested probably about a
20 hundred kids a year for five years. I had a contract with
21 the Wake County schools, and then I also worked with the
22 Division of Services for the Blind. It was another
23 assistantship that I did when I was in Graduate School, and
24 then, afterwards, I kept working for the Governor Morehead
25 School for the Blind it's called in Raleigh.

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By Mr. Allen

1 So, a number of those people who could go into Division
2 of Services for the Blind would -- there would be issues of
3 what we call differential diagnosis. This is true when
4 you're working with children too. You're trying to sort out
5 does the kid have Attention Deficit Disorder, do they have
6 mental retardation. So, these would be the kind of cases
7 where I would have to get, have to have special training.

8 I've also done some training and consultation. I've
9 had workshops and consultation with some experts in the
10 field specifically for these kinds of evaluations like I did
11 in this case where the standards are somewhat different than
12 they are for, for other situations.

13 Q I'm almost forgot to ask.

14 What professional associations do you, do you belong
15 to?

16 A Well, they're quite a few. It's on my CV.

17 I belong to the APA, which is the American
18 Psychological Association. I belong to the AAIDD, which is
19 the American Association of Intellectual and Development
20 Disabilities. I belong to the APSAC, which is the American
21 Professional Association on -- I forget exactly what it
22 stands for, but it's a, an organization that promotes
23 understanding of abuse of children.

24 Let's see. What else do I belong to?

25 Oh, the American Association on Family and Community

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By Mr. Allen

1 Courts, American Association on Juvenile Judges. I forget
2 the whole name of that one. They're quite a few that I
3 belong to.

4 Q Do you belong to any professional organizations or
5 associations with a view towards forensic psychology?

6 A Oh, yes. The American Psychological Association has
7 different divisions, and so Division 41 has to do with
8 forensic psychology. So I belong to that.

9 Division 33 has to do with developmental disabilities.
10 I belong to that. I also belong to Division 12, which has
11 to do with clinical psychology, and there's a section within
12 Division 12 which has to do with assessment. Also belong to
13 Section 5, which has to do with assessment as well, and I
14 belong to the Society for Personality Assessment. I'm so
15 sorry. I forgot about that. That one I'm a fellow in the
16 Society for Personality Assessments. So, that means my
17 peers recognize me as having an expertise.

18 Q Okay. And approximately how many mental retardation
19 assessments and evaluations, if you know, have you done?

20 A You mean for my whole career?

21 Q Yes, ma'am.

22 A Clinical and forensic?

23 Q Yes, ma'am.

24 A Hundreds probably into the, I would say, well over a
25 thousand now.

Ginger Calloway - Direct examination
By Mr. Allen

1 MR. ALLEN: Okay. Your Honor, at this point I'd offer
2 Doctor Calloway as an expert in the area of forensic
3 psychology and in mental retardation assessments and
4 evaluations.

5 THE COURT: Any objection?

6 SOLICITOR GHENT: Your Honor, may I just ask the good
7 doctor about a few things in her resume?

8 THE COURT: Yes, sir.

9 SOLICITOR GHENT: Thank you.

10 MR. ALLEN: Excuse me.

11 CROSS-EXAMINATION

12 BY SOLICITOR GHENT:

13 Q Doctor, you went over all of the things that you've
14 done, all of the things that you are a part of.

15 If it's not too personal, you are being paid for your
16 testimony, are you not?

17 A Oh, yes, uh-huh. (Affirmative).

18 Q And how many patients do you now have?

19 Patients.

20 A I don't have any clinical patients at this point.

21 Q Okay. So, you are exclusively a forensic psychologist
22 now?

23 A I, I am doing all forensic work, which the majority of
24 what I'm doing at this point are evaluations.

25 Q Okay. And you're paid for that?

Ginger Calloway - Cross-examination
By Solicitor Ghent

1 A Uh-huh. (Affirmative).

2 Q And you come---

3 A Yes.

4 Q ---into Court and you give your testimony?

5 A Only in a small proportion of those. You asked me that
6 question when I was here last time, and I went back and
7 looked at the number. I've testified in 12 cases that had
8 to do with this same sort of situation. However, I've
9 worked on another 26 cases where either mental retardation
10 was an issue or whether the person had been charged with
11 first degree murder. I've also evaluated three men now on
12 death row who the question was mental retardation, but I
13 didn't find mental retardation, and two women on death row.

14 So, there are a number of evaluations where I don't
15 necessarily go to Court.

16 Q Well, one of the cases that you did go to Court on, you
17 would agree, was with Mr. McGuire down in Dillon?

18 A Mr. Secour was lead counsel I believe. Mr. McGuire did
19 the direct questioning of me.

20 Q Okay.

21 A Yes.

22 Q And most of your testimony, if not all in matters of
23 death penalty cases pertaining to mental retardation, and
24 yes, I did ask you about this before, they've been for the
25 defense in North Carolina, is that not correct?

Ginger Calloway - Cross-examination
By Solicitor Ghent

1 A That's correct. In North Carolina we have three state
2 mental institutions. One for the western part, one for the
3 middle part of the state, and one for the eastern part. So,
4 the prosecution is always able to hire people from the --
5 these state institutions to evaluate the defendants, and so
6 yes, I've always worked for what's called -- Indigent
7 Defense Services pays my fee.

8 Q How long did you -- well, let me -- I'll come back to
9 that.

10 In your resume, you have areas of expertise and/or
11 interest, correct?

12 Page 5 of your resume.

13 A Would you show me what you're talking about?

14 Q Yes, ma'am. Be glad to.

15 May I approach, Your Honor?

16 THE COURT: You may.

17 A Yes, and your question?

18 Q My question simply is one of those areas also is having
19 to do with substance abuse disorders?

20 If you'd read number four?

21 A Yes, these are areas of interest or expertise that's a
22 part of my curriculum vitae. Substance abuse disorders and
23 related areas, codependency, dysfunctional families, and
24 sexual or emotional abuse.

25 Q All right. Thank you.

Ginger Calloway - Cross-examination
By Solicitor Ghent

1 You also, and I hope -- I mean I'll be glad to -- you
2 also have been interested in matters pertaining to children
3 as well, correct?

4 A I explained that I worked with children and families
5 for a number of years, and I have conducted a number of what
6 are called child custody evaluations and also evaluations of
7 children who were already either inpatient or the
8 psychiatrist were considering them to go inpatient.

9 Q You said that you testified for the State in matters of
10 sexual abuse, and I believe, the last time we met, I asked
11 you about that one case in particular.

12 My question is when you say sexual abuse, would that
13 include emotional abuse?

14 A What I just read you was emotional---

15 MR. ALLEN: Your Honor, at this point I would object to
16 the questions. I believe this is going beyond a voir dire
17 on the qualifications of the witness as an expert.

18 SOLICITOR GHENT: No, sir.

19 THE COURT: Well, tell me how it's not.

20 SOLICITOR GHENT: There's been testimony in this case
21 regarding the relationship between the defendant and his
22 wife, and there has been extensive effort to put the blame
23 on her. That is to move the potential anger of the jury---

24 THE COURT: Those are factual issues. The question
25 right now is whether this person is qualified as an expert

Ginger Calloway - Cross-examination
By Solicitor Ghent

1 within the field that she's been offered, and I'll let --
2 the purpose of your cross-examination now should go as to
3 her qualifications.

4 SOLICITOR GHENT: That's all I want to know.

5 THE COURT: Well, sir, I'm gonna ask that you get to
6 the point because it seems to me we're getting into some
7 other points.

8 Q You have expertise in matters of emotional abuse in
9 family situations, do you not?

10 A Yes.

11 MR. ALLEN: Still object to that.

12 SOLICITOR GHENT: Thank you.

13 THE COURT: Are you finished with your
14 cross-examination?

15 SOLICITOR GHENT: Yes, sir.

16 THE COURT: He's finished.

17 MR. ALLEN: Thank you.

18 THE COURT: Now, are there objections to her
19 qualifications?

20 SOLICITOR GHENT: None, Your Honor.

21 THE COURT: All right. She'll be admitted as an expert
22 within the field in which she's been offered.

23 MR. ALLEN: Thank you, Your Honor.

24 THE COURT: You may proceed, Mr. Allen.

25 CONTINUED DIRECT EXAMINATION

Ginger Calloway - Direct examination
By Mr. Allen

1 BY MR. ALLEN:

2 Q In preparation for, for your testimony today, did you
3 prepare a PowerPoint slide?

4 A I did.

5 MR. ALLEN: Okay. And if I may---

6 THE COURT: Yes, sir.

7 MR. ALLEN: ---turn it on at this time?

8 THE COURT: Absolutely. It may need some adjusting.

9 Oh, here we go. Here we go.

10 MR. ALLEN: There we go.

11 THE COURT: All right.

12 Q I'm gonna hand you a laser pointer --

13 A Okay.

14 Q -- in case you need that during your testimony.

15 SOLICITOR GHENT: Your Honor, may we approach for one
16 moment?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: Mr. Allen, the testimony is subject to the
21 state's prior objections. The Court would make the same
22 rulings.

23 You may proceed.

24 SOLICITOR GHENT: Thank you, Your Honor.

25 MR. ALLEN: Thank you.

Ginger Calloway - Direct examination
By Mr. Allen

1 Your PowerPoint begins with a title defining mental
2 retardation. I just want you to talk in general for me
3 about mental retardation, what it is, and how it's assessed.

4 A Okay. I -- that, that's why I put this together
5 because my job, my contract, if you will, was to provide an
6 evaluation to determine whether or not this individual is or
7 is not mentally retarded. So, I wanted to focus on what is
8 the definition of mental retardation, and there are three
9 parts to that definition.

10 I mentioned earlier that I belong to an association
11 called the American Association on Intellectual and
12 Developmental Disabilities. They use to be called the
13 American Association on Mental Retardation. Now we've
14 changed the name of mental retardation to intellectual
15 disability. But because most of us know mental retardation
16 as mental retardation, I wanted to keep that terminology so
17 it would be easier to talk about it.

18 We, we psychologist, psychiatrist, social workers,
19 licensed counselors, use something for diagnoses called the
20 Diagnostic and Statistical Manual of Mental Disorders, and
21 that also has a definition for diagnosing mental
22 retardation. There's consistency among professionals about
23 how to diagnose mental retardation and that consistency has
24 been in place for 50 years.

25 So, what is mental retardation?

Ginger Calloway - Direct examination
By Mr. Allen

1 The three parts of it, first of all, significantly
2 subaverage general intellectual functioning, and I'm gonna
3 explain that to you in just a minute. I just wanted to be
4 sure and point out the three parts.

5 Deficits in adaptive behavior.

6 Three. It is a developmental disability, which means
7 that we see it manifesting during the developmental period,
8 which is zero to 18 years. And just for your information, I
9 threw in that, what I just said a minute ago, which is
10 mental retardation is now called intellectual disability.

11 Q Doctor, if you would let me interrupt you for just one
12 second.

13 A Yes.

14 Q When you say it's now called intellectual disability,
15 by whom is it called intellectual disability?

16 A Thank you.

17 The AAIDD, American Association on Intellectual and
18 Developmental Disabilities, refers to it as intellectual
19 disability and the DSM, the Diagnostic and Statistical
20 Manual, the newest version of that is Version V, and that's
21 the group I'm referring to.

22 Q Okay.

23 A The two, two professional groups.

24 Q Okay. And why -- do you know why people in your field
25 have -- are now calling it intellectual disability?

Ginger Calloway - Direct examination
By Mr. Allen

1 A Disability captures the fact of -- that it has -- that
2 the diagnosis has impairments and that it disables the
3 individuals in certain ways. So, rather than calling it a
4 disorder, for example, a disorder implies that there's some
5 sort of etiology. There's, there's a reason for it, and
6 that's not always the case. Particularly with mild mental
7 retardation.

8 So, so, instead of calling it a disorder and thinking
9 that it's a bit like having diabetes and you can figure out
10 what the reason is, the AAIDD suggested calling it a
11 disability because that captures the fact of the
12 impairments, which are the deficits in adaptive functioning
13 that I'm gonna give you a little bit more detail about.

14 Q But, but is mental retardation, in, in your
15 organizations or in your field, the same?

16 Is mental retardation essentially the same as
17 intellectual disability?

18 A Yes, and it's been called other names too. Like in
19 school systems, sometimes children are called educably
20 mentally handicapped. That's a word that's used in North
21 Carolina in some schools.

22 So, mental retardation, educably mentally handicapped,
23 intellectual disability, they're one in all the same
24 concept. We're talking about the same thing. But different
25 agencies or entities call them by different names. It's the

Ginger Calloway - Direct examination
By Mr. Allen

1 same diagnosis.

2 Q Okay. So, if you would, please tell us what the mental
3 retardation is.

4 A Okay. So, there isn't one test that we can give to say
5 this is mental retardation. It takes time meaning that you
6 have to look at a number of different sources, and you have
7 to get information from different people and different
8 places in order to come to that diagnosis.

9 The next slide.

10 So, again, I'm repeating myself, but I want you to
11 remember that it's significantly subaverage general
12 intellectual functioning, deficits in adaptive behaviors,
13 and it manifests prior to the age of 18.

14 Okay. So, what is significantly subaverage general
15 intellectual functioning?

16 The -- again, going to the AAIDD, which is one of the
17 sources for professionals in my field, a score on an IQ test
18 that is -- and the language the AAIDD uses is approximately,
19 but I just used about two standard deviations below the
20 mean. So, that's gonna be roughly a score of 70, and we say
21 two -- about two standard deviations because any test, no
22 matter what test it is, is not perfect, and it has what we
23 call a standard error of measurement. So, if I got a score
24 today of 68 on an IQ test, and I took it in a year and a
25 half, I might get a score of 63. There's a standard error

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By Mr. Allen

1 of measurement that essentially means that those two scores
2 are not really that different. They just happen to have a
3 bit different variation because I'm taking the test on a
4 different day and there's a different examiner, I don't feel
5 as good, whatever.

6 So, the standard error of measurement is just a way we
7 have of talking about that there's a, a variation around any
8 one score and that's why the AAIDD manual says a score on an
9 IQ test that is approximately two standard deviations below
10 the mean.

11 Q What, what do you mean by the mean of---

12 A Oh.

13 Q ---the IQ test?

14 A Okay. That's a good question. On -- all IQ tests have
15 been set to have a mean of 100. So the average score for
16 the average person is a score of 100. The range for average
17 intellectual functioning is from a score of 90 to a score of
18 a 110. So, the standard deviation allows for that much
19 variation. That's what is meant by the mean.

20 So, it's the exact midpoint, and I have, at the end of
21 this PowerPoint presentation, a normal curve that I'm gonna
22 show you that will show where the mean is. So it will be
23 right smack dab in the middle. So, if you got a hundred,
24 you would know you were exactly average in IQ.

25 Q Okay. And a standard or two standard deviations or a

Ginger Calloway - Direct examination
By Mr. Allen

1 standard deviation is---

2 A That's---

3 Q ---how much or how do we --?

4 A It's roughly five points, and so it's, it's five points
5 plus or minus or around the mean.

6 Q Okay.

7 A Okay. And so but, but the -- well, let's see. I
8 don't -- I'm not gonna go into the other thing I was
9 thinking about. I'll wait for your question.

10 Q I guess what I'm asking is when you get -- how does,
11 how does one know generally when they get to approximately
12 or about two standard deviations from the mean?

13 A Well, the standard deviation, again, it -- two standard
14 deviations below the mean would be a score of 70. Okay.

15 Q Okay. And, again, that -- there's a standard error of
16 measurement?

17 A Yes. Yes.

18 Q Okay. Which is you said plus or minus --?

19 A Five.

20 Q Okay. Now, it -- if you would, continue to tell us
21 about the intellectual or the subaverage general
22 intellectual functioning please.

23 A Okay. So, the normal curve, I'm gonna show you here in
24 a few minutes, and then because they're fewer people at the
25 extremes of the normal curve, then there's more variation in

Ginger Calloway - Direct examination
By Mr. Allen

1 the scores cause you don't have as many people to count on
2 it in a standardization sample, for example.

3 Q And when you say more variations in the scores, what
4 are you talking about?

5 A Well, if -- can you jump to that last slide cause that
6 would help me?

7 Q Okay. So, if you look here, a score between 85 and 115
8 captures 68 percent of the population. So, if we went out
9 and gave this test to a thousand people, 68 percent of those
10 people would score between 85 and 115.

11 Now, when we get down to -- let's see if I can work
12 this thing.

13 All right. Hold on. If you get down to the lower two
14 percent, then that's where you're getting an IQ of 70, and
15 you get down to an IQ of 55, then you're only capturing
16 roughly 0.1 percent of all people. So, there are fewer
17 people both at that lower end as well as the higher end.
18 So, the higher end you're starting to get IQ's of 130 and
19 then 145.

20 So, those tails, we call them, of the normal curve have
21 fewer people, and so we get more variation in scores simply
22 because of fewer numbers.

23 Q Okay. And in the IQ score distribution, approximately
24 how many or how much percentage of the population scores 70
25 or below?

Ginger Calloway - Direct examination
By Mr. Allen

1 A Two percent.

2 Q Okay. All right. Now, if we can go back to---

3 A Yes, if we could go back to the slide about subaverage
4 general intellectual functioning.

5 All right. Let's see.

6 Okay. You can go to the next slide.

7 Q Now, so that was about the general intellectual
8 functioning?

9 A Right.

10 Q And you mentioned there's another component of deficits
11 in adaptive behavior?

12 A Yes.

13 Q And what is that?

14 A Okay. Adaptive behavior is behavior that -- we're
15 looking at the behaviors that people need to manage every
16 day life, and we're looking at behaviors that are done
17 independently without assistance.

18 So, again, going to the AAIDD manual, what that manual
19 talks about are the conceptual, social, and practical skills
20 that have been learned and performed by people in their
21 everyday lives. So, performance that is, again, roughly two
22 standard deviations below the mean in either of these areas,
23 conceptual, social, or practical areas of a standardized
24 measure of adaptive functioning or performance that is about
25 two standard deviations below the mean on an overall score

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By Mr. Allen

1 of a standardized measure of adaptive functioning.

2 So, the adaptive functioning measures that we have come
3 up with this general score, it's called a general adaptive
4 composite score, or they come up with a conceptual score, a
5 social score, or a practical skill score, and that's what
6 the deficits are. They are, they are ways in which the
7 person has impairments in these areas of conceptual, social,
8 and practical skills.

9 Q When you say standardized measure, are you talking
10 about an IQ test we were talking about earlier?

11 A No, the standardized measures of assessment for
12 adaptive functioning. The Vineland is one that many people
13 are familiar with. The one that I used in this particular
14 evaluation is called the ABIS, the Adaptive Behavior
15 Assessment System. There are some other ones. There's
16 another one called the SIBAR. But the ones that are
17 recognized by the AAIDD are the Vineland, the SIBAR, and the
18 ABIS.

19 Q Okay. Thank you.

20 A Okay.

21 Q Let's go to the next slide.

22 A Okay. So, then the third parts of subaverage general
23 intellectual functioning, we've got the impairments in
24 everyday social skills, and then we have the part that has
25 to do with it being a developmental disability.

Ginger Calloway - Direct examination
By Mr. Allen

1 So, when does this disability start?

2 The evidence for mental retardation occurs before the
3 age of 18. We don't have to have a formal diagnosis before
4 the age of 18 according to the AAIDD and other professional
5 standards.

6 The disability interrupts normal development, and
7 that's why -- I think that's part of the reason that the
8 AAIDD decided to call this a disability because that's what
9 a disability does. Here's a kid and they're going along in
10 the normal trajectory, a normal course of development, and
11 the disability causes them to have impairments, and that's
12 what we're looking for.

13 What are those impairments?

14 Can we identify those?

15 And the result is, for these kind of impairments, that
16 the person doesn't develop, they don't show behaviors, they
17 don't act like other people of their own age. And when
18 we're looking at these adaptive deficits, these impairments
19 we're looking at how does the person compare to others his
20 or her own age.

21 Q Okay. Thank you.

22 A Okay. I wanted to give you an idea of how an
23 intellectual disability is different than other
24 disabilities. So, I put, I put this up here because they --
25 other disabilities can occur after age 18, and they're

Ginger Calloway - Direct examination
By Mr. Allen

1 general, but they're not necessarily intellectual in nature
2 like mental retardation. So, some examples of other kinds
3 of intellectual -- of other kinds of disabilities would be
4 like a traumatic brain injury, infections of the brain,
5 accidents that damage the brain, cerebral palsy, senile
6 dementia.

7 Now, other kinds of disabilities that show up in
8 childhood would include some things like reading
9 disabilities, learning disabilities, or autism, and those
10 are different than mental retardation. You can have autism
11 and not be mentally retarded. You can have a reading
12 disability and not be mentally retarded. So, I want to give
13 you some examples of other disabilities you might know about
14 that would be different than mental retardation.

15 Q Okay.

16 A Okay. Going back to the adaptive behaviors again, to
17 try to simplify what the AAIDD was saying cause that was a
18 little I think complicated, just want to put up again that
19 these are the skills that we need, anybody needs, to live
20 and survive day-by-day, and these are done independently
21 without assistance and they're what a person does routinely,
22 not once in a while.

23 Q Okay.

24 A Adaptive behaviors are also shown typically throughout
25 the lifetime of a person. The person does them in a typical

Ginger Calloway - Direct examination
By Mr. Allen

1 community. So, we can't talk about adaptive behaviors in
2 jail because that's not a typical community. The community
3 that the person grew up in, the community of peers we call
4 it, that the person has lived among most of their life,
5 that's what we're looking at when we look at adaptive
6 behaviors.

7 This is the most difficult area of mental retardation
8 to evaluation particularly in a situation when you're in --
9 where you have a defendant and you're trying to figure out
10 do they have these kind of impairments that we're talking
11 about with regard to adaptive behaviors, and that's because
12 we're asking people to go back and think about what someone
13 was like when they were before the age of 18, and I think
14 you probably have some idea how memory can affect things.
15 People trying to remember things that happen five years ago,
16 ten years ago, that can be difficult.

17 There's no one test that we have to indicate the
18 presence or absence of adaptive behaviors. These measures
19 that we use give us an idea of what the impairments are like
20 for the person, but they're not the only test. We still
21 have to use clinical judgment. We have to use evidence that
22 we get from records and that kind of thing.

23 So, this is how to measure them, adaptive behavior. We
24 look at the strengths and the deficits for the person. We
25 look at the strengths exhibited over time if that's typical

Ginger Calloway - Direct examination
By Mr. Allen

1 for their community of peers or not. We look at the
2 deficits in everyday functioning, and then adaptive deficits
3 means that adaptive behaviors are missing, and that's
4 important, I believe, in terms of the next slide that I
5 have. No, it's actually another slide later.

6 But going back to the measuring of adaptive behavior --
7 no, you're fine. That's okay.

8 We, we psychologist, when we're looking at diagnosing
9 mental retardation, we look at multiple sources of
10 information for the adaptive behavior, and we conduct
11 thorough evaluations, and we do interviews with family,
12 friends, neighbors, teachers, employers, pastors, coaches
13 who knew the defendant well, and community life so we can
14 get as much information as we possibly can. We look at --
15 we review all the records that we can possibly find
16 including school records, work records, mental health
17 records.

18 Jail records aren't so helpful cause, in jail, a
19 person's already in a structured environment. All their
20 needs are being taken care of. There's no challenge to
21 them. So, we can't really get a sense of how well they are
22 impaired or not. They're not having to, to do anything to
23 independently take care of themselves, and then we're
24 looking at tests of current performance.

25 Q When you conduct these interviews of people who knew

Ginger Calloway - Direct examination
By Mr. Allen

1 the person through their life, are you looking at people who
2 only knew the person during the developmental period or
3 prior to age 18?

4 A Not just. We want to get people -- you want to get as
5 broad a spectrum as possible. You know it, it wouldn't be
6 unusual to, to interview many more people than you end up
7 giving the ABIS to, for example. But you want to have as
8 many interviews and information as, as possible. It
9 wouldn't be unusual, I learned from one of my mentors
10 recently, that he's had great difficulty even finding one
11 person to administer this ABIS to. So, we try to get as
12 many possible records, as many possible interviews as
13 possible with as many different people as possible who knew
14 the defendant over their entire life, not just as a child,
15 but over their entire life as an adult as well.

16 Q Okay.

17 A So, here's how adaptive behaviors are not determined.
18 We don't ask the person themselves to tell us what they
19 think their adaptive deficits are because most people who
20 are mildly mentally retarded do what we call masking.
21 That's that next concept right there. They don't want to
22 look retarded. It's not -- it's shameful in our culture to
23 be incompetent. So, they don't want to be looking
24 incompetent. They don't want to be looking retarded. So,
25 they try to cover their inadequacies or their deficits by

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By Mr. Allen

1 saying -- using big words sometimes, trying to with a --
2 they rely a lot on short term memory so they can remember
3 certain details and people think oh, they know a lot of
4 information.

5 So, they do this masking we call it or there's even a
6 book about it called the Cloak of Competency where the
7 person is putting on this cloak of competency so they don't
8 look retarded, and then how it, how others view them when
9 they simply look at them.

10 We don't diagnose mental retardation by looking at
11 somebody and saying they look retarded. There are some
12 forms of retardation, when people are -- have very severe
13 forms of retardation and where they have physical
14 deformities where you might begin to think yes, they do.
15 But in mild mental retardation, which is in this range
16 roughly from 60, 62, upward to about 72, 75, then, in that
17 range, people are -- you can not look at them and say
18 they're mentally retarded.

19 So, that's why I put that one in. That can be a
20 misleading source of information if someone says well, I
21 think he's retarded because he looks retarded or he doesn't
22 look retarded. I don't think he's retarded cause he doesn't
23 look retarded.

24 Okay. I also wanted to distinguish, this was the one I
25 was thinking about a minute ago, adaptive deficits are the

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By Mr. Allen

1 absence of adaptive behaviors. Maladaptive behaviors are
2 not adaptive deficits. So, adaptive behaviors are the
3 skills that society would like for people, any people, any
4 children, any adults, to develop because it helps people
5 become independent. If you have adaptive strengths you can
6 become more independent. You can live on your own. You can
7 do things for yourself. You don't have to ask for
8 assistance. You don't have to have other people help you.
9 So, that's what we want on hand, and the lack of that skill
10 then is an impairment or a deficit.

