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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002281

STEPHEN C. STANKO #6022.....PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

APPENDIX
VOLUME 6 OF 14

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THE COURT: Right. Hold on a second.

Q. Okay. Where did this -- do you know where this graph came from?

A. Yes. This came from Dr. Ruben Gur's measurements of the M.R.I. scan on Mr. Stanko.

Q. Okay. And go ahead and tell us, if you would, Dr. Wu, what you see in this diagram.

A. Well, what I see in this diagram is that Mr. Stanko shows a significant reduction in the size of his left frontal lobe of his brain. F.R.O. is referring to the frontal lobe area of the brain. And this solid blue line, as opposed to the red line, is the left side of his -- showing left versus a right. And the right side of his frontal lobe is not smaller, but the left side is significantly smaller. When you have this two, this two means that it is a statistically significant difference from the normal control population, so he's got a reduction, an abnormal reduction in the left side of his frontal lobe volume.

Q. All right. And what does that mean in conjunction -- if anything, in conjunction with -- we are looking at structure here, correct?

A. Yes. So that this is different, because what I've been presenting has been the function of the frontal lobe. This is actually measuring the size, so this is the size or shape of the frontal lobe, so this shows that Mr. Stanko has two

different kinds of abnormalities in the frontal lobe. There's a functional abnormality, that is, he's burning less sugar in both the right and left sides of his frontal lobe, near the base, but this is showing that not only is there less function, but it's actually shrunken. It's actually smaller in size or volume, and so it's a second kind of abnormality of Mr. Stanko's brain.

Q. All right. Do you have an opinion of what percentage of the population would fall into this category?

A. Yes. This is two standard deviations, which would mean that five percent or less of the general population would have a -- so that means ninety-five percent of the norm population would have left frontal lobe that would be larger than Mr. Stanko's.

Q. All right. And how about -- what are we looking at over here that's over four deviations?

A. Well, this is what we call the medial part of the -- the remedial part is the inner part of the brain. It includes areas like the amygdala or other parts, and so this is -- so the brain has basically two shells. It's kind of like there's an outer shell, and then there's kind of like an inner shell, and this is referring more to the inner shell of the brain. This inner shell of the brain is more than four standard deviations below norm, which is probably less than one in -- so that means nine hundred ninety-nine out of a thousand

people, maybe even more, would have a brain bigger than Mr. Stanko's in this part of his brain.

Q. And we have a -- when does -- is there any significance in the collection of these two deviations in the frontal lobe and the medial, frontal lobe being processing of information, I think, according to your ---

A. Yes, especially including moral judgment and impulsivity and aggression.

Q. Okay. And what happens in the amygdala?

A. The amygdala is also involved with things such as regulation of aggression, so there's two key areas of the brain involved with regulation of aggression. One of them is the frontal lobe, the other is part of the temporal lobe.

Q. All right. Have you ever heard of the Kluver-Bucy syndrome?

A. Yes. It's a famous syndrome that neuroscience is aware of. If you lesion the temporal lobe by removing it in monkeys, and you cut it out, you get a abnormality in the regulation of aggression and abnormalities in social behavior, and so this is a well-recognized syndrome that human beings can develop as well as monkeys.

THE COURT: All right, Mr. Diggs, if we are asking those questions y'all come and talk to me for a second, please.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen, it took longer than I expected, but your lunch is here, so we are going to stop at this point in time.

If you would put your pens down and just go to lunch.

Thank you.

(THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Dr. Wu, let me explain one thing to you. You have taken the stand and you are under oath. At this point in time you are still in your testimony. You may not discuss this case with the defense counsel at all ---

A. Yes, Your Honor.

THE COURT: ---While we are in the break. Okay.

A. Yes.

THE COURT: Thank you very much. We will be at ease till the jury finishes lunch.

Thank you.

(THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready for the jury to come in?

MR. HUMPHRIES: The State is ready, Your Honor.

THE COURT: All right. Mr. Diggs.

Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Diggs, you may continue, sir.

MR. DIGGS: Thank you, Your Honor.

DIRECT CONTINUED BY DIGGS:

Q. Dr. Wu, I want to ask you to look at these ---

MR. HUMPHRIES: No objection to the introduction of those exhibits. I don't know the numbers, but I don't have any objection.

MR. DIGGS: Your Honor, they are Defendant's Exhibits 2 through 19.

THE COURT: Two through nineteen are in evidence without objection.

(DEFENDANT'S EXHIBITS 2 THROUGH 19 ADMITTED INTO EVIDENCE. SEE INDEX FOR DESCRIPTION.)

Q. Now, Dr. Wu, I'm going to have you look at these and just -- you don't have to go through every one of those individually with the jury, but just tell us what these are. Do you recognize those?

A. Yes.

Q. Okay. What are they?

A. These are prints of the sagittal, coronal and trans-axial views of Mr. Stanko's brain compared to that of the normal control, as well as there's three-dimensionally rendered view.

Q. Okay. Are they taken from the video that we just saw?

A. Yes.
Q. Okay. So -- thank you. You had indicated that a certain percentage of the population would have the same degree of diminished function in the frontal lobe area, correct?
A. Or the same -- a certain percentage of the population would have a two standard deviation difference in the volumetric size of the left frontal lobe ---
Q. Okay.
A. ---Which is equal to five percent.
Q. Five percent?
A. Yes.
Q. All right. And how about with respect to the area of the amygdala, four standard deviations?
A. I believe that would be somewhere between one and a thousand to one and five thousand.
Q. All right. What -- what percentage of the population would have both of those conditions?
A. Well, it would be multiplicative, so that you would take, oh, one out of twenty times one out of a thousand, and it would be like roughly one out of twenty thousand.
Q. All right. One out of twenty thousand that would have both of those situations ---
A. Yes. Yes.
Q. ---To the extent that Mr. Stanko does?

A. Yes.
Q. All right. Now, with respect to Mr. Stanko's brain, P.E.T. scan, can you give us an opinion as to what percentage of reduction he has in the frontal lobe function?
A. My estimation would be approximately half ---
Q. Okay.
A. ---In the ventral frontal area, so his -- yes, around half the glucose metabolism.
Q. All right. And would that be in the frontal lobe area here?
A. Yes. In the base of the frontal lobe, right there.
Q. All right. Now we went through some of the projects that you've worked on. Have you done any work for the government, government?
A. Yes. Yes, I've been a grant reviewer for the National Institute of Health, which is a Federal arm for research funding. I have also been a grant reviewer for the Congressionally Directed Defense Research Program, which is a program that Congress has approved to provide additional funding for brain-injured Veterans returning from Afghanistan and Iraq, and so ---
Q. Go ahead.
A. And so I've been asked to review grants to look at diagnostic and treatment measures to treat brain-injured Vets.
Q. What is a grant reviewer?

A. A grant reviewer is asked by the government to review a number of grant applications by different universities who are proposing to test better diagnostic and treatment methods, to diagnose and treat brain injury.

Q. And how do you -- what do you do to make those decisions or recommendations?

A. Well, I sit down with a group of other grant reviewers and we read through the grants and we score them on a number of different parameters or dimensions, and then we discuss our final scores, then we vote.

Q. And then the U.S. Government depends on your recommendation in order to make it's decision?

A. Yes. The U.S. Government uses my input to help them decide which, you know, grants to fund.

Q. How long has that been the case?

A. Well, I've been involved in a number of grant review processes, both for N.I.H. and the Defense Department.

Q. And the N.I.H. is what?

A. Oh, the National Institute of Health, and the Defense Department, so I would say at least ten years.

Q. All right. Now, if one were to undertake a battery of neurological psychological exams, or tests for Mr. Stanko, would they necessarily show any anomalies psychologically?

A. It depends on what you are looking for. If you are looking for -- I mean, you can have people with brain injury

who have high intact I.Q.s, but who have impairment in things that I.Q. tests don't test for.

Q. All right. And would you -- are there -- what kinds of psychological battery tests would likely, if any, show a problem with an individual who has the type of brain deficit that Mr. Stanko has?

A. There are very few psychological tests that specifically test for abnormalities in the floor of the frontal lobe of the brain, which is where more judgment takes place. Most ---

Q. By the floor you mean ---

A. At the base of the frontal lobe.

Q. That area where Mr. Stanko was deficit?

A. Yes, that's correct.

Q. All right.

A. Most of the tests that are currently available look at other parts of the brain.

Q. All right. So it may be that a psychologist could come in and perform battery tests on Mr. Stanko, or a psychiatrist, the standard type tests, and by the way, can you give us an idea of what those tests would be?

A. Well, tests like the Wisconsin Card Sort Test, a test such as Standard Intelligence Test, a test such as, you know, Stroop or a Symbol Digit Substitution, C.P.T..

Q. All right. And you would not be surprised if Mr.

Stanko were to do quite well on those types of tests?
A. No. The rest of his brain looks pretty intact.
Q. Okay.
MR. DIGGS: Dr. Wu, that's all I have at this time. Thank you very much, and answer any questions that the Solicitor may have.
THE COURT: Cross-examination.
MR. HUMPHRIES: Thank you, Your Honor.
Good afternoon, Dr. Wu.
A. Good afternoon.
CROSS-EXAMINATION BY MR. HUMPHRIES:
Q. You -- you use a compute program in order to analyze these scans that you talked about. There's a computer program obviously involved.
A. Well, there's a computer program involved in created three-dimensionally rendered views, and just to reconstruct the images we use a computer to capture the data from the positron, electron and annihilation decay, and we construct the images.
So computers are used at many different steps.
Q. Well, I'm sorry, I should be more specific. There's a computer program used to compare C.P.T. scans with the data base computer program that's used to make that comparison. Is that correct?
A. Well, you can do quantitative statistical comparison --

-

Q. And I'm sorry. I'm not talking about quantitative statistical analysis. We have heard from Dr. Gur. I'm talking about what you do. Tell me how computer programs are used in what you do, what you've told this jury today.

A. Well, computer programs are used to create the images from the positron, electron and annihilation decay than which are captured by the crystal detectors using the coincent circuits, so you need a computer for them to generate the images in the first place, and then computer programs are used to take the two-dimensional series of images and create a three-dimensionally rendered view, so the computer is used at that stage.

Q. Is F.D.A. approval an important thing?

A. F.D.S. approval -- it depends on what it is you are asking approval for. I mean ---

Q. Let me ask you this. If it is traditional to have F.D.A. approval for something and it does not have it, is that significant?

A. Well, again, I need to know the specifics of what you are asking for. I mean, you can ask for F.D.A. approval for lots of things, and it depends -- like for drugs, if you want to sell a prescription medication you need F.D.A. approval for prescription medication.

Q. Okay. So you don't have an answer. I mean that -- I

thought the question was fairly straight-forward.
A. Well, I'm trying to answer as best I can.
Q. All right. If there is something, in this case say a computer program, that traditionally is subject to F.D.A. approval and does not have it, would that be important? Would that be significant?
A. Well, so you are asking, if there is a computer program that is normally subject to an F.D.A. approval, and -- and can you be more specific? Again, I think it would help me if you could give me a concrete example of what it is you are talking about, because you ---
Q. We'll come back -- we'll come back to that.
A. Okay.
Q. Let me talk a bit about -- I understand that you've done work for the Government?
A. Yes.
Q. Appreciate that. But in terms of your provided expert testimony in courts of record, with whom do you primarily work?
A. I've worked in criminal cases primarily with public defenders.
Q. And, in fact, you've done a significant amount of work with capital defendants, have you not?
A. Yes.
Q. Do you know how much, how many times?

A. I would say, over the last, I don't know, five to ten years probably twenty or thirty cases at a minimum.
Q. About twenty -- twenty or thirty. Often in conjunction with Dr. Gur.
A. I've worked with Dr. Gur on probably two or three other cases.
Q. And Dr. Sachy?
A. I have worked with Dr. Sachy maybe one or two other cases.
Q. Your data base -- let's talk about your data base. Let's get back with what we were talking about, your data base. That -- what was the data base that was used in -- at M.U.S.C., to your knowledge?
A. My understanding is that they use the Hermes Brass data base, and I believe that that is composed of twelve at-rest control subjects.
Q. That data base is F.D.A. approved.
A. Yes.
Q. The data base you employed regarding the C.P.T. scans is not F.D.A. approved.
A. Well, to be more precise, what's approved at M.U.S.C. is the Brass software that ---
Q. Well, I'll tell you what, let me -- and I'll let you explain your answer, but could you answer my question first. Is your computer data base F.D.A. approved, the one which you

employ?

A. No.

Q. Okay. Now, empathy -- you testified about empathy, that being something that is governed by the floor, or the base of the occipital frontal lobes?

A. The frontal lobe.

Q. Frontal lobe. Okay. And empathy would be impaired if there was a significant loss of function in the frontal lobe?

A. That is a key neural substate.

Q. Now, that doesn't necessarily mean that the person with -- with the type of abnormality that you've testified to about Mr. Stanko wouldn't understand the difference between right and wrong, just means he doesn't care.

A. Well, ---

MR. DIGGS: Your Honor, may we approach on that question?

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Do you want me to send the jury out, Mr. Diggs?

MR. DIGGS: Your Honor, not at this time. Let's ---

THE COURT: All right.

MR. DIGGS: I'm okay at this point.

THE COURT: Continue on then.

Q. There is a distinction, would you agree, between

knowing morally what's right and wrong and just not caring about what's right and wrong?

A. I -- yes, I -- you can draw distinction between those two.

Q. There is a -- there is another thing that is curious to me. You testified that there is, in your opinion, a fifty percent reduction of function in Defendant Stanko's brain by virtue of your test. Is that correct?