11 Maladaptive behaviors are not skills that society seeks
12 to enhance. So, to look at illegal criminal behavior as an
13 adaptive deficit would be incorrect. That's not a deficit.
14 That's maladaptive illegal behavior, and the elements of a
15 crime don't really help us make a finding of an adaptive
16 deficit because, once again, that's illegal behavior.

17 So, we're looking at the skills we want people to
18 develop and saying do they have them or don't they. That's
19 the way professionals look at -- by professionals, I mean
20 people in my field, the mental health field.

21 So, adaptive behaviors -- I mean maladaptive behaviors
22 do not indicate a deficit or the absence of a skill.

23 Okay. So, to summarize, the diagnosis of mental
24 retardation is complex because it doesn't just equal test
25 scores and it doesn't just equal one score. It does involve

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By Mr. Allen

1 some clinical judgment in the sense of I'm gonna weigh this,
2 I'm gonna weigh that, I'm gonna look at this, I'm gonna look
3 at that. That's not subjective, but it is clinical
4 judgment.

5 So, the diagnosis of MR or mental retardation involves
6 more than just scores. The elements of a crime or behavior
7 in prison are maladaptive behaviors and they're not adaptive
8 deficits. Individuals with mild mental retardation are
9 distinct due to difficulties in judgment, and so they look
10 like other people. But when you begin to talk to them, and
11 you do a thorough interview with them, and you ask them
12 certain questions, you begin to see that their reasoning and
13 their judgment is not the same as a person with an average
14 IQ.

15 Therefore, in -- particularly in a forensic situation
16 where the stakes are, are high, you know, in a personal
17 injury matter there's money, and the child custody matter
18 there's people losing custody of their children, in a
19 criminal matter there are other issues that are critically
20 important. So, particularly in a forensic evaluation, it
21 behooves us, a psychologist, or anyone who's doing these
22 sorts of evaluations to do detailed evaluations with a lot
23 of information from a lot of sources, and that's what we use
24 to diagnose mental retardation.

25 That last slide had to do again with the IQ

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1 distribution, and just to repeat, I think I misspoke. I was
2 kind of mixing up standard error of measurement and standard
3 deviation a minute ago. Two standard deviations is actually
4 30 points. You can see if a mean is 100, then a standard
5 deviation is -- two standard deviations is 30 points, and
6 that, that means an IQ of 70 roughly.

7 Q Okay. Thank you.

8 A Uh-huh. (Affirmative).

9 Q All right. Now, in -- and so you, you evaluated Ricky
10 Blackwell, did you not?

11 A I did.

12 Q Okay. Tell us a little bit about how you went about
13 that evaluation.

14 A The first thing I did was I went to the jail, the
15 correctional center, and I gave him a, a detailed interview.
16 I spent a little bit of time asking him some questions about
17 himself generally, and then I gave him a detailed structured
18 interview. It's called a forensic client history and
19 checklist, and that's an interview that ask him questions
20 like where did you grow up, what's your birthday, you know,
21 how many sisters and brothers do you have. Just, just a
22 detailed way of finding out more about him.

23 And then I gave him something called the Wechsler Adult
24 Intelligence Scale Fourth Revision. That's the IQ test that
25 I mentioned that we give to people.

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1 And I also gave him something called the Wide Range
2 Achievement Test. That was to get at where his level of
3 achievement is, and when people like me do these kind of
4 evaluations, we want to know is the IQ like the achievement
5 or not. We want to see how close those are related to one
6 another. If we had big differences, that might raise some
7 questions for us about whether we had retardation, for
8 example, or we had something else going on.

9 So, that -- those are the tests that I gave him and I
10 spent probably four to six hours with him that first day.
11 That's usually typical for what I do. They're, they're a
12 lot of questions that are being asked, and typically I spend
13 four to six hours with somebody the first time. I went
14 back -- that was on -- that was in June of 2012.

15 In August of 2012 I went back and I did a bit more
16 detailed interviewing with him. The total amount of time I
17 spent with him on both of those occasions was roughly seven
18 hours I believe it was. After that, I began -- well, let me
19 back up.

20 Once I -- the other reason that I do the testing that I
21 do in the beginning, the first day, is to get a pretty good
22 sense of whether the person is mentally retarded or not
23 according to some of the test scores I have, and then I
24 immediately give feedback to the attorneys so they can
25 decide if they don't, if they don't think those -- if

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1 that -- if I'm not gonna be helpful to them, then they're
2 not gonna hire me. So, I want to give them the opportunity
3 to do that right away, and so -- and I was also concerned,
4 in Mr. Blackwell's case, that he was taking Thorazine, which
5 is a major tranquilizer that is, isn't as frequently used as
6 some of our other medications for people.

7 So, then I went back and I tested him again and gave
8 him something called the a CAST*MR, which is a way of
9 looking at competency. I just wanted to see how he would
10 understand the legal system. I wasn't asked to, to
11 determine whether he was competent or not. It was just my
12 wanting to look at how did he understand the legal system,
13 and I also gave him another measure to see about the
14 possibility of what we call malingering, was he faking this
15 mental retardation.

16 So, I wanted to give him measure, and then I went in to
17 some more in-depth interviewing with him on that, that time
18 and that was also in 2012, in August.

19 After that I began working with Ms. Richards, and she
20 is the social worker who is working with the defense
21 attorneys to find all the records that she can for me to
22 look at to begin to do this, what we call gathering multiple
23 sources of information. I mentioned that on one of the
24 slides.

25 So, we started -- she started providing me with all the

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1 records that I could review and look at, and then she and I
2 began coming to Chesnee is where Mr. Blackwell grew up, and
3 we went to -- first to his parent's home, and I interviewed
4 them in depth on a number of different occasions with both
5 this ABIS that I told you about as well as other questions I
6 have to get at adaptive behavior. So, I think that probably
7 the total amount of time I spent with his two parents, both
8 together and separately, total amount of time was probably
9 somewhere between four to six hours.

10 Then we began interviewing or I began interviewing
11 other people in the community who knew him. I interviewed
12 one of his neighbors who knew him. I went to a former
13 school teacher who taught him. I went to two of his
14 employers who worked with him. I went to his minister, who
15 had seen him in counseling, as well as he had worked with
16 both Mr. Blackwell and his wife, and he had -- Reverend Rice
17 ran a school that the Blackwell's children went to. It was
18 a faith based sort of school, and I spoke with Reverend Rice
19 at length in his home.

20 And after all of that information was collected, which
21 took over a year to go -- to keep coming back to South
22 Carolina and finding people, and we did -- oh, yes, I did
23 also interview another one of the neighbors, Howard Wall I
24 think is his name, and I tried to interview the principal
25 for Mr. Blackwell's school and we did -- I did go there and

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1 started speaking with him, but then his son didn't want us
2 to talk to him. So, I didn't talk to him any further.

3 And all of this record review, collection of records,
4 going and doing the interviewing took, took over a year and
5 I finally began preparing the report when it looked like we
6 were gonna be going to Court. That -- I went back and
7 looked in my computer and I started on the first draft, I
8 believe it was, in October of 2013, and then I completed the
9 report on November the 20th in 2013.

10 Q Okay. Now, in, in -- concerning the -- well, let's
11 just talk a little bit. You indicated earlier that you were
12 concerned about the Thorazine that Mr. Blackwell was taking
13 and was he taking that or was -- had he been taking that at
14 the time of the, the Wechsler IQ test or the is it called
15 the WAIS-4 as well?

16 A Yes, it is. That's an abbreviation for it.

17 Q Okay.

18 A That's easier to say I think. So, I'll call it that.

19 The WAIS-4 is Wechsler Adult Intelligence Scale
20 Revision 4. But the -- yes, he was taking it and I was
21 concerned not because of his behavior because when someone
22 is overdosing on or if they have too much Thorazine, it's
23 very obvious even to the lay person. Their words are
24 slurred. They can't walk very well. They can, they can
25 barely keep their eyes open. You know, they're -- just look

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1 not right.

2 But I was concerned because it is a medication that was
3 popular 30 years, 40 years ago, a lot -- some number of
4 years ago, and it's been replaced by earlier medications.
5 So, I, I was concerned about it from that point of view and
6 I wanted to ask his attorneys about it.

7 I did, after I was here February 19th through the
8 21st, I went and consulted a forensic psychiatrist about
9 the dosage that he was on at the time and he was actually on
10 a very low dose, according to this forensic psychiatrist, of
11 the Thorazine. So, I looked -- a dose actually lower than
12 what children are given in inpatient facilities. So -- and
13 this forensic psychiatrist also told me some other ways in
14 which the Thorazine is being used. So, it's not maybe quite
15 as uncommon as I had thought, but I was concerned and I
16 brought it to the attorney's attention.

17 Q Now, based on what you've been able to do and, and what
18 you know and your consult, do you believe the Thorazine
19 affected his scores on the WAIS-4 or any of these scores?

20 A I don't think so. He, he did not look overmedicated to
21 me. What I did learn, from the forensic psychiatrist, was
22 that he's at such a low dose that the forensic psychiatrist
23 would of expected, if anything, that dosage of Thorazine
24 would of helped him to be more alert rather than be less
25 alert.

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1 So, I wasn't concerned about his paying attention. I,
2 I did describe him in ways that, that said that, to me, he
3 seemed like he comprehended certain things, but that's
4 different than attention.

5 Q Okay. Now, I want to go to the records that you
6 reviewed to some degree.

7 Without necessarily describing every record, did you
8 look at school records, for example --

9 A Yes.

10 Q -- of Mr. Blackwell?

11 A I did.

12 Q Okay. And what other records of Mr. Blackwell or Ricky
13 Blackwell did you look at or -- while you were conducting
14 your evaluation and assessment?

15 A Oh, there were some psychiatric records that he had
16 been admitted to an inpatient facility, and there were some
17 psychiatric records with some psychiatric diagnoses, and I
18 looked at those as well.

19 Q Okay. Are those, those all?

20 A Oh, no, no, that's not all.

21 Do you mind if I look at my psychological report and
22 then I can tell you or would you like me to go from memory?

23 Q No, I mean if you need to refer to your notes, report,
24 or anything like that, I think you can do that you -- I mean
25 do you need it to do that to refresh your memory?

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1 A That would be helpful. I don't want to forget
2 anything.

3 Q Right. I mean---

4 SOLICITOR GHENT: No objection, Your Honor.

5 THE COURT: All right.

6 Q So, if you would, you can refer to your notes---

7 A Thank you.

8 Q ---notes and report.

9 A Okay. So, on the records that I looked at and
10 considered, there was an interview that had been done by
11 Mr. Richards with one of his other teachers. I looked at
12 that. There were some -- now, let me, let me ask a question
13 if I may?

14 Q Well, do---

15 A Do you want me to restrict myself right now to just
16 Ricky Blackwell's record?

17 Q I'm asking the general kind of records about Mr. Ricky
18 Blackwell that you are, that you used in conducting your
19 assessment.

20 A Okay.

21 Q I mean -- and while you don't necessarily need to name
22 every one, I mean but what types?

23 A Okay. So -- all right. I'll be more general then.

24 So, school records clearly, his work records, his --
25 the psychiatric records, records about him, records that I

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1 had about his family with regard to school and psychiatric
2 diagnoses. I looked at his Social Security earnings. I
3 looked at -- well, I said the employment records. I think
4 that --.

5 Q The, the -- more than one employer?

6 A Yes. Yes.

7 Q Okay. And I think you said health records, does that
8 include hospital records, doctor records?

9 A Yes, thank you. There were quite a, quite a lot of
10 records from several medical facilities.

11 Q Okay. Was one them the Palmetto Hematology Oncology---

12 A Yes.

13 Q ---records?

14 Okay. And mental health records?

15 A Yes.

16 Q And psychiatric hospitalization records?

17 A Yes.

18 Q Okay. Did you also look at any records concerning
19 members of his family?

20 A I did.

21 Q Now, why would that be important?

22 A Well, if other members of his family had mental
23 retardation, that would be a risk factor. The AAIDD, again,
24 has a nice table that shows the risk factors for mental
25 retardation, and the -- having mental retardation in your

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1 family is a risk factor and that's why it was included.

2 Q Okay. And what kind of records did you look at with
3 respect to his family members concerning these risk factors?

4 what records were they, in other words?

5 A There were school records for his father for his -- we
6 didn't find them for his mother. But for his father, for
7 his brother, who's now deceased, for his daughter, and for
8 his two grandchildren, and then there were some medical
9 records for his granddaughter. There were medical
10 records -- I mean school records. So, I -- yeah, that's
11 everyone in his family, and except for his ex-wife. I
12 didn't have any records on her, and I also looked at the
13 psychiatric records that were available on his brother as
14 well as his daughter.

15 Q Now, his brother -- is his brother still alive as
16 far---

17 A No, he's deceased.

18 Q Okay. Okay. In reviewing the records of his family
19 members, I think you indicated that it might be important if
20 there -- if you find mental retardation in the family.

21 what did you find?

22 A There are a number of people in his family with mental
23 retardation or that have -- another way I should say it.
24 Some members of his family have actually had a diagnosis of
25 mental retardation. Then there are other members of his

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1 family who have scored, on school records and school
2 testing, in a way that would make a mental health
3 professional start to wonder about mental retardation.

4 Q What kind of scores are you talking about in those
5 kinds of---

6 A Well, his father, for example, was given a, a group
7 measure. So, we can't put quite as much emphasis on it as
8 we would like a WAIS. A WAIS is an individually
9 administered IQ test, and it's more accurate than a group
10 administered IQ test. But on this group administered IQ
11 test that his father had, he scored 60, which would fall
12 into the mild range of mental retardation. That would not
13 be -- remember we have the three ways in which we diagnose.
14 So -- but it falls into a range that would make a mental
15 health professional to start to wonder is this person
16 retarded.

17 Some of the other scores, his brother scored, again, on
18 these academic sort of measures, not, not a measure like the
19 WAIS, but these academic measures, scored 73 I believe on
20 one occasion, a 74, which, again, makes you sort of wonder
21 about mild mental retardation. His daughter scored, on one
22 occasion, a 57. On another occasion, 71. His grandson --
23 one of his grandsons, at age nine, scored a 52. Another
24 grandson, at age six, scored a 50, and, at age eight, scored
25 a 46, and he has a cousin who is institutionalized with a

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1 diagnosis of moderate mental retardation, which would fall
2 below 60, and if you remember this curve here, more into the
3 range of 0.1 percent. So, below that two percent level.

4 Q With respect to his grandsons, were they also one of
5 those group measures?

6 A Oh, thank you. You're -- I appreciate that.

7 No, his grandsons and his -- received the -- okay. The
8 wechsler Adult Intelligence Scale is what I gave him.
9 There's a version of that for children called the wechsler
10 Intelligence Scale For Children, and his grandsons were
11 given that version of the wechsler test. So, they were
12 kids. They had to be given the children's version, and that
13 was an individually administered IQ test, and so those
14 scores I reported were a result of the individual test. Not
15 group testing.

16 Q Now, tell me a little bit about the difference in, in
17 your opinion, between these group -- what you call group
18 measures, what are they, and the -- like the WAIS or the
19 risk for children, the individualized---

20 A Okay.

21 Q ---testing.

22 A Yes.

23 Q What's the difference?

24 A Well, one difference is that, I said already,
25 individually administered. The WAIS, the wechsler scales

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1 are individually administered. So, that means you have the
2 subject taking the test, and the examiner, and the examiner
3 is asking the questions of the subject, and so there --
4 that's one way in which they're different.

5 Another way is that in order to give these individually
6 administered test, and they're referred to as individually
7 administered scientifically recognized measures of
8 intelligence, you, you have to be a licensed psychologist or
9 you could be a licensed psychiatrist if you had the
10 training, but more often than not it's psychologist who are
11 administering these individually administered IQ tests. So,
12 you have to have some training, and you have to be licensed,
13 and you have to prove that licensure when you obtain the
14 test from the publisher.

15 With these other tests that are group administered,
16 it's not unusual, in schools, for schools administrators,
17 teachers, and counselors, to be the ones who administer
18 these group intelligence, intelligence tests or sometimes
19 some of them are achievement tests or they're also called
20 measures of mental maturity or cognitive ability. Those are
21 somewhat different both in terms of the kinds of skills,
22 kind of cognitive abilities, thinking abilities that they're
23 getting at versus the individually administered test, and
24 most of the tests that are group administered are going to
25 be administered within the school setting and not always by

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1 the same person each time.

2 So, we don't always know what the qualifications for
3 the persons are in terms of the testing. We don't always
4 know what the conditions are. In, in the individually
5 administered IQ test, the manuals are very specific about
6 what the conditions should be, and how the examiner should
7 conduct those, and that, to my knowledge, there's not that
8 kind of standardization we call it when it comes to group
9 administered test.

10 Q In terms of reliability of the scores on the test, the
11 group test versus the individualized standard measures,
12 what's more reliable?

13 A The individually administered because they, they --
14 because of the standard -- you have the standard procedures
15 each time. You have to administer them in a certain way.
16 You have very specific instructions. You ask the same
17 questions every time. You have to have the same conditions.
18 You have to be very specific with regard to how you
19 administer it, and that's called standardized procedures.
20 And when you have standardized procedures, that takes out
21 any sort of extra variables that could affect the scoring.

22 Q Okay. Thank you.

23 You also---

24 A The scoring or the subject's performance. I should add
25 that.

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1 Q Okay. Now, if you would, I believe you indicated that
2 you also reviewed Mr. Blackwell's psychiatric and mental
3 health records?

4 A I did.

5 Q Why is that important?

6 A Well, again, in terms of -- I spoke of -- very briefly
7 about a differential diagnosis earlier. Some people can
8 have mental retardation and mental illness. But in the
9 interest of trying to sort out, you know, do you have one or
10 the other or both, it, it's important for examiners to look
11 at all the information and compare all the information to
12 what the current situation is when you evaluate the person
13 and try to determine do you have one or the other diagnosis
14 or do you have both.

15 Q And did you find any diagnoses in Ricky's or Ricky
16 Blackwell's records concerning mental illnesses or mental
17 disorders or mental problems?

18 A Yes, he has a -- been diagnosed with a number of
19 different -- well, mostly the same. The one's that most
20 consistent for him is something called major depressive
21 disorder, which remember I mentioned the DSM, the Diagnostic
22 and Statistical Manual of Mental Disorders to you as one of
23 the places where we get information about disorders. We
24 meaning mental health people. A major depressive disorder
25 is a mental health illness. It falls on what we call Axis I,

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1 and that's -- that's a mental illness.

2 So, he's had that diagnosis several times. That
3 diagnosis can come with or without psychosis, and I believe
4 his have been diagnosed each time without the psychosis
5 part. Yes, severe, but without psychosis.

6 Q The records you've reviewed, when do you first see, for
7 Ricky Blackwell, a major depressive disorder?

8 When did they first get diagnosed?

9 A It was first diagnosed when he was 31 years of age, and
10 that was in 1990.

11 Q Okay. And you saw it again when in his records?

12 A In his records, it is -- the next time he has the major
13 depressive diagnosis, he has another diagnosis before that,
14 but the next time he gets the major depressive diagnosis, he
15 is 50 years old and that is in 2008.

16 Q When in 2008?

17 A In December, December the 11th, and that was
18 involuntary admission to an inpatient facility.

19 Q Okay. And you said he had a diagnosis before that.
20 What and when was that?

21 A That was in -- that's September of 2005. He's 47 years
22 old, and he obtained -- this is from his primary care
23 physician at Westgate Family Physicians and he diagnosed him
24 with anxiety and depression, and then, before that, again,
25 at the Westgate Family Physicians, in 2000, when he's 42,

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1 he's diagnosed with acute anxiety depression and insomnia.

2 Q Okay. Now, I want to move a little bit to his school,
3 the schooling.

4 In conducting these evaluations and assessments, do
5 psychologist regularly rely on school records---

6 A Yes.

7 Q ---in doing that?

8 All right. I have this exhibit marked as next in order
9 please.

10 (WHEREUPON, the school records were marked as
11 Defendant's Exhibit No. 4 for identification purposes only
12 at this time.)

13 MR. ALLEN: Show it to the solicitor.

14 SOLICITOR BARNETTE: Your Honor, may we approach for
15 one second?

16 THE COURT: Please do.

17 (WHEREUPON, a bench conference was held out of the
18 hearing of the jury at this time.)

19 THE COURT: Ladies and gentlemen, I think that there's
20 a matter the attorneys are gonna be able to work out, but
21 they're gonna need a few minutes, and we're about an hour
22 and a half into this run of testimony, and that's usually
23 when I like to let you stretch your legs and clear your head
24 for just a minute. So, we'll take a short break at this
25 time. I'll ask you to step back to the jury room. You know

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1 I'm going to instruct you not to begin any discussions until
2 I've asked you to do so.

3 You may retire to your jury room.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. I'll instruct the witness,
7 during the break, that she's not to discuss her testimony
8 with anyone.

9 You understand that, ma'am?

10 THE WITNESS: Yes, sir.

11 THE COURT: And are you able to follow that
12 instruction?

13 THE WITNESS: Of course.

14 THE COURT: Thank you.

15 And when the attorneys have been able to resolve it, if
16 you can, please let me. We'll have a short recess.

17 Thank you very much.

18 Everyone remain seated while the defendant retires.

19 Thank you.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Been able to work out the
23 questions concerning the exhibit?

24 MR. ALLEN: I believe we have, Your Honor.

25 SOLICITOR BARNETTE: Yes, sir, they removed the three

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1 pages we objected to.

2 THE COURT: All right. Are we ready for the jury?

3 MR. ALLEN: I think so.

4 THE COURT: State's ready?

5 SOLICITOR BARNETTE: State's ready, Your Honor.

6 THE COURT: All right. Bring the jury in.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: Ma'am, you can resume the stand.

10 (Witness returns to the stand.)

11 THE COURT: Mr. Allen, you may resume your examination.

12 MR. ALLEN: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. ALLEN:

16 Q Let me ask you, when -- before we go into, into what I
17 just had marked.

18 When you conducted the WAIS-4 on Ricky Blackwell, what
19 did you determine?

20 Like did you score an IQ for him?

21 A Yes, sir.

22 Q Okay. And tell me about that.

23 A The actual score?

24 Q Yes.

25 A Was a 63 for the overall IQ score.

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1 Q Okay. Sixty-three.

2 A Yeah. Let me -- yes, 63.

3 Q Okay. And that puts him where as far as the, the
4 standard deviation from the mean?

5 A That puts him in that bottom two percent of the normal
6 curve. That puts him into what we call a mild range of
7 mental retardation.

8 Q Okay. And is that -- does that meet the definition of
9 significantly subaverage general intellectual functioning?

10 A Yes, it does.

11 Q Okay. Now, I'm gonna show you what's been marked as
12 Defense Exhibit 4. It's 12 pages.

13 Can you tell me what that is?

14 A These are Mr. Blackwell's, the school records that we
15 were able to obtain on Mr. Blackwell.

16 Q Okay. On Ricky Lee Blackwell?

17 A Yes, Mr. Ricky Blackwell.

18 MR. ALLEN: Okay. Your Honor, I offer that into
19 evidence as State's, excuse me, as Defense Exhibit 4.

20 THE COURT: Any objection?

21 SOLICITOR BARNETTE: No objection, Your Honor.

22 THE COURT: Without objections it will be admitted as
23 marked.

24 (WHEREUPON, Defendant's Exhibit No. 4 was received into
25 evidence at this time.)

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1 THE COURT: You may proceed, Mr. Allen.

2 MR. ALLEN: Thank you.

3 THE COURT: If you wish to publish you may.

4 MR. ALLEN: Yes. Yes, Your Honor. I'll be
5 publishing---

6 THE COURT: Yes, sir.

7 MR. ALLEN: ---portions of them.

8 Q If you would, tell me what you found of significance in
9 Ricky Blackwell's school records as it relates to IQ, did he
10 have prior IQ type testing, or what those tests were, and
11 how it may or may not relate to the WAIS-4 that you
12 conducted?

13 A What the school records go to are, are the area of, of
14 adaptive functioning that has to do with functional
15 academics. So, functional academics is an area that is
16 considered a skill, again, that we want people to learn how
17 to be functionally literate. We want them to be able to do
18 certain things in the academic area. So, this is an area of
19 adaptive functioning that we're looking at with regard to,
20 with regard to the school records.

21 The, the -- he was given some -- many, many measures
22 of, of -- there's some measures of mental maturity, which
23 are not the same as individually administered IQ tests. But
24 they do give us some rough idea of where he might fall
25 within these ranges that I've been talking about, the lower

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1 two percentile of functioning. So, again, the adaptive
2 deficits, we also are looking for those deficits to fall
3 into that lower two percentile.

4 So, one of the areas that I looked at is how he
5 performed on these various standardized measures. He was in
6 school in the mid-sixties, and, at that time, those
7 particular measures that were used for mental maturity, for,
8 for looking at some way of, of trying to, to see how a
9 person was functioning with regard to their thinking, those
10 measures have definitely -- obviously been revised at, at
11 this point in time, and the way that they -- that those
12 measures reported IQ is an older methodology for, for
13 arriving at IQ.

14 So, we wouldn't give them the weight, those measures
15 that report IQ, we wouldn't give them the kind of weight
16 that we would give to a Wechsler test or there's another
17 test called the Stanford Binet that's also an individually
18 administered scientifically recognized measure of IQ, but
19 we, but we look at them. We, we look at them and we try to
20 determine, you know, do they give us any indication that he
21 had an impairment in the area of functional academics.

22 So, he had a number of those kind of measures of mental
23 maturity or short form of academic achievement. Some of
24 them were called various names, and, and those had various
25 scores attached to them. So, that's one piece of

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1 information that I looked at in terms of functional
2 academics from his school records.

3 The other pieces that I looked at were more strictly
4 what they call measures of, of basic skills, and those came
5 out more likely. They were reported -- their scores were
6 reported in terms of grade levels. So, what -- where is he
7 as relative to his peers. Remember I talked about the
8 adaptive functioning pieces want to know where people are
9 and they're typical communities. So, a school would be a
10 typical community, and we want to know what they're like
11 compared to their peers. So, I looked at him in terms of,
12 you know, how is he functioning relative to his peers. That
13 was important information.

14 The same thing could be said for his grades, how was he
15 on his grades, and we wanted to know what he was functioning
16 like there. Some other aspects of his school records that
17 were important was that he was placed into these classes
18 that were called adjunct classes, and, in the interview that
19 I did with Ms. Scruggs, who was one of his teachers, she
20 indicated to me -- she reported that the adjunct classes
21 were precursors to special education classes. She later
22 became a special education teacher, and she said that the
23 adjunct classes were meant to be for kids who weren't doing
24 as well in school, and so they tracked them -- those kids
25 into those classes to give them special attention,

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1 individual attention, make the subjects a little less more
2 challenging and so forth and so on, smaller class size, all
3 of that.

4 So, that was another significant piece of information
5 with regard to functional academics. He was impaired
6 relative to his peers, and that he was in those classes
7 starting in the ninth grade. That's what the school records
8 told us. He repeated the ninth grade despite being in the
9 adjunct classes, which is another---

10 SOLICITOR GHENT: Your Honor, at this time I'd object
11 and ask that we be allowed to approach.

12 THE COURT: Please do.

13 (WHEREUPON, a bench conference was held out of the
14 hearing of the jury at this time.)

15 THE COURT: All right. Mr. Allen, you can continue.

16 MR. ALLEN: Thank you.

17 I think you were describing the, that he repeated the
18 ninth grade and---

19 A Yes.

20 Q ---even though taking adjunct classes.

21 A Yes, he, in spite of taking adjunct classes, he
22 repeated the ninth grade and he also, I learned, was the
23 only one in that class of adjunct students who did repeat
24 the ninth grade. On -- so, those all are pieces of
25 information that went towards trying to figure out about his

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1 functional academics piece.

2 The other part of his educational record that I looked
3 at were the grades and I noticed a couple of things about
4 the grades. He actually did not the same as average
5 students, but he was sort of holding his own, so to speak,
6 for about the first three, four grades in terms of his
7 grades. He was getting low, sort of borderline kind of
8 scores to a low sort of average kind of scores. So, he was
9 kind of holding his own in the first three, four, maybe even
10 five grades.

11 By the time sixth grade comes along, seventh grade
12 comes along, he's not doing so well in what we call kind of
13 core courses like arithmetic, english, social studies, the
14 kind of more academic courses. He's doing okay in terms of
15 spelling, which requires short term memory skills. He's
16 doing okay in terms of things like physical ed. So, he's
17 doing okay in those kind of courses that are nonacademic,
18 but when you look at the kind of core academic course, he's
19 not doing so well.

20 And if you know what happens in school, school subjects
21 get more abstract. They get more complex. By the time
22 children are getting to the fifth, sixth, and seventh
23 grades, they're getting more difficult. They're getting
24 more challenging, and so that was significant to me knowing
25 that he was not doing as well in those core courses.

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1 By the time he's in the, I think, let's see which grade
2 is it is, if I can refer to my notes in -- just a minute,
3 Mr. Allen.

4 By the time he's in the tenth grade, and, at this
5 point, he is, he's 16 when he goes in in the fall, his
6 birthday's in the late fall, so he turns 17, he's in the
7 tenth grade, and he's really only taking three of the core
8 courses. So, he's not taking as many as other children, and
9 they're are adjunct courses. They're not as challenging as
10 the regular basic core sort of courses, and in, in those
11 courses, his scores are, again, in this kind of borderline,
12 low average range.

13 By the time he's in the eleventh grade, he has one kind
14 of what you'd recognize as a core course, english, and it's
15 still an adjunct class, and the other classes he's taking
16 are things like agriculture, basic consumer, which I believe
17 is basic consumer math, health and family living, and he
18 went to -- he went as far in the eleventh grade as he
19 completed three-quarters and attended five days into the
20 fifth, fifth quarter, and what was also striking about
21 school records is that, in a class of 113, his class
22 placement was 113.

23 So, again, he's not doing as well as his peers despite
24 having adjunct classes now for ninth grade twice, tenth, and
25 eleventh. So, for four years he's getting specialized help,

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1 individual, more individualized instruction, less difficult,
2 less challenging classwork, smaller class size, and he's not
3 doing very well. He also, as I mentioned with regard to
4 grade levels, when he's tested in May of 1976 with something
5 called the adult basic learning exam, his grade levels fall
6 in a range from grade level 5.2 for math computation, and he
7 goes all the way up to grade level 6.6 for math problem
8 solving. These are, are very similar grade levels to what I
9 obtained when I tested him with the wide range achievement
10 test at -- in June of 2012. So, from 1976, May of 1976
11 until June of 2012, his grade levels are remaining
12 essentially the same.

13 So, this -- these school records are really congruent
14 with what I'm finding currently, but the -- but aside from
15 what I'm finding currently, they're, for the most part,
16 congruent with his grades. They're congruent certainly with
17 his performance in school. He's a 113 out of 113. He's not
18 like his peers. They're other people who are doing
19 considerably better than him. All the rest of the class is
20 doing considerably better than him.

21 So, these are all going to the impairment and
22 functional academics. It's a part of the adaptive deficits
23 piece that I was looking at.

24 Q Okay. Just to take a little description of the
25 records, on the first page of Exhibit 4, Defense Exhibit 4

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1 on the left side of the page, with the scores of --
2 beginning with 76, seventies and all that, what area of
3 the -- is this the elementary school years?

4 Can you see that?

5 A Did you hand -- I'm so sorry.

6 Did you hand me one of those?

7 Do I have a copy of that?

8 I can find it here in my records if you'd like.

9 Q Yes, I have -- did not hand you a copy.

10 A I want to make sure I'm looking at the same thing you
11 are.

12 Q Would it help if I brought you the exhibit?

13 A If you don't mind. I could compare it to this page of
14 my records, and I just want to make sure I'm looking at the
15 same thing---

16 Q Please.

17 A ---that you are.

18 Q Handing you Defense Exhibit 4.

19 A Yes. Okay. Thank you.

20 Q Okay. On the left side of the page it's got his
21 elementary school record, is that correct?

22 A Yes.

23 Q Okay. And showing the scores there.

24 A Yes.

25 Q Okay. And also the subjects?

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1 A Yes.

2 Q Okay. And then on the right side of the page is what?

3 A That's the secondary school records.

4 Q Okay. The high school grades?

5 A It starts year '72, '73 and let me look at my notes
6 please.

7 Q Okay.

8 A '72, '73, he's in the eighth grade, and he's 13 in the
9 beginning of that year.

10 Q Okay. And so, in '72, '73 you've got -- the records
11 have the scores for his classes in the eighth grade?

12 A Correct.

13 Q Okay. And then over one column '73, '74, you've got
14 the ninth grade?

15 A Yes.

16 Q Okay. And that's where we see the abbreviation A-D-J?

17 A Correct.

18 Q And that means again?

19 A Adjunct, uh-huh. (Affirmative).

20 Q Adjunct.

21 Okay. And then -- and the scores are what, not good,
22 good---

23 A I would say---

24 Q ---moderate?

25 A ---they're not good. He did all right in something

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1 called pre-vocation. He got an 80 and phys ed he got a 90.

2 Those are okay.

3 Q Okay. But yet he -- and this was the first time he was
4 in the ninth grade?

5 A No, this was the second time. Wait a minute. Let me
6 double-check that. '73, '74 was the first time he was in
7 the ninth grade, yes.

8 Q And then on the bottom on the -- is the ninth grade for
9 '74, '75, is that correct?

10 A That's correct.

11 Q And he did better?

12 A He did better. He repeated the adjunct English and did
13 a little bit better. Adjunct science he didn't do very
14 well. Adjunct math he did not do very well. And despite
15 repeating those, he didn't do very well. He did okay in
16 phys Ed, and pre-vocation he was I guess all right. 79 is
17 not probably terrific, but it's okay.

18 Q Okay. And then the next year was '75, '76, and that
19 was what grade?

20 A That was the tenth grade.

21 Q And his grades there show what about his scores?

22 A He's -- for arithmetic, he's not doing very well.
23 Reading, he ends up the year not doing very well.
24 Handwriting, not so great. General science, not so great,
25 and health, not really that good.

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1 Q Okay. And then in '76, '77 -- handwriting.

2 Are we looking at '75, '76?

3 A I was looking -- oh, I'm sorry. Did I look at the
4 wrong one?

5 I apologize.

6 Let me get my notes in order here.

7 What year again?

8 I'm sorry.

9 Q '75, '76.

10 A Okay. Here we go. That's tenth grade and adjunct
11 English that year, I don't believe he finished that, and
12 then agriculture he got an 80. Adjunct history he had a 75.
13 Adjunct civics an 88, and phys ed an 85.

14 Q Okay. And then what about the following year?

15 A The following year 1976, '77?

16 Q Uh-huh. (Affirmative).

17 A That's when he takes adjunct English is the only sort
18 of core course I'm seeing and he gets a 55 there, and
19 agriculture he had a 74. Basic consumer, which I believe
20 was math, was an 84. Health was a 50, and family living a
21 90.

22 Q Okay. Now, I only see one set of scores in the, in the
23 eleventh grade year as opposed to two sets of scores on the
24 other years.

25 Why is that?

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1 A In the eleventh grade, he did -- he completed
2 three-quarters, and he went five days into the fourth
3 quarter. So, the -- there wasn't a score for the second
4 semester. The first score's the first semester, which is
5 quarters one and two.

6 Q Okay. Now, he did earn units or credits for
7 graduation?

8 A Yes, he did.

9 Q And does it indicate how many units he earned towards
10 graduation?

11 A It does. I believe the total is 12 down there.

12 Q Okay.

13 A Although one place it says 12, and just below it it
14 says 11.

15 Q For the twelfth appears that is -- the wording to the
16 left of the twelfth is what?

17 Is that units and points today?

18 A Units and points today.

19 Q Okay. And then the handwriting below that is?

20 A Eleven units towards graduation.

21 MR. ALLEN: Excuse me, Your Honor.

22 (Pause.)

23 Q On the third page of this exhibit is a, another page.
24 Can you find that page --

25 A Let's see.

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1 Q -- or shall I show it to you?

2 A If you don't mind showing it to me and I'll compare it
3 to what I have.

4 Q I don't mind. You found your notes.

5 A Yes, I did.

6 Q Okay. Thank you.

7 In the upper portion in the center column or toward the
8 center column, there's handwriting, and that handwriting
9 says -- can you, can you read that from where you are?

10 A For the date is 9/66. Grade one. California Short
11 Form.

12 Q Okay. No, I'm on the next column where it looks likes
13 it says junior rank.

14 A Oh, yes, junior rank, 113 in a class of 113.

15 Q Okay. Now going to where you were originally, on
16 these, on the first column, what can you tell me about the
17 scores, the first two sets of scores which are marked
18 4/19/66 and 10/20/67?

19 A He took something called the California Short Form of
20 Mental Maturity, and that was 9/66, which was the beginning
21 of the first grade. He was -- I forget how old now. I
22 think seven and he was -- he, he obtained an IQ of 68.

23 Q Okay. Now, is that score, again, that's on one -- is
24 that on an individualized standard test?

25 A No, it's not. It's a, it's a -- more like an academic,

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1 academic achievement or mental maturity. Mental maturity
2 tests don't measure the same thing as an individualized IQ
3 test.

4 Q Okay. And then the next line shows another score?

5 A Yes.

6 Q On what kind of test?

7 A The California Short Form of Mental Maturity.

8 Q And does it indicate an IQ?

9 A It does. It has an 87.

10 Q Okay. Now, what's your interpretation or what's your
11 opinion, if any, of these two scores?

12 A Well, one thing I noticed about the two scores, they --
13 it appears they were -- if you -- there's an actual separate
14 sheet for---

15 Q Okay.

16 A ---showing -- I don't know if that's part of your
17 exhibit, but those actual scores are presented in a separate
18 sheet and it shows the, the year norms for those that were
19 used were 1963 I believe, and---

20 Q Okay. Are you referring to, which will be the next to
21 the last sheet on the form, are you referring to this sheet
22 for the April 1966 date?

23 A Yes.

24 Q Okay.

25 A That is correct.

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1 Q We'll zoom out a little bit on that.

2 A Uh-huh. (Affirmative).

3 So, that was given in April of the first grade, which
4 means getting toward the end of the year, and he's seven
5 years five months at that point, and, on my sheet, I
6 highlighted it so it would be easier to see the 68 is the
7 IQ.

8 Q All right. Is that the score that I'm pointing to
9 right here that's 68?

10 A That's correct.

11 Q Okay. And then, again, in -- on the last sheet of this
12 exhibit, I see a form that's got, in the upper corner, the
13 date 67/10/20.

14 A Yes.

15 Q Is that the other form?

16 A Yes, that would be the beginning of the third grade and
17 he was almost nine years old at that point cause, again, his
18 birthday's in November.

19 Q All right. And so what do those two scores tell you,
20 if anything, about his abilities?

21 A Well, a couple of possibilities. One is that he -- it
22 appears he was given the same test, and roughly a little
23 over a year has passed since he took the test the first
24 time. So, there's something called the practice effect that
25 can happen when you take the same form of a test within a

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1 year to a year and a half. Generally psychologist who are
2 testing with the wechsler like to wait a year and a half to
3 two years before they repeat a wechsler test. So, you
4 wonder about the practice effect and wonder if they made any
5 impact on his testing.

6 Also there -- I made reference to the fact that there
7 can be greater variation at that tail end of the normal
8 curve where you have fewer people, and there's some studies
9 to support that through looking at meta analysis of, of IQ
10 testing. For people at the lower end, their scores
11 fluctuate more greatly than for people in that middle
12 portion of the normal curve and those are referred to in my
13 report. So, that's another possibility.

14 It's also possible that he learned more after being in
15 school and was able to apply it better by the time he got to
16 the third grade. So, there's also that possibility.

17 Q Okay. Do the records of his schooling show other
18 testing that indicate an IQ score?

19 A Yes.

20 Q Okay. And what records are those?

21 A When he is in the sixth grade he took this California
22 Test of Mental Maturity and the IQ score is a -- reported as
23 an 86, which is not very different than that 87 that he
24 obtained in the third grade. And then when he is -- in
25 October of 1973 he takes another measure of academic

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1 achievement, mental maturity, and he obtains an IQ of 72,
2 which is more similar to the IQ of 68 that he got when he
3 was seven years old, and I think those are the only ones
4 that are represented in terms of IQ. The rest of them are
5 represented in terms of grade levels --

6 Q Okay. And---

7 A -- or percentiles.

8 Q Okay. And, generally speaking, let me just ask you,
9 when you initially did a report, did you have any errors in
10 your report about the reporting of IQ scores?

11 A I did. I had -- I found that -- I don't know how it
12 happened, but I found that I had put IQ scores into a table
13 in my report that are not in the school records. They don't
14 exist. They're not factual pieces of information from the
15 school records, and so I issued a supplemental report to
16 correct for those mistakes.

17 Q Okay. So, I mean you've reviewed the school scores or
18 the school records, correct?

19 A Yes, sir.

20 Q And how confident are you on the four IQ scores or at
21 least the reporting of those four IQ scores as opposed to
22 the other IQ scores that you initially reported?

23 A Well, the ones that we had just been talking about now,
24 these four are actual facts. They are there in the records.
25 The ones that were erroneously inserted into a table I made

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1 were not factual. They're not in the records. So, they
2 don't exist. So, I feel very confident that the four that
3 you've just shown, through the school records, are there in
4 the school records. They are facts.

5 Q Okay. What else could you tell by reviewing his school
6 records about his academic function?

7 A Well, I mentioned about the fact that he was in the
8 adjunct classes. I mentioned that he was receiving special
9 instruction in that he, in spite of that, failed the ninth
10 grade. That was something I noticed. He wasn't -- he --
11 the other thing I noticed, there's one sheet that, that
12 listed his goals for school, and one goal was to finish high
13 school. Another goal that was listed was listed as
14 technical sort of interests. I'm not sure what that means,
15 but that was one other thing that I noticed.

16 He was on a, a non-academic path, if you will. He
17 wasn't on a path to go to college, for example. He was on a
18 path to end up in a vocation of some sort, and, and the --
19 let's see.

20 Was there anything else that I noticed?

21 Oh, he -- there were no extracurricular activities that
22 he seemed to participate in other than he listed one
23 interest as horseback riding. So, I think yeah, that's what
24 I can remember.

25 Q Was there also a score in the school records about on,

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1 an adult, I might get the name wrong, but an adult basic
2 scoring?

3 A Yes, that was the--

4 Q Tell me about it.

5 Tell us what that testing is cause I obviously didn't
6 get it right.

7 A Okay. Yeah. It's, it's called the Adult Basic
8 Learning Exam. This is the one that I mentioned that he had
9 in May of 1976. So, that would have made him 17 years old.
10 That's the one I mentioned where the grade levels, for
11 example, in reading, his grade level is 5.8. Math problem
12 solving, his grade level is 6.6. Math computation, his
13 grade level is 5.2. And total, arithmetic, his grade level
14 is 5.6. These are very comparable to the scores that I got
15 on the Wide Range Achievement Test that I gave to him in
16 June of 2012. The grade levels are similar.

17 So, basically he's functioning at a, roughly, a fifth
18 to a sixth, at best sometimes, a low seventh grade level
19 functioning or like a 12 to 13 year old child.

20 Q Okay. Now, I believe you've indicated that the WAIS-4
21 that you gave him put him in the mild mental retardation
22 range, is that correct?

23 A Yes.

24 Q As far as the intellectual functioning?

25 A As the subaverage general intellectual functioning,

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1 yes.

2 Q Okay. Can those with mild mental retardation learn?

3 A Yes. Oh, yes. Yes. Especially with repetition and
4 with assistance they can learn. I mean that's why we have
5 what are called educably mentally handicapped classes. That
6 means that the -- that level of child is capable of learning
7 and they're placed in those type of classes, yes, indeed.

8 Q Can they read?

9 A Yes.

10 Q Do they read at a high level or what?

11 A Well, many times their reading level is more or less
12 sixth, seventh grade level. Again, kind of like a 12 or a
13 13 year old.

14 Q Okay. And, and you tested Ricky Blackwell's academic
15 achievement as well?

16 A I did, with the Wide Range Achievement Test.

17 Q Okay. And what was his scoring on, on that as far as
18 reading and whatever else it---

19 A All right.

20 Q ---covers?

21 A Let me turn to my report.

22 Okay. Here is it. On the RAT, it was the fourth
23 version of the RAT. So, it's been revised just like the
24 wechsler scale has been. On word reading, his grade level
25 was 7.4. Sentence comprehension was 5.3. Spelling was 6.8.

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1 Math computation was 4.6.

2 Q And these are what?

3 These are --?

4 A Grade level.

5 Q Grade levels?

6 A Uh-huh. (Affirmative).

7 Q Okay. And, again, I believe you indicated that you
8 gave or did you indicate that you gave him a test to
9 determine if he was malingering or faking it or something?

10 A Yes, or faking, yes. It's not the greatest test, but
11 it's, it's one that is used and, and he was fine on that
12 test. There was no indication of malingering.

13 Q Okay. Which means -- what's the value of, of that
14 or---

15 A Well, that would be one way to look at, if he was
16 faking, to, to produce a, a score that fell into a mildly
17 mentally retarded range. Really though I think a better way
18 of, of, of looking at if somebody's faking is what kind of
19 consistency do we have in their scores.

20 So, that's why it made -- that's why I emphasized about
21 the fact that his scores on this ABEL that he took at
22 roughly age 17 are, are not that different in terms of grade
23 level from where he was scoring now on the RAT. So, that
24 indicates a grade deal of consistency, and that would
25 suggest he wasn't faking his ability because he would of had

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1 no reason, for example, at age 17 to be faking and now that
2 he's roughly obtaining the same grade level.

3 Some of the IQ scores, although we can't give them the
4 weight that we give to a Weschler, some of the IQ scores
5 that he obtained are, are the level of functioning that he
6 was showing in the academic, in the functional academics
7 area suggest that there is a consistency there with that
8 level of functioning, that level of impairment is consistent
9 with somebody who's, who's functioning in a mildly mentally
10 retarded range.

11 Q Okay. Now, I think you indicated that he left high
12 school and dropped out of high school in the -- a few days
13 into the fourth quarter, is that correct?

14 A That's correct. Although one thing that's confusing to
15 me, I just want to point that it -- that it is -- it's a
16 puzzle. I don't know the answer to it. He, according to
17 the records that I saw, he was five -- he attended five days
18 of the fourth quarter. We also have -- there's another
19 place in the records where it shows that he was in a, in
20 the -- let me see which grade it was.

21 Yes, in 1975, '76, when he's in the tenth grade, he
22 also is in a program called Project Succeed, and it was
23 because of this Project Succeed that he took this ABLE that
24 resulted, Adult Basic Learning Exam. So, I wasn't -- I --
25 that was given in -- well, it was given in May of '76. So,

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1 that -- no, that -- I take back what I said. That does make
2 sense then because the '77 is when he was in the --

3 Q Okay.

4 A -- at the end of the eleventh grade, yeah.

5 Q Okay. Now, of course, you continued your investigation
6 with other records and looking at what happened with Ricky
7 after that, correct?

8 For example, did he get employed?

9 Did he marry?

10 A Yes.

11 Q What can, what can you tell us about that?

12 A Well, he did marry later on, and he was employed. Some
13 of the records I looked at, it was not clear to me exactly
14 when he first got his driver's license. I don't know
15 exactly what year that was, but it looks like the first time
16 he got a commercial driver's license -- he did drive a
17 truck, and it looks like the first time he got a commercial
18 driver's license was quite a number of years after he left
19 high school. He said to both me and to Doctor Brown, the
20 State's expert, that he was -- wanted to be a truck driver.
21 That was one of his, his goals. I didn't find that in the
22 school records, but he did tell that to both of us.

23 Q Okay. Now, did -- I think you indicated that you --
24 part of the records that you, you looked at were Social
25 Security earnings?

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1 A I did.

2 Q Along with other employment records?

3 A Yes.

4 Q And from that, were you able to determine his --
5 roughly his dates of employment and his earnings?

6 A Yes, I have -- I made myself a chart of his employers
7 and what his earnings were each year.

8 (WHEREUPON, the Social Security earnings information
9 was marked as Defendant's Exhibit No. 5 for identification
10 purposes only at this time.)

11 Q Okay. Showing you Defense Exhibit 5.

12 Do you recognize this document?

13 A Yes.

14 Q And what is it?

15 A This is a listing by year of the employment he had, and
16 how much he made and where the address is of the employer.

17 Q Okay. This chart that you made based on review of
18 employment records, Social Security earnings, and that sort
19 of thing?

20 A Yes.

21 MR. ALLEN: Okay. Offer this into evidence as Defense
22 Exhibit 5.

23 THE COURT: Any objections?

24 SOLICITOR BARNETTE: No, sir.

25 THE COURT: Without objections it will be admitted as

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1 marked.

2 (WHEREUPON, Defendant's Exhibit No. 5 was received into
3 evidence at this time.)

4 THE COURT: You may publish.

5 MR. ALLEN: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 Q If you can just go through and let us know not
8 necessarily each and every number, but if you just tell us
9 the types of job and where he was employed and that kind of
10 thing please.

11 A Okay. 1976, of course, he, he left school in 1977, but
12 he started working with James Belue, and that job involved
13 putting lids on the boxes of peaches and it lasted one
14 season, and his earnings there were \$89.

15 In 1976 he worked for United Overton Corporation. He
16 earned \$165, and I'm not sure exactly what that job
17 involved. I don't have any of the details of that. Also in
18 '76 he worked for Community Cash Stores. He earned \$355.36,
19 and I'm not sure what that job involved either.

20 In 1977, it was the same. He worked with Community
21 Cash. He earned \$173.66. In 1977 he worked with Crown Cork
22 & Seal and earned \$1,931.50, and in that he inspected cans
23 for defects. In '77, he also worked for White Bag Company
24 and earned \$154.78, and there he stacked pallets.

25 '78, he worked for Milliken & Company earning

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1 \$3,506.35. Let's see. I'm sorry. Milliken. I don't know
2 what he did there. '78, he worked for Newspaper Management
3 Production earning \$1,285.50, and I'm not sure -- I don't
4 know what the job was there. '78 he worked for Phillips
5 Fibers earned. 286.96. I don't know what that one was.

6 '79, Southern Piedmont Ice, \$1,554.06, and he bagged
7 ice there. '79, M&C Farm & Feed, \$30.00, and I don't know
8 what he did there. For '79 he worked for American Fast
9 Print. Earned \$1,554.40 and -- okay. Let's see. I don't
10 know what he did there.

11 '80, Southern Piedmont Ice Company, \$5,571.09. Don't
12 know what he did there. 1980 he also worked for M&C Farm
13 again. \$50.00. For 1980 he worked for Oneda Industries,
14 \$2,100.31. I don't know what he did there.

15 For '91 -- '81, again, M&C Farm & Feed. \$40.00.
16 '81 is also Oneda Industries. \$1,079.70.

17 '82, he works for Hess Corporation. He earns
18 \$5,498.01, and he was a truck driver in for Hess. From --
19 in '82 he also worked for BNR Transports, \$2,304.10, and I
20 don't know what he -- he was a truck driver there.

21 1982, also -- no '83 Hess again. He's working for
22 Hess. \$8,141.58.

23 And 1984, Charles P. Belue. He earned \$4,640.72 and he
24 was a truck driver there. Cherokee Textiles in '84,
25 \$4,388.15. He worked a hopper and a bale press.

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1 In 1985, he was self-employed as a trucker, and he
2 earned \$1,480. '85 he worked with Charles Belue Trucking
3 again. \$3,562.94. '85, he worked with K&S Trucking.
4 Earned 197.50. He was self-employed there as a truck
5 driver.

6 Let's see. Okay. '85 he worked with Peeler Rug
7 Company, \$2,650.24. Don't know what he did there.

8 With Charles Belue, in '86, \$10,083.72. Again, that's
9 trucking. '86, he worked with Peeler Rug, \$834.

10 '87 to '97 is a time period when he had Hodgkin's
11 Lymphoma and he was out of work, and after that he went back
12 to work -- let me find my place.

13 In 1998, with Springs Industries, \$1,502.09, and there
14 he drove a forklift.

15 1999, Springs Industries, the same. \$15,418.77.

16 2000, Spring Industries, \$17,641.52. 2000, Broadspire
17 National Services, \$200. I don't know what he did there.

18 Spring Industries in 2001. 19,093.09. 2001,
19 Broadspire, 228.58.

20 2002, Spring Industries, \$17,252.68. 2002, Broadspire,
21 542.87.