A. In this area, yes.

Q. Correct. Right. And that's all we are going to talk about is the frontal lobe and secondarily about the amygdala, correct?

A. Yes.

Q. That -- that's not a subtle departure from the norm, is it, fifty percent?

A. I would say it's a substantial change.

Q. Substantial. And I agree. The question then becomes, in my mind, how one is selective, given that substantial departure from the norm, the ability to be selective regarding how they respond to aggressive impulses from the amygdala. Do you understand my question?

A. Can you repeat it. I ---

Q. Sure. I'll be glad to. If, according to your testimony, there is a fifty percent reduction in function -- and let's just assume that to be true for purposes of our

discussion right now -- how then is it possible that one with a fifty percent reduction in the function of their frontal lobe, in the areas you've discussed, would have the ability to be selective as relates to stimuli from the amygdala?

A. So you are asking about the ability to be selective in ---

Q. I'm sorry. Let me complete -- I'm -- let me make the question more complete. Selective in terms of either exhibiting or not exhibiting an aggressive response, in response to stimuli from the amygdala.

A. So you are asking how does the frontal lobe selectively discriminate between stimuli from the amygdala with regards to expressing aggression?

Q. Yes. Yes. With a fifty percent reduction in performance of the frontal lobe.

A. So with a fifty percent reduction in sugar metabolism in that area.

Q. That's the way you can explain it, yes sir.

A. Yes. And so how does -- I mean, I think the exact intricacy of the mechanism is not well established.

Q. Excuse me.

A. The exact mechanism by which, you know, certain criteria or certain stimuli are selected or not selected, I don't think that specific mechanism is well-established.

Q. Let me ask you, selectivity -- and I may not be using a

term that's appropriate in this context -- you help me out. If an individual with, as you have testified, operating with a fifty percent reduction of functioning, or sugar metabolism in the frontal lobe, does that person have the ability, when stimulated by the amygdala, or the amygdala is stimulated, and especially in a case where it's substantially reduced, four standard deviations below normal, where then is the ability to be selective in terms of responding to that -- to the amygdala being stimulated in that circumstance? I mean, where is that ability situation in the brain if it's not in the frontal lobe? Isn't that what the frontal lobe does, assist you in selecting what stimuli you respond to and what you don't?

A. See, the frontal lobe is like a -- it's a factor. It's kind of like a risk factor for having heart disease. You know, if you have someone who has smoked twenty years they are going to be at high risk for developing cancer or heart disease, but not everyone who smokes twenty years is going to develop heart disease or cancer, and so it's risk factor, but you know, why some people who smoke twenty years get heart disease or cancer and others don't, you know, it's not well understood. We know it's a risk factor. The same thing is true for the frontal lobe with regard to these issues you are raising. We know that it's a risk factor, but the exact method by which which factor translates into specific outcomes is not well understood.

Q. No, that's great. That's very helpful, because it is true that there are people who have these substantial risk factors who have, you know, the physiological effects of, for instance, smoking for twenty years and don't develop heart disease or lung cancer. It doesn't necessarily follow then that the reduction in functioning, or sugar metabolism in the frontal lobe as you described in Defendant Stanko would necessarily explain his conduct.

A. I would say it's -- when it increases probability for having a manifestation of this problem, but I won't say, you know, that -- yes, I would say it would increase the probability.

Q. But it wouldn't necessarily explain his conduct, not to a scientific degree of medical certainty, it would not explain -- necessarily explain his conduct. Is that true?

A. I would say to a scientific degree of certainty it would significantly increase the probability, but if you are saying does that mean that -- this would mean that he is a hundred percent going to do this I can't say a hundred percent. I would say a significant increase in probability.

Q. And I appreciate that. I would like you to answer my question. Do you recall my question?

A. Can you repeat it or rephrase it?

Q. The fact, as you have testified, that Defendant Stanko has a fifty percent reduction in the functioning or sugar

metabolism in his frontal lobe, that, in and of itself, does not necessarily explain his conduct, specifically in this case. Is that true or not?

A. Okay. So you are asking does the fact that he has a significant reduction in sugar metabolism does not neces -- you are asking does it necessarily explain his behavior?

Q. To a reasonable degree of medical certainty, does the fact, as you've testified, that he's got a fifty percent reduction in the frontal lobe functioning or sugar metabolism, does that necessarily explain this Defendant's conduct?

A. I believe that it's a significant risk factor ---

Q. Doctor, it's okay. If you are not going to answer the question it's all right, but you have not answered my question three times.

A. I'm trying to understand the question, paraphrased in a way that makes sense to me.

Q. Can you fix what's wrong with the Defendant Stanko's brain?

A. I mean, that's outside of my domain.

Q. Do the brain cells reproduce?

A. Brain cells can reproduce under certain circumstances, yes. There's research that's -- under certain circumstances brain cells can reproduce. That is possible under certain circumstances.

Q. In the frontal lobe?

A. That is possible under certain circumstances. It used to be thought that brain cells never reproduce. That was what people were taught.

Q. I think we heard that earlier in this case.

A. But there has been some recent research that suggests that under certain circumstances you can see some regrowth of brain, but it would require a very particular set of circumstances.

Q. Circumstances that perhaps could exist for this Defendant, in his present condition?

A. I mean, it would have to be medically induced, I mean -- I mean, there are what they call neurotrophic factors that people are using to try to regrow brain stems, and you know, develop stem cells from, you know -- I mean, there's all kinds of new research ideas about how to regrow brain cells.

Q. There is no -- there is no medically recognized method that's accepted by the general medical community that would recognize an ability to regrow brain cells at this point, is there?

A. No, none that are currently -- there are no current methods that are generally accepted. There are a lot of research ideas that people are trying.

Q. The P.E.T. scan -- the P.E.T. scan, Doctor, does have some generally medically accepted uses, many of which you have talked about, Alzheimer's. There's a significant history of

use, P.E.T. scans, in terms of diagnosing and tracking Alzheimer's. Is that fair to say?

A. Yes.

Q. Tumors.

A. Yes.

Q. The truth of the matter is, Doctor, the purpose for which you employ it, at least in relation to your testimony here today, it's not one of those, is it?

A. Well, it's not Alzheimer's or tumor.

Q. No sir. It's not -- the use of a P.E.T. scan is not generally accepted by the medical community as a tool by which you can do the things you say you've done with this Defendant, is it?

A. I would disagree with that.

Q. Haven't you previously called it emerging technology or emerging science, something that has been developing very recently?

A. Have I used those terms?

Q. Uh huh **(indicating positive)**

A. I mean, it is a emerging field or growing field, but in my view it is generally accepted in the medical community to use P.E.T. scans to evaluate for brain injuries.

Q. You used the analogy of a vehicle with an accelerator stuck in talking about the amygdala, the frontal lobe. Is that a comparison that you are comfortable with as it relates

to Defendant Stanko, and the condition that you diagnosed him with?

A. Yes. I think it's a metaphor for -- as a metaphor, that you have certain conditions where certain vehicles, certain Toyotos or Lexuses appear to have some inexplicable sudden acceleration which cannot be stopped, and his -- you know, and I think that it's a metaphor for what I think is going on in Mr. Stanko.

Q. There wouldn't -- there, of course, is no selective process for diffusing or filtering the process involved in that analogy, right? If it happens it happens, and then you've got a fastly accelerating vehicle. Is that what you are saying Defendant Stanko is, that he is absolutely subject, without any kind of filter, to react to these -- to the stimuli to the amygdala?

A. I think that the areas of the brain that regulate impulse and aggressive control are impaired, and I think his ability, under certain circumstances, may be significantly compromised.

MR. HUMPHRIES: Beg the Court's indulgence.

THE COURT: Yes sir.

MR. HUMPHRIES: Thank you, Dr. Wu.

THE COURT: Redirect.

REDIRECT-EXAMINATION BY MR. DIGGS:

Q. Dr. Wu, the Solicitor asked you if the Hermes Brass

software was F.D.A. approved.
A. Yes.
Q. Is it F.D.A. approved ---
A. Yes.
Q. ---For C.P.T. scans?
A. Oh, it's not F.D.A. approved for use with the C.P.T. scan. That's correct.
Q. Thank you. So if it were so used it's in a manner that's not consistent with F.D.A. approval.
A. That's correct.

MR. DIGGS: All right. Now -- actually I believe that's all I have.

Thank you very much.

THE COURT: Do you wish the witness to be excused?

MR. DIGGS: Yes sir.

MR. HUMPHRIES: Beg the Court's indulgence, Your Honor.

THE COURT: Yes sir.

RECROSS-EXAMINATION BY MR. HUMPHRIES:

Q. Is there any software that's approved with the C.P.T. scans, for comparison with the C.P.T. scans? Is there any software approved by the F.D.A.?
A. There's no statistical software.
Q. Honestly, Doctor, I -- please, is there any software approved, such as the one used by M.U.S.C., for use with C.P.T. scans, yes or no?

A. There's no statistical software. I mean, the one that M.U.S.C. uses is a statistical software for use, and there's no comparable statistical software for the C.P.T..

MR. HUMPHRIES: Thank you, Doctor.

RE-REDIRECT-EXAMINATION BY MR. DIGGS:

MR. DIGGS: I'm sorry. I didn't understand. Would you repeat the answer.

A. So the M.U.S.C. uses the Hermes Brass software which is a statistical quantitative software, which is trying to determine statistically whether there's a difference, as is software that's used where subjects are at rest. There is no statistical software that was used in the C.P.T. comparison. This was not a statistical comparison that was used with the C.P.T., and we didn't use a statistical software. There is no F.D.A. approved statistical software for a statistical quantitative comparison. The comparison that was used was a clinical judgment based on visual inspection, which is the way most clinicians do P.E.T. scan analysis.

Q. The way it was done in this case is peer-review?

A. Yes. It was a peer-reviewed visual inspection.

MR. DIGGS: All right. Thank you.

THE COURT: Do you wish the witness to be excused?

MR. DIGGS: Yes sir.

THE COURT: Any objection?

MR. HUMPHRIES: No sir.

THE COURT: All right, sir. You are released from your Subpoena. You may go back to your regular duties, sir.

A. Thank you, Your Honor.

THE COURT: Your next witness.

MR. DIGGS: Thomas Sachy.

THE COURT: Come around to be sworn, sir.

MR. DIGGS: He's not in the courtroom, Your Honor. We've gone to get him.

THE COURT: All right.

THOMAS SACHY, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. DIGGS:

MR. DIGGS: Your Honor, can we approach?

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Go ahead, Mr. Diggs.

Q. Dr. Sachy, how are you this afternoon?

A. Good.

Q. Tell us how you are employed, please sir.

A. I'm self-employed. I'm a Neuropsychiatrist in private practice in Georgia.

Q. All right. Would you give us the benefit of your education and training.

A. I have two undergraduate degrees from the University of Calgary in Canada, one a Bachelor of Science in General

Studies, one in Electrical Engineering. I have a Masters of Degree -- Masters of Science Degree in Biology from Georgia State University. I also have a medical degree from the Medical College of Georgia in Augusta.

Q. Now, after you completed your educational training can you give us an idea of what you did in terms of preparation for your present practice?

A. I completed a Neurology -- I'm sorry, a Psychiatry residency Fellowship at the Medical University of South Carolina. I also completed a Behavioral Neurology Fellowship there as well. I then completed a Fellowship in Forensic Psychiatry at Emory University.

Q. Now, tell us what you do in your current practice, Dr. Sachy.

A. I'm a Neuropsychiatrist, so I practice Psychiatry, some -- well, Behavioral Neurology, Neuropsychiatry, Pain Management, some Primary Care, and Forensics.

Q. All right. Let's talk about Neuropsychology, Behavioral ---

A. Neurology.

Q. ---Neuropsychiatry, Behavioral -- what did you say, Behavioral ---

A. Neurology.

Q. ---Neurology. What do you mean by those terms?

A. Behavioral Neurology is what the Neurologists call it.

Neuropsychiatry is what the Psychiatrists call it. It is special training in the brain disorders and brain diseases that cause psychiatric or brain problems, problems with thinking and cognition and mood.

Q. Have you had an opportunity to do any work with reference to Stephen Stanko?

A. Yes.

Q. Tell us what you've done in that regard.

A. I performed an evaluation of Mr. Stanko several years ago. I did a psychiatric evaluation of him where I did a neurological evaluation of him. I made sure that he had an M.R.I. scan done and a P.E.T. scan done, and that a morphological analysis would be done of his brain.

Q. All right. Have you ever testified as an expert in any courts in the United States ---

A. Yes.

Q. ---In the area of Psychiatry?

A. Psychiatry, Neuropsychiatry, yes, forensics.

Q. And have you ever testified in South Carolina as an expert in those areas?

A. Yes.

MR. DIGGS: And Your Honor, we offer Dr. Sachy as an expert in the area of Psychiatry and Neuropsychiatry.

THE COURT: Do you wish to question the witness?

MR. HEMBREE: Very briefly, Your Honor.

THE COURT: You may do so.

CROSS-EXAMINATION BY MR. HEMBREE:

Q. Dr. Sachy, are you licensed to practice in the State of South Carolina?

A. No.

Q. Have you testified -- you have testified today that you've testified in other cases before, you've been qualified in other cases before. On how many occasions have you testified in criminal cases?

A. I believe between fifty and a hundred, maybe more. I don't keep track anymore.

Q. Okay. And of those cases how many involve murder?

A. Probably twenty, thirty, forty, fifty.

Q. Okay. And of those quite a -- a significant number of murder cases?

A. Yes.

Q. On how many occasions have you testified that the defendant was sane?

A. Several in my training. It's been a long time ago, but when I worked for the State, and when I worked at Emory -- that was -- I had quite a few of those cases.