22 2003, Spring is 23,195.03.

23 2004, Spring Industries, 20,575.52.

24 2005, Spring Industries again. 3,393.18.

25 2005, Jacobsen Staffing, 6,614.39. He drove a forklift

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1 and pulled orders there.

2 In 2006 he earned two thousand -- 28,690.27 with
3 Jacobsen.

4 In 2007 he earned \$32,799.70.

5 In 2008 he earned \$9,994.74.

6 Q Now, with companies like Jacobsen and Springs, do you
7 know what he did?

8 A I don't know what he did -- let me see. With Springs
9 he, he drove a forklift. He also drove a forklift with
10 Jacobsen.

11 Q Okay. And I think you said -- I think you mentioned
12 that he was self-employed when he was doing what?

13 A He was driving a truck.

14 Q Driving a truck?

15 A Uh-huh. (Affirmative).

16 Q Okay. And those who are mildly mentally retarded work,
17 hold jobs?

18 A Yes.

19 Q And why is that?

20 A I'm sorry?

21 Q why is that?

22 A Because they can be taught to -- like I said before,
23 they are capable of being educated. They, they can be --
24 they are in educable sorts of classes, educable classes for
25 special ed children, and so they can be taught, and they can

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1 be taught through routines and they can be taught through
2 giving assistance, and they can be -- they can work.

3 There's no reason they shouldn't be able to work.

4 Q Okay. Can -- is it inconsistent for someone who -- if
5 someone's mildly mentally retarded, for that person to be
6 able to drive a truck?

7 A No, they can -- with, with -- again, with instructions,
8 with help, with assistance, they can drive trucks and they
9 can be taught how to keep a log of their activities. They
10 can be taught to pay attention to a worksheet. Those kind
11 of things -- one of the things that I was told about a
12 driving a forklift, for example, was that he, he was able
13 to -- his -- he was given instructions about the, the bundle
14 of cloth that we want you to move is over here, and we want
15 you to move it to this place over here. So, there's no
16 reason that that can't happen for somebody with mild mental
17 retardation.

18 Again, I -- you know, the, the distinguishing thing
19 about mildly mentally retarded people is that, just by
20 looking at them and just by looking at some of their
21 activities, would not be sufficient -- a sufficient way to
22 diagnose mental retardation because they are capable of
23 doing many things.

24 Q Okay. What about passing a CDL, a commercial
25 trucker's, commercial driver's license exam?

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1 A I think that's possible for somebody with a mild mental
2 retardation. Again, the ability to learn, they can pass
3 other tests. So, that would be a possibility too.

4 Q Okay. Now, in addition to the WAIS-4 that you
5 administered, in your evaluation and review of records in
6 this case, did you review another WAIS-4 that was given to
7 Ricky Lee Blackwell, the individual standardized test?

8 A Yes, I did.

9 Q And do you know by whom and when that was?

10 A It was administered by Doctor Brown who's the State's
11 expert, and it was administered late at the end of 2013 or
12 the beginning of 2014.

13 Q Okay. What was the score on that test?

14 A I believe it was a 68.

15 Q And the score that you gave him in 2011, was it, or was
16 it 2012?

17 A 2012.

18 Q 2012?

19 A Uh-huh. (Affirmative).

20 Q Was 63?

21 A I believe that's right. You know, I'll -- I'm -- it's
22 either 62 or 63. I think it was 63.

23 Q Okay.

24 A Let's just make sure that we have it correct for the
25 record.

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1 (Pause.)

2 A Sixty-three, uh-huh. (Affirmative).

3 Q Now, how do those scores compare?

4 I mean I know they're five points off, but can you talk
5 a little bit more, elaborate more, on what those scores
6 mean?

7 A The actual score, the actual numerical value is the --
8 that's not so -- it's not very different because of what I
9 talked about in terms of the standard error of measurement.
10 Any IQ score is gonna have fluctuation around it from one
11 testing to another.

12 So, there's no like -- sometimes people think there's
13 like a true IQ score out there. That's a misunderstanding
14 of the way that IQ tests were. They have variation in them
15 depending on circumstances, and a 63 and a 68 are both
16 within limits of mild mental retardation.

17 Q Okay. Now, let's -- what other -- from your review of
18 the records and your interviews and whatnot, what other
19 aspects of Ricky Blackwell's history, as far as his life
20 history, do you find significant or do you find noteworthy
21 in your evaluation and assessment?

22 A Well, well, one piece of his history would, would be
23 the kind of information that I obtained from all the
24 interviews that I did of people in his community, which
25 included his mother and his father and a neighbor, and --

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1 well, several neighbors and his daughter and his minister.
2 All that -- all the information that I got that gave
3 concrete examples of the kind of adaptive deficits that he
4 exhibits, that was significant.

5 Q Okay. You mentioned that he suffered Hodgkin's
6 Lymphoma?

7 A Yes.

8 Q And that's from some other -- some records that you
9 evaluated or saw?

10 A Yes.

11 Q Okay.

12 A His medical records were part of what was reviewed.

13 Q And he was treated for that?

14 A Yes.

15 Q Okay. With what type of treatment?

16 A Chemotherapy I believe.

17 Q Okay. And according to his records, is it -- how is
18 the lymphoma from what you can tell from the records you
19 saw?

20 A I'm sorry. What was your question?

21 Q Is it in remission?

22 Is it still active?

23 A I see. Yes, I think -- yes.

24 Q What's the status of the Hodgkin's Lymphoma?

25 A It's in remission as a cancer.

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1 Q Okay. And I think you mentioned that he's been
2 previously diagnosed with some major depressive disorders?

3 A Yes.

4 Q Okay. And, in 2008, he was also treated or diagnosed
5 with a major -- was it a major depressive order in 2008?

6 A Let's see. That's here in my report. I'll find that.
7 I believe it was. I believe it was 2008.

8 Q Okay. And that -- how did that come about?

9 In other words, what led to that diagnosis and
10 treatment or that hospitalization?

11 A He was very upset about his wife leaving him and he was
12 having a hard time with that and he overdosed on some
13 medicine that he was taking.

14 Q Do you know -- did the records indicate what type of
15 medication?

16 A He was taking a minor tranquilizer called Xanax.

17 Q Okay. And after that -- so, he went to the hospital
18 first and he was treated for the overdose?

19 A I believe that's correct, and then he was committed
20 involuntarily to this Carolina Center for Behavioral Health.

21 Q Okay. And did that lead to the diagnosis of the --
22 that diagnosis again was?

23 A That was the major depressive disorder recurrent and
24 severe without psychosis.

25 Q Okay. Now, if I may go to -- I think you've referred

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By Mr. Allen

1 to it as the second prong of the adaptive behavior
2 functioning.

3 what can you tell me about that in Ricky's case?

4 A well, that -- I believe I mentioned in the PowerPoint
5 that that is the most complex part of a -- of an evaluation
6 to look at mental retardation. It requires trying to give
7 these -- the, the measures that I mentioned, the adaptive
8 behavior assessment system. You'd like to try to find a
9 number of people to administer that to, but as I mentioned
10 to you earlier, one of my mentors told me recently that he
11 considers himself fortunate if he can find one person to
12 administer this ABIS to. So, in lieu of that, when you
13 don't have standardized test scores to help you, then you
14 have to go and do extensive interviewing with people who
15 knew the person well.

16 In the, in the field outside of forensic psychology
17 when psychologist are or mental health professionals are,
18 are attempting to learn something about somebody who might
19 have mental retardation, the people that they would be most
20 likely to interview would be the school teachers and the
21 parents and perhaps neighbors because those are the people
22 that have the most contact with the individual and know what
23 their daily life is like, and that's what you're trying to
24 get at is the daily skills, the daily skills that the person
25 either does or doesn't do.

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1 So, taking that and applying it to the forensic area,
2 you try to get as many possible interviews with people who
3 can tell you anything. So, sometimes you don't have the
4 people that you'd like to have.

5 So, in the case, for example, of the employers that I
6 talked to, they didn't -- they couldn't know certain things
7 about him, but they did know about his work skills. So even
8 though they couldn't do a complete ABIS it's called, the
9 Adult -- I mean -- yeah, the Adaptive Behavior Assessment
10 system. They couldn't do a full ABIS, but I gave them the
11 section that had to do with work so I could use that as an
12 interview form to get information of about what his work
13 habits, what his work skills were like, what he was like on
14 the job.

15 So, in that, in that way, that's how I went about
16 trying to find information, but it is, it is a difficult
17 area because, particularly in this kind of a case when you
18 have someone who's 55 years old whose had lots of time to
19 learn things over his lifetime, chances are you're going to
20 find inflated scores on any measure of adaptive assessment
21 that you give. So, you have to take that into
22 consideration.

23 Then you have to take into consideration that people
24 are -- remember I spoke about the retrospective or
25 remembering what he was like when he was a teenager. That's

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1 difficult.

2 So, all these ways that we have of looking at what he
3 was like and what the adaptive deficits are like are, are
4 honestly imperfect. They're not in perfect means. But we,
5 we get -- that's why we have to get as much information as
6 possible, as many records as possible, talk to as many
7 people as possible, get as much time with the people who
8 are, who are likely to know him. Even if people don't know
9 him that well, to try to find out what they do know about
10 him so that all of that can be, can be looked at when we're
11 trying to decide, you know, are there adaptive deficits or
12 not, and then we look at the adaptive deficits again in
13 those four areas that, that I mentioned that the AAIDD
14 suggests, which is the general area, conceptual, social, and
15 practical.

16 Q Okay. Now---

17 SOLICITOR BARNETTE: May we approach about this, Your
18 Honor?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: Ladies and gentlemen, I think we've reached
23 another point where the lawyers need to work on something
24 for just a moment. So, we're going to allow them to do
25 that. I'll let you step back to the jury room, stretch your

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1 legs, clear your head. As always, I'll ask you not to
2 discuss anything about this case until I've asked you to do
3 so.

4 You may retire to the jury room.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Doctor Calloway, you can move about the
8 courtroom. Please don't discuss your testimony during that
9 time.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: All right. Court will be in recess
12 shortly.

13 Please remain seated while the defendant retires from
14 the courtroom.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. At the request of counsel I
17 have directed the clerk to deliver to me documents that were
18 filed under seal in the case of -- this case on February the
19 28th of this year. These are exhibits -- State's Exhibits
20 8 and 10. I have broken the seal, and for purposes of this
21 hearing, they will be unsealed for use in this hearing.
22 This is documents involving the ABIS-II test. I'll turn
23 those over to Mr. Allen.

24 Do you want to come look at them, anybody?

25 SOLICITOR BARNETTE: Yes, sir, I'm sure they're the

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1 same things we saw earlier.

2 SOLICITOR GHENT: Your Honor, may I ask about one other
3 matter?

4 THE COURT: Just let me -- let's take care of one thing
5 at a time.

6 SOLICITOR GHENT: Yes, sir.

7 (WHEREUPON, a bench conference was held at this time.)

8 THE COURT: All right. Are we -- are those gonna be
9 made exhibits for this hearing?

10 SOLICITOR BARNETTE: Yes, sir, or we---

11 THE COURT: I would---

12 MR. ALLEN: I don't know that we were necessarily gonna
13 make them an exhibit.

14 SOLICITOR BARNETTE: We are, Your Honor. We're gonna
15 make them State's Exhibits for this hearing.

16 THE COURT: Okay.

17 SOLICITOR BARNETTE: And I guess we'll introduce them
18 when we do the cross. That was the subject of our
19 objection. We wanted to have that available to us to use.

20 THE COURT: I see.

21 All right. Well, I've unsealed them. Let's put them
22 back. Once you had a chance to look at them, Mr. Allen,
23 we're gonna put them back in the envelope and allow the
24 court reporter to hold them until such time as the State may
25 wish to introduce them.

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1 Put it -- give it back to the court reporter and we'll
2 put it back in the envelope.

3 MR. ALLEN: Okay.

4 THE COURT: Pam, you want to hold onto that until---

5 COURT REPORTER: Yes, sir.

6 SOLICITOR BARNETTE: Your Honor, we can go ahead and
7 pre-mark those as State's Exhibits.

8 THE COURT: well, it's, it's already marked as an
9 exhibit for the other hearing. So, it's marked. I was just
10 gonna leave it in that envelope until you're ready. Don't
11 want to leave that out.

12 Are we ready to proceed then?

13 SOLICITOR BARNETTE: Yes, sir, our objection was he was
14 gonna introduce the scores from the ABIS. We want the
15 actual ABIS test in, and you just -- graciously you've
16 unsealed those and they've agreed to it.

17 THE COURT: Okay.

18 SOLICITOR BARNETTE: So, we will introduce them.

19 THE COURT: well I've unsealed them for purposes of
20 this hearing, and either side can use them subject to Court
21 order.

22 MR. ALLEN: And we simply ask, because of the copyright
23 proprietary nature of that, that if they're offered as
24 evidence in the case, that, at the conclusion of the case,
25 that it be resealed.

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1 THE COURT: They'll be resealed and subject to further
2 order of the Court if there's -- during the appeal.

3 SOLICITOR BARNETTE: And no objection, Your Honor.

4 THE COURT: Necessary for the Appellate Court to look
5 at it. Obviously I'm sure they can handle that if they want
6 to.

7 MR. ALLEN: Yes, Your Honor.

8 THE COURT: All right. We ready for the jury to come
9 back?

10 Doctor Calloway, if you'll come back to the stand.

11 (Witness returns to the stand.)

12 MR. ALLEN: Yes, Your Honor.

13 THE COURT: Are we ready for the jury?

14 MR. ALLEN: Yes, Your Honor, I am. Thank you.

15 THE COURT: Bring them in.

16 MR. ALLEN: I apologize to the Court. I didn't realize
17 I was holding you up.

18 THE COURT: Well, I thought you were maybe gonna do
19 something else since you were conferring.

20 MR. ALLEN: Yes, sir.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: Ladies and gentlemen, the jury's returned
24 to the courtroom. Thank you for your patience. I think
25 we've been able to resolve the questions we had.

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1 Mr. Allen, you can continue.

2 MR. ALLEN: Thank you, Your Honor.

3 SOLICITOR BARNETTE: No objection, Your Honor, since
4 the other items have been unsealed, to it being entered?

5 THE COURT: Without objection, that's Defense?

6 MR. ALLEN: Six.

7 THE COURT: Six. It's admitted.

8 (WHEREUPON, the ABIS records were marked as Defendant's
9 Exhibit No. 6 and received into evidence at this time.)

10 MR. ALLEN: Okay. If I may approach?

11 THE COURT: You may, yes, sir.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. ALLEN:

14 Q Okay. I'm gonna show you Defense Exhibit 6, and ask if
15 you can tell me what this is.

16 A Yes, sir, this is the table that I made for my report,
17 which shows the scores from the ABIS for the different
18 people who were administered the ABIS.

19 Q Okay. And, again, if you would, tell me who did you
20 administer the ABIS to.

21 A Well, the full ABIS was administered to Mildred
22 Blackwell, who is Ricky's mother, to Cletus Blackwell, who
23 is his father, to Heather Blackwell, who is his daughter, to
24 Ken Rice, who is his minister, to Jean White, who is a
25 neighbor who lives in the community where he lives not very

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1 far from his parents, Ms. Scruggs -- those are the people
2 that were administered a full ABIS, and the other people
3 that I administered a partial ABIS to was -- were Louise
4 Lewis Scruggs, who was one of his teachers, Mr. Bagwell, who
5 was one of his supervisors from -- no, he worked for Belue.
6 He was not an actual supervisor I think of Ricky Blackwell,
7 and Ms. Shook, who was one of his supervisors.

8 Q Okay. And why would you administer a full ABIS to some
9 and a partial ABIS to others?

10 A The -- Ms., Ms. Bagwell -- I mean Louise Scruggs, for
11 example, didn't really feel like she knew Ricky Blackwell
12 very well, and so she didn't feel that she could answer all
13 the questions. For example, there, there are ten areas that
14 make up the ABIS, and those ten areas, if you will, kind of
15 distill into these four areas, the general adaptive
16 composite, the conceptual composite, the social composite,
17 and the practical composite. So, the only people who scores
18 carried a lot of weight were the people who had the full
19 ABIS, and those people I named already.

20 But I gave it to Ms. Scruggs because she had some
21 information. For example, I believe she had information
22 about the communication area if the remember. Yes, she had
23 some information about the communication area, which you
24 would expect that a teacher would have some knowledge and be
25 able to answer some of the questions that were in the

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1 communication area. So, again, trying to get as much
2 information as possible to give to the trier of fact and to
3 the person who reads this report about what this man was
4 like was the whole reason for giving people partial ABISs.

5 So, Mr. Bagwell, for example, didn't feel that he could
6 answer very many questions and he couldn't. He really
7 couldn't answer very many questions in certain areas. But
8 then he was able to answer questions in the work related
9 area, and work shows up in the practical skills area.

10 Q Okay. Now, tell me a little bit how these numbers are
11 arrived at if you will.

12 A Okay. Well, the -- these numbers here in this chart?

13 Q In the chart.

14 A Okay.

15 Q In the chart I handed you Defense Exhibit 6 I believe.

16 A Okay. I may need to retrieve one of my ABIS forms, but
17 let's see if I can do it by memory.

18 Each area of the ABIS has or roughly, let's say, 30
19 questions to it, and so each area of the ABIS is summed,
20 each one of those subtests is summed, and then the examiner
21 puts the sum of the scores into a chart, and then those
22 numbers get added up and you come up with a standard score
23 by going into a manual. So, a raw score converts to a
24 standard score, and then the standard scores are added up
25 and you come up with the composite score.

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1 Q Okay. And does the same raw score in the various areas
2 equal the same composite score?

3 A No, no, you would get a raw score, and then you would
4 go into the manual and you would look up, under the person's
5 age, well they're different norms. You, you look up under
6 is this person a parent, caregiver, or are they another
7 adult that knows them, and you, you look under those norms,
8 and then the raw scores translates to a standard score, and,
9 and for each one of the ten areas that are assessed through
10 questionings, the raw score could be different.

11 Like a raw score, let's say, in the communication area
12 of 50 would be different than a raw score of 50 in the home
13 living area. They could translate to different standard
14 scores because the, the raw scores are just what the,
15 what -- the numbers there that you get are the raw scores,
16 but then what, what the manual is doing is translating that
17 to normative scores. So, the publishers of the test have
18 gone out, taken a number of different people, given this
19 test to, and that's how they come up with the normative
20 scores.

21 Q Okay. And so you took these scores and you converted
22 them to --?

23 A Standard scores.

24 Q -- standard scores?

25 And then it gives you a composite score for the

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1 conceptual areas?

2 A For these different areas, you add up the standard
3 score, look it up, and it converts to the -- to a final
4 standard score. See, you have the -- you have the subtest
5 standard scores, then those get added up, and then you get a
6 final composite score, which is also a standard score.

7 Q Okay. And this -- the raw scores come from the testing
8 in the ten skilled areas?

9 A In the ten different areas, uh-huh. (Affirmative).

10 Q Okay. Now, in administering this, the ABIS, do you
11 just give these folks a piece of paper and tell them to go
12 sit in the corner and answer the questions or how do you do
13 it?

14 A No, it's, it's a somewhat confusing test I guess you
15 could say because it's long for one thing, and I've been
16 taught by the people, one person in particular that I've
17 received consultation from who's also an expert in this
18 area, to administer the ABIS as an interview form. So, what
19 I do is I sit down with the person and the ABIS has a scaled
20 system. So, the person is to give the person a score. Zero
21 means that they can't do it so that it would be like the
22 person can -- the question might be something like knows how
23 to say please and thank you.

24 All right. So, if -- a zero would mean they can't do
25 it. A one would mean they never do it. A two would mean

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1 they sometimes do it, and a three would mean they always do
2 it. So, the person rates each one of those questions.

3 well, what I know happens, when you administer this, is
4 that people get confused and they start thinking well, he
5 really could do that if he tried. well, that's not what
6 you're asking. You're asking the person to rate actual
7 behavior.

8 So, so, I administer this as an interview form, and
9 when people start saying things like oh, I know he probably
10 could do that, then I say well, I need you to think about
11 have you ever seen him do it, and if you haven't, then
12 please put down that you're uncertain or put down or tell,
13 you know, tell me, I'll write down your answer, and, you
14 know, or tell me is it a zero, one, two, three. So, that's
15 the way that, that I go about it, administering the ABIS, is
16 as an interview form.

17 Then once I'm through with the ABIS, then I ask
18 additional questions about adaptive functioning based on
19 what they've told me and based on another set of questions
20 that I have that I've obtained from the same mentor that I
21 mentioned earlier.

22 Q Okay. And so you're the one marking the form itself?

23 A Yes, I'm the one -- they tell me -- they're, they're
24 holding the rating there. I give them an extra form.

25 Q Uh-huh. (Affirmative).

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1 A So, they can, they can look at the zero, one, two,
2 three, and it has right above it what the zero, one, two,
3 three means. So, I say would you go back and read that and
4 tell me what do you think. Is it zero, one, two, or three.

5 Q Okay.

6 A So, that's the way I do it.

7 Q All right. And---

8 A And then I put down -- if they tell me a two, I say,
9 okay, so you're saying sometimes does it, and then they say
10 yes and I circle the two.

11 Q Okay. When you conducted this test and you came up
12 with the composite scores, what did you find, and if I may
13 just put this on the overhead if I may?

14 A Yes, I have my copy here.

15 Q Okay. If I can actually get it -- that's why. It's
16 not on. Let me see if I can zoom in a little bit more.

17 Now, on this form you've got, under the heading
18 respondent, you've got --

19 A Mildred.

20 Q -- the first names of the people we were talking about?

21 A Yes.

22 Q Mildred, Mildred Blackwell, Cletus Blackwell, Heather,
23 Heather Bryant. I called her Heather Blackwell. I'm sorry.
24 Her name is Heather Bryant. Ken Rice, who's the minister,
25 Jean White, who's the neighbor, Louise Scruggs who was the

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1 teacher, Mr. Bagwell, who was -- worked at Belue, and Ms.
2 Shook was a supervisor of Ricky at Springs.

3 Q Okay. And the first column is labeled GAC.

4 What does that stand for?

5 A General adaptive composite. So, the -- you, you have
6 the scores in the conceptual, social, and practical area,
7 and then the general is like what it says. It's a general
8 score. So, it would be the same as thinking about a full
9 scale IQ on the WAIS if you were to -- if he were to put up
10 the wechsler scores. We would also have composite scores,
11 verbal comprehension, working memory, perceptual reasoning,
12 and we would have a full scale. So, the GAC is like a full
13 scale IQ score.

14 Q Okay. And, of course, I notice that, underneath each
15 of the headings, it says mean is 100.

16 Tell me what that means.

17 A The -- to, to make interpretation easier when we're
18 talking to parents or patients about their scores, the mean
19 is arbitrarily set at a hundred. So, going back to what
20 these publishers do. They go out and they get all these
21 thousands of people that they give these tests to. Wherever
22 most of those people fall, whatever that score is, whatever
23 that raw score is, they say okay, we're gonna call that a
24 mean of 100 or we're gonna call it a hundred instead of
25 whatever the number is. So, 100 is just like -- remember on

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By Mr. Allen

1 the normal curve where 100 was right in the middle of that
2 normal curve?

3 That's what that means. It's right at average.

4 Q Okay. And at what point did you -- is it considered a
5 deficit in adaptive behavior?

6 A Okay. Well, on the, the slide show that I gave and
7 also here in my report, from the AAIDD manual at Page 43,
8 what it says is that the, the -- you have to have
9 significant limitations in adaptive behavior and they should
10 be operationally defined as performance that is
11 approximately two standard deviations below the mean of
12 either one of the following three types of adaptive
13 behavior, conceptual, social, or practical, or it -- an
14 overall score on a standardized measure of conceptual,
15 social, and practical skills.

16 So, either the -- in one of the conceptual, social, and
17 practical areas or the GAC. The two standard deviations is
18 exactly the same as with the IQ test. So, at that bottom
19 part of the curve again where you've got two percent of the
20 population.

21 Q So, what I guess I'm asking is how in -- you first get
22 the -- or, or when you come up with the composite score, you
23 get the scores that you show or do you get a range or what
24 do you get?

25 In other words, the 61 with Mildred under the GAC, is

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1 that a sixty -- is that 61 that you based on the ABIS and
2 the conversion of the scores?

3 A Yes, the, the---

4 Q What do you mean?

5 A The, the -- okay. The 61 for the GAC would be arrived
6 at by adding the standard score for the conceptual area,
7 social area, and practical area, and that gives you a
8 number, and then you go back into the standard -- the
9 normative tables and you look and you see what does that
10 score correspond to, and it gives you that GAC.

11 Q Okay. And looking at this table as a whole, what does
12 that tell us?

13 A Well, it -- if you go across and look at Mildred --
14 well, let's go down, let's go down each of the columns.
15 That---

16 Q Yes, explain it to me.

17 A That probably makes more---

18 Q Explain it to me.

19 A Yeah, that probably makes more sense.

20 So, for the GAC we have Mildred, Cletus, and Jean White
21 all giving scores that fall into a mentally -- a mild
22 mental -- a range of mild mental retardation. For Reverend
23 Rice, we have a score that falls at borderline. I called it
24 borderline because I'm trying to be fair. Actually the AAID
25 considers up to 75 I believe to be within limits of, of

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1 mental retardation. But within the field, I think it's fair
2 to be called borderline. So, that's why I put that there
3 and Heather gave a score that fell into a borderline range.
4 So, we have one, two, three people for whom a full ABIS was
5 given who agree that his scores fell within a mild range of
6 mental retardation.

7 If we go down the conceptual column, then we've got
8 Mildred, Cletus, and Jean White, again, agreeing that his
9 scores fall within a range of mild mental retardation. For
10 Heather, his score fell within a low average range, and for
11 Reverend Rice, it fell into a borderline range.

12 For the social area, there's only one person who sees
13 him as falling within a mild mental retardation range and
14 that is Reverend Rice. All of the other -- I'm sorry. Also
15 Cletus. Two people.

16 So, then Mildred sees him as being in low average,
17 Heather in average, and Jean White in a borderline range.

18 Then if we go to the practical column, we've got
19 Mildred, Cletus, and Jean White, again, saying he falls
20 within a mild MR range for practical, and the -- Heather
21 says a borderline, and Ken scores come up with a low
22 average.

23 One thing about the practical area, when you score that
24 one, you have an opportunity to look at, at two different
25 scores because if people are not able to score work, which a

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By Mr. Allen

1 number of people aren't, then you can look at a score that
2 is, is totaled up without the work area. So, that would be
3 true for, for Mildred I believe and Heather. I don't
4 believe they had answers for the work area, for example.

5 Q Okay. Now, there -- as you mentioned, there's some
6 disagreement or the scores indicate there's some
7 disagreement about Ricky Blackwell's adaptive behavior.

8 what can you tell me about that?

9 How do you determine -- how do you judge that or how do
10 you evaluate that?

11 A Well, this is -- it's one piece of the information that
12 we have, okay, and, again, this is why -- part of the reason
13 that I do the extensive interviewing is to try to get
14 specific concrete examples to add to the report so that you
15 can start to look at, you know, the weight of, of what you
16 have versus just, you know, a -- just a clinical judgment
17 alone or incomplete information or just a score alone.

18 So, it's all of these things together, but what you can
19 tell from this is that, by and large, the people who have
20 spent the most time with him, who know him the most, who
21 better than other people are his parents and Jean White and
22 then Reverend Rice I think spent a fair bit of time with
23 him, and he sees him as, you know, borderline in two of
24 three areas and mild MR in the third area.

25 So, the, the -- most of the scores are falling within

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1 this mild mental retarded range to a borderline sort of
2 range, and the biggest exception to that, I think, is -- are
3 Heather's scores where she's gotten -- she has more
4 elevation than the other people.

5 Q Okay. Do you, do you have an opinion about why
6 Heather's -- the scoring on Heather's responses is higher
7 than most of the other folks?

8 A Well, one thing I said in my report is that she
9 believes that her father, you know, can do a lot of things
10 that were not corroborated by other sources of information,
11 and this is, again, why I go to asking for concrete examples
12 from people about adaptive behavior. If Heather's saying
13 one thing and Cletus and Mildred are saying something else,
14 and that's more like Ken Rice, then that enters into the
15 equation, so to speak, about how these things get, get
16 considered, how the deficits, how it gets considered.

17 So, with regard to Heather, I think that she does think
18 that her father can do a lot of things that I wasn't able to
19 corroborate from other sources of information, and I can't
20 remember what else I might of said -- oh, I know the other
21 thing I think I said about Heather was that, during the
22 administration of the ABIS, I didn't feel like she always
23 understood exactly what I was saying even though I kept
24 repeating now I want you to think about, you know, have you
25 actually seen your father do these things, and so there

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1 was -- it didn't seem to me that she fully comprehended that
2 at all times.

3 Q I believe you indicated earlier something about
4 Heather's scores from at least her, her schooling indicated
5 something about or that Heather's scores from her school
6 were in a certain range?

7 A Yes, I believe her scores from school fell within mild
8 MR limits.

9 Q Okay. Could that -- would that have or could that have
10 had an affect on her ability to understand some of these
11 questions?

12 A It's, it's possible. I think that she -- I did have to
13 repeat things to her a fair bit, and it wasn't always clear
14 to me that she really understood it, which is why I
15 mentioned that as a possible limitation. But I still report
16 her scores, and I report all those things for the reader to
17 reach their own conclusion about that.

18 Q Okay. And so based on these scores, did you come to an
19 opinion of whether or not Ricky Blackwell had significant
20 deficits in adaptive behavior?

21 A Those scores helped me.

22 Q Okay.

23 A But certainly the examples that people gave me, which I
24 mentioned throughout the report. This was a fairly long
25 report. It's like 40 pages.

Ginger Calloway - Direct examination
By Mr. Allen

1 Q Okay.

2 A And I went and gave some fairly concrete examples of
3 what people told me, and those examples, and, and the scores
4 themselves entered into the equation of reaching a
5 conclusion, yes, as well as the records. It wasn't just,
6 you know, my examination of the test scores and my, my
7 examination of the interview information, information that
8 came from the, from the interviews. But also what, what was
9 there in the records that we had from the school, that we
10 had from employment, that we had from the psychiatric
11 records. All of those records, any of the medical records
12 that might of mentioned behaviors that were congruent, all,
13 all of those records were examined for congruencies, and
14 incongruencies with mild mental retardation.

15 Q Okay. Let's move on to the skill areas of the ABIS
16 system.

17 SOLICITOR BARNETTE: No objection, Your Honor, as long
18 as we're allowed to introduce the actual tests themselves at
19 the appropriate time.

20 THE COURT: Be admitted as marked.

21 MR. ALLEN: Okay. Thank you, Your Honor.

22 (WHEREUPON, the ABIS rating information was marked as
23 Defendant's Exhibit No. 7 and received into evidence at this
24 time.)

25 Q Showing you Defense Exhibit 7.

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By Mr. Allen

1 Can you tell me that this is?

2 A Yes, this was another chart that I made for my report
3 in -- and I may of been overly compulsive in here because I
4 was, again, trying to give the reader as much information as
5 possible so the reader could draw their own conclusion.

6 Also, in North Carolina, we have a statute and our statute
7 requires that we have to talk about deficits in two of these
8 ten areas. So, I was following what I typically do when I
9 write a report in North Carolina as well. So --.

10 Q Okay. Well, I'm gonna show this on the screen if you
11 don't mind, and if we can talk about some of the different
12 skilled areas. This is, this is Exhibit 7.

13 When you -- and, again, this comes from the same
14 interviews that you were talking about that arrived at the
15 composite score that we saw on previous exhibit, is that
16 correct?

17 A That, that is correct, uh-huh. (Affirmative).

18 Q Okay. If you would, let's talk about the skill area of
19 communication.

20 Did you find any deficits that Ricky Blackwell had in
21 the area of communication?

22 A Well, if we look at the scaled scores, and, again, not
23 all of these can be given as much weight perhaps as some
24 others because some people didn't know him as well and,
25 therefore, they couldn't give us complete information, but

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By Mr. Allen

1 if we look at those scaled scores, then he -- take
2 communication, Mildred -- again the one -- the scaled -- the
3 score of 100 where we have a score of 100, the mean of 100,
4 when you're talking standard scores, that score becomes a
5 score of ten for a subtest score. So, on the, on the
6 wechsler test you have subtests, and if you got a ten, that
7 would be the same as getting a hundred for that whole test,
8 for example. So, a ten is the mean. It's the exact average
9 point.

10 So, Mildred's, on communication, we've got one, two,
11 three, four people who are scoring -- who are giving answers
12 that put him into a significant or very significantly low
13 area of functioning. So, that -- those contribute to the
14 thinking that he has a deficit.

15 Q Okay. And what types of stuff are you talking about
16 when you talk about communication as a skilled area?

17 A Oh, well, let's see. Let me go to my report cause I
18 believe I give some examples there. Yeah.

19 This is -- what I do, again, because of the way that I
20 prepare reports in North Carolina, is the -- remember I
21 mentioned that the American Association on Intellectual and
22 Developmental Disabilities use to be the called the American
23 Association on Mental Retardation. Well, the AAMR came up
24 with a description of all these different skill areas. So,
25 what I've done in my report is I've taken the definition

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By Mr. Allen

1 of -- that the AAMR came up with because it's still
2 applicable today and the AAIDD recognizes that.

3 So, for communication, what they say, skills include
4 the ability to comprehend and express information through
5 symbolic behaviors such as the spoken word, the written
6 word, orthography, graphics, symbols, sign language,
7 manually coded english, that's all in parenthesis, or
8 nonsymbolic behaviors like facial expression, body movement,
9 touch, gesture. Specific examples include the ability to
10 comprehend and/or to receive a request, an emotion, a
11 greeting, a comment, a protest, or rejection. Higher,
12 higher level skills of communication such as writing a
13 letter would also relate to functional academics.

14 So, one of the questions -- I don't think this is a
15 question -- I shouldn't say what the questions are
16 specifically from the ABIS cause they're -- that's
17 copyrighted material and I have ethical guidelines that
18 direct me not to do that sort of thing, to give the exact
19 question. But a question that would be an example from the
20 ABIS might be something like the person makes eye contact
21 consistently. So, that would be something where, where the,
22 the respondent, those people that I asked to take the ABIS,
23 would put a zero, one, two, or three for that.

24 Q And what were your findings with respect to Ricky in
25 the area of communication?

Ginger Calloway - Direct examination
By Mr. Allen

1 A That, that -- those scores suggest that he has a
2 deficit there, yes.

3 Q Okay.

4 A Those -- not just the scores, but what I said in my,
5 what I said in my -- I should repeat what I said in my
6 report because this is what I did. On the basis of the
7 preceding scores comments, and hours of interviewing a
8 number of collateral sources, and I should add and looking
9 at multiple sources of information that include records, a
10 significant deficit in the adaptive functioning area of
11 communication seems to be the case for Ricky Blackwell.

12 Q And, again, this is based on your interviews with the
13 various people and the specific questions that you asked and
14 that sort of thing?

15 A It's based on that as well as record review.

16 Q Okay.

17 A And so all of that assessment process, the evaluation
18 of Ricky Blackwell started on 6/29/12 and the entire
19 assessment process went through October of --
20 October/November of 2013.

21 Q Okay. Let's go to the next area on the list of
22 community use.

23 What were your findings with respect to community use?

24 A Okay. I---

25 Q I believe it would be on Page 30, 34.

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By Mr. Allen

1 A Community use, there are one, two, three, four, five
2 individuals that gave answers that would suggest he has a
3 significant -- a very low score in that area of community
4 use.

5 Q Okay. So, based on that, what are you saying about
6 whether or not he's got significant deficits on that
7 adaptive behavior?

8 A Well, again, that -- to repeat myself, on the basis of
9 the, on the basis of the scores, on the basis of the
10 comments during interviews, on the basis of all the records
11 that I reviewed, it seemed to me that he had a significant
12 deficit in the functioning area of community use.

13 Q Okay. Moving on to functional academics, what can you
14 tell me about your findings there?

15 A Okay. Let me see where that is.

16 Okay. Functional academics, there were one, two,
17 three, four scores that occurred in the very significantly
18 low area, and then there were one, two scores that occurred
19 in the significantly low area, and on -- so, on the basis of
20 not just the scores, but on the basis of scores, on the
21 basis of interview material, on the basis of records
22 reviewed, and that I concluded that he had a impairment in
23 that area, a deficit in that area.

24 Q Okay. Moving on to -- I'm gonna try to get everything
25 over here. Home, home living, the next one on the list,

Ginger Calloway - Direct examination
By Mr. Allen

1 what were your findings there?

2 A All right. Let me find where that is.

3 Q Page 27.

4 A Okay. So, in that area, let's see, his scores there
5 are -- he has one, two scores that are in a significantly
6 low area, one, two scores that are in a low area, one score
7 that's in -- there's no score, and then one score that
8 Reverend Rice has a score that falls into a low average sort
9 of area, and for -- well, look, wait a minute. This -- I'm
10 sorry. This is for home living.

11 All right. So, for home living, again, considering
12 everything that I've already said about what I considered, I
13 considered that he had a deficit in that area.

14 Q Okay.

15 A So, you can see it's not always that, that -- the
16 conclusion wasn't always based on the actual scores from the
17 ABIS in the subtest area. Because the AAIDD talks about
18 using the GAC, the conceptual, the social, and the practical
19 areas, that's given more weight than these subtest areas.
20 But I have broken them out into these subtest areas because
21 of the reason that I already said about the North Carolina
22 statute.

23 Q Okay. Moving on to health and -- I think on health and
24 safety next --

25 A Okay.

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By Mr. Allen

1 Q -- what were your findings with respect to deficits
2 there?

3 A All right. And what page is that?

4 Q Page 33.

5 A Okay.

6 Q Okay.

7 A So, health and safety, here the subtest scores break
8 out into -- he's got one, two, three scores where they're
9 significantly low, two where they're low, and one where
10 that's no, no score there, and then what I concluded,
11 considering all the information I've already said, that --
12 let's see. Let me find it here. Oh, no, wait a minute.

13 where am I?

14 Health and safety, I said that it appears that he
15 doesn't have a deficit there, and, again, the subtest scores
16 alone, if they were only considered alone, might suggest
17 that that -- that there is an area of deficit, but when you
18 look at what people say and when you look at the sorts of
19 things that he clearly did and didn't do in the interview
20 material, also in the other records, then that led me to the
21 conclusion that he did not.

22 Q Okay. So -- and in -- let's see. I think we're on
23 leisure now.

24 A Yes. For leisure, the scores were -- he had one, two,
25 three, four scores that were low, none that were

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By Mr. Allen

1 significantly low, and one that was in an average to
2 slightly above average range.

3 Q And so what does that mean as far as whether he has or
4 has not a deficit in that area?

5 A Well, again, it's not just on the scores.

6 Q Okay.

7 A So---

8 Q But what were your findings with respect to that?

9 A Okay. The finding that I have, the conclusion I
10 reached is that he -- it doesn't appear, does not appear
11 that he has deficit, a significant deficit in that area.

12 Q Okay. And in self-care.

13 A Self-care, he has one score that's significantly low,
14 and then one, two, three that are low, and then one that's
15 average.

16 Q Okay. And what were your findings with respect to that
17 skill set?

18 A Okay. Let me find that one.

19 Q Wait a minute. There's also a second page to your --.

20 A Okay.

21 Q There is the top line, Louise.

22 Is that part of the --

23 A Yes.

24 Q -- preceding?

25 A That's a, that's a high average score.

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By Mr. Allen

1 Q Okay. What were your -- and what were your findings
2 with respect to whether or not Ricky has a deficit in that
3 skill set---

4 A And I'm---

5 Q ---based on everything that you've---

6 A Filed---

7 Q ---had on there?

8 A What page are we on now?

9 Q It's gonna be 35.

10 A Okay. And remind me of which area we're in.

11 Q Leisure. No, excuse me. Self-care.

12 A Self-care. Okay.

13 Q Excuse me. I might of misdirected you. Twenty
14 something -- Page 27.

15 A Okay.

16 Q My conclusion there was that it does not appear that he
17 has a deficit in that area.

18 Q Does not?

19 A Does not.

20 Q Okay. Going to self-direction, what were your findings
21 with respect to that?

22 A Well, if we're looking at the, at the subtest scores
23 first, then the -- there are -- there's one person who rates
24 him in significantly low area, and then there are one, two,
25 three, four people in a low area, and no score for one

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By Mr. Allen

1 person, and this is self-direction. So, let's see where
2 that is.

3 Q Thirty-one.

4 A Okay.

5 Q Page 31.

6 A The conclusion, I think, is on Page 33.

7 Q That's right.

8 A The conclusion is that he does have a significant
9 deficit in self-direction.

10 Q Okay. That he does?

11 A He does.

12 Q Okay. And social?

13 A In the social, the subtest scores here are one that
14 falls into a significantly low area, and one, two, three
15 that fall into a low area, and then we have one, the 11
16 falls into an average, slightly above average, and then
17 we've got one that is no score.

18 Q Beginning on Page 29 I believe is social---

19 A Okay.

20 Q ---in your report.

21 A And this is social that's distinct from the social
22 composite area. Let me just make a point about that. This
23 is the social subtest area. That's distinct from the social
24 composite area.

25 Okay. That was Page 27, is that what you said?

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By Mr. Allen

1 I'm sorry.

2 Q I'm -- if I said it I meant 29.

3 A Okay. And I concluded that he had a deficit in that
4 area of social.

5 Q Okay. And then in work.

6 A In work, he had -- there was also -- there were no
7 scores in it for one, two, three, four, five people, and
8 there was one score that was in the significantly low area
9 for one person, and the work is the last one, and I'm pretty
10 sure I decided he did not have -- okay. Oh, I said it's
11 unclear that the kind of tasks he performed were repetitive
12 in nature, required limited training, and were generally
13 supervised by others. He did not obtain supervisory
14 positions nor did he move beyond a limited set of skills in
15 this area despite many areas of working. Nevertheless, work
16 represents an area of relative success for him when compared
17 to other areas of adaptive function -- functioning.
18 Therefore, it's concluded that the area of work does not
19 represent an area of significant deficit. Does not is what
20 I concluded.

21 Q Does not.

22 Okay. Now, what was your conclusion, if, if you have
23 one, about whether or not Ricky Blackwell had a significant
24 subaverage intellectual functioning that coexisted with or
25 was -- coexisted with deficits in adaptive behavior or

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By Mr. Allen

1 significant limitations in that behavior?

2 A Well, the subaverage general intellectual functioning,
3 I concluded that he did have a, an IQ score that fell into a
4 mildly retarded range, existing concurrently with deficits,
5 I concluded yes, he did and that it was -- this disability
6 was manifested before the age of 18 I also concluded, yes.

7 Q Let's talk a little bit more about manifesting before
8 the age of 19.

9 How did you conclude that?

10 A Well, again, going to the -- the school records gave a
11 great deal of -- well, not a great deal, but they gave
12 information about functional academics. Also, in talking
13 during the interviews that I gave with the ABIS, and getting
14 the specific kind of comments that I did from the people who
15 knew him best when he was younger, that all those kind of
16 indications, all those kind of comments added to the
17 conclusion that he had those kind of impairments, and he --
18 if you look at the area of functional academics, he was not
19 like other children. He was quite different and he had
20 impairments relative to other children.

21 So, that area, as well as the areas that -- in, in
22 terms of what he was able to do independently without
23 assistance that were described by his -- the people who knew
24 him best, his mother, his father, Jean White, and Ms.
25 Scruggs gave some examples of his behavior as well.

Ginger Calloway - Direct examination
By Mr. Allen

1 Q All right. What is your opinion then of whether or not
2 Ricky Blackwell is mentally retarded?

3 A I, I -- my opinion is that he is.

4 Q That he is?

5 A That he is.

6 MR. ALLEN: Okay. If I may beg the Court's indulgence
7 for a moment or two?

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. ALLEN: I have no other questions for Doctor
11 Calloway, Your Honor.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, we've come to a point where I think we can break for
14 the afternoon. As always, when you leave the courthouse, my
15 instructions are always the same, not to discuss any aspect
16 of this case until such time as I ask you to begin your
17 deliberations. The agents will take you and I hope you have
18 a good evening.

19 We'll start in the morning at nine o'clock. See you at
20 that time. Have a good evening.

21 Everyone remain seated while the jury retires.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Doctor Calloway, I'll caution you again not
25 to discuss your testimony during our break for the evening.

1 we'll resume at nine o'clock in the morning.
2 Everyone remain seated while the defendant retires.
3
4 (WHEREUPON, Court was in recess for the evening.)
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1 (No response.)

2 THE COURT: It appears that everyone's been able to
3 comply with my instructions.

4 Now, yesterday, when we stopped, the defense had
5 finished its direct examination of this witness, and, at
6 this time, the State has the right to cross-examine.

7 Mr. Barnette, are you gonna do that?

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: All right, sir. Your witness.

10 SOLICITOR BARNETTE: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY SOLICITOR BARNETTE:

14 Q Morning, ma'am.

15 A Morning.

16 Q Isn't it true the defendant was a truck driver as well
17 as a forklift operator, did that type of work?

18 A Yes.

19 Q And isn't it true he had a criminal -- I mean a --
20 basically a, CDL, commercial driver's license?

21 A Yes.

22 Q He drove for Hess Gas, Belue Trucking, and other
23 trucking companies.

24 Is that true?

25 A I'm most aware of Hess and Belue, but yes, I think

Ginger Calloway - Cross-examination
By Solicitor Barnette

1 you're right. There was one more, but I don't remember the
2 name of it.

3 Q Let me go ahead and pre-mark this. This is marked
4 earlier, but if I can go ahead and get that marked again for
5 ID.

6 (WHEREUPON, an application was marked as State's
7 Exhibit No. 73 for identification purposes only at this
8 time.)

9 SOLICITOR BARNETTE: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 Q Like to show you No. 73 for ID at this time and I'll
13 show it to the defense after you get a chance to look at it.

14 Have you seen that document before, ma'am?

15 A I have.

16 Q And was that part of the -- what you looked at in
17 making your evaluation of this case?

18 A Yes.

19 SOLICITOR BARNETTE: Your Honor, I'd like to move State
20 Exhibit 73 into evidence at this time.

21 THE COURT: Any objection?

22 MR. ALLEN: No, Your Honor.

23 THE COURT: All right. Without objection, it will be
24 admitted into evidence.

25 (WHEREUPON, State's Exhibit No. 73 was received into

Ginger Calloway - Cross-examination
By Solicitor Barnette

1 evidence at this time.)

2 SOLICITOR BARNETTE: May I publish to the jury, Your
3 Honor?

4 THE COURT: Well, has it been identified by her?

5 SOLICITOR BARNETTE: Oh, I'm sorry. Your Honor, this
6 is an application for employment with Belue Trucking.

7 THE COURT: Okay. It's been admitted.

8 You may publish.

9 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

10 okay. This is his application for employment at Belue
11 Trucking, is this right Ms. -- doctor?

12 A Yes.

13 Q Okay. And she talks about the -- it talks about the
14 position he was applying for was truck driver, is that
15 right?

16 A Yes.

17 Q And he goes through his different employees or
18 employers that he had worked for?

19 A Yes.

20 Q Matter of fact, he talks about the driver's license
21 he's got, is that correct, ma'am?

22 A Yes, that's correct.

23 Q And showing you what's been entered -- already been
24 entered into evidence as State Exhibit 33-C. This is his
25 present driver's license, I guess, at the time the incident

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By Solicitor Barnette

1 occurred?

2 It actually expired in 2010.

3 Is that the commercial driver's license and I'll be
4 glad to blow that up for you?

5 A Thank you.

6 Q That was what we call a CLD license, right, commercial
7 driver's license?

8 A That would be indicated on the Class A.

9 Q Right.

10 And up top, is that right?

11 A Driver's license.

12 Q Matter of fact, on the back of it he was endorsed to
13 drive a tank vehicle, wasn't he?

14 A Thank you.

15 Q I'll try to blow it up.

16 A Okay.

17 Q I'm trying to get this---

18 A Yes.

19 Q Okay. There we go. A little bit better.

20 So, he was endorsed to drive a tractor -- tank vehicles
21 too?

22 A Yes.

23 Q Matter of fact, Hess is a -- they usually don't get --
24 we see Hess all the time, the gas stations and so forth.

25 Those are gasoline type tanker -- I mean tanker trucks

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1 usually, correct?

2 A That's correct.

3 Q And on the bottom he had driven to Texas, Oklahoma,
4 Tennessee, New York, and New Jersey, correct?

5 A That's what he reports there, yes.

6 Q And he worked for Belue and for Hess in the 80's, is
7 that right?

8 Let me show you what's been -- Defendant's Exhibit 5
9 entered into evidence.

10 He worked for the Hess Corporation in 1982/1983, is
11 that right, ma'am?

12 A Yes, that's correct.

13 Q And he worked for Belue Trucking, if I'm reading this
14 correctly, this is Page 2 of it, in 1984 and 1986, correct?

15 A Yes, and 1985.

16 Q And 1985. Thanks for correcting me on that.

17 But back in the 1908's, I know my wife, I buy GPS
18 systems for her because she hates to read maps, trying to
19 drive, keep track of all those things.

20 MR. ALLEN: Objection to the form of the question as it
21 sounds like he's---

22 THE COURT: He's on -- he hasn't finished the question
23 and he -- I'm not sure exactly what the question is to be
24 honest with you.

25 what's your objection?

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1 MR. ALLEN: Well, my objection is he's talking about
2 his wife. I mean it doesn't sound like he's even starting
3 out with a question, and I would---

4 THE COURT: Well, I don't know what -- I'll let him
5 finish and then we'll see where that goes.

6 Go ahead and finish, Mr. Barnette.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 Q Back in the 80's we didn't have a GPS system, did we?

9 A I didn't have one.

10 Q No, and I don't think I -- I don't think anybody had
11 one back then. They might -- NASA might of had one back
12 then, but I don't think anybody else did.

13 So you had to use maps and other things to keep track
14 of where you were going, isn't that correct, ma'am?

15 A That would be one way.

16 Q Yes, ma'am.

17 So, here's an individual that went to Texas, New
18 Jersey, New York. Going to Texas, I'm assuming you have to
19 go through Atlanta to get to Texas from here. Oklahoma,
20 places like that.

21 You're taking a tanker through those type of areas,
22 having to keep track where you're going and things like
23 that, isn't that correct, ma'am?

24 A There would be different routes for going where you've
25 mentioned. So, I'm not sure where he went, but it's

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By Solicitor Barnette

1 reasonable to think about Atlanta, yes, of course.

2 Q And he definitely looked like he drove tanker trucks
3 with gasoline, different things in them if he drove for Hess
4 Corporation, isn't that right?

5 A That's correct.

6 Q Okay. And he was also a forklift operator, correct?

7 A Yes, that's correct.

8 Q And he also, I believe, the lady before, that testified
9 before you, Ms. Shook, he had to pass tests in order to be a
10 forklift operator, correct?

11 A That's what she explained to me in an interview.

12 Q And he also had to pass safety tests concerning that,
13 correct?

14 A I don't know about that. She didn't relay that.

15 Q Well, did you hear her testimony here the other day?

16 A I don't remember that, no --

17 Q Yesterday.

18 A -- that part of it.

19 Q I believe she answered that he has to pass safety tests
20 in order to operate that equipment, but you didn't hear
21 that?

22 A I didn't hear that.

23 Q Okay. You testified about Thorazine when you went to
24 interview the defendant in the jail concerning your
25 evaluation.

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By Solicitor Barnette

1 He was taking Thorazine as one of the drugs, is that
2 right?

3 A Yes.

4 Q And isn't it true that you never contacted his doctor
5 about the prescription he was taking, the other drugs he was
6 taking, concerning the interaction of those drugs?

7 A I did not contact his doctor.

8 Q Right.

9 And you didn't ask about his dosage either, did you?

10 A I did ask about his dosage.

11 Q Are you sure about that?

12 A Yes, I have -- it's on my forensic client history and
13 checklist.

14 Q It's not what you testified to earlier, ma'am.

15 A I didn't ask him about it.

16 Q Let me refer you to this testimony that you gave,
17 ma'am, earlier.

18 If you would, read the question on Line 22 and then
19 read your answer then?

20 A At any rate, he was on Thorazine.

21 You did not call the doctor?

22 You did not ask about his dosage?

23 That's right. I did not ask the doctor about his
24 dosage, correct.

25 Q Okay. Matter of fact, when you went to interview him

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1 that day, wasn't your prior testimony was you stated that he
2 stared blankly during the period of your discussion when
3 informing consent with him.