Q. Okay. Since you left and entered private practice ---

A. Uh huh **(indicating positive)**

Q. ---How many cases have you -- how many murder cases have you testified in?

A. Like I say, twenty to fifty, maybe more.
Q. Of those cases how many times have you testified that the defendant was sane?
A. I don't think I've testified that any of them were sane because, by the time they got to me it was already established that they had severe mental illness. If someone brought a case to me where they are obviously sane, and it was a case like this, there wouldn't be anything for me to do.
Q. And when you said that they were obviously sane, because another doctor had already evaluated them and made that determination?
A. And by reviewing the records.
Q. Is that -- is that -- I mean, answer my question, please. Is -- is it -- would you say that they were obviously sane based -- it would have to be based on someone else's determination, isn't that correct?
A. No. No, it isn't correct. Obviously it would be based on my review mainly of the record in the case. If there is no case there's no reason to take it.
Q. All right. So since you've been in private practice you have not once testified that the defendant was sane?
A. No.
Q. All right. That answers my question.
MR. HEMBREE: Your Honor, I have no objection to Dr. Sachy testifying as a Psychiatrist. I have no objection.

MR. DIGGS: And Neuropsychiatrist.

A. Neuropsychiatrist. Yes.

MR. HEMBREE: I have no objection.

MR. DIGGS: Okay. Thank you.

THE COURT: He's qualified to give his opinion in those areas. Thank you.

DIRECT-EXAMINATION BY MR. DIGGS CONTINUED:

Q. All right. Dr. Sachy, let me ask you what you did with respect to Mr. Stanko.

A. Well, several years ago I came out and I did a psychiatric evaluation of Mr. Stanko at the jail. I did a neurological examination of him there as well. I reviewed records that were provided to me, mental health records. I reviewed the report by the doctors, etcetera, the other doctors involved in this case, and as I said, I sent -- I obtained imaging data which was sent away for further analysis.

Q. All right. Now, I notice you have set up a computer over here. What is the purpose in utilizing -- or do you plan to use the computer in your testimony in this case?

MR. HEMBREE: May we approach, Your Honor?

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Ladies and gentlemen of the jury, go to your jury room, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Yes, Solicitor. Do you have an objection?

MR. HEMBREE: I do, Your Honor. I have an objection to the introduction of any photographs, slides or other materials that Dr. Sachy intends the use from this computer as the State has not been provided those materials in discovery, and we have absolutely no idea what that presentation might involve, and therefore we would object to it based on discovery violation.

THE COURT: All right. When was the slideshow or this information prepared?

MR. DIGGS: It was prepared in 2006.

THE COURT: Okay. And is it on a hard disk?

MR. DIGGS: They were originally on film, the data and the film being provided to the State at that time.

THE COURT: Mr. Diggs, let me be real clear.

MR. DIGGS: Yes.

THE COURT: What you want to show to the jury right now, is it on a disk?

MR. DIGGS: We have a copy of it on a disk, yes.

THE COURT: All right. And did you give a copy of the disk to the State?

MR. DIGGS: No sir. We gave a copy of the photograph to the State that is on the disk. It's in the report ---

THE COURT: Play what you have for the State, please, so they have an opportunity to review it.

Can this be the last time in this trial that you bring up something you haven't turned over? Please.

Thank you very much. We are taking a break. You can play for the State.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Solicitor, have you had an opportunity to look at whatever was going to be projected on the screen?

MR. HEMBREE: I have, Your Honor, and the State has no objection to the use of the slides, no objection to the use of the slides.

THE COURT: Very good.

Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Diggs.

MR. DIGGS: Thank you, Your Honor.

BY MR. DIGGS CONTINUED:

Q. Let me -- before we get any further, Dr. Sachy, can you identify these for me, please sir.

A. These appear to be Mr. Stanko's M.R.I. from M.U.S.C..

Q. All right.

MR. DIGGS: And Your Honor, we have marked those as

32 -- Defense 32.

THE COURT: Any objection?

MR. HEMBREE: No, Your Honor. My only question is, are those the M.R.I. scans or the P.E.T. scans?

A. M.R.I.

MR. HEMBREE: M.R.I.. No objection, Your Honor.

THE COURT: All right. In evidence without objection.

MR. DIGGS: Thank you.

(M.R.I. SCAN ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 32.)

Q. Dr. Sachy, since we've got it up here on the screen what is that image we are looking at there?

A. We are looking at an axial cut slice of Mr. Stanko's brain. If we took a blade, a saw, and cut someone's head in half this way that's what we would see. That's the image we would see of their brain.

Q. And what -- why are we looking at that?

A. I was looking at that level in this particular image because -- and I'm going to blast with my laser -- it says a FL.A.I.R. image. Fl.a.i.r. means Fluid Attenuated Inversion Recovery. It is a special number-crunched picture from the M.R.I. computer where damage to the meat part of the brain, the part of our brain. Damage to it appears as white. Now, we see some things that are white around here, and there is some white stuff around here, but in particular what we are

looking at is white matter tracks with a Fl.a.i.r. image to see if there is damage. And the white matter tracks actually on a Fl.a.i.r. image are these dark areas, here, here, not this dark butterfly which is fluid, by the way, but these dark areas back here, these dark areas here. And what's abnormal in this image -- it's very slight in him but it's abnormal -- we have a little white dot here, and a little white dot there. It has a special name in Neurology and in Neuroradiology. It's called Frontal Horn Capping. This butterfly here -- these are called the frontal horns of his lateral ventricles, the frontal horns of his fluid-filled spaces in his brain, and there should not be a little white spot there, and there should not be a white spot there, and that's why we get a Fl.a.i.r. image, to look for signs of damage. He has it. The actual term for this damage for this Frontal Horn Capping is called Deep Periventricular White Matter Disease, or Leukoaraiosis.

Q. Okay. And is -- why is that significant, or can you tell us, is that a good thing, is it a bad thing?

A. Well, it's a bad thing. We see this in people as they get older. These white things get big, and can actually spread out this way and this way. These butterflies can get big as we lose brain meat, and the fluid fills the space where the meat is lost as our brain atrophies, but we tend not to see it until people get in their forties. He was in his

thirties when this was done. The problem for him, or anyone with this damage, here and here, is that it affects the function of their frontal lobes, which are right here, and in fact scientific literature is clear that this white matter stuff here, this Leukoaraiosis, causes a decrement in frontal lobe functioning.

Q. Okay. Now, if I wanted to refer to this condition what would I call it?

A. You would call it Deep -- you would call it Deep Frontal Periventricular White Matter Disease, or hyper-intensity, because on this image it's hyper-intense, it's white -- it's worse on this left side than the right -- or Frontal Horn Capping as the radiologist will note on an M.R.I.. They will states, well, there's Frontal Horn Capping, but they may not state what it means because they are not trained to describe what behavioral effect it has, but it is pathological.

Q. All right. And by pathological we mean ---

A. Abnormal, damaging.

Q. And it's Deep Frontal ---

A. Lobe Periventricular White Matter changes or hyper-intensity, and it is a structural manifestation that we see with Fl.a.i.r. images that's -- this is why we invented Fl.a.i.r., to show things like this, to make it stand out.

Q. Okay. Now we'll come back to that in a minute. There

are -- I believe you have a couple of other images you want to make reference to.

A. Yes.

Q. Can we go to the next one?

A. Right -- right here.

Q. All right. What do we have here?

A. Well, this is a sagittal image of Mr. Stanko's brain, so if I took my head and just cut it in half this way that's what I would see in the brain, and we can see his nose here, and mouth here, back of his head here, front of his head here. By the way, just -- this black thing here is that fluid-filled sac that looked like a butterfly -- that's the front of it. Well here we see Mr. Stanko's brain, and here's his frontal lobes. Now, he has some atrophy, okay. He has brain shrinkage, and I can show exactly where it is. Adjust this.

I need to explain. This white line here is his scalp. That's his skin and scalp. There's a faint white line underneath it with black on either side. That is the marrow of his skull, that faint light gray line. Then we have some more black space, then we have his brain. His brain is pushed right up to the inside margin of his skull, right to about here, then it comes away, and we have this black space there. So let's look at where the margins of his brain are pressed right up on the inside of his skull, from here ---

Q. Yes.

A. ---To about here. Then these folds get thicker, and especially here, especially right here. I'm just underlining underneath it. We can see the folds get very wide and deep, and we are not touching the underside of his brain -- on the underside of his skull. This is shrunken brain, from here to here. I know it is shrunken because the skull above it could not have grown and been pushed out to this size unless the brain underneath pushed it out. The only way our skull grows is by this brain growing and pushing it out. So at one point in time his brain was touching up here, and since that point in time his brain has dropped to these levels here.

Another way to visualize it and see it -- and it's important -- look at the little lines here, the folds of the brain, how think and line-like. pencil-like thin they are, but here we see deep valleys, thicknesses. We see deep, thick lines that look like mini-tornadoes coming from the sky rather than lines like back here and back here. That's a sign of atrophy.

So what we have here at signs of -- beginning about here, frontal-lobal or dorsa-lateral pre-frontal, and parietal atrophy or shrinkage that is not normal.

Q. Why is that significant in this case, if it is?

A. Well, people with frontal lobe, Frontal Horn Leukoaraiosis -- we know that leukoaraiosis is now connected with atrophy. If you've got the white stuff inside you are

likely to have shrinkage of the brain on top. And any -- and beside that, your brain is your computer. This is responsible for everything you are thinking and feeling, and going over in your box right now, this thing is doing it. When it shrinks our computing power is decreasing, especially if it's -- you are an adult. There's a time for the brain to mature and go through changes, but as an adult any time the brain shrinks it's not particularly good, and in fact, studies have shown that the smaller the brain shrinks the more intellectually impaired individuals are. And in fact, if you had Alzheimer's Disease the brain might be shrunk right to this level here, and all of this would be fluid, rather than just that.

Q. All right. And before we move on, do you have any idea what might cause this?

A. You know, they say it's multi-factorial, but a history of brain damage during birth, or inside the mother, any kind of traumatic, anoxic -- that means lack of oxygen -- or toxic injury to the brain, the brain will eventually do this. But again, you can be healthy and have Alzheimer's, and a young Alzheimer's patient who doesn't know they have Alzheimer's yet -- and no one knows -- their brain is going to look like this before it gets to the point where it's shrunken down to here. So we have the start of something here, something has started, and things in the brain typically progress one way, and then unfortunately it's like aging, it's downhill.

Q. All right. Now, you have -- there's another image that you would like to have shown. We'll go to that one.
A. These two images we just did, and we'll keep going to the next one. Just highlight that there are structural abnormalities that, if you are careful when looking at the M.R.I. you can see. If you are not careful, and you don't specialize in this area, Neuropsychiatry, you might overlook them. Neuroradiologist and Radiologists tend to look for tumors, and big white things that look like a big ball, or something grossly abnormal. We Neuropsychiatrist, we tend to look for the little things to explain what's going on.
Q. Okay. Now, this is what you wanted us to look at. Tell us why you brought this up.
A. Well, I gather that the video has been reviewed, and obviously I have reviewed it, and these are two stills from the video. This is a shot from the front and this is a shot from the side of the head, and they obviously highlight. Mr. Stanko's medial-orbital frontal lobes are cold there compared to normals. See all the red here, and the lack of red here.
Q. Yes.
A. And looking sagittally a normal person's frontal lobes, and especially the part right above their eyeballs, here, very bright and active, and in Mr. Stanko they were very cool.
The -- in my report that I did for this case I mentioned several literature articles certainly that have come out since

the last time I examined him, but I just want to focus on this image right here. This is not one of these images. It's just a study that shows that, if you damage certain areas of the brain you are more likely to act in an impulsively violent or psychopathic manner, and they show two halves of the brain, but we'll compare this to this, because they are the same view, Stanko, and from the literature, that anywhere in this brain where you see red it doesn't correspond to the red on him, but where you see brighter red or colors in this study sample, those are the areas that, if there is damage you are more likely to act in an impulsively aggressive or psychopathic manner. And again, the most damage you see is right here, and compared to Stanko's brain that's where we see the least activity. So most damage here in normal folk who aren't psychopaths, but they get damage there and start acting like psychopaths, most of it occurs here, they start acting more psychopathic. This is where we have less activity in Stanko compared to normal.

This shot here, I just think it was perfect because, if we compare this -- this slice here is actually one of these slices, if you sliced it, and if we look at this slice here we are at the same level of the frontal lobe as Stanko, and we can see in red -- now in this slice, again, red means where the damage is most. If you are going to damage this part of the brain you are more likely to show impulsive, aggressive,

violent tendencies, and that's exactly where Stanko is quiet on his brain, so damage here, or quietness there. If I have a stereo and it's quiet, and I turn it on and it should work, something is wrong with it, it's quiet for a reason, so Mr. Stanko has something going on here, definitely, that's not turning his brain on as a normal brain should, and that's an important part of the brain for morality and that kind of behavior.

Q. Okay. Can we turn the lights up?

A. Yes.

Q. Okay. Dr. Sachy, can you tell us what the importance of a healthy frontal lobe function is for a human brain?

A. It's the most important part of our brain. You can't be human without it. If you take it off of a human we'll act more like animals that don't have large frontal lobes, like lizards, or lower life forms. Frontal lobes are what make us human. This is where our empathy is, this is where our moral behavior lies, where our impulse control lies, where our kind of planning and things like that lie. It's all kind of mixed up around in there.

Q. What do we mean when -- you said this is where our empathy is in the brain. Can you tell us what is meant by that, if -- what does that function do, or that -- is it an attribute, I mean, what is empathy?