4 Isn't that true, doctor?

5 A We need to look at what the report says.

6 (Pause.)

7 A I don't see that in my report. If you will show me --
8 I don't recall it from the testimony. If you have it I'll
9 be glad to look at it.

10 Q Yes, ma'am, I'll be glad to show that to you. It's on
11 Page 259 going from there.

12 If you would read from the Line 18, that was the
13 question that was asked, and then your answer all the way
14 down to the bottom.

15 A Okay. Okay. With respect to the Thorazine, in your
16 report you state that he stared blankly during the period of
17 your discussing informed consent with him, is that not
18 correct?

19 That is correct.

20 And he just nodded his head up and down in compliance
21 or agreement, correct?

22 That's correct.

23 Q So, does that refresh your memory?

24 A It refreshes my memory as far as what I said in the
25 transcript, yes.

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By Solicitor Barnette

1 Q Yes, ma'am.

2 So, basically he was just -- he was just staring
3 blankly, he was just nodding his head up and down in
4 compliance, is that correct?

5 A I would describe him as staring blankly and not
6 appearing to understand.

7 Q But you went ahead and gave him these tests. You went
8 ahead and tested him and everything when he's in this
9 condition.

10 Isn't that correct, ma'am?

11 A What condition?

12 Q Well, obviously he's taking Thorazine. You never
13 contacted his doctor about how it was gonna affect him and
14 so forth, and you went ahead and gave him these tests anyway
15 or went ahead and evaluated him, correct?

16 A Yes, that's correct.

17 Q Okay. You were talking about the ABIS testing, and I
18 believe -- can I get those exhibits, Your Honor, the --.

19 THE COURT: Yes, sir.

20 SOLICITOR BARNETTE: Your Honor, if we could ahead and
21 mark these for ID purposes at this time.

22 THE COURT: You can mark them for ID purposes.

23 (WHEREUPON, the ABIS information was marked as State's
24 Exhibit Nos. 74 and 75 for identification purposes only at
25 this time.)

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1 SOLICITOR BARNETTE: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 Q Doctor, if I can show you State Exhibit 74 and 75.

5 Could you tell us what those are, ma'am?

6 A Seventy-five is a copy of the ABIS form that was given
7 to Louise Scruggs.

8 Q Okay. And what's the other exhibit, sir -- ma'am?

9 A Seventy-four is -- the first one is a copy of the ABIS
10 that was given by -- it looks -- I believe it must be by
11 Doctor Brown given to Ricky Lee Blackwell. The next tab --
12 did you want me to go through all these tabs?

13 Q I just wanted you to just identify what, what it is,
14 ma'am --

15 A Oh.

16 Q -- if you could.

17 A They are the ABIS forms. The first one is the one
18 given by Doctor Brown to Ricky Lee Blackwell. The next one
19 is the one -- a copy of the ABIS form that was given to
20 Mr. Bagwell. The next one to Cletus Blackwell. The next
21 one to Mildred Blackwell. The next one to Ken Rice. The
22 next one to Gail Shook. The next one to Jean White, and the
23 last one to Heather Bryant.

24 SOLICITOR BARNETTE: Your Honor, I'd like to move these
25 into evidence at this time.

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1 THE COURT: Any objection?

2 MR. ALLEN: I have an objection as to part of Exhibit
3 74.

4 THE COURT: Is it something I need to take up outside
5 of the jury's presence?

6 MR. ALLEN: If the Court please for a minute.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, one of those occasions I'll ask you to step back in
9 the jury room. Don't begin any discussions until I ask you
10 to do so.

11 You may retire at this time.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Yes, sir, Mr. Allen.

15 MR. ALLEN: Your Honor, with respect to the ABIS that
16 was given by Doctor Brown to Ricky Blackwell, I would object
17 to that because that is not part of Doctor Calloway's
18 investigation. She didn't know how -- she was not there
19 when it was prepared.

20 THE COURT: As I recall, it was not a basis of the --
21 for her opinion.

22 MR. ALLEN: That's -- and yes, Your Honor, and also for
23 that reason, and I'll object to that portion going in. We
24 certainly, while we don't object to the ABIS being shown to
25 the jury and that sort of thing, we certainly ask, because,

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1 as I understand it, these are copyright protected and should
2 not get out into the public domain, we certainly ask the
3 Court and I believe the Court has already indicated that the
4 Court will not allow---

5 THE COURT: well, they were previously sealed. They
6 are germane to this hearing. So, I'll allow them to be
7 admitted into evidence, but once the hearing -- once this
8 trial is ended, I will seal them again is my intention.

9 MR. ALLEN: Yes, Your Honor. We ask for that
10 protection.

11 THE COURT: All right. Any objection to that?

12 SOLICITOR BARNETTE: Your Honor, I'll be glad to take
13 out the Doctor Brown part.

14 THE COURT: All right.

15 SOLICITOR BARNETTE: Do you want me to hand that to the
16 clerk to be sealed?

17 THE COURT: Hand it to the clerk and have her maintain
18 that since it's part of the marked exhibits --

19 SOLICITOR BARNETTE: Yes, sir.

20 THE COURT: -- from the previous hearing, the Atkins
21 hearing.

22 SOLICITOR BARNETTE: I'll just show you that I just
23 took that out.

24 THE COURT: All right.

25 MR. ALLEN: Oh, one other. It looks like it's got two

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1 stickers on there. I mean I don't know what we can do
2 about---

3 THE COURT: well, we're gonna leave the sticker on
4 there. It doesn't identify it other than as an exhibit from
5 a previous hearing. I don't think that would prejudice the
6 jury in any fashion.

7 MR. ALLEN: Yes, sir.

8 THE COURT: So, we'll leave that on there because it is
9 an exhibit in the other trial. So --.

10 MR. ALLEN: Yes, Your Honor. It is.

11 THE COURT: All right. We'll leave the stickers on
12 there.

13 SOLICITOR BARNETTE: Yes, sir.

14 THE COURT: All right. You may mark the -- other than
15 that, that's your objection is to remove the Ricky Blackwell
16 out of this and then have the Court seal it once this,
17 this -- the purpose in this hearing---

18 MR. ALLEN: Yes, sir.

19 THE COURT: ---has been completed.

20 THE COURT: All right. I've granted both of those
21 requests.

22 Anything else before we admit it?

23 MR. ALLEN: No, Your Honor. Thank you.

24 THE COURT: All right. It will be admitted.

25 Has it been marked?

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1 COURT REPORTER: Yes, sir.

2 (WHEREUPON, State's Exhibit Nos. 74 and 75 were
3 received into evidence at this time.)

4 THE COURT: Bring the jury in.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. I have admitted the evidence
8 requested by the State with one exception. I've removed
9 some item that is not germane to this inquiry.

10 You may proceed.

11 SOLICITOR BARNETTE: Thank you, Your Honor.

12 CONTINUED CROSS-EXAMINATION

13 BY SOLICITOR BARNETTE:

14 Q Doctor, Ricky Blackwell is one of the evaluations that
15 you did in State Exhibit 74, is that correct, ma'am?

16 A I don't understand that question.

17 Q Okay. Ricky Blackwell, is that one of the evaluations
18 that was done on the ABIS form?

19 A No.

20 Ricky Bagwell?

21 Q Bagwell. I'm sorry. Ricky. I said Ricky.

22 Ricky Bagwell?

23 A Correct.

24 Q Did you do that evaluation, ma'am?

25 A I did. I did an assessment and an interview with him.

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By Solicitor Barnette

1 Q Just showing the jury that part, why is it mostly
2 blank?

3 I mean, you didn't hardly put any information on it. I
4 mean it's blank.

5 So, how could you get an evaluation -- I mean it's all
6 blank.

7 I mean what kind of evaluation did you do?

8 A As I explained yesterday, I did an interview using
9 ABIS, and not all of it is blank. There were additional
10 sheets that -- where the interview was conducted where I
11 wrote down other things that he said.

12 Q Well, would you agree with me the majority of that is
13 blank?

14 A I would. He was not very forthcoming.

15 Q Was not very forthcoming?

16 A He did not provide very much information.

17 Q But you based your evaluation -- matter of fact, you
18 only used seven people for your valuation on the ABIS, is
19 that right?

20 A If you read my report, I really relied more heavily on
21 the people who knew him the most, which was his family and
22 Reverend Rice.

23 Q Okay. Talking about that, matter of fact, I think your
24 testimony is that you should have ten to twenty people that
25 you should look at.

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By Solicitor Barnette

1 Is that right, ma'am?

2 A The testimony that I gave previously was that we try to
3 get as many as ten to twenty people to interview. Not to
4 give the ABIS to. And yesterday I testified to the fact
5 that one of my mentors has commented that if he has even one
6 person to administer the ABIS to he considers himself
7 fortunate.

8 Q Just one person?

9 A That's correct. The ABIS is one part of what's looked
10 at in this kind of an assessment.

11 Q Let me show you your testimony again, ma'am, on Page 80
12 starting on Line 2, and you're welcome to read the whole
13 answer. I want to give you a chance to read the whole
14 answer.

15 A All right.

16 Q Starting on Line 2, ma'am.

17 A You want me to start reading there?

18 Q Yes, ma'am, and go down to the end of the paragraph. I
19 want that whole answer down the line.

20 A Okay. "So, I would choose a number of different
21 people, not just one person, not just two people, not even
22 three. The people that I have received training from
23 recommend as many as ten to fifteen -- ten to fifteen to
24 twenty different people to try to interview."

25 It's difficult to get that many.

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1 "That's often difficult to find that number of people,
2 but certainly more than two or three. Hopefully you have
3 anywhere between six to ten people that you would have that
4 would have some intimate knowledge of the everyday
5 activities of the subject for whom you're seeking
6 information about."

7 Q Thank you, ma'am, for reading that.

8 A Uh-huh. (Affirmative).

9 Q So, it's recommended that ten to fifteen people---

10 A I---

11 Q ---or ten to twenty?

12 A I---

13 Q That's what the expert -- the people that taught,
14 taught you recommended, right?

15 A It is not recommended in a -- what I answered earlier
16 in that hearing when we were here last time was that I
17 attended a workshop, and one of the leaders talked about
18 trying to obtain certainly multiple sources of information,
19 and they threw out the number somewhere between ten to
20 fifteen. If you could get as many twenty, that would be
21 great.

22 Q Let me ask you a question, doctor.

23 Do you know Curtis Jones, investigator for the Public
24 Defender's Office?

25 A I met him last time I was here.

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1 Q Well, did you go talk to his friends?

2 Did you go talk to anybody that knew him?

3 Did you, did you go try -- just not his family.

4 Did you go try to talk to other folks, people he worked
5 with?

6 A Yes, I talked to Mr. Bagwell.

7 Q Did you try to talk to other people?

8 Well, Mr. Bagwell wasn't forthcoming from what you just
9 said.

10 So, you just depended on the family, right?

11 A I depended on all of the information I had, which
12 included records. It included interviews with family, with
13 employers. There were multiple sources of information.
14 There were quite a few records, if you look at my report.
15 I, I relied on all the information that I had.

16 Q Okay. And talking about the people you did rely on, I
17 believe Cletus was one of the people that you relied on, his
18 father?

19 A Correct.

20 Q And you say he's mentally retarded is what you say?

21 A I did not say he was mentally retarded. I said he had
22 a score, on a group administered test, it's called the Otis
23 Lennon, of 60, which falls within a mild mentally retarded
24 range.

25 Q And you said the same thing about Heather, is that

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1 right, his daughter?

2 A What I said about her was that she -- what her score
3 was on those tests that she took in school.

4 Q So, that's two people you depended on, family members
5 who you depended on, but you could of went out and talked to
6 more people, got one of the investigators to go talk to
7 other people he worked with, with people he was friends
8 with, different individuals, couldn't you, ma'am, but you
9 didn't?

10 A You asked me two questions.

11 what would you like me to answer?

12 Q You had resources to go talk to other folks, didn't
13 you?

14 A The social worker that I worked with also worked with
15 the investigators from Mr. Allen's office, and we
16 interviewed as many possible people as we could find.

17 Q But you didn't -- the only people you really talked to
18 was his family, isn't that right, and his reverend?

19 A No, that's not true. I talked to the supervisors that
20 he had at work. I also talked to Howard Wall, who is a
21 neighbor of his. We attempted to talk to Mr. Painter, who
22 was the principal of his school. We spoke with Ms. Shook.
23 Ms. Richard spoke with other -- Cheryl Ponder who was a
24 former teacher at his school, and we went -- I came to South
25 Carolina on several occasions and we attempted to talk to as

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By Solicitor Barnette

1 many people as we could possibly find who were willing to
2 talk to us.

3 Q Talk about school records, ma'am, I believe it's
4 Defendant Exhibit 14. I know you talked about the grades in
5 high school, but if you look at his elementary grades,
6 they're pretty good, aren't they, ma'am?

7 A I wouldn't say they're pretty good, but they're better
8 than they were in high school, yes.

9 Q Yes, ma'am.

10 And matter of fact, a lot of -- you was talking about
11 the units towards graduation. I think we pointed this out
12 the other day. They marked 11 towards graduation.

13 He actually had 12, correct?

14 A It looks like he had 12 above that, but what they have
15 written below is 11 units towards graduation.

16 Q Isn't it true, one of the reasons why -- the reason why
17 he left high school was cause of that disagreement?

18 Isn't it true that he -- because he disagreed with the
19 amount of credits towards his graduation is the reason why
20 he left school?

21 A No.

22 Q You know Kimberly Harrison, the doctor at the South
23 Carolina Department of Mental Health at the time?

24 A I don't know her.

25 Q You, you know about her report?

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1 A Yes.

2 Q Let me show you that report, ma'am. One, one of the
3 things that they found out was that she -- that he dropped
4 out because he got in an argument over the credits.

5 A What Doctor Harrison reports is that his mother said he
6 was frequently bullied in school, and she said he dropped
7 out of school during the eleventh grade following a
8 disagreement over the number of credits he earned.

9 Q All right. Thank you, ma'am.

10 And another thing I know, during your direct testimony,
11 you talked about, about where he placed 113 out of 113
12 students in his class in Chesnee, is that right?

13 A Yes.

14 Q Well, could it of been very simple, he was the last one
15 to leave -- I mean was the one that left first and then
16 graduates?

17 So, he made 113. If the next one would of dropped out,
18 it would be 112 out of 112?

19 Couldn't easily be that also?

20 A That doesn't really make any sense to me.

21 Q What I'm saying, ma'am, is, as people drop out of
22 school or leave school, if you're 115th, if you leave school
23 and you're the 115th student, and you're 115th out of 115th,
24 you're 114th student and you leave school, you'd be the
25 114th student out of 114.

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1 Could it easily have been that, ma'am?

2 Correct?

3 A I wouldn't agree with that.

4 Q Okay. Matter of fact, you looked at the medical and
5 the health records, the mental health records as well as all
6 the medical records the defendant's had in his history, is
7 that right, ma'am?

8 A Say that---

9 Q You've looked at all his medical records and mental
10 health history records, haven't you, the defendant in this
11 case?

12 A Yes.

13 Q Okay. And matter of fact, in 1990, when he shot a gun
14 in the air -- are you familiar with that incident?

15 A Yes.

16 Q He was taken into the hospital. He admitted smoking
17 marijuana that day.

18 A Yes.

19 Q He also drank eight to nine beers that day.

20 A Yes.

21 Q So, he had a history of drug use, legal and illegal
22 drug use, as well as drinking, isn't that right, ma'am?

23 A Yes, that's consistent with what he told me during the
24 interview.

25 Q Okay. And his family has that history also?

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1 A Some members.

2 Q Okay. And looking through all these records, ma'am --
3 and you're familiar with Doctor Gordon Brown from the South
4 Carolina Department of Special Needs?

5 A Yes.

6 Q And you got to review his report, is that right?

7 A I did.

8 Q You also got to look at Doctor Kimberly Harrison's
9 report from the South Carolina Department of Mental Health?
10 Did you get a chance to review that report?

11 A I did.

12 Q You've reviewed all these records and everything.

13 Did anybody find him mentally retarded or even find any
14 evidence of mental retardation?

15 A Yes, Doctor Brown actually talked about him having
16 certain areas that would add to a diagnosis of mental
17 retardation.

18 Q But his diagnosis was that the defendant was not
19 mentally retarded, is that correct?

20 A That's hard for me to say. He definitely said that at
21 the end of his report. In the beginning he was indicating
22 that he was retarded. So, it was a little puzzling to me,
23 his report.

24 Q My question to your mind -- ma'am, was that he did not
25 find him mentally retarded, correct?

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By Solicitor Barnette

1 A At the end of his report he concluded that he was not
2 mentally retarded.

3 Q Kimberly---

4 A That's correct.

5 Q Kimberly Harrison -- and these experts is appointed by
6 the Court, is the right?

7 MR. ALLEN: Your Honor, I'm gonna object to the
8 solicitor trying to get in other doctor's reports simply by
9 talking about the results of them to this particular
10 witness. I mean if he wants to call these witnesses---

11 THE COURT: I won't allow you to pit witnesses against
12 each other. To the extent that she may have used their
13 evaluations or reports in formulating her opinion, he has
14 the right to cross-examiner her as to that, but she hasn't
15 indicated that she used their reports in formulating her
16 opinion at this point in time.

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: So, I'll sustain the objection at this
19 time.

20 Q Looking through his medical history, looking through
21 his mental health history, nobody -- there was no indication
22 of mental retardation by any doctor, was there?

23 A There was no diagnosis of mental retardation given by
24 the people that he saw in those facilities.

25 Q Matter of fact, ma'am, you're the first person and the

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1 only person that has said he's mentally retarded?

2 A I don't know about that, but I did say that he's
3 mentally retarded.

4 Q You've looked at all the reports. You've looked at all
5 the medical evidence. You've looked at all the mental
6 health evidence.

7 You're the only person that is said that he's mentally
8 retarded, correct.

9 A I don't know that, but I -- in all the records that I
10 have seen, I have not seen a diagnosis of mental retardation
11 except for Doctor Brown indicating some ways in which he
12 sees him as being mentally retarded.

13 Q But that was not his findings, was it?

14 A That was not his -- that was not his final diagnosis
15 that he presented in his report.

16 Q Ask the question again, ma'am.

17 You reviewed everything. You got a chance to review
18 everything.

19 How long -- you've had how years, two years to review
20 everything?

21 MR. ALLEN: If it please the Court.

22 I object. I think, I think she's answered this, this
23 question.

24 THE COURT: He's on cross-examination, and I'm not sure
25 she's answered this specific question he was going in. He

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1 had -- the last question he asked was how many years she had
2 to review this. I don't think that's been asked yet.

3 You may proceed.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 How many years have you reviewed this, ma'am?

6 A It's been about a year and a half.

7 Q Okay. And during that time you've had access to all
8 his records, everything, all the reports that's been
9 generated on him and everything---

10 A Everything that could be found.

11 Q ---correct?

12 Yes, ma'am.

13 And you're the only one, out of all the medical
14 professionals, all the mental health professionals,
15 everybody, you're the only one that said he's mentally
16 retarded?

17 A That is correct.

18 Q Matter of fact, this is after he received the death
19 notice, isn't it, ma'am?

20 Your findings was made after the death notice was given
21 to him that we'd be trying him for the death penalty?

22 A Yes, that is correct.

23 SOLICITOR BARNETTE: One moment, Your Honor, please.

24 THE COURT: Yes, sir.

25 (Pause.)

Ginger Calloway - Cross-examination
By Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, ma'am, for answering my
2 questions.

3 Thank you, Your Honor.

4 THE COURT: Redirect, Mr. Allen.

5 MR. ALLEN: Yes, Your Honor, if it please.

6 THE COURT: Yes, sir, you may proceed.

7 REDIRECT EXAMINATION

8 BY MR. ALLEN:

9 Q In talking about the CDL license, did you have an
10 opportunity to review records from the Department of Motor
11 vehicles concerning the CDL of Ricky Blackwell?

12 A I did.

13 Q Did you find any indications as to when that CDL was
14 obtained?

15 A I believe it was 1986.

16 Q Okay.

17 A Let me see. I have that record. Oh, I think this is
18 it. I recall that it was roughly ten years after he
19 graduated from high school -- not graduated from high
20 school, but after he left high school.

21 Q Okay. So, about -- approximately -- so, approximately
22 ten years after he left high school?

23 A Correct. He left high school in '77 and I'm pretty
24 sure '86 is the first time that -- it shows on the records
25 that the first time it was issued was 1986.

Ginger Calloway - Redirect examination
By Mr. Allen

1 Q Okay. And concerning the solicitor's questions about
2 Mr. Blackwell, you know, the lack of GPS in the, the 80's,
3 90's and that you reviewed, and pursuant to your review of
4 his records, you know, in employment and in talking with
5 various people, did you get a, a sense or did you learn as
6 to how he was directed while he was driving the truck?

7 A Yes. Well, one of the things that I asked him, when I
8 was talking to him about employment, that's one of the
9 questions on the forensic client history and checklist. So,
10 I was talking to him about his various employments and he
11 told me about being a truck driver. So, I asked him how it
12 was that he learned to drive a truck.

13 He grew up in a very rural area of Chesnee, and he
14 learned to drive some farm equipment first, and he then
15 learned to drive a truck from his father. And when he would
16 go to certain places he would have instructions. Like he
17 described to me driving to Cary or close to Cary, North
18 Carolina from close to maybe Holly Springs, and what he did,
19 when he learned how to do that, was he got directions and he
20 had someone go with him a few times and then he learned the
21 route that way, which would be consistent with someone who
22 has mild mental retardation, to learn how to drive that
23 distance that way.

24 When I looked in the records there were a disciplinary
25 action at the -- Belue Trucking where he was found to have

Ginger Calloway - Redirect examination
By Mr. Allen

1 people in the cab with him. So, he did have people in the
2 cab of the truck with him driving with him to certain
3 places. There's one disciplinary action, for example, when
4 he was told -- when he had someone in the -- had his brother
5 in the cab with him. He was told that that was
6 unacceptable.

7 He was told he could use the truck to go ahead and take
8 his brother home, and he went home and then did not return
9 and later was asked about that, and he said that he thought
10 that, since the -- it was raining that day, that the truck
11 wasn't gonna be loaded and he didn't know to come back.

12 So, he did routinely have -- I believe his wife was
13 found to be in the truck with him on one occasion. Those
14 were some disciplinary ways in which it was clear other
15 people were, were driving with him or in the cab with him.
16 Q Okay. Now, in concerning your -- the questions about
17 the Thorazine when you saw him, and, and the blank stare, I
18 mean give me a sense of your interpretation of the, of what
19 you referred to as his staring blankly while you were
20 reading various things to him.

21 A Yeah, the way you start any or the way an examiner is
22 suppose to start any forensic evaluation is that you explain
23 to the person that you're evaluating that whatever they tell
24 you is not confidential. In this particular situation,
25 anything that he told me could show up in my report. I

Ginger Calloway - Redirect examination
By Mr. Allen

1 could be asked to testify about it, and so that's called
2 informed consent.

3 You explain to the subject or the person that's
4 involved in the evaluation this is what we're gonna be
5 doing. I'm going to be asking you a lot of questions, I'm
6 going to be giving you some testing, and anything that you
7 tell me is not confidential, do you understand that.

8 And when I say he looked at me blankly, frankly he
9 looked at me as what I might also or I will call naively.
10 He seemed to be looking at me like oh, yeah, yeah, I
11 understand, but not with true comprehension of this informed
12 consent. So, that's what I was talking about.

13 And also someone who's on Thorazine, I said yesterday,
14 is obvious to -- if they're overmedicated, that's obvious to
15 a lay person because they will slur their words, and they
16 will not be able to focus very well. Often their eyes will
17 close. He didn't engage in any of those kind of behaviors.
18 He was able to attend. He was able to do, on the WAIS, for
19 example, you give a subject both verbal kinds of tests as
20 well as what we call performance subtest. So, like little
21 blocks are given to people and they have to reproduce the
22 design.

23 One of his highest areas---

24 Q That's okay. Please continue.

25 A Okay. One of his highest areas was an area called

Ginger Calloway - Redirect examination
By Mr. Allen

1 working memory. That requires attention. So, part of what
2 goes into working memory is a subtest called digit span, and
3 the digit span subtest starts off with asking the subject to
4 repeat, first of all, a series of three numbers, and then
5 the number string gets longer and longer and longer.

6 The second part of that requires the subject to repeat
7 the numbers backwards. So, you say if I say to you three,
8 five, seven, what are you gonna say and they have to say the
9 number backwards, and the string gets increasingly longer.

10 The third part of that subtest, digit span, has to do
11 with asking the subject -- you give them a set of numbers
12 that are in a mixed up or random order, and you ask them to
13 put those numbers in a proper order starting from one, two,
14 three, four, five. That was one of his highest subject
15 areas, subtest scores.

16 So, that told me he was paying very good attention, but
17 the look he had on his face when I was trying to explain
18 informed consent to him or did explain informed consent was
19 one of where he, he looked naively like a kid would look at
20 you like I don't really get what you're saying, but I'm
21 gonna agree with you.

22 Q Okay. And is, is that a characteristic of those with
23 mild mental, mental retardation as far as the way he was
24 responding?

25 A Yes, the, the -- there's even a technical term for it.

Ginger Calloway - Redirect examination
By Mr. Allen

1 It's called acquiescence bias. What that means is just that
2 many mildly retarded people will agree, if you say now do
3 you agree, they will say oh, yeah, yeah I agree. So, part
4 of what an examiner can and should do with someone who's
5 mildly mentally retarded is go into more depth with the
6 questions to really test whether that person really is
7 understanding what it is that you're asking them, and that's
8 part of why it took me so long to interview him and test him
9 is because I went into great depth because it's also
10 typical, for mildly mentally retarded people, to give short
11 answers.

12 So, when he wouldn't give me a very elaborated answer,
13 then I would ask him, I would ask more detail or I would
14 simplify the question so that he could answer that question
15 and give me a more complete answer.

16 Q Okay. And with respect to the solicitor's questions
17 concerning the people you spoke with on the ABIS and that
18 evaluation and also again showing Defense Exhibit 6, there
19 are other people on there other than his family?

20 A That's correct.

21 Q Okay.

22 A Yes.

23 Q How many family members?

24 A Well, there's Mildred, Cletus, and Heather. So,
25 they're three. And then the non-family members, Ken, Jean,

Ginger Calloway - Redirect examination
By Mr. Allen

1 Louise, Mr. Bagwell, and Ms. Shook. So, that's five.

2 Q Okay. But on the composite scores, Louise,
3 Mr. Bagwell, and Ms. Shook, did not provide sufficient
4 information for you to score their---

5 A That's correct. One of the things that I did, I think
6 I explained this yesterday, but because Mr. Bagwell and Ms.
7 Shook would know something about the work area, then I took
8 that section of the ABIS and asked them, used it as an
9 interview, and asked them specific questions in that work
10 area so I could better understand what he was like as an
11 employee. However, they didn't give enough information on
12 areas like home living or community use to -- for me to get
13 a complete score.

14 So, that is why I listed it was insufficient
15 information to score. It was okay to use the ABIS to get
16 that kind of information, but then there wasn't enough
17 information to score.

18 Q Okay. Now, going to the information on the school
19 class rank.

20 Did anyone tell you how that rank was arrived at?

21 A We talked about it with Ms. Scruggs, but I don't recall
22 exactly what she said. The -- go ahead. I'm sorry.

23 Q Well, what I'm getting at is did anyone with the school
24 district or anyone tell you that the reason that he was 113
25 out of 113 was because he dropped out?

Ginger Calloway - Redirect examination
By Mr. Allen

1 A No one told me that, no.

2 Q Okay. And was there anything in the records as to how
3 he got that ranking?

4 A No, I didn't find anything that said that he got it
5 other than because he -- his class rank was 113. The, the
6 actual statement says class rank, 113 out of a class of 113.

7 Q Okay. Now, I'm putting Defense 4 back up on the screen
8 where the elementary school records or elementary grades are
9 shown.

10 For someone who's mildly mentally retarded, do you --
11 what do you expect to find as far as how their grades
12 progress in a schooling history?

13 A Well, as school subjects, I said this yesterday, but I
14 believe that, as school subjects get more difficult, more
15 challenging, more abstract, more complex, then you would
16 expect that someone with mild mental retardation would not
17 be able to do as well, and, in fact, that's the pathway that
18 he takes. He does fine at the elementary level where
19 there's a lot of repetition. There's a lot of simplicity to
20 the school subjects. They're very basic I guess would be
21 another word to use.

22 But then when one starts to get into the fifth, sixth,
23 and seventh grade and the subjects become more and more
24 difficult, more challenging, more complex, more compound,
25 then that's when you begin to see mild mentally retarded

Ginger Calloway - Redirect examination
By Mr. Allen

1 people begin to have more trouble and that's what happened
2 with him with the exception of spelling, I mentioned that,
3 which is memorization tasks, and, again, remember that was
4 his best area on the WAIS. That was a skill for him, and
5 that is sometimes what you get with mildly mentally retarded
6 people because, if they can remember short term, they can
7 look smarter than that are.

8 Q Okay. And then about the mental health records that
9 were mentioned, a 1990 incident where he shot the gun up and
10 I think the solicitor mentioned the marijuana, and the, and
11 the beers that he reported to have drank.

12 Was it -- what was the diagnosis, according to the
13 records of that particular admission or, or incident?

14 A I am pretty sure it's major mental -- a major
15 depressive disorder, which is an Axis I disorder, meaning
16 it's a mental illness. If you'd like me to -- let me, let
17 me double-check and make absolutely sure. I'm almost
18 positive --

19 Q Yes, ma'am.

20 A -- that's what it is.

21 Yes, major depressive disorder recurrent, which means
22 he's had it before and they're diagnosing it again. A
23 partial remission. So, he was somewhat better, not totally
24 better, at discharge.

25 MR. ALLEN: Okay. Excuse me, Your Honor.

Ginger Calloway - Redirect examination
By Mr. Allen

1 If I may have a moment?

2 THE COURT: Yes, sir.

3 (Pause.)

4 MR. ALLEN: No other questions, Doctor Calloway.

5 SOLICITOR BARNETTE: Just a couple.

6 THE COURT: Mr. Barnette.

7 SOLICITOR BARNETTE: Just a couple on recross, Your
8 Honor.

9 THE COURT: Yes, sir.

10 RE CROSS EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q You was talking about disciplinary actions, doctor.

13 You said one was with his brother in the truck and one
14 with his wife in the truck?

15 A (Witness nods affirmatively.)

16 Q Well, you're not suppose to use business vehicles for
17 your personal use, are you?

18 A That's my understanding.

19 Q All right. That's why he got disciplined from that
20 standpoint, isn't that correct?

21 A I don't know that Belue disciplined him, but he was
22 disciplined and he did have the people in the cab with him
23 that he should not have had.

24 Q So, you -- so -- but this is a man that drove to Texas,
25 New Jersey, New York in tanker trucks?

Ginger Calloway - Recross examination
By Solicitor Barnette

1 A That's what his application says, yes.

2 Q So, he drove to all these areas, and, like I said, we
3 didn't have GPS back then. He has to keep track of his gas,
4 his money, his mileage, everything.

5 Correct?

6 A That is what he is suppose to do.

7 Q Right, and he did. I mean he worked for different
8 trucking companies.

9 Matter of fact, they rehired him, some of these
10 trucking companies did though, didn't they?

11 A One -- I believe one of them did, yes.

12 Q Well, well, Belue did three times, didn't they?

13 Showing you State Exhibit -- I mean Defense Exhibit No.
14 5 cause you corrected me. It's '84, '85 and '86.

15 A That he worked with Belue, yes.

16 Q Okay.

17 A '84, '85, and '86.

18 Q And with Hess Corporation, like I said, they deal with
19 gasoline, '82 and '83, isn't that correct, ma'am?

20 A Yes, he worked with Hess in '82 and '83, that's
21 correct.

22 Q And this is dangerous materials that these people are
23 taking. I mean, you know, when you have gasoline and a
24 trucker, I mean tanker, that's pretty dangerous stuff if you
25 wreck with it?

Ginger Calloway - Recross examination
By Solicitor Barnette

1 Would you say so, doctor?

2 A Yes, that would be -- that would be correct.

3 Q And talking about high school records about high
4 school, isn't it true a lot of people, when they get to
5 their teenage years, have a lot of trouble with school?

6 They get other distractions. It could be girls and
7 boys, could be drugs, could be alcohol. Obviously, there's
8 a lot of reasons why your grades may drop.

9 Correct?

10 A That question has a number of different parts, and so
11 what do you mean by most people?

12 Q When kids are in high school, they get other
13 distractions, don't they?

14 A Some children do.

15 Q Yes.

16 And some of their grades drop?

17 Some drop some, some drop a lot, isn't that correct?

18 A Some do.

19 Q So, it easily could of been something about that
20 instead of just what his mental capabilities was?

21 A The fact that he had difficulty with subjects, as time
22 progressed, was also supported by the fact that he was
23 placed in adjunct classes. That was supported by the fact
24 that he failed the ninth grade despite being in adjunct
25 classes. In addition, he was placed in another program

Ginger Calloway - Recross examination
By Solicitor Barnette

1 called Program Succeed. So, there is a pattern there of his
2 having difficulty with school as the school subjects become
3 more challenging and more difficult.

4 Q Wouldn't you say things become more challenging from
5 first grade up to fifth grade?

6 A Somewhat.

7 Q Yes, ma'am.

8 Matter of fact, in his first grade, his IQ score was a
9 68, correct?

10 This is on -- let me refer to this. This is actually
11 Defense Exhibit -- be Defense Exhibit 4.

12 It was a 68, right?

13 A He---

14 Q Give you a chance to refer to your notes.

15 A Pardon me?

16 Q Give you a chance to refer to your notes, ma'am.

17 A Thank you.

18 (Pause.)

19 A There was a chart and that's what I'm looking for.

20 Is that what you have there?

21 Q I do have a chart, ma'am.

22 Okay. Here -- I believe this is the chart you're
23 looking for, ma'am. Part -- it's still part of Defendant's
24 Exhibit 4.

25 Is this the chart you was looking for in the right side

Ginger Calloway - Recross examination
By Solicitor Barnette

1 of it?

2 A No, I was actually looking for a chart that was
3 presented yesterday with his -- where it compared the grades
4 as well as all the standardized test scores. That's the one
5 I was looking for.

6 Oh, here it is. This pulls all the information
7 together. It's a little easier to look at.

8 Q Okay. But in first grade, it was a 68 if I understand
9 right?

10 A He obtained a score of 68 on a mental -- a test of
11 mental maturity.

12 Q Okay. And then, in third grade, he had an IQ of 87?

13 A He obtained a score of 87 on the same test of mental
14 maturity, yes.

15 Q So obviously he can learn?

16 A Yes, that is very characteristic of mildly mentally
17 retarded people. They can learn.

18 Q Well, it's also a characteristic of everyday people
19 that can learn too, isn't it, doctor?

20 A Average students would score higher than that, and it
21 is typical for average students, as you're talking about, to
22 also learn, correct.

23 Q Right.

24 But they learn just as well, isn't that right?

25 A No, they don't. The rate is different.

Ginger Calloway - Recross examination
By Solicitor Barnette

1 Q And like I said before, you're the only person that has
2 found him mentally retarded, isn't that correct?

3 A I'm the only person that's given him a diagnosis of
4 mental retardation that I am aware of.

5 Q Yes, ma'am.

6 Nobody else has, have they?

7 A And no one else has concluded that that I'm aware of.

8 SOLICITOR BARNETTE: Thank you, Your Honor.

9 THE COURT: All right, ma'am. You may step down.
10 Wish to excuse the witness?

11 MR. ALLEN: I do, Your Honor.

12 THE COURT: Any objections?

13 SOLICITOR BARNETTE: No objection, Your Honor.

14 THE COURT: You're free to go, ma'am.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 All right. Defense may call its next witness.

18 MR. MCGUIRE: Your Honor, my understanding is the State
19 has an objection to the subject matter of the next witness.

20 THE COURT: All right. Well, ladies and gentlemen of
21 the jury, I'll ask you to step back to the jury room while I
22 take up that matter. As always, I'll ask you not to begin
23 any discussions about the case until I've asked you to do
24 so.

25 You may retire to the jury room.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: The next witness is going to be?

4 MR. MCGUIRE: Ms. Gracie Williams, records custodian
5 from Spartanburg Regional.

6 THE COURT: All right.

7 MR. MCGUIRE: The records---

8 THE COURT: Objections?

9 MR. MCGUIRE: I'm sorry. Just to make the record
10 clear, I'm gonna mark the document for ID for purposes of
11 the record.

12 THE COURT: All right.

13 MR. MCGUIRE: Just for ID, ma'am, and I'll, and I'll
14 hand it up to the Court.

15 THE COURT: She has to take that down. So, give her a
16 second.

17 (WHEREUPON, the medical records were marked as
18 Defendant's Exhibit No. 8 for identification purposes only
19 at this time.)

20 MR. MCGUIRE: And I'll hand it up to the Court.

21 THE COURT: Thank you.

22 (Pause.)

23 THE COURT: State's objection?

24 SOLICITOR BARNETTE: Your Honor, I believe he wants to
25 introduce the bottom, the patient was struggling with guilt,

1 and wanted to tell his grandchildren he loved them, and that
2 part of the section. There's no exception for the hearsay,
3 Your Honor. It doesn't go to diagnosis in this situation,
4 and we would object to that, and what's following after
5 that. That doesn't allow any hearsay objection -- exception
6 that I know of.

7 THE COURT: All right. Can you tell me in what context
8 that statement was made?

9 MR. MCGUIRE: Me, yes?

10 THE COURT: Yes, sir.

11 MR. MCGUIRE: You'll note on the record there are two
12 chaplains noted at the bottom, Abigail Moon and Victoria
13 Hess. Their initials appear as the person who entered that
14 notation, and, in their interaction with Mr. Blackwell, this
15 is, this is the substance of the -- their interaction, and
16 the document itself is a record of regularly conducted
17 activity at Spartanburg Hospital, and the records custodian
18 is here to testify to that fact.

19 THE COURT: Yes, Mr. Barnette.

20 SOLICITOR BARNETTE: Your Honor, I understand that you
21 can introduce records and so forth, but this is obviously
22 two things. This is not a diagnosis, number one.

23 Number two, obviously these witnesses are available. I
24 would assume they can call them, and I'd object to the
25 hearsay. It's not an exception to the hearsay rule in this

1 situation, and obviously it's highly prejudicial on top of
2 that.

3 THE COURT: Well, it, it --.

4 SOLICITOR BARNETTE: It's not more than probative---

5 THE COURT: It looks like a -- I'm trying to -- they
6 use some code words here that I'm trying to figure out. It
7 says intervene responds.

8 Can you tell me -- I'm not sure what that means.

9 Then it says AWM. I'm not sure what those---

10 MR. MCGUIRE: That's Abigail Moon.

11 THE COURT: That's her initials?

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: All right. So, is this, is this an
14 intervention response?

15 I'm not sure what that code means.

16 Do you know what that means?

17 MR. MCGUIRE: I don't. I mean my understanding is --
18 we interviewed the chaplains and -- some time ago. They
19 didn't have much memory actually of this event. So, their
20 notes are actually the best evidence of it. I did not ask
21 them what that notation means.

22 THE COURT: Well, I understand that, but, again, the
23 records can come in, but not opinions contained in records.

24 I'm not -- is this -- it appears -- it says patient was
25 struggling with guilt, and wanting to tell his grandchildren

1 he loved them. He was struggling with his actions and what
2 had been done, and then the second indicates -- second
3 statement, again, reviewed -- it's referred to as an
4 intervene response, whatever that is, was sad, had some
5 prayers in his heart, asked for prayers for the family. We
6 prayed that -- the Lord's Prayer together.

7 If that's their evaluation of him or their opinion
8 concerning him, these are not medical professionals. These
9 are chaplains.

10 Is that what I understood?

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: All right. I'm gonna take a short break.
13 Anything else, Mr. Barnette?

14 SOLICITOR BARNETTE: Yes, sir, I just found a case,
15 State versus Burrows, and I don't have a copy of it
16 unfortunately. But it's 328 S.C. Reporter 489. It's 492
17 S.E.2d 408, Your Honor, Court of Appeals case from 1997.
18 Held that statements of the victims made to police officer,
19 nurse, that her alleged rapist asked if he could have a hug
20 was inadmissible hearsay, and -- in this case and was
21 bolstering testimony, Your Honor. The statement is -- no
22 way could be viewed as reasonably pertinent to the victim's
23 diagnosis or treatment.

24 THE COURT: I don't, I don't---

25 MR. MCGUIRE: I'm not---

1 THE COURT: I don't see this is as a diagnostic---

2 MR. MCGUIRE: That's not my position.

3 THE COURT: All right. Your position is it's just a
4 regularly kept business record?

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: All right. Okay. I'll take a brief moment
7 to take a look at it.

8 Court will be in recess for about ten minutes.

9 Everyone remain seated while the defendant retires
10 please.

11 Thank you.

12 (WHEREUPON, a short recess was taken at this time.)

13 THE COURT: All right. In reviewing the document
14 that's been submitted, it appears that is a record from the
15 Spartanburg Regional Hospital from the Chaplain's Office. I
16 assume that the pertinent portions are the parts that I
17 discussed earlier that state the patient was struggling with
18 guilt. wanted to tell his grandchildren he loved them. He
19 was struggling with his actions and what had been done, and
20 another entry, the next day, by a different individual said
21 but he was sad, had some prayers in his heart, asked for the
22 family. We prayed the Lord's Prayer together.

23 The case cited by Mr. Barnette does appear to be on
24 point. Also the exception to the hearsay rule for regularly
25 kept business records states that matters which are in the

1 nature of an opinion will not be admitted as an exception to
2 the hearsay rule from a regularly kept business record.

3 It appears that the quotes in here that describe the
4 defendant would be in the form of opinions given by the
5 individuals involved, and therefore, I'll grant the State's
6 motion.

7 If you'd like to proffer it I'll allow you to do so.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: All right.

10 MR. MCGUIRE: For purposes of the proffer, call Gracie
11 Williams.

12 THE COURT: Come forward please, ma'am. Over here to
13 my left. Please be sworn please, ma'am.

14 GRACIE WILLIAMS, having been first
15 duly sworn, testified as follows:

16 THE COURT: Ma'am, once you're seated, state your name
17 for me.

18 THE WITNESS: Gracie Williams.

19 THE COURT: Thank you.

20 Mr. McGuire, you may proceed.

21 MR. MCGUIRE: Thank you, judge.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. MCGUIRE:

25 Q Ms. Williams, where are you employed?

Gracie Williams - Direct examination
By Mr. McGuire

1 A Spartanburg Regional Health Care Center.

2 Q And are you -- a part of your job description is being
3 custodian of records there?

4 A Yes.

5 Q And I'm going to show you what's been marked Defense
6 Exhibit No. 8 for identification purposes.

7 Would that be a record from Spartanburg Regional?

8 A Yes.

9 Q And is that a type of record that would be kept in the
10 regular course of business there?

11 A Yes.

12 Q And the information on there would be recorded on a
13 document such as that at or about the time the information
14 existed?

15 A Yes.

16 Q And these are the records that are in your, your care
17 and custody?

18 A Yes, sir.

19 Q And you have -- there's no issue as to whether it's
20 genuine or not, in your opinion?

21 A No, sir.

22 MR. MCGUIRE: Okay. And, judge, I would mark it as the
23 proffer.

24 THE COURT: Okay. It has been proffered.

25 Wish to ask any questions, Mr. Barnette?

1 SOLICITOR BARNETTE: No, sir.

2 THE COURT: All right. Ma'am, you may step down.
3 Wish to excuse the witness?

4 MR. MCGUIRE: Yes, if the witness could be excused.

5 THE COURT: Any objections?

6 SOLICITOR BARNETTE: No objections.

7 THE COURT: Ma'am, you're free to go. You have a nice
8 day today. Thank you very much.

9 Yes, sir.

10 MR. MCGUIRE: Just for the record, put my objection on
11 the record with regard --

12 THE COURT: Yes, sir.

13 MR. MCGUIRE: -- to the, to the not allowing this
14 evidence that -- the State called an officer who talked
15 about lack of remorse at the emergency room bed that
16 Mr. Blackwell was in as he was being worked on after the --
17 shooting himself with a -- the pistol, and that interview
18 was 11 minutes long, and I asked him if he did any
19 follow-up, did he go back to the hospital, did he talk to
20 any chaplains, nurses, doctors.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. MCGUIRE: He indicated no, and this document, which
23 states that -- the entry from Abigail Moon is that the
24 patient was struggling with guilt and with wanting to tell
25 his grandchildren that he loved them. He was struggling

1 with his actions and what he had done, and then the notation
2 by Virginia Hess indicates that patient was sad, had some
3 prayers in his heart, asked for prayers for the family, and
4 we prayed the Lord's prayer together. I think this would be
5 clear evidence of, of remorse, and that he, in struggling
6 with his actions, and---

7 THE COURT: Well, I, I -- the reason -- my reason for
8 my ruling is not as to its relevance. I'm -- it's not the
9 issue.

10 MR. MCGUIRE: And---

11 THE COURT: It's the manner in which it's been
12 presented. Now, the -- if you have the people who were
13 involved in those conversations to testify, they're -- I
14 don't have any problem with it being presented, but the
15 ruling has nothing to do with the relevance. It's the, the
16 fashion in which it's being presented. It's been presented
17 as a business record, which is Rule 803(6), and, again, that
18 rule states that those are allowed in except where they
19 contain subjective opinions and judgments, they are not
20 admissible, and I think those are opinions of those people
21 who were involved in those activities as to what they
22 observed and what they saw. It's their opinions as to his
23 demeanor. So --.

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: My ruling would be the same. I understand

1 your position.

2 MR. MCGUIRE: Sure.

3 THE COURT: My ruling's not on relevance though.

4 MR. MCGUIRE: I understand. And just for the record,
5 we would stand on the cases of Maryland Mills, Georgia
6 Green, Sears versus Upton, all United States Supreme Court
7 cases where they indicated the rules of evidence,
8 particularly hearsay, would necessarily fold in, in the face
9 of presenting mitigation evidence and that the failure to---

10 THE COURT: Yes, sir, but it seems, it seems to me that
11 you, from your statements earlier, you've interviewed the
12 people involved, the nurses. They are available. So --.

13 MR. MCGUIRE: Well, actually they -- I can tell you
14 it's four and a half years ago.

15 THE COURT: Uh-huh. (Affirmative).

16 MR. MCGUIRE: And they're gonna say I don't have a
17 recollection of this.

18 THE COURT: Well, I don't know what they -- you know,
19 well, there, there are things to do about that, but I'm
20 not -- I don't get into that. I'm ruling on what's in front
21 of me.

22 MR. MCGUIRE: Sure.

23 And just to, just to finish for the record, failure to
24 admit this would, would violate Mr. Blackwell's Eighth
25 Amendment right to present mitigation evidence to the jury.

1 THE COURT: I understand your position.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: Court's made its ruling.

4 You may call your next witness.

5 That document has to go in the record.

6 MR. MCGUIRE: The one that's marked is.

7 THE COURT: It's in?

8 I saw you had one in your hand. I you just wanted to
9 be we didn't misplace it. It's the one --.

10 MR. MCGUIRE: I hope this -- there it is.

11 THE COURT: Okay. Just wanted to be sure that got put
12 in the record.

13 MR. MCGUIRE: Yeah, I just wanted to make sure Ms.
14 Williams didn't take off with it.

15 THE COURT: Okay. All right. You may call your next
16 witness.

17 MR. MCGUIRE: Next witness would actually be for a
18 jury.

19 THE COURT: Would be what now?

20 MR. MCGUIRE: For a jury. For a jury.

21 THE COURT: Oh, I understand.

22 Are you ready to call your next witness?

23 MR. MCGUIRE: Yes, sir. Yes, sir.

24 THE COURT: Okay. I guess that's where we are.

25 All right. State ready?

1 SOLICITOR BARNETTE: well, it depends on the -- who's
2 the witness, the witness. I'm just curious.

3 MR. MCGUIRE: Doctor Schwartz-Watts. Doctor.

4 THE COURT: All right. State's position on that one?

5 SOLICITOR GHENT: We have the report, Your Honor, but
6 as previously indicated, I will need some time to prepare
7 for cross-examination.

8 THE COURT: All right. Do you want to do that now or
9 do you want to wait until after you've heard the direct
10 testimony?

11 SOLICITOR GHENT: I'm fine with letting her direct
12 testimony go in and then we'll do it afterwards.

13 THE COURT: All right. Okay. We did note that the
14 defense refused to turn over her report to the, to the
15 State, and I did indicate that, at the time of her
16 testimony, I would allow the State some additional time, if
17 needed, for cross-examination purposes.

18 SOLICITOR GHENT: It is needed, Your Honor.

19 THE COURT: All right. We'll make that determination
20 when she's testifying.

21 All right. Let's bring the jury in.

22 SOLICITOR GHENT: Thank you.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: The record will reflect that the jury has

1 returned to the courtroom.

2 At this time the defense may call its next witness.

3 MR. MCGUIRE: Thank you, Your Honor.

4 Defense calls Doctor Donna Schwartz-Watts.

5 THE COURT: Come forward please to be sworn to my left.

6 DONNA SCHWARTZ-WATTS, having been first
7 duly sworn, testified as follows:

8 THE COURT: Have a seat please, ma'am. Once seated,
9 state your name.

10 THE WITNESS: Yes, sir. Donna Marie Schwartz-Watts.
11 S-C-H-W-A-R-T-Z-W-A-T-T-S.

12 THE COURT: Thank you.

13 Your witness, Mr. McGuire.

14 MR. MCGUIRE: Thank you very much, judge.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 Q Doctor Schwartz-Watts, if you would, tell the Court and
19 the jury a summary of your education, experience beginning
20 with your obtaining your medical degree.

21 SOLICITOR GHENT: Your Honor, we stipulate to her
22 qualifications to testify.

23 THE COURT: In what field?

24 what is she being offered for, Mr. McGuire?

25 MR. MCGUIRE: Well, while generally she testifies as a

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By Mr. McGuire

1 forensic psychiatrist, it would be in the field of general
2 psychiatry today.

3 THE COURT: All right. Any objections?

4 SOLICITOR GHENT: Stipulate.

5 THE COURT: All right. So, the parties have stipulated
6 as to her qualifications. That means the Court will qualify
7 her as an expert.

8 I've explained to you what that designation means. She
9 will be allowed to state her opinions on matters within her
10 expertise.

11 You may proceed.

12 MR. MCGUIRE: Thank you very much, judge.

13 Q Still I want to let everybody know who you are.

14 If you could, tell us what your occupation is.

15 A Sure. I have two jobs. I'm a senior psychiatrist
16 right now at Harris Psychiatric Hospital. That's an
17 inpatient facility in Anderson, South Carolina. So, I'm
18 actually a psychiatrist there treating patients everyday. I
19 work on a female unit and so I take care of women with acute
20 mental illness. And then I also have a part-time private
21 practice in forensic psychiatry, which is a subspecialty of
22 psychiatry.

23 Q And have you testified in the Circuit Court in South
24 Carolina numerous times?

25 A I have.

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1 Q About how many?

2 A Over 700. Somewhere around there.

3 Q Okay. And both for the State and the defense?

4 A Yes.

5 Q And you were engaged in this case by me --

6 A Yes.

7 Q -- to do an evaluation on Mr. Ricky Lee Blackwell?

8 A That's correct.

9 Q Okay. What I'd like to do is focus on the psychiatric
10 issues first if you don't mind.

11 Can you give us a summary of his psychiatric history?

12 A Sure.

13 I, I evaluated Mr. Blackwell in the Spartanburg County
14 Detention Center a number of times. I conducted interviews
15 of him and performed what's called a mental status
16 examination, which is similar to your internist physical
17 exam. You're looking at someone's brain and how they -- how
18 it functions, how they think, how they feel, that sort of
19 thing.

20 After evaluating him and treating him over a period of
21 time, I also later was given records about his prior
22 treatments, and so it's very important in his case, since he
23 has a history of two prior psychiatric hospitalizations, so
24 that means he's been inpatient on two different periods.

25 Q Could you tell the jury the specifics of the 1990

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1 hospitalization where he was in the psychiatric hospital,
2 the events that led to that?