A. Empathy is the ability to feel someone else's pain or

agony, and if we feel it we sympathize with them, and we try to console them, we feel bad ourselves. Without it we can't do that.

Q. Is it a normal thing for human beings to feel, empathy? That's a normal trait that everyone -- every normal brain should have?

A. Unless those areas of the brain are dysfunctional.

Q. What role, if any, would it play in understanding moral right and wrong?

A. From the medical literature, again, since I've last saw him three years ago, it's quite clear. Besides controlling impulsive aggression, moral decision-making, our moralizing, our ability to moralize, comes from that area of the brain.

Some people hyper-moralize, and in fact, in obsessive-compulsive disorders some people worry too much, and are guilty -- they feel guilty, just -- you know, and -- they may be driving down the street and hit a bump and they are certain that they hit a person and they are hurt, and they are checking to see if they ran over someone. If that area is turned on too much they can actually seem hyper-moral. bit when that area of the brain is not functioning people are more likely to do things in amoral ways, but especially when their brain is being stressed out, tested, they are fatigued, they are in a highly -- you know, lots of noise, lots of stress, etcetera, they are more likely to -- that amorality or lack of

morals, or decreased moral behavior or thinking is more likely to show itself.

Q. If one is going to have the capacity to distinguish moral or legal right from moral or legal wrong ---

A. Your frontal lobes.

Q. If one is going to have that capacity, how important is a proper functioning of the frontal lobe?

A. Without it you can't distinguish morally right from wrong. That's the part of the brain that does it. If I take the back part of my brain out here I am blind. I may have eyes, but I won't be able to see, because this part of my brain does that. There are parts of the brain that are responsible for specific functions, and emotions, and memories, etcetera. Facial recognition is the right side of my brain, language, left side of my brain, morality is right here.

Q. Let me talk about the amygdala just a minute. Can you tell us -- are you familiar with what that is?

A. Yes.

Q. Tell us what the amygdala is, and what function it serves?

A. Well, deep inside the brain emotions come from there and they are fired up to the front of the brain for processing. The frontal lobes will decide, in milliseconds, what to do or not to do. It's that quick. It's unconscious.

Q. Would this help you to ---
A. Sure, if you can just face it to them and lay it there. Right about here and here -- the amygdala you can't see it here -- but right about here and here, but just within the flesh here, just deeper in, are two structures on either side of the brain -- they are just little pea-sized nodules -- but they are responsible for starting emotional impulses, but especially highly valent, we call them, strong emotional impulses, they fire the signal, they respond to environmental ques and fire the signal up to the front of something that's strongly emotionally valent, and it's -- it's -- you know, can be fight or flight, it can be something very negative. It could be aggression, fear. That's where it starts, and it's signal starts there, goes to other structures, but ultimately has to go to the front for further processing.
Q. All right. Now, for the amygdala to fire -- where does the amygdala get it's information?
A. From our eyes and our ears. It's very primitive.
Q. All right. Our senses, all five senses funnel information into the amygdala.
A. Correct.
Q. And does the amygdala -- amygdala -- is it important to have a healthy amygdala?
A. Correct. If your amygdala isn't there you are not going to respond at all. You would be emotionally dead. If

your amygdala is working improperly and some how overly functional in some way you are going to be unnaturally and inappropriately angry or fearful. In fact, when they take cats and put an electric wire into their brain -- or monkeys -- and they've done this from the fifties -- and put a little electric juice into their amygdala -- they've done this with rats -- you can take a rat, put it in a cage with a credibility. Cat normally eats rat. You stimulate the amygdala in the rat, it jumps on the cat and starts tearing it up.

Q. Now, the amygdala, is it a sophisticated analysis, or is it an analysis at all? What happens in the amygdala?

A. There is no analysis. It just gets information -- it does some processing. The amygdala seems to store memory, if we can call it that, or memory traces of emotionally important, either very good or repugnant situations, so if I see horse poop on the ground here or something, and I'm aghast at it, my amygdala is what sent those signals to my frontal lobes to kind of be aghast at it, but my frontal lobes will decide whether or not to keep my composure or a stiff upper lip, as the British do, or to freak out.

Q. All right. Now, with respect to the impulses or the emotions that come out of the amygdala from our sensory inputs, is it possible for emotions to come out of the amygdala that are not really -- that are caused by something

that is not, in actuality there, but a perception?
A. Correct. For instance, a schizophrenic mis-perceives most innocuous things as something that's threatening. That's why they call -- we call them paranoid schizophrenics. The amygdala can get false signals.
Q. Does Mr. Stanko show any evidence of that?
A. Well, he doesn't show evidence of Schizophrenia, but, you know, I have to say that, in the medical literature it's fairly clear that the amygdala and pre and frontal circuitry is dysfunctional in psychopaths. That -- all you have to do is watch Discovery Channel and anyone can learn that, you know, watching it weekly. The amygdala and the frontal lobes have to work together for us to behave normally.
Q. All right. Now, the amygdala sends out a -- an emotion.
A. Yes.
Q. And would it -- that emotion is send immediately to what area of the brain?
A. It's sent to the frontal lobes within -- they've timed it -- about three hundred, or two hundred milliseconds. If you divide a second up into one thousand cuts within two to three hundred of those cuts out of one second this has already been done. It's that quick. It's faster than I did that. So it's unconscious. It's beyond conscious.
Q. Okay. It goes immediately into the frontal lobe?

A. Yes.
Q. And can you tell us what happens to it there?
A. There it's processed in the frontal lobe, along with other structures in the brain, but mainly the frontal lobe decides what to do.
Q. Now, in terms of deciding what to do, what might that encompass?
A. Electrical signals being fired between various bundles of cells in the brain, and based on genetics, learning, damage to the brain, what-have-you, a person will react in a certain pattern.
Q. What is a complex thought process?
A. It's complex. It's very intricate, and multi-leveled, multi-faceted.
Q. How about executive process?
A. Executive process is what the frontal lobes do amongst the various things I've talked about, but that is a complex multi-functional function of the frontal lobes, executive function. An executive is someone who is in control of a company. Well, the frontal lobe is our executive for the whole company of the brain.
Q. What determines an appropriate response in -- or to the emotion that's sent out of the limbic system?
A. Again, it's the frontal lobes.
Q. And how does it do that?

A. Well, through all the complex wiring and chemicals that are there it processes that information, and either dampens down an impulse or lets it go, depending on how well it's functioning itself.

Q. Are choices presented there?

A. Well, choices come after the fact. The medical literature is quite clear on this. A person tends to, or seems to make a choice. Choices are made before they are even consciously aware they've made a choice. When we look at our choices that we make it tends to be, is it Monday morning quarterbacking, but it's after the fact. In a highly emotionally-charged situation our brain is running on pure, you know, instinct, I guess you could say, a pure-wiring that's -- and signals being sent within milliseconds. There's no thinking. You just do.

Q. All right. Decisions are made with respect to those impulses where? Are they made in the amygdala, or are they made elsewhere?

A. Well, they are made in the frontal lobes, but it depends on other areas of the brain, but mainly the frontal lobes play the major role in that.

Q. And in terms of judging the appropriateness of a response, where is that analysis and judgment made?

A. It appears to be exactly that area of the brain between my eyes, above my nose, in the medial-orbital frontal lobes,

and I guess that would be, you know, morality, or judging moral value to something. The medical literature is fairly clear on that, quite clear. It is something that is genetically and biologically determined.

Q. All right. And so the judgment of morality, and the judgment of the appropriate response, are those judgments that occur in the same area, and are processed in the same area in the brain?

A. Yes. And we know that by people who have brain damage to the frontal lobes who aren't psychopaths, who are normal, and now got cancer, or a gunshot wound, or some kind of damage there, and now they act socially and morally inappropriately.

Q. If someone lacks the ability to -- or the capacity to distinguish the moral or legal right from moral or legal wrong where should we look in the brain -- I assume that's a result of something to do with the brain.

A. Absolutely, it has.

Q. And where would we go to in the brain to look at that particular lack of capacity?

A. Frontal lobes. It's a frontal lobe function. It's not here, it's not here. A bit of it might be distributed to other areas, but it's right here.

Q. Okay. And your testimony is, those judgments occur in the same area?

A. Yes.

Q. How about memory? Where does memory come into play?
A. Frontal lobes are involved in memory too.
Q. Why is that?
A. Because the first part of an intact memory is intact attention. If I cannot attend properly to something I will never store that information. Attention -- if you threw me three balls and I jug -- if you gave me a phone number, very quickly, and I had to memorize it, it's actually my attention -- I remember it. It's my attention that holds that phone number, my short-term memory, which -- and attention go hand in hand, but whether or not I store it depends on how much force and energy I put into storing it for the long-term, but that is a frontal lobe function too.

Absolute proof of that that we see everyday are kids with Attention Deficit Disorder, which I treat, and unfortunately there are so many kids with A.D.D.. They have frontal lobe disfunction, and they have very poor attention.
Q. Let me ask you this, pretty much just out of curiosity. Have you ever heard of Kluver-bucy Syndrome?
A. Kluver-bucy syndrome is where you damage the inferior -- underside of the brain, undersize of the frontal lobes and the temporal lobes, and it damages the areas close to the amygdala, and these people, actually because of that damage to the amygdala area which, remember, helps them recognize horrible or grotesque or anger-making things. If that's

damaged they no longer recognize anything as horrible or gross or angry, and now a lamb, with Kluver-bucy, will sit down with a lion, fearlessly, and just get eaten.

And they also, because the frontal lobe -- they do other things, like stick things in their mouth, but the main thing is, they are very docile, and less intellectual, and very -- they are not afraid of anything. They are just there.

Q. Do they ever act out of rage?

A. Technically speaking they are a little more docile, but they can become hypersexual. They tend to put things in their mouth and they tend to try to have sex with anything that comes through within grasp, not all the time, but at inappropriate times.

Q. Now, with respect to Mr. Stanko, let's review the materials that you put to use in his case. Can you do that with us? What, again, have you had access to in coming to any kind of diagnosis or opinion, if you do have such?

A. I did his evaluation, psychiatric, and neurological. We got the imaging, and I reviewed past records. I reviewed reports from other mental health treaters and experts.

Q. Uh huh **(indicating positive)**

A. I talked to Dr. Wade who treated him in Charleston, or Berkeley County Mental Health. There are various things that I reviewed.

Q. And what, of anything, significant about his status

comes to mind, or can you tell us about?
A. Well, in the past, before this -- well, number one ---
Q. I'm talking about basically -- not necessarily conduct that he's done, but I'm talking about things that have come as a result of testing and the like.
A. Well, at birth I reviewed his Guantanamo birth records, and it shows that at birth something bad happened to him and the doctors at Guantanamo Naval Base, the doctor, thought that he was precarious, that he would -- there was a threat that he might die, that he was in precarious health, and that he was -- he had signs or an indication of brain damage, and they ---
Q. Why do you say that?
A. Because they actually wrote that, that there is -- intracranial damage was written down as a possible diagnosis.
Q. Okay.
A. They also recommended that his mother not have sterilization or tubal ligation because they thought he would die, so they wanted her to still be able to have other children in case he died.
Q. All right. And that's in the birth records?
A. It's in the birth record. I might add, they also found poor neurological reflexes, which is another indication of brain damage, and I would -- my opinion is, that's why they wrote intracranial damage as a possibility.
Q. All right. And with respect to the M.R.I. and P.E.T.

scan data, what does that show you?

A. We know that animals, or people who have damage to the frontal lobes, something caused it, okay, or people with leukoaraiosis, something caused it, and we try -- well, those of us who are interested, try to find reasons for it, like what was the initial cause. We know that -- and we are not allowed to -- you know, I don't do experiments, but those who do can't experiment on baby humans, but they do experiment on baby rats and monkeys, and we know that anoxic, or lack of oxygen damage to the brain, around the time of birth, can cause leukoaraiosis, and damage to other structures of the brain.

Q. Now, when someone -- let me follow up. I want to make sure that we've covered everything that you had access to through the imaging, the technologies. You had the M.R.I. studies, you had the P.E.T. scan, and before we get into the area that we've brought you here for this afternoon I want to ask you, when someone suffers from a deficit in the frontal lobe, and lacks an ability, in a normal healthy way, to process limbic emotions, and they do -- they undertake a certain act that's in response to the limbic emotion, can we say that that is an activity that's engaged in by choice?

MR. HEMBREE: Object, Your Honor, to the leading nature of the question.

THE COURT: I'm going to allow him to answer the

question. Go ahead.

MR. HEMBREE: Thank you, Your Honor.

A. No. You don't have any choice on how your brain works. We have -- you know, science is -- Neuroscience is kind of indicating that actually our choices are very limited. Choices made on a very short time span, like milliseconds, we probably have no choice in what we do. It's just -- it just happens, and then later on we can talk about what we've done, but these things happen very quickly, but when someone's brain is damaged, and it affects their behavior or cognition, they have no choice. That's happened to them. It's done, and in an act of God it's happened.

Q. In a situation -- in this situation, based upon your review of the medical records, history, your interviews and testing with respect to Mr. Stanko, your use of his imaging technologies, the results of that data, do you have an opinion as to whether or not he was sane at the time this particular incident that's alleged in this case occurred?

A. Yes.

Q. What is the opinion?

A. At the time that these things occurred he was insane.

Q. All right. And by that do you mean to say, if I could read you the definition of insanity that we have in South Carolina, that he lacked the capacity to distinguish moral or legal right from moral or legal wrong, or to recognize the

particular act charged as morally or legally wrong, are you saying he meets that definition of insanity?

A. At that time, given his diagnosis, and history, but clearly his diagnosis, he does.

Q. When we -- when the Law of South Carolina puts the burden, or the necessity upon an actor, a defendant, an accused, to recognize a particular act in a certain way, in a situation where that individual lacks the -- or has brain damage that prevents an executive functional analysis of that process, is it fair to say that person recognizes the act to be in any -- to be anything? Do you understand my question? Is there an ability to recognize, at that point?

A. Not at that point, and I would assume that the writers -- I would have to assume that whoever wrote the laws, that's the reason they put it in that, at that time ---

Q. Yes.

A. ---Rather than, at that time, and the next half-hour, two days, or, you know, it's at that time ---

Q. Of course.

A. --I suspect for a good reason it's there.

Q. All right. And your opinion is that Mr. Stanko, at this time, did not have the ability to recognize, or distinguish moral or legal right from moral or legal wrong.

A. Yes.

Q. All right.

MR. DIGGS: Beg with me, Your Honor. Beg the Court's indulgence.

THE COURT: Yes sir.

Q. Just one line of follow-up, Dr. Sachy. Are there -- what are the most important relationships in an individual's life? As a psychologist/psychiatrist, generally speaking, with respect to ourselves, who are the most important persons?

A. Our loved ones, those around us that we interact with and ---

Q. Our families?

A. Yes.

Q. Okay. And what would it -- I'll leave it at -- there.

MR. DIGGS: That's all I have at this time, Your Honor. Please answer any questions the Solicitor may have.

THE COURT: Cross-examination.

MR. HEMBREE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. HEMBREE:

Q. Good afternoon, Dr. Sachy.

A. Hello. Good afternoon.

Q. Dr. Sachy, is it your testimony that Defendant Stephen Stanko, as he sits here in this courtroom today, does not know that armed robbery is morally wrong?

A. No.

Q. It would be your testimony that, as he sits here today he understands and appreciates that armed robbery is wrong ---

A. I agree.
Q. ---Both morally and legally.
A. I agree.
Q. Both.
A. I agree.
Q. Would it be your testimony, Dr. Sachy, that Stephen Stanko, as he sits here today, understands that murder is both morally and legally wrong?
A. Yes, I believe he understands that.
Q. Do you believe that when you interviewed him on June 24th of 2006, that he understood that armed robbery was morally and legally wrong ---
A. Yes.
Q. ---And that murder was morally and legally wrong?
A. Yes.
Q. So he understands the difference between right and wrong except in certain situations. Is that your testimony?
A. Yes, in essence, that is my testimony. It's called moral insanity.
Q. Well, I appreciate that that's your characterization of it. That's a term that you have selected to describe this situation, but there are -- so it's your testimony that there are times, there are circumstances that trigger -- if I understand the sum and substance of this, there are circumstances that trigger Mr. Stanko to go into this state

that he does not understand the moral and legal wrong of criminal offenses, of violent criminal offenses such as armed robbery and murder?

A. Say that one more time, just -- I want to answer it clearly.

Q. Is it your testimony that -- is it your testimony that Defendant Stephen Stanko is only insane -- excuse me -- that he only doesn't understand moral and legal right from wrong under certain circumstances or conditions?

A. Partially, yes. But let me explain.

Q. All right.

A. He has a disease called Psychopathy, or Anti-social Personality Disorder. He has that all the time, and it covers and flavors his behavior. It makes him what he is. It makes him what makes him so similar to all the other psychopaths we know about. They all sound and act pretty much the same. Part of their similar behavior is that, in high conflict, emotionally-charged situations they reach the level of moral -- for certain, moral insanity. It's part -- it doesn't get triggered. It's always there, but it's not unmasked until certain brain conditions are met.

And if I can just quickly give you one example. A car that's got something wrong with it, driving at thirty or forty miles an hour, looks okay, but until we push it to the limit -- let's say eighty miles an hour, then the problems become

apparent, so it's not triggering something. That problem was always there, but until the situation, the right threshold was met, then it becomes unmasked. It's not triggered, but it is unmasked. Triggered means something new is happening. Unmasked means it was always there but now becomes apparent. So I agree with you, but with this explanation.

Q. And isn't it fair to say, Doctor, that what you are testifying is that his inability -- that at this particular moment, under these specific circumstances, that he -- when that occurs, that he is unable to form the specific intent necessary to commit a crime?

A. Yes. He's reacting. He's reacting, but I have to also say -- remember, impulsive, aggression and violence among psychopaths is not the de riguer, or the constant activity that they do, but the other criminal activity, the low-level criminal activity, the conning, the manipulation, the stuff that occurs in not so high morally-charged situations, that's occurring pretty much all the time. So it's a spectrum, right, the low-level criminal activity is kind of all the time, and the very worse is at certain times.

Q. Well, there were times in his life that Stephen Stanko could follow the rules, that he wasn't conning, that he wasn't lying, that he wasn't stealing. He's had a history where there were times when doesn't, and times that he does. Fair to say?

A. I -- I don't think that's fair unless we were standing by his arm all the time. If it were on and off, as you've just characterized it, the medical textbooks would say that, and then I would agree with you. They don't.

Q. Let me make sure I understand what you are not testifying to.

A. Okay.

Q. Okay. I just want to clarify one point.

A. Okay.

Q. You are not saying that at the time he had the capacity to distinguish between right and wrong. You are not saying that at all.

A. At the actual time ---

Q. Right.

A. ---I'm saying that he lacked it.

Q. Lacked the capacity to distinguish between right and wrong.

A. Right. At the -- at the time that these are occurring, at that time. That's what the Law says. I mean, I agree with it. I ---

Q. You are not saying that he lacked the capacity to conform his conduct to the requirements of the Law, you are saying he actually didn't understand the difference between right and wrong?

A. He didn't -- he was morally -- well, how does the Law

say it? He didn't understand, appreciate the moral difference between right and wrong. Again, morals aren't something we think about. They are something we appreciate. They are -- they are -- basically they are biologically determined, basically, as well as your brain works.

Q. And right and wrong, by very definition, is a moral -- I mean, it's a moral concept.

A. Absolutely.

Q. Right. So, you are not saying that he understood right from wrong and couldn't conform his conduct to the Law. You are not saying that, are you?

A. I'm saying that he didn't know right from wrong at the time. And I guess I could say that, through most of his life he -- what's that second part you were saying? I mean, all the conning, all the -- in prison, you know, being in prison, all the mental health things that he went through, and all the diagnoses of Anti-social Personality Disorder, which is Psychopathy, all those things, continuous, repetitive, his inability to learn, his inability to be successful at being a criminal, all these are part of a medical diagnosis.

Q. And I'll ask you about those in a little while. What I'm asking you about is, in connection with your diagnosis of him you are not saying that he understands right from wrong but he lacks the capacity to conform his conduct to the requirement of the Law?

A. No.
Q. That is not your opinion?
A. I'm saying he ---
Q. I just want to make that clear. That is not your opinion.
A. I just want to make sure you are saying -- I'm saying -- that I'm not saying something. I just want to say, he didn't know right from wrong at the time. Does that answer your question?
Q. Got you. That answers my question. I just want to clarify that you are not saying there's some other ---
A. I'm definitely not.
Q. ---Definition. Fair enough. So he just outright doesn't know right from wrong at the -- these certain times, that we will talk more about in just a moment.
A. Yes.
Q. Now, he's been diagnosed with a personality disorder on several occasions by several different doctors.
A. Yes.
Q. He was diagnosed by Dr. Einhorn, and I think by you as well, with an Anti-social Personality Disorder.
A. Yes. And Dr. -- is it Frierson, or Frierson?
Q. Frierson. Had a personal disorder with anti-social features.
A. And I think Pam ---

Q. And Pam Crawford, Dr. Pam Crawford also, I believe, offered that same diagnosis.
A. And Randy Wade.
Q. I -- fair enough. So it's a consistent -- there's a consistent.
A. Five of us.
Q. Yes. There's a consistent diagnosis there, that he -- he -- you know, I don't think there's an issue about -- about that he does have -- he has been diagnosed as someone who has an Anti-social Personality Disorder.
A. Yes.
Q. Now, let's talk about what an Anti-social Personality Disorder is. Isn't it fair to say that an Anti-social Personality Disorder is -- can be defined as someone who cannot follow the rules, they cannot -- they don't get along with the rules that are established by society, and they -- well, that they don't -- they don't follow the rules.
A. Correct. They have great difficulty following rules.
Q. Okay. And it's even fair to say that career criminals are frequently diagnosed, and people that spend ---
A. Yes.
Q. ---In and out of jail their whole life, that they are frequently diagnosed with Anti-social Personality Disorder. As a matter of fact, about fifty percent of the people in prison are diagnosed as Anti-social Personality Disorder.

A. Yes. I'm smiling because I'm glad you've picked that up. That's true. That's right out of the literature.
Q. And well, it kind of makes sense, doesn't it ---
A. Yep.
Q. ---Because the reason they are in jail is because they didn't follow the rules. Fair to say?
A. Fair to say. And -- and my -- just a short -- and because of their disorder they have an inability to learn from that punishment, and they keep doing it.
Q. Okay. And they are diagnosed -- and here's the other side of it that is kind of the -- kind of the interesting part, they are diagnosed with Anti-personality -- Anti-social Personality Disorder because they can't follow the rules, and they keep getting in jail.
A. Well, they have to meet other criteria too. It's not just that.
Q. Right. But that's a -- that's a big one.
A. It's a big one, but you know, you've got to include all these other things, these cognitive things that we've been talking about because they do, in the medical textbooks, so we don't want to give the jury the wrong impression that it's just that and not other ---
Q. Right. And I mean, we've talked a lot about P.E.T. scans and M.R.I.s and all of that, but all that -- all you are really saying, if I understand correctly, is you are assigning

-- you are saying that these are things that could contribute to an Anti-social Personality Disorder.

A. They are the cause of it.

Q. In your opinion -- in your opinion, they are the cause of it.

A. Well, yes.

Q. Well, I mean, that's what we are talking about. You've offered an opinion. You are an expert. You've offered an opinion. Your opinion might be accepted by this jury, might not, but it's an opinion, true?

A. Okay. I would hate to pick a wrong opinion. It's embarrassing.

Q. Well, I'm -- I better just let that one go.

Let me take you back to -- you -- let's talk -- we'll talk a little bit about the P.E.T. scan and the M.R.I. briefly. On the P.E.T. scan, the P.E.T. scan was done at M.U.S.C. in Charleston, correct?

A. Yes.

Q. And I believe you indicated in your report that the study was of good quality.

A. Yes.

Q. So there's no problem -- I mean, we are not talking about, you know, a P.E.T. scan that is going to run into difficulty in being interpreted because of a poor quality?

A. No.

Q. Now, the M.R.I. -- Doctor, this M.R.I. was done May 18th of 2006, I believe.
A. Yes.
Q. And it was done at your request?
A. Yes.
Q. And the results of that M.R.I. were provided to you, and ultimately to Dr. Gur and -- or I think to Doctor -- well, they were provided to you, correct?
A. Yes. The disk was provided to me.
Q. And you evaluated that M.R.I. at sometime in the past, did you not?
A. I did, three years ago.
Q. Correct. And as a matter of fact, you evaluated that M.R.I. and you prepared a report on July 22nd of 2006, didn't you?
A. Yes.
Q. And in the course of that report you didn't mention, not even a word, about the two diagnoses that you've offered this jury today.
A. Correct.
Q. Doctor, those -- you have indicated to Mr. Diggs that those are very, very important diagnoses.
A. They are.
Q. And I'm concerned, and I want you to tell me, and explain to me how a man of your skill and ability, in charge

of this -- this important evaluation of Mr. Stanko, so woefully failed to diagnose these two serious conditions back in 2006. This is new material, isn't it, Doctor?

A. It is, but I was unaware of it then because I didn't have the expertise in leukoaraiosis that I have today. That was three years ago. I wouldn't want to embarrass myself. I guess I could have not mentioned it in the second report, and knowing that you have a report, the first one, and knowing that I had to add these extra diagnoses to that same report, I guess I could have assumed you might say what you are just saying now, but I'm unafraid. I didn't know about leukoaraiosis then. I do know.

Q. You knew about brain atrophy, Doctor. Come on.

A. I mentioned the brain atrophy, but I didn't know about the leukoaraiosis.

Q. Doctor, do you need more time? Do you think you could find some more diagnoses if we let you take a little more time with it?

A. No.

MR. DIGGS: Your Honor, we object. It's argumentative.

THE COURT: Let's rephrase the question, Solicitor, please.

MR. HEMBREE: Thank you, Your Honor.

A. No.

Q. Let me ask you about this -- this defect, or this

condition, Anti-social Personality Disorder. That is as -- in your opinion, is caused by this defect, or these defects in the brain. This defect manifests itself by repeated criminal or other social -- anti-social behavior.

A. Yes. By definition, that's the disease.

Q. You've offered an opinion that this -- essentially that this -- because of this frontal lobe problem Mr. Stanko gets a stimuli -- tell me if I'm characterizing this properly when I finish. He gets a stimuli, and it goes to the frontal lobe, and because he has this frontal lobe defect -- your opinion he has a frontal lobe defect -- that he is unable then to know moral right or moral wrong, or legal right from legal wrong, and he may act -- act that out in some way, manifest -- he will manifest -- manifest himself with criminal or other anti-social conduct.

A. Correct.

Q. All right. And you've also offered an opinion that this is -- this occurs, most likely, in challenging, high-conflict and emotionally-charged situations.

A. Yes. And in situations of high moral dilemma, high conflict, they are more likely to act out on impulsive, aggressive -- on impulsive, aggressive impulses.

Q. Right.

A. Yes.

Q. Now, you've reviewed Mr. Stanko's history ---

A. Yes.
Q. ---His criminal history, his social history ---
A. His ---
Q. ---School records. Did you have a chance -- did you review his school records?
A. I've look at them. He had great grades.
Q. Right. Good grades, good school records.
A. Great grades. I ---
Q. But you've got -- you've taken this thing -- you've done a thorough job looking at his background.
A. I hope I have.
Q. Yes. And you -- in that entire -- he's thirty-eight years old when these tests were done, I believe. In those thirty-eight years leading up to this testing in your -- beginning of your diagnosis he's only had two significant occasions where he acted out in violence.

MS. WILLIAMS: Your Honor -- Your Honor, we need to approach, please.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Ladies and gentlemen of the jury, if you would go to your jury rooms, please. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Solicitor, why don't you ask your questions, and then you will know exactly -- if you would, or

what it is that there is a problem with.

BY MR. HEMBREE CONTINUED:

Q. Dr. Sachy, my question to you was, in the -- in Mr. Stanko's prior history he -- in your review of those records he had only had two significant violent experiences. That was my question to you.

And that was when the objection came, Your Honor. I hadn't heard the response to that.

A. Three -- I mean, two -- on the three previous victims of violent crime, besides the one in this case.

THE COURT: Well, you -- first, Doctor, you need to speak up, because the Court Report can't hear you.

A. There were three previous victims of violence, I believe, on, I guess you could say, two separate -- two events.

Q. Two events.

A. Two events.

Q. That's what I meant, and your answer is a fair answer.

MR. HEMBREE: Judge, I -- I believe I can avoid -- we'll see where it goes. I'm going to try to avoid both -- I'm going to avoid the Ling crime, unless there's something that I absolutely can't anticipate right now, but I will seek to avoid that, and I likely will avoid the Buckner or McLandon crime also, depending upon Doctor -- I mean, it would have to require something from Dr. Sachy that requires me to bring it

out, but it would be my position that we would be allowed to go in -- actually, I think -- I believe we are allowed to go into any material that led to Dr. Sachy's diagnosis.

And Judge, if I may ---

Q. Dr. Sachy, did you review the records of the McLandon assault and the Ling assault in reaching your diagnosis?

A. Yes.

THE COURT: What objection, if any, is there?

MS. WILLIAMS: One moment, Your Honor.

Your Honor, my objection is that I think that, you know, part of -- the Court has ruled this continuance times, but we are not to address the Ling incident. It's not doing -- I mean, the graphic part of it, coming into it, anything being characterized as violent, none of that is in here, and I think if we get into that we are getting real close to where we should ---

THE COURT: Well, I did that before -- that was a restriction on the State. You have presented your defense, and in your defense you have placed an expert on the stand. When you did that -- and an expert you supplied materials to, and an expert you supplied these previous criminal acts the Defendant committed -- you supplied that information to your expert, he relied on that to come to his opinion, therefore, since you have done that then the State may now, if it chooses to, question him about it. It was a previous restriction on

the State. You placed it in evidence, the Defense did.

All right.

Let's take a short break for about five minutes. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Can I -- before we bring the jury back in let me ask a question, Mr. Diggs, Ms. Williams. Will you have further defense witnesses after this particular witness?

MR. DIGGS: Your Honor, as it stands right now I don't think so. There's like a five percent possibility, but probably no.

THE COURT: All right. Well, we need to cover with your client, with the Defendant, about his right to testify in this particular matter. Usually I give the Defendant the full opportunity of hearing anything that the defense would like to put on before I question them so they have the full knowledge to see what the defense has done before they make a decision as to whether they need to testify or not, but -- so I don't have to send the jury back in and out, since they are already out it, it would seem to be now would be an appropriate time to review that with your client, unless you had an objection to that.

MR. DIGGS: I don't have any objection to it.

THE COURT: All right.

Mr. Stanko, if you would please stand, sir.

Madame Clerk, if you would place him under oath, please Ma'am.

STEPHEN CHRISTOPHER STANKO, being first duly sworn, testifies as follows:

BY THE COURT:

THE COURT: All right, Mr. Stanko, at this point in time I am going to explain to you certain of your Constitutional Rights. If, at any point in time during my discussion with you, the times I'm asking you questions, that you do not understand, or you have a question, if you can just indicate, and raise your hand, or say I have a question, or I need to talk to my attorney, whatever that might be, is that agreeable with you?

A. Yes sir.

THE COURT: Very good.

Now, we are obviously in the stage of the trial where you are presenting your defense in this particular matter, and based upon my inquiry of Mr. Diggs it appears that the majority, if not all of the Defense witnesses, potentially, other than yourself, have already been presented by the Defense in this case, so I believe it's appropriate now to tell you that you have the right to claim the protection given to you by the Fifth Amendment to the Constitution of the United States of America, and that Amendment states, in part,

that no person shall be compelled in any criminal case to be a witness against themselves. That means nobody can make you, or force you to testify in this case. You certainly may testify, and you can testify, if you want to, but certainly no one can make you. Do you understand that?

A. Yes sir, I do.

THE COURT: All right, sir. Now, that being your right, you understand it is a personal right to you, and only you can either exercise that right, or waive it, or give it up. Do you understand that?

A. Yes sir, I do.

THE COURT: You certainly can seek the advice of your attorneys, or close confidants, but it is your decision to make. You understand that?

A. Yes sir, I do.

THE COURT: All right, sir. Now, if you decide to testify you would be subject to all the rules that you have seen govern all the other witnesses that have come before you in this trial, and that would be, you would be examined by your attorneys, you would be cross-examined by the State as to any matters the Court deemed relevant.

And in that regard, Solicitor, are there certain crimes involving dishonesty, or false statement, or crimes punishable by imprisonment for more than one year that you would seek to question the Defendant about?

MR. HUMPHRIES: Your Honor, we can do that with some specificity. We are going to get the actual indictments so there will be no question about it ---

THE COURT: All right, sir.

MR. HUMPHRIES: ---And they are right -- they are just outside the courtroom.

THE COURT: All right.

MR. DIGGS: Your Honor, I think Mr. Stanko has a response. I don't think that we need, or he needs, you know, a complete list of any crimes that might be used to impeach him in terms of ---

THE COURT: Well, it looks like the State has it right now, so why don't we just -- so it's clear for the record, we will put it in the record.

So if you will just read that off, Solicitor, if you would.

MR. HUMPHRIES: Yes sir, Your Honor.

Your Honor, we would intend to impeach Defendant Stanko with conviction out of Charleston County with Breach of Trust, from 1995, Breach of Trust, 1995, Breach of Trust, 1995, and Grand Larceny, 1995.

In Berkeley County, Charleston, coming from Berkeley County, Kidnapping, 1996, and then, of course, the convictions from the Georgetown case in 2006.

THE COURT: All right. Very good.

Now, you understand, Mr. Stanko, that the Court -- and I would so tell you that I would determine that the probative value of admitting that kind of evidence would outweigh it's prejudicial effect to you. There might be -- if you were to testify I might have the -- make sure that certain details, especially of any of the crimes in Georgetown -- none of that would be admitted, but the crime for which you were convicted the State would be allowed to ask you. You understand that?

A. I do.

THE COURT: All right, sir. Now, understanding it's your decision to make -- and it's got to be made freely, voluntarily, with the knowledge of these protections given to you by the Fifth Amendment, as well as consequences if you decided to testify.

Now, if you decide not to testify I will instruct the jury that they cannot give that fact any consideration whatsoever, the fact that you didn't testify, they are not -- I will tell them they are not to talk about it, they cannot use it in reaching their determination or their decision in this matter.

It being, again, left entirely up to you to decide whether or not you want to testify do you, at this point in time, want to discuss anything further with your attorneys?

A. Not at this time. No sir.

THE COURT: All right, sir.

A. I have one question to ask you.

THE COURT: Why don't you ask your counsel first.

A. Thank you, sir.

THE COURT: All right, sir. Not asking you to tell me what it was that you asked your attorneys, but you had an opportunity to ask them. Did they adequately answer the question to your satisfaction?

A. They did. Yes sir.

THE COURT: All right. Thank you, sir.

Do you understand everything we have been talking about?

A. Yes sir, I do.

THE COURT: All right, sir. And do you have any further questions at this point in time?

A. No sir, I do not.

THE COURT: All right. Do you wish to testify in this particular case?

A. No sir.

THE COURT: All right. Thank you, sir. You may be seated.

A. Thank you.

THE COURT: All right. Solicitor, are you ready to continue with your cross-examination in this matter?

MR. HEMBREE: I am, Your Honor.

THE COURT: All right, sir.

Ask the jury to come in, please sir.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, you may continue, sir.

MR. HEMBREE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. HEMBREE CONTINUED:

Q. Dr. Sachy, let me kind of get back on track a bit here, and we were talking about Mr. Stanko's violent responses to stimuli, and just to kind of bring us back to where we were before the break, it was your testimony that, because of an anti-social personality disorder that when faced with certain stimuli that was likely to occur in challenging, high-conflict and emotionally-charged situations, that he would -- he might respond in impulsive, aggressive and explosive manner.

A. Yes.

Q. Okay. And I had asked you the question right before the break about your review of his record, and my question to you was, isn't it true that, in his thirty-eight years of life, before your evaluation of Mr. Stanko, in his thirty-eight years of life he only, on two occasions, exhibits these violent, impulsive, aggressive, explosive behaviors?

A. That we know of.

Q. But that's all you know of, so we can only -- you can only tell this jury that there are two occasions when this condition manifested itself.

A. I can tell the jury that there are two occasions that he did something very bad, terribly violent things, but I can also tell them that he has a -- apparently life-long history of committing, you know, illegal, fraudulent acts that are consistent, just the same with, a mental disease.
Q. Understood. But they are -- those acts were not aggressive acts or explosive acts. Those were -- they were criminal acts, but they were more cons?
A. Yes.
Q. I mean theft ---
A. Correct.
Q. --Sneaky stuff?
A. Definitely.
Q. But not for that -- I mean, I don't believe you are saying that that -- you are not saying to this jury that that falls into this category of the aggressive and explosive behavior that you are talking about?
A. I am, and I'm following D.S.M.4, because, you know -- you have faith in the D.S.M.4 -- I'm following it. I have less faith than you, but I've reviewed it now, you know, the D.S.M.4 -- I won't be long -- it lists the pattern of behavior that these guys have, and it mentions aggressive behavior and physical assault, that it is possibility you would see more in them than the average person, but it also -- they performs acts that are grounds for arrest continually ---

Q. Right.
A. ---Low-level things, but it's part of this whole picture. I just fear you are trying to split off one thing when it's part of the whole thing.
Q. No. I understand. And I appreciate what you are saying, and I'm not trying to -- I'm not trying to take you down a track anywhere, because I appreciate that -- that these other crimes are part of the diagnosis, because it's not following the rules ---
A. Correct.
Q. ---And that's what anti-social behavior is all about, is not following the rules.
A. Yes. It's a big part of it, yes.
Q. I've got you. Now, I do want to -- but I do want to focus on these violent offenses. I understand, and I'm not trying to -- I just want to focus on the violent offenses, that -- it would be your testimony that because of his low function in his frontal lobes, or for whatever reason -- that's -- your opinion is the low function in the frontal lobes -- and other causes in his brain, that he cannot control -- when faced with these highly emotional situations, that he is not able to control his violent behaviors.
A. Yes.
Q. And we only have two occasions in his life that he -- that we know of, that he committed violent offenses.

A. Yes.
Q. And -- but he certainly -- wouldn't you agree with me, Doctor, that he has certainly been exposed, time and again, to challenging, high-conflict and emotionally-charged situations?
A. I don't know if he has. But I also have to add -- explain that. Right in the D.S.M.4 it says that aggressive acts required to defend oneself, or someone else -- for instance, if he got in a fight in jail -- wouldn't be considered part of the aggression of psychopathy, so you know, I hear what you are saying. There's only two I know about. With Ted Bundy there were twelve but they think there were forty more, you know, I don't know -- but I know of two.
Q. Okay. He's been in jail, incarcerated a significant period of time, true.
A. Yes.
Q. He hasn't killed anybody in jail.
A. No.
Q. Hasn't seriously injured anybody in jail?
A. Nope.
Q. Hasn't even had a scuffle or a fight with anybody in jail.
A. No.
Q. Yet he -- and he claims to have been assaulted more than thirty times in jail.
A. Psychopaths victimize weak victims. They don't go

after the big thugs, or people who are in positions of, you know, beating the heck out of them. They are -- they are very smart, they tend to be -- he's got an I.Q. of one forty-three -- they tend to victimize the weak, they tend to manipulate and abuse the weak, but in jails, which are very structured and supervised, they are actually very docile. They are more likely to be the victim of violence, like Jeffrey Daumer was.

I am not aware of any serial killed -- or psychopath -- let me just say this -- I'm not aware of any that did something in jail. Maybe it's happened where they've hurt another or killed another client or something, whatever you want to call it, but a high profile one, I've not heard of it.

Q. But Doctor, I mean, wouldn't you agree that -- what could be more challenging, more high-conflict, and more emotionally-charged than life in a prison?

A. You know, you brought that up yesterday and I reviewed that. Jails are -- and prison, is very mundane. Life is mundane. If it were very highly emotionally charged, with a bunch of psychopaths and anti-social, we would have a blood bath daily in prison, but we don't. Their life is very regulated. They don't have access to weapons.

And by the way, psychopaths frequently use weapons when they do their impulsive act of violence, impulsive acts of violence.

Let me just say this, going to jail, I'm sure, is very emotionally stressful, but once you are there, and once you have been there for a long time and the mundaneness of it comes into play, it's very -- you know, I'm sure there is emotional stress like in daily life, but it's mundane. It's -- we are not allowed to torture there or have them suffer. It's part of our civilized society.

Q. So it's your testimony that he became conditioned in jail, and was able to conform his conduct and can control himself in jail regardless of the emotional and -- emotionally-charged or conflict situations that he might face.

A. No. In just the same way that a child with A.D.D. placed in a structured environment performs better on their studies, and is better behaved just because of the structure we have not changed their A.D.D..

Q. Okay. But somebody is controlling him. He's controlling himself. I mean, everybody ultimately controls himself. I mean, this is the C.E.O. right up here -- you told us -- is the C.E.O. that controls the rest of the brain, that controls the rest of the body, and I mean, is that -- that was your testimony, right?

A. Correct.

Q. So he's exhibiting some level of control because otherwise, every time he ran into an emotional situation he would go bonkers and go -- go -- you know, taking a swing at

somebody. True?
A. Well, it has to be unmasked. It disease is always there. There's no cure. He has not been conditioned and cured. That's like StarTrek level medicine. He's in a controlled, stable environment, and psychopaths, in the medical literature, are -- they don't get into a lot of trouble in jail. We know this, when they get out of jail they have about an eighty percent chance of committing another crime. I mean, that's very high. How can someone who has gone to jail and should learn, and is docile, and supposedly has been conditioned, come right out and do the same things if they've been properly conditioned. It's because they have not been cured. They have controlled.
Q. The -- let's talk about the Turner case, Henry Turner case.
A. Okay.
Q. You've talked to Defendant Stephen Stanko about the events that led to the death of Henry Turner?
A. Yes, three years ago, I did.
Q. All right. And what did he report to you?
A. Well, after the first incident he went over there and he did some terrible things, he did a terrible thing.
Q. Well, I appreciate that -- that's a very -- I mean, it's a pretty broad statement.
A. I mean horrible ---

Q. Let me ask you to help me out with a little more detail than that. What did he specifically tell you about the leading up to and shortly after, and during ---

MR. DIGGS: Your Honor, we object, and -- maybe I could approach.

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, Solicitor, you may continue.

MR. HEMBREE: Thank you.

Q. Dr. Sachy, in discussing the matters with you, the case with you, or the facts with you, did you find Mr. Stanko's conduct goal-directed?

A. Well, there was -- it's goal-directed, but it seemed to me, senseless. I mean, goal-directed means I do something but -- you know, in my opinion -- yes, I guess you are asking my opinion. He didn't need to do this. He didn't.

Q. And -- but he took steps -- and there has been evidence in this record -- there has been evidence presented to this jury that he armed himself with a weapon. That shows a certain amount of intentionality and goal-direction. Would you -- wouldn't you agree with me?

A. He chose criminal intent, I guess, criminal thought.

Q. Okay. He, in an effort to keep this crime quiet, or avoid detection, he took a pillow and fired the gun through a pillow into the back of Mr. Turner. Wouldn't you agree with

me that that is very intentional and goal-directed?
A. I can't agree with you on that.
Q. You cannot agree with me on that?
A. A .357 Magnum through a pillow is like -- it's like me just dropping this mic here. It sounded explosive. There are -- you know, there are many ways for criminals to do things, but that is almost like putting a beacon or a speaker out there for someone to -- to draw attention to it.
Q. I mean, that's stuff they do on television, isn't it? I mean that's kind of -- I mean, you see that kind of silliness where they -- like some old movie, that some guy would shoot through a pillow to try to use it like a silencer, right?
A. I don't know who would use a pillow for a silencer.
Q. I'm not saying it's a good idea, Doctor. I'm saying it was -- it was a reason -- I mean, you don't shoot through a pillow just for fun, I mean, there was a reason that he took a pillow and fired the weapon through the pillow. There was an intentionality, even if it was a failed attempt.
A. It was an unsuccessful or a poor choice, yes.
Q. Poor choice. I'm not disagreeing with you there, but there was intentionality behind it. There was some thought that, in the next step I'm going to do this ---
A. Yes.
Q. ---Take this step in the process.

A. Well, I don't know -- yes, I mean there was thought.
Q. Let me ask you this. He -- he reloaded the weapon ---
A. Yes.
Q. ---And so that involves intentionality. That involves goal-directed thought.
A. Yes.
Q. I mean, the fact that he shot him in the back, that involves -- I mean, selected -- he selected that method of killing Mr. Turner. That minimizes the likelihood that something goes wrong, if they -- if your -- if your victim can't face you. I mean, that's goal-directed, isn't it?
A. It's goal-directed, but it is victimization. It's -- you are truly victimizing someone when you shoot them in the back. It's goal-directed, but it is amoral.
Q. Certainly it's amoral. No question that it's amoral, that it's wrong.
A. It's cognitively amoral.
Q. Correct. No doubt about it's wrongfulness, but it's intentional and goal-directed.
A. I guess so. But there are two things there that are connected and separate in a way.
Q. And he goes through Henry Turner's pockets after he's dead and takes -- certainly he takes car keys. We know that he takes car keys. He may have taken money. We don't know what else he might have taken, but there was no cash recovered

on Mr. Turner at all. I mean, that's certainly a goal-directed -- the robbery of Mr. Turner is certainly a goal-directed intentional activity.

A. It is -- I guess it's -- it is thought. I guess it is goal-directed, but is it with proper forethought and consideration of the consequences.

Q. And the switching vehicles from, you know, kind of a -- at least a shiny red Mustang convertible to a much more low profile vehicle to make his escape from the crime scene shows some intentional goal-directed thought, does it not?

A. It does. It shows impaired goal-directed thought. That's just dumb. It's -- it is evil, the general act, but it's dumb.

Q. Well, I'm not disagreeing with you that he made mistakes. No question that he made mistakes, that he may have thought more like a checker player than a chess player, but -- but there -- he's taking one step at a time, at least, with some intentionality, and with an objective in mind.

A. He makes errorful steps, but he's doing it, yes.

Q. Uh huh **(indicating positive)** And he leaves town. I mean, doesn't hang around, he gets out of town. I mean, that's a -- that's an intentional goal-directed step, to flee the crime scene.

A. And -- yes, and like anti-socials, they fail to compensate, or make amends for their behavior. They -- they

hit the road.

Q. Uh huh **(indicating positive)** And I mean, most -- most anybody would hit the road after they had killed somebody, wouldn't you say?

A. I disagree. I believe if you are morally wired very well, if you kill somebody you are going to stop and bring attention to it. You are going to show -- when I say bring attention, you are going to take yourself to the authorities, and you are going to turn yourself in.

Q. Then it would be your testimony, if I understand you correctly, that under that theory anybody who breaks any kind of law, if they are a moral person, will immediately pick up the telephone and dial 911 and report themselves.

A. They may not, but they would feel guilt, they wouldn't like remorse like anti-socials do. And you know, you can kind of generalize. They are all going to call the cops or they're not, but things are more complicated than that.

Remember, I'm one of five people who has diagnosed him with anti-social personality disorder, a mental illness, and part of that mental illness is doing all of the stuff you are talking about.

Q. He goes to another -- yet another city that is quite crowded, I mean, lots of strangers in town. It's the Master's week at Augusta, and you know, nobody knows nobody. It's a -- I mean, wouldn't you agree with me, Doctor, that that's a

pretty good choice -- if you are going to try to go some place where somebody won't know you, that's a pretty good choice.

A. No, not after murdering someone and driving off in their truck.

You know the guy who -- was it blew up the bomb in Atlanta and went to the mountains. That's probably the kind of thing someone with correct cognition would do, but taking a stolen truck from a murder victim to a big town, and then getting filmed on T.V. in a church, and all that stuff, you know, not laying low, isn't that -- you know, laying low, yes, he went to another town. You know, he's going to be -- feel that he is in danger, but he's going to do the typical psychopathic anti-social things.

Q. Doctor, you testified this murder was an act of God. Is that your testimony?

A. I don't believe I said that. His brain, in the State it's in, is considered an act of God.

Q. And going back to the P.E.T. scan -- and I will be very brief about this -- the P.E.T. scan was actually read by the radiology staff at M.U.S.C. ---

A. Yes.

Q. ---And provided to you ---

A. Yes.

Q. ---And their report said it was a perfectly normal P.E.T. scan.

A. That was either ---

MR. DIGGS: Your Honor, we -- I object to that, and I move that it be stricken. That is absolutely hearsay.

MR. HEMBREE: Your Honor ---

THE COURT: I'm going to allow the question, and the witness can either agree or disagree.

A. It said that, but either that was due to medical negligence, or willful mischaracterization of the evidence. That's not a normal P.E.T. scan and they knew it, and I can't wait till that part is exposed in this case.

Q. Well, I'm sure we will all look forward to that.

A. Oh yes.

Q. But medical negligence or willful mischaracterization --

A. Mischaracterization ---

Q. ---Would that be how you would characterization your failure to diagnose the M.R.I. findings?

A. No. That was based on my medical knowledge at the time. But let me add, they read a stimulated M.R.I. -- I'm sorry -- a stimulated P.E.T. scan where a guy is doing a computer test to turn on those frontal lobes, they compared it to their normal group of people who were literally almost asleep in a room with the lights turned off. That is unbelievable. It's unconscionable, and I can't believe any expert from anywhere would have the guts enough to come in and

say something like that.

Number two, you know what it does prove. It proves the point that our P.E.T. got -- our stimulated P.E.T. of Mr. Stanko, his frontal lobes shown no brighter than normal people in a quiet room with the lights off. They read them as looking the same. All your experts did from there was really bolster our case, and strongly.

Q. And Dr. Sachy, I mean, I appreciate this dickering over the P.E.T. scans, and dickering over the M.R.I.s ---

MR. DIGGS: Your Honor, we object. That's not a question. It's a ---

MR. HEMBREE: I'm -- I'll be asking him ---

MR. DIGGS: ---Statement.

THE COURT: I'm going to allow the Solicitor to continue. Thank you, sir.

MR. HEMBREE: Thank you, Your Honor.

Q. I mean, I understand there are differences of opinion about this. I appreciate that, and I understand that, but the bottom line on it, the bottom line, now there may be opinions that say the P.E.T. scan is fine, all right, but everybody agrees, everybody agrees that, for whatever reason, whether it's a brain function or not, that this Defendant is diagnosed with anti-social personality disorder.

A. Correct.

Q. I mean, the net -- the bottom line on it all is, you

just used that to get to your diagnosis.
A. I used it as a part -- it's a tool to get that diagnosis ---
Q. Right.
A. ---But to also show that anti-social personality is not just something in a book. It is a dysfunction in brain, and now we have the technology to show it, and that's God-given.
Q. Well, and it can be -- you know, that's a whole different issue. I mean, that may or may not be. The point of it is, whether it's through P.E.T., or whether it's through Dr. Einhorn's psychological testing -- Dr. Einhorn didn't look at any of this stuff, did he? That wasn't part of his -- that's not in his area of expertise, is it?
A. No.
Q. No. So based on just his personality test he determined that this Defendant is anti-social personality disorder, right?
A. Yes.
Q. So, you know, all this stuff is, you know, maybe interesting, but when it gets right down to it all we are talking about, is this Defendant has Anti-social Personal Disorder. Isn't that true?
A. Yes, that he has a disorder that predisposes him to act like this.
Q. Well, whatever causes it. I mean ---

A. It's beyond his choice.
Q. Whatever causes it.
A. Okay.
Q. I mean, it really doesn't matter what causes it. The bottom line is, he has it.
A. That is true. You are right.
Q. Okay. And he had it before, and he has it today.
A. Yes.
Q. And we are not debating that he has that diagnosis.
A. Yes.
Q. Okay. And you are telling this jury he can't be fixed.
A. No, we can't fix it. We can't cure it yet. It's in the future.
Q. And Dr. Sachy, tell this jury how much money you have, or will be paid in connection with your diagnosis of Stephen Stanko.
A. Nothing so far. I don't know how much I'm going to get paid. I haven't discussed it. On the previous case I worked in I haven't been paid for that one yet either.
Q. Well, have you submitted a bill?
A. To this case?
Q. I'm asking you, have you submitted a bill from the time you began working with Dr. -- with Defendant Stanko, how much time -- how much are you charging for your services in connection with this case?

A. Four Hundred Dollars an hour, typical expert witness fee.
Q. Fair enough. And how much have you billed to date?
A. I haven't billed anything yet.
Q. How much of a bill have you generate -- how much of a bill have you tallied up? How much time have you put into the case?
MR. DIGGS: Your Honor, we object. It's not appropriate, and -- if you want me to go further probably be -- should be done in a matter -- as a matter of law.
THE COURT: It is proper fodder for cross-examination to examine any expert, whether it's in criminal or civil court, what they are being paid.
A. I -- I have worked all this week in the hours, the evening hours after work preparing for this case, reviewing. You know, I've driven here and back. I have reviewed all last night until the early morning hours.
Q. I've talk -- I'm talking with you, since 2006 ---
A. Oh.
Q. ---How much time have you logged on this case?
A. A lot.
Q. I mean, ten hours?
A. Oh, way more than that.
Q. Two hundred hours?
A. Probably. I -- it's a lot.

Q. Okay. And your normal rate is Four Hundred Dollars an hour?
A. Right.
Q. So ---
A. Well, actually it isn't. It higher, but for this I ---
Q. You are willing to ---
A. Correct.
Q. So you've agreed to Four Hundred Dollars an hour.
A. Correct.
Q. And you've got three hundred hours in the case?
A. Well, you know, I didn't get paid for the first case, so I don't know what's going to happen there, and this case I'll have to tally up my hours and put it in, and hope that I get paid.
Q. At least two hundred?
A. Maybe -- at least a hundred.
Q. All right.
A. Oh, but if you are counting going way back ---
Q. I'm talking about since 2006, when you first got started on it.
A. Right. Right. Yes.
Q. So at least Eighty Thousand Dollars?
A. I wish. I hope. It would be nice. You know, I don't work for the State. I don't have medical benefits. I don't have benefits. I -- when I'm not at my office no one makes

any money. I have to charge for my time to make a living.

MR. HEMBREE: Thank you, Dr. Sachy.

MR. DIGGS: May it please the Court.

THE COURT: Yes sir, re-direct.

REDIRECT-EXAMINATION BY MR. DIGGS:

Q. Any money that you get from work on this case is initially approved by the Court.

A. Yes.

Q. Okay. And then it -- are you aware of what happens to it after that?

A. No.

THE COURT: Now Mr. Diggs ---

MR. DIGGS: Your Honor, he's opened the door on it.

THE COURT: No sir. No sir.

MR. DIGGS: All right. All right.

I've got another area that I want to go into.

THE COURT: Yes sir.

Q. This question, the whole subject of anti-social personality, would it be fair to say that that ranges all the way from someone who lies a lot to someone who murders a lot?

A. Yes.

Q. All right. And so simply because we say -- when the Solicitor says, all he has is an Anti-social Personality Disorder, that could be, by definition, someone who murders a lot.

A. Yes.
Q. Okay. And they would still have an Anti-social Personality Disorder.
A. Yes. We don't grade them.
Q. All right. Exactly. Okay. So it could be a baby anti-social personality, or a ---
MR. HEMBREE: Objection, Your Honor. Leading.
THE COURT: I'm going to allow it.
MR. DIGGS: Thank you.
A. Mild to moderate, to severe.
Q. Yes. Mild -- okay. Now on the other occasions that the Solicitor ---
And Your Honor ---
Well, on the other occasions that the Solicitor asked you about, not only were there other opinions about Anti-social Personality Disorders, there were other opinions, or at least another -- one other psychiatric opinion that he was insane, wasn't there?
A. From the previous case ---
Q. Well, from any -- any -- the medical information that --
A. That he had mental illness?
Q. There was another psychiatric opinion that he was insane.
A. Yes, I'm sorry. Dr. Thrasher, yes.

Q. All right. Now, with respect to the other incident that comprised one of the two, were you aware of the facts that were recounted by the alleged victim in that case, which relate to the Defendant's actions during that event?
A. Yes.
Q. What do you remember -- what were you informed of with respect to those?
A. Those terrible, terrible, terrible, terrible acts.
Q. Do you remember -- were you told anything about his conduct during that event?
A. From the interviews of the victims, etcetera ---
Q. Yes.
A. ---And the police reports -- well, mainly from the interviews of the young victim, yes.
Q. Were you aware about his behaviors?
THE COURT: Mr. Diggs, come here? Y'all come over here.
(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)
THE COURT: Ladies and gentlemen, go to the jury room, please.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)
MR. DIGGS: Your Honor, we would ---
THE COURT: All right, Mr. Diggs, you can try your case however you would like to try your case. Now it is my job to

make sure that there is a fair and impartial trial in this case, but before you went any further with your questions I wanted you to be clear about the implications about what you were about to do, and that was the reason I stopped you. If you wish to continue you certainly may.

MR. DIGGS: Your Honor -- and I certainly appreciate that, and here are my thoughts on it. We had objected earlier to the Solicitor being permitted to go into those areas, and the Solicitor was permitted to, at least to mention the fact that those incidents had occurred. Now they are part of the record, and given that fact there are factual details -- and I'm not sure this witness -- I don't know if the witness -- it may be something we want to discuss out of the witness's presence, because I'm not sure he, you know, is capable -- I might ask questions and he may lack the knowledge with which to respond, but ---

THE COURT: As I understood your question -- and you correct me if I'm wrong -- you were asking him to give you details about how the crimes were committed.

MR. DIGGS: No. I was asking -- what I was trying to get at was the details of his mental ---

THE COURT: Well, that certainly wasn't the question you asked ---

MR. DIGGS: ---Of what he was doing.

THE COURT: ---And I'm certain that wasn't the answer

you were going to get.

MR. DIGGS: Yes. And I -- and he may not know. But what I'm referring to specifically, Your Honor -- and I don't think Dr. Sachy was in the room -- when the -- is it Ms. McLandon -- testified -- do I have the name right on that -- when she testified ---

MR. HEMBREE: I'm sorry, Bill. I don't mean this -- it may have been Dana Putnam. Ms. McLandon has not testified in this case.

MR. DIGGS: No. I mean, in a prior occasion she testified, and she gave a good amount of detail about Mr. Stanko's conduct, and what he was doing at that time, which to me clearly indicated that he -- he was not sane at that moment, and so what I was going to try to elicit from this witness is that type of behavior from him, not -- you know, not the additional acts for which he was convicted, but his signs of insanity at that time, and so what we have there on those two incidents that were mentioned by the Solicitor in his cross-examination, we have pretty -- we have one professional opinion that he was insane in addition to Dr. Sachy's, and some conduct that probably indicated as much too, in that incident ten years prior, or eight and a half to ten years prior that occurred down in ---

THE COURT: All right. But now you are -- now you are going to be giving him the details ---

MR. DIGGS: Yes.

THE COURT: ---If he doesn't have them, you are going to be giving him the details of another crime, which is going to form the foundation of his expert opinion ---

MR. DIGGS: Well, ---

THE COURT: ---Which then, on that grounds alone, would allow the State to fully explore the issue to test his credibility an believability before the jury.

MR. DIGGS: Well, I think at this point, because I don't have the victim here, you know, if we get into that, it's not a situation where we need to open that door and go down that path. I think if we had the witnesses here prepared to offer that evidence it would be one thing, but we don't have it, and I don't want to get into a situation where we simply allow the State to bring out additional details of the crime and we can't rebut that.

THE COURT: I was -- and that was my purpose of ---

MR. DIGGS: And I understand that, and I appreciate that.

THE COURT: You know, I ---

MR. DIGGS: But then I won't go any further in that regard.

THE COURT: All right.

MR. DIGGS: There are a couple of other follow-ups, and other things I want to throw out, and then we will be -- we

will be through.

THE COURT: All right. Ask the jury to come back in. Thank you very much.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Diggs, you may continue, sir.

MR. DIGGS: Thank you, Your Honor.

BY MR. DIGGS CONTINUED:

Q. With respect to your examination of Mr. Stanko, while you may have indicated you felt he had Anti-social Personality Disorder, you always, at that same time, felt he was insane. Is that correct?

A. Yes. I mean, insane is a legal term.

Q. Okay. Exactly.

A. Insanity -- when I look at the statute it says, a defect of mind, or what-have-you, so insanity, I translate it to mental illness. Does he -- did he have mental illness then, at all times, yes. Are there times when it's worse or -- it manifests worse -- badly, more worsely, if that's a word, yes.

Q. Okay. So it's not that you change from one diagnosis to another, it's simply wording.

A. Correct.

Q. You've always felt he was insane?

A. Correct. He has mental illness, insanity.
Q. All right. And now the P.E.T. scan reading from M.U.S.C. that the Solicitor asked you about, and the purported finding of normalcy ---
A. Yep.
Q. ---Now that was based on the way that they normally read P.E.T. scans at M.U.S.C..
A. Yes.
Q. Is that correct? And do you know anything about that? Can you shed light on how that process works?
A. I think they may have heard it before, but they stick the radioactive sugar in them, they take a picture of their brain. They are in a quiet room, it's dark, their eyes are closed, it's at rest. They are just looking for a tumor to show up as a bright spot on the brain. They are not looking at frontal lobe activity. That's not even near what they are looking for.
Q. All right. And so in someone such as Mr. Stanko's case, if there is no frontal lobe activity because of a defect, because it's dead, because it doesn't work, it's going to appear normal on a P.E.T. scan if you are looking at a P.E.T. scan read from someone at rest.
A. Correct. But that's not the way it's suppose to be done. These are experts. These are P.E.T. scan experts. They know exactly how his was done. It was a activated

P.E.T.. It's just unbelievable -- it's just -- you know, and I get hot about this. I get angry about this. This is -- I don't like this kind of stuff. They knew how it was done, and the way it was done, and it was done different than the way their's was done, and they mischaracterized it, and yet it's fully, really they proved the point, because his brain looks -- when he's doing a computer test and suppose to be focusing his brain looks no different than someone in a quiet room with their eyes closed. That's astounding. They proved our point with their own P.E.T..

MR. DIGGS: All right. And I believe that's all I have on redirect. Thank you very much.

THE COURT: Anything else, Solicitor?

MR. HEMBREE: Very briefly.

RECROSS-EXAMINATION BY MR. HEMBREE:

Q. One question for you, Dr. Sachy. We've got another Doctor that you testified found, or opined, offered an opinion, that Stephen Stanko was insane. That was Dr. Thrasher, correct?

A. Yes.

Q. And he is the -- he is another Doctor that is on the Defense team in this case. He was retained by the Defense in this case, correct?

A. Correct.

Q. He testified yesterday, I believe. I don't know if you

are aware of that. He testified yesterday.
A. I guess so.
Q. A local guy, works at Waccamaw Mental Health now.
A. I guess so. I don't know where he works.
Q. Okay. And that was done in connection with this case. That was -- his services -- or he was consulted in connection with this case.
A. Yes. What was your original question?
MR. HEMBREE: Well, that was three questions, I guess --
A. Okay.
MR. HEMBREE: ---But that's all.
A. No, but -- but -- but if I may answer. You said there was one other who said he was insane.
Q. Right. And you testified that Dr. Thrasher.
A. Insanity means mentally ill, and Anti-social Personality Disorder is one of the mental illnesses in this book. There are five who found that. Now, maybe just one other testified about that he met -- that he was insane, but anyone who said he had a psychiatric diagnosis is saying he's insane. They are saying he has mental illness.
MR. HEMBREE: Well, I'm not going to -- I'm not going to debate that with you, Doctor. That's going to be a question for the Court and this jury to deal with, and not for us to deal with, so thank you.

THE COURT: All right, sir. Do you wish the witness to be excused?

MR. DIGGS: Your Honor, I do.

THE COURT: All right. Any objection?

MR. HEMBREE: None whatsoever, Your Honor.

THE COURT: All right, sir. You are released from your Subpoena, sir. You may go back to your regular activities.

Are there going to be further witnesses on behalf of the Defense?

MR. DIGGS: Your Honor, could -- I know -- I apologize for doing this, but could we have a couple of minutes to discuss that?

THE COURT: Ladies and gentlemen of the jury, go to your jury room please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Yes sir, Mr. Diggs. Do you have further witnesses you want to present?

MR. DIGGS: Your Honor, we had subpoenaed Dr. Spicer. I haven't heard -- he hasn't responded, to my knowledge, to the Subpoena ---

THE COURT: Where is Dr. Spicer located?

MR. DIGGS: He's in Charleston.

THE COURT: Without the subpoena powers of this Court, isn't it?

MR. DIGGS: No. Our Clerk has State-wide subpoena powers.

THE COURT: I mean, we probably need to look at the Rule again.

MR. DIGGS: But if ---

THE COURT: Are you asking for the assistance of the Court to have this Doctor arrested and brought to court?

MR. DIGGS: Not yet. It's -- last time he was a witness for the Prosecution, and I anticipate he will be again, and if that's the case then that will satisfy me.

Could I have the Court maybe inquire of the Solicitor if they are going to call him.

THE COURT: I don't know who is going to be called. I have no idea. I have no idea who is going to be called, if they are going to have any reply testimony.

So, I -- who served your Subpoena?

MR. DIGGS: Pardon.

THE COURT: Who served your Subpoena on the Doctor?

MR. DIGGS: Beg the Court's indulgence for just a second, please.

THE COURT: Yes sir.

MR. DIGGS: Your Honor, we've -- Your Honor, I'm not going to ask for the Court's assistance at this point.

THE COURT: All right, very good.

MR. DIGGS: Certainly not at this stage of the trial,

so -- and I assume -- having said that, Your Honor, I think that the Defense is going to rest at this point.

THE COURT: All right. Very good. Well, we need to cover that with the jury, so they understand the procedure.

All right.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Diggs, further witnesses on behalf of the Defense?

MR. DIGGS: Your Honor, we are not going to call any additional witnesses, and the Defense is going to rest at this point.

THE COURT: All right, sir.

All right, ladies and gentlemen, I find this to be an appropriate place to stop for the evening. We've had ---

MR. HUMPHRIES: May we approach the bench?

THE COURT: Yes sir.

MR. HUMPHRIES: I'm sorry, Your Honor. That's fine. Forgive me. Sorry.

THE COURT: All right. We are going to stop for the evening, and we will come back tomorrow morning and continue on with this particular matter, so leave your pens and pads and obviously you will be back tomorrow morning, same time that we have already established.

Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. I will see y'all back tomorrow morning. We will have the jury here by 8:30.

MS. WILLIAMS: Your Honor, if I may, just as a matter of housekeeping.

THE COURT: Yes Ma'am.

MS. WILLIAMS: I just want to ask how the Court wants to do this.

THE COURT: Yes Ma'am.

MS. WILLIAMS: Dr. Gur's PowerPoint, I've asked him to e-mail that to me so that I can submit that to make sure we've got that clear, and on the record, so I anticipate bringing that in here tomorrow.

I will also ask Dr. Sachy for his, to make sure I've got that.

The other thing at this point is, I would like to -- I do not believe that this brain poster has been introduced, or at least marked for identification, or officially on the record, so I would like to mark