3 A Yes, he was actually at Patrick Harris Hospital. Now
4 that was before I worked there, but in -- on March 1990 he
5 was admitted there. He had come in. He was at the Mental
6 Health Center and was referred there to the hospital.

7 At that time he was diagnosed with depression. He had
8 fired a gun through the roof of his mobile home, and, at the
9 time he had reported depression, he had a cancer known as
10 Hodgkin's Lymphoma. It's a serious cancer. It involves
11 your lymph nodes and so he was ill at that time, and he also
12 had some financial problems, and he also, around that period
13 of time, had been drinking and, and using some marijuana,
14 and he had, had developed more financial problems, got very
15 stressed out, and developed what's called a major
16 depression, which it's a serious mental disorder that
17 requires medication for treatment.

18 Q Okay. And was the event classified as a suicidal
19 gesture?

20 A Yes.

21 Q And what are the details of that?

22 A He -- again, he was upset. He was in his trailer and
23 fired -- actually had a gun, loaded gun, and fired it
24 through the roof, and that was not behavior typical of him.

25 Q Okay. Now, shortly before this incident, in December

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1 of '08, he was hospitalized again?

2 A Yes.

3 Q And tell the jury about that.

4 A Yes, this time he, he didn't go to Patrick Harris, and
5 what happens in this area, people go to the -- usually to
6 the emergency room. So, he was at Spartanburg Regional, and
7 then when he -- the doctor's there will civilly commit you
8 if they think that you need inpatient treatment, and now it
9 takes -- sometimes you have to go to a different hospital to
10 get a bed.

11 So, for example, if Patrick Harris is full, he may be
12 referred to another hospital. So, this hospitalization, he
13 went to the Spartanburg Regional Medical Center, and then
14 they admitted him from there to the Carolina, Carolina
15 Center for Behavioral Health Services.

16 Q And that's an inpatient, he can't leave,
17 hospitalization?

18 A That's correct.

19 Q Because he was a danger to himself?

20 A That's correct.

21 Q And the event that led up to that psychiatric inpatient
22 commitment, what were the facts?

23 A Some of the quotes -- he, he had overdosed on Xanax.
24 He had been prescribed Xanax by his treating doctor in the
25 community, and he had overdosed on them. The notes noted

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1 that he was upset, he was sobbing hysterically. His wife
2 had left him, and he was considered a significant risk to
3 himself.

4 When he went into the hospital, he had also been
5 unemployed since May. So, he had some stressors there.
6 They had noted that he had a deterioration in his hygiene
7 meaning his ability to shower, keep himself up, and take
8 care of himself. He -- their, their notes were that he was
9 overwhelmed. His wife had come to visit, to look -- visit
10 with the grandchildren. He begged and pleaded for her to
11 stay with him. When she didn't, he went into his truck and
12 then overdosed on the Xanax and then was admitted.

13 Q Okay. He took about 30 pills I think is the report?

14 A Yeah, I've seen different, different records. But yes,
15 it's -- that's about the amount.

16 Q When he was hospitalized after this incident, did he
17 indicate that he was actually hearing his wife's voice?

18 A Yes.

19 Q Okay.

20 A What he would report, he'd wake up in the morning and,
21 and hear his wife and think that she was with him.

22 Q The -- when he was admitted, not just that day, but the
23 days, weeks leading up to that, did he report just daily
24 crying spells?

25 A Yes.

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1 Q And is that consistent with the diagnosis of depression
2 disorder?

3 A Sure. For, for depression, you have two weeks where
4 everyday you don't feel well. You have a depressed mood and
5 you have other symptoms. You don't sleep well. Your
6 appetite may be disturbed. You can have what's called
7 rumination, which is excessive worries. You can have
8 excessive guilt. You can develop suicidal ideations. That
9 happens. That's one of the complications of depression.
10 And then that's another complication where you can
11 actually -- some people do -- can hear voices or hallucinate
12 with, with some forms of depression. So, all those symptoms
13 are consistent.

14 Q Okay. And his audio hallucination was his wife's
15 voice?

16 A Yes.

17 Q Obviously they, they let Ricky out eventually.

18 What's the procedure to let somebody out?

19 How are they stabilized?

20 A Sure. Well, they treated him with medicines. Major
21 depression, it's a physical illness, and it -- you have
22 physical symptoms. You don't sleep. You don't eat. You
23 worry. And so medications improve that condition.

24 So, they stabilized him. He was on an antipsychotic
25 called Remeron. That's one that you take at night. It

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1 helps you sleep, and it improves your appetite. They had
2 also given him a sleeping medicine called Ambien, which is
3 indicated for insomnia, and then they gave him an
4 antianxiety medication known as Visceral.

5 So, he was medicated and then he participated in some
6 groups. The hospital programs will usually have groups that
7 teach you how to cope with your symptoms. They'll educate
8 you about what your illness is, and he had -- and they
9 improved his coping skills is what they also put -- listed
10 as a goal for him.

11 Q Okay. So, he -- I'm assuming he was taken off Xanax?

12 A That's correct.

13 Q And especially since that was the drug he tried to --
14 used to kill himself with.

15 That would of been a normal course of practice?

16 A That's correct. That's certainly -- that's standard
17 practice. If you overdose on a medication, there's some
18 concern that you'll do that again. But also depressions,
19 they have anxiety with them, and Xanax is a great medicine
20 for short term management of anxiety, but in terms of long
21 term management of anxiety and depression, it's, it's --
22 they're probably other medications that will work just as
23 well.

24 Q Okay. Is Xanax a disinhibitor?

25 A It can be.

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1 Q Okay. What does that mean?

2 A In -- there's certain types of people, if you take too
3 much Xanax, you get what's called disinhibited and the best
4 example I can give you is you -- if you've ever seen someone
5 that drinks alcohol and they become mean, we'd say "a mean
6 drunk" or you can see people that maybe would say things
7 they normally wouldn't say because they're somewhat
8 intoxicated.

9 Also, in people that have some underlying brain
10 disfunction, it can also disinhibit meaning that they may
11 have behaviors they normally don't. They might get more
12 agitated.

13 Q Okay. Now, in forming your opinions as to
14 Mr. Blackwell's psychiatric state with regard to this
15 incident, did you also interview his primary care provider?

16 A No, but I relied on notes. He, he was treated by
17 Doctor Jackson and I relied on some notes that documented
18 the interview with him.

19 Q Okay. And he's at Westgate Physicians?

20 A That's correct.

21 Q And with regard to the review of those records, are
22 they also consistent with your findings of major depressive
23 order?

24 A Absolutely.

25 Q And if you can tell the jury a little bit about his

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By Mr. McGuire

1 treatment with Doctor Jackson at Westgate?

2 A Yes, Doctor Jackson had treated Mr. Blackwell for a
3 number of years and was aware of the lymphoma.

4 Mr. Blackwell also had a lot of other medical conditions
5 that Doctor Jackson took care of. He had some chronic
6 obstructed pulmonary disease. It required inhalers. He had
7 high blood pressure and required treatment for that. So, he
8 had another -- a number of other medical conditions as well,
9 and Doctor Jackson treated both his psychiatric and his
10 medical conditions.

11 The gist of Doctor Jackson's notes is that
12 Mr. Blackwell was very depressed and very upset over his
13 relationship ending with his wife, and Doctor Jackson also
14 noted there were times where he would cry uncontrollably and
15 that he tried to counsel with him and prescribed medications
16 for him as well. And the, the records also noted that
17 Mr. Blackwell often -- his wife would usually accompany him
18 to appointments in the past and that he -- she would, she
19 was certainly active in his care and played a role in that.

20 Q Okay.

21 A And that was a very -- a loss for him.

22 Q What I, what I want to do right now is to -- you, you
23 indicated -- you referenced just generally some health
24 issues. Obviously you're a medical doctor.

25 What is your general opinion with regard to his

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By Mr. McGuire

1 physical health, Ricky's, Ricky's physical health?

2 A It waxes and wanes some. It was -- it had been poor
3 recently. As you know, Mr. -- I don't know if they knew.
4 Mr. Blackwell had shot himself around the period of time of
5 this crime as well, and so he required medical care.

6 He had had the Hodgkin's Lymphoma. That presented in
7 about 1986 or 1987, and, and this was serious. He had to
8 have chemotherapy. He had long term treatment of that.
9 He's been cleared of that medically. He usually has to have
10 an x-ray yearly cause it can reoccur in your lungs, and he's
11 been cleared from that although he has to continue to be
12 followed up for that for the remainder of his life.

13 He's had other things that were significant. He's got
14 some low back pain. He fell from some stairs, and, and
15 developed -- and had some disk problems with that. He has
16 high blood pressure and he takes medication for that.
17 Back -- he was hospitalized again. He had had -- after his
18 Hodgkin's, he had severe nausea and vomiting and actually
19 had to have a surgery. He had a hernia in his stomach that
20 they had to actually take a piece of stomach and wrap it
21 around his esophagus. So, he's had some major abdominal
22 surgery before.

23 He's had his gall gladder out. He's had his tonsils
24 and adenoids out. But most recently, in response probably
25 to the medications I had prescribed for him while he was at

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1 the detention center, he developed what's called a small
2 bowel obstruction meaning that his bowel got paralyzed. It
3 wasn't moving the food and digesting materials though his GI
4 symptom -- system, and because of that, he developed kind of
5 a constipation that got more severe and went to his small
6 intestine and that required -- he was not allowed to eat for
7 a number of days, and we had to change some of his
8 medications.

9 So, he's -- his, his health has been poor at times.

10 Q Okay. And with regard to the, the intestinal failure,
11 he was hospitalized for that?

12 A Yes, he was.

13 Q And taken from the jail to a hospital for several days?

14 A That's correct.

15 Q Going back to Doctor Jackson's records, after Angie
16 left Ricky, what does he report in his records with regard
17 to Ricky's depression?

18 Is it, is it sort of average depression or was it
19 markedly different?

20 A His term was it was very different. It was way far out
21 for depression. Much more than a grief reaction.

22 Q And did he use the phrase in his records it was grief
23 beyond consolation?

24 A Yes.

25 Q Okay. Now, if you would, tell the jury what your

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By Mr. McGuire

1 opinion is as to Mr. Blackwell's psychiatric state at the
2 time of this incident.

3 A I, I didn't look at that. I need to qualify that, and
4 part of my job that sometimes that is my job is to look at
5 somebody's mental state, what they were thinking as an act
6 was committed.

7 My role was different here. My role was to treat
8 Mr. Blackwell, and so, as a general psychiatrist, I treated
9 his depression and his anxiety and helped to manage that in
10 the detention center. So, the only opinion I'm able to give
11 today would be that, in my opinion, he's had a history of
12 major depression before. He's had two episodes before when
13 he was hospitalized, and it's clear, from looking at Doctor
14 Jackson's records, that he remained depressed before this
15 incident, and it's very clear that, since I treated him at
16 the jail, he had had symptoms of depression as well.

17 So, the opinion that I could offer to you-all was that
18 he was suffering from a major depression at that time.

19 Q Sure.

20 And in your role as a forensic psychiatrist, sometimes
21 you're called upon to answer the question with somebody so
22 insane at that time that didn't know right from wrong.

23 You weren't engaged for that purpose?

24 A No.

25 Q And we also have, in South Carolina, a phrase in the

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By Mr. McGuire

1 law guilty but mentally ill, which means somebody who can't
2 conform their conduct to the requirements of the law.

3 You weren't engaged for that purpose?

4 A No, sir.

5 Q Okay. And your opinion is that he suffered from
6 depression sort of historically?

7 A Yes, there's two kinds of depression. When a
8 psychiatrist has to code a depression, it's very similar to
9 your doctor, if you go to your family doctor or an
10 internist, after they see you, they put a little code on
11 your billing sheet, and so there's two different kinds of
12 major depression.

13 There's one called a single episode meaning that you
14 have one episode in your life, and then there's also another
15 kind called recurrent major depression, and he has the
16 second kind, kind. He's had depressions before. He's had
17 three depressions now, and so, again, he would be classified
18 as recurrent major depression.

19 Q And the, the two events that were so acute or severe
20 that actually required hospitalization were, were incidents
21 involving interaction with his wife?

22 A To, to a degree. The first was related to his chronic
23 health problems and some financial problems, which certainly
24 probably affected both of them I would imagine. But the
25 second was clearly related to the break-up from his wife.

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By Mr. McGuire

1 Q Okay. And after the break-up with his wife, the
2 medical records all point to his depression being far more
3 severe?

4 A Yes.

5 Q And in terms of how he's doing now, I think you
6 indicated in your report that he, he ruminates over what
7 he's done and he ruminates over the victim.

8 Do -- tell me what that means.

9 A Yes, he, he spends time -- one of the things you -- one
10 of the symptoms, you check and see what someone's anxious
11 about or what they're worried about, and he -- the, the
12 words that he usually uses with me are he can't believe he's
13 done this. It's very hard for him to accept what happened
14 and what he's done, and he, he has a lot of anxiety. He has
15 nightmares about it. He has a difficult time dealing with
16 what he's done and he's very sad about it.

17 Q Okay. Thank you. Thanks, doctor. That's all I have
18 for you.

19 A You welcome.

20 THE COURT: Ladies and gentlemen of the jury, at this
21 point in time I'm gonna take a short recess. I'll ask you
22 to step back to the jury room. As always, I'll ask you not
23 to discuss anything about the case while we're in recess.

24 You may retire to the jury room.

25 Please remain seated while the jury retires.

1 (WHEREUPON, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Mr. Barnette, if you can give me some
4 indication as to how much time you think you may need.

5 SOLICITOR BARNETTE: Well, can we briefly go in the
6 back and talk and come right back and tell the Court?

7 THE COURT: Yeah, that will be fine. I'll give you a
8 chance to consult.

9 THE WITNESS: Your Honor, can I get a glass of water?

10 THE COURT: Yes, ma'am, just don't discuss your
11 testimony.

12 THE WITNESS: Yes, sir.

13 (Pause.)

14 SOLICITOR BARNETTE: We got no questions.

15 THE COURT: Oh, okay. All right. Well, that makes it
16 easy.

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: All right. Are you ready with your next
19 witness?

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Okay. Bring the jury in.

22 I'll let you put that on the record.

23 SOLICITOR BARNETTE: Yes, sir, Russell -- Mr. Ghent
24 will actually put it on there.

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. The jury has returned to the
3 courtroom.

4 At this time the State has the right to cross-examine
5 the witness.

6 SOLICITOR GHENT: Your Honor, the State has no
7 questions.

8 Thank you, doctor.

9 THE COURT: All right. Ma'am, you may step down.

10 THE WITNESS: Thank you, Your Honor.

11 May I be excused?

12 THE COURT: Any objections?

13 No, without objection you're free to go. Thank you for
14 coming this morning.

15 THE WITNESS: Thank you.

16 THE COURT: The defense may call its next witness.

17 MR. MCGUIRE: Thank you, Your Honor.

18 Defense calls Ms. Sherry Wofford.

19 THE COURT: Come forward please, ma'am. Come to my
20 left and be sworn in. Thank you, ma'am.

21 SHERRY WOFFORD, having been first duly
22 sworn, testified as follows:

23 THE COURT: Have a seat please, ma'am.

24 (Witness complies.)

25 THE COURT: State your name.

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By Mr. McGuire

1 THE WITNESS: Sherry Wofford.

2 THE COURT: Thank you.

3 Your witness, Mr. McGuire.

4 MR. MCGUIRE: Thank you very much, judge.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q Sherry, I know you're nervous. I've interviewed you
9 before. I know you get very nervous. There's no reason to
10 be nervous.

11 Just tell the jury how you know Mr. Ricky Lee
12 Blackwell.

13 A He's my cousin.

14 Q Okay. Did you grow up next door to him?

15 A Yes, sir, I did.

16 Q Okay. Do you love him?

17 A I love him a lot. He's just like a brother to me.

18 Q Tell the jury just a little bit about Ricky.

19 what kind of person is he?

20 A Just a loving man. Just as gentle, always caring about
21 everybody, doing everything he can for anybody.

22 Q Okay. Does he have mean words for people?

23 A No, he's always trying to help people.

24 Q Okay. When you lived next door and, and you were a
25 child and, and Ricky and Angie were married, when they did

Sherry Wofford - Direct examination
By Mr. McGuire

1 things, do they include you?

2 A Yes.

3 Q What---

4 A I basically stayed out there.

5 Q You -- I mean they almost took you in almost?

6 A Yeah.

7 Q And---

8 A Yes, sir.

9 Q And whenever they did something fun, they wanted to
10 make sure you were included too?

11 A Yes, sir, they did.

12 Q Okay. And that would include -- well, tell, tell the
13 jury what that would include.

14 Just give me examples of that.

15 A We went to Carowinds. I mean just anywhere they went I
16 went.

17 Q Okay.

18 A I mean we've spent our -- all our Christmases together,
19 everything. I mean it was our whole family was right there
20 together since I was five years old.

21 Q Okay. And the jury's seen some pictures of some
22 trailers.

23 Ricky lived in the white trailer with Angie eventually?

24 A Uh-huh. (Affirmative).

25 Q And Heather and Mark in the little blue trailer for a

Sherry Wofford - Direct examination
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1 little while, and then you were in the little -- you grew up
2 next door to that?

3 A Yeah. Well, actually grew up in there -- in Scott's
4 house. The big house is where I grew up.

5 Q Right.

6 On your property, there's a little small house and then
7 there was the bigger---

8 A Yes.

9 Q ---white house?

10 A Yeah.

11 Q You grew up in the big white house?

12 A Yes, sir.

13 Q And it's a stone throws away from Ricky---

14 A Yes, sir.

15 Q ---and Angie?

16 How did Ricky treat Angie?

17 A Like a queen.

18 Q Like a queen.

19 What do you mean by that?

20 A He had her on a pedestal. Anything he could to make
21 her happy he would do it.

22 Q Okay. Was, was Ricky a, a -- was Ricky the boss or who
23 was -- was Angie the boss?

24 A Angie was the boss.

25 Q Okay. There was a time where you, you had to leave

Sherry Wofford - Direct examination
By Mr. McGuire

1 that, that property and leave that land and, and move away,
2 is that right?

3 A Yes, sir.

4 Q And you were not happy about that?

5 A No, sir.

6 Q Okay. That was a family disagreement with another
7 relative?

8 A Yeah, my brother.

9 Q Okay. And you -- did you miss Ricky?

10 A I missed him a lot.

11 Q Okay. And did Ricky come and seek you out and---

12 A He come to my work.

13 Q Okay. And what did he do?

14 A He just come by to my job to check on me to see if I
15 was okay --

16 Q Okay.

17 A -- and make sure everything was good and handed me \$20
18 just to make sure I was fine.

19 Q Okay. And is that sort of the kind of guy Ricky is?

20 A That's the way he always been.

21 Q Okay. It's hard to capture somebody's whole life in
22 talking to people, it's difficult, but is there any one
23 thing you want to tell the jury?

24 I mean they have your brother's future in your hands or
25 your cousin's future. I'm sorry.

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By Mr. McGuire

1 A He's just a great man even though that one time, and we
2 love him and care about him, and we love him with all our
3 hearts and need him. So, just understand he is a good man.

4 Q When you heard -- go ahead.

5 A Go ahead.

6 Q When you heard about this, when you heard about this
7 incident, what were your thoughts?

8 A It wasn't Ricky. They wasn't our Ricky. It was no way
9 that was our Ricky. Something went wrong. It was not our
10 Ricky that did that.

11 Q Okay. That's all I have for you, Sherry. Answer any
12 questions they might have.

13 SOLICITOR BULSA: Your Honor, we have no questions.

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

16 THE WITNESS: Thank you.

17 THE COURT: Any objections to her leaving if she
18 wishes?

19 SOLICITOR BULSA: None from the State.

20 THE COURT: Ma'am, you're free to go if you'd like.
21 You may call your next witness, Mr. McGuire.

22 MR. MCGUIRE: Judge, the next witness is gonna involve
23 a little bit of use of some electronics. So, we need to set
24 up.

25 THE COURT: So we need to take a short break?

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: All right. Ladies and gentlemen, we're
3 gonna take a short break while we get the electronics going
4 in the right direction. So, again, please don't discuss the
5 case while you're outside the courtroom. Even among
6 yourselves. You're free to step back to the jury room.

7 Thank you very much.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Yes, Mr. Barnette.

11 SOLICITOR BARNETTE: Judge, I was gonna inquire. They
12 said something electronic or whatever. I don't know if it's
13 anything that's already in evidence or not in evidence.
14 That's what I was checking to see.

15 THE COURT: I don't know what they're about to offer.
16 Yes, sir.

17 MR. MCGUIRE: Yes, sir, it's a home movie, family.
18 It's about a snippet of about two minutes of home movies,
19 and I, I -- as soon as we can play it he'll see it.

20 SOLICITOR BARNETTE: We have not reviewed that. So, I
21 don't know---

22 THE COURT: All right. While we take our break, if
23 it's only two minutes long, maybe you'll have a chance to
24 take a look at it.

25 SOLICITOR BARNETTE: Yes, sir, like to before---

1 THE COURT: All right. Court will be in recess.

2 Please remain seated while the defendant retires.

3 (WHEREUPON, a short recess was taken at this time.)

4 THE COURT: All right. We ready to proceed from the
5 State's prospective?

6 SOLICITOR BARNETTE: Your Honor, we have a general
7 objection. They're gonna introduce family pictures, videos,
8 and things like that. I understand the Court's probably
9 gonna allow them in because of being the sentencing phase in
10 a death penalty.

11 THE COURT: Yes, sir.

12 SOLICITOR BARNETTE: But there is one specific. It's
13 not with this witness, but there's one specific picture we'd
14 have a specific objection to.

15 THE COURT: All right. Tell me about it.

16 SOLICITOR BARNETTE: There was one I believe he's gonna
17 introduce with a later witness is with I believe the
18 defendant's grandfather in a casket, and he's touching his
19 hand, and I think that's way too close to this situation
20 from a death penalty situation and that would be my only
21 objection to that one picture.

22 THE COURT: All right.

23 MR. MCGUIRE: I can mark it for ID so the record's
24 clean.

25 THE COURT: Can I see it?

1 MR. MCGUIRE: Yes.

2 (WHEREUPON, the Bible study information was marked as
3 Defendant's Exhibit No. 9. Ten photographs were marked as
4 Defendant's Exhibit Nos. 10 through 19. Another photograph
5 was marked as Defendant's Exhibit No. 20. All of the above
6 exhibits were for identification purposes only at this
7 time.)

8 THE COURT: Pass it up, please. Thank you.

9 MR. MCGUIRE: It's Defense No. 20 for ID, judge.

10 THE COURT: Can you tell me the probative value of that
11 in light of -- how many pictures do you intend to put in of
12 family scenes?

13 MR. MCGUIRE: Probably about 30.

14 THE COURT: Thirty. Okay.

15 MR. MCGUIRE: Yeah, about 30.

16 THE COURT: All right. It appears to be a -- taken
17 some time ago.

18 MR. MCGUIRE: That's correct.

19 THE COURT: And can you tell me what probative value it
20 might have as opposed to its prejudicial nature?

21 MR. MCGUIRE: Well, the probative value would be that
22 it's a, it's a photograph of our client in a very tender
23 situation paying his respects to, to a family, to a person
24 who's died that was important to him. It just shows that
25 he's, he's a tender human being, and it shows a, a

1 characteristic of Mr. Blackwell.

2 THE COURT: State.

3 SOLICITOR BARNETTE: Your Honor, it's very -- for
4 example, if I bring the victim in in her casket from there,
5 and show that---

6 THE COURT: That would be a little different
7 circumstance than this, Mr. Barnette, but --.

8 SOLICITOR BARNETTE: But I understand. But I think
9 what they're trying to do is obviously get that thought in
10 front of the jury from that standpoint. I think it's very
11 prejudicial from the point showing a person and trying to
12 translate that he'll be in a casket if they come back with a
13 death verdict. That's what -- the impression I get from it.
14 I think it's way too -- there's no probative value here.
15 They got all the other family pictures, believe me. They're
16 showing him as a kid, which I understand. That comes with
17 the part showing who he is.

18 But when you, when you put that casket, and then you
19 got him in the picture touching the person in the casket, I
20 think that's way overboard in this situation.

21 THE COURT: All right. Well, what I intend to do is
22 I'm gonna reserve my decision concerning that until I've
23 seen what the other photos show. I don't know whether I
24 would, at that time, consider it to be cumulative or whether
25 its probative value would be outweighed by the other

1 photographs showing similar situations.

2 So, rather than review them all, I'll just ask that
3 this not be presented until the end of the process, and then
4 we'll make a decision once I've had a chance to review
5 those.

6 MR. MCGUIRE: I'll, I'll alert the State and the Court
7 when the appropriate witness is about to take the stand who
8 would---

9 THE COURT: Thank you. I appreciate that.

10 MR. MCGUIRE: Thank you, judge.

11 THE COURT: Yes, sir, thank you.

12 Are we ready to proceed otherwise?

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: State ready?

15 SOLICITOR BARNETTE: Yes, sir.

16 THE COURT: All right. Let's bring the jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. The record will reflect the
20 jury has returned to the courtroom.

21 At this time the defense may call its next witness.

22 MR. MCGUIRE: Defense calls Heather Bryant.

23 THE COURT: Come forward please to be sworn.

24 HEATHER BRYANT, having been first duly
25 sworn, testified as follows:

Heather Bryant - Direct examination
By Mr. McGuire

1 THE COURT: Have a seat and state your name.

2 THE WITNESS: Heather Bryant.

3 THE COURT: Thank you.

4 Your witness, Mr. McGuire.

5 MR. MCGUIRE: Thank you very much, judge.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. MCGUIRE:

9 Q Heather, how do you know Mr. Ricky Lee Blackwell?

10 A He's my father.

11 Q He's your daddy?

12 A Yes.

13 Q Tell the jury about growing up and, and Ricky as a
14 father.

15 A Well, my daddy always spoiled me. He always said that
16 I was his daughter. He was always a kind caring man. He
17 never had not one mean word and he just loved me. He loved
18 me unconditionally and he still does love me
19 unconditionally.

20 Q And how about -- how was Ricky with other family
21 members, cousins, Sherry, Bud?

22 How was he with the rest of his family?

23 A Kind and caring and loving.

24 Q Did Ricky, did Ricky take in -- tell the jury who
25 Brittany is, Brittany Fowler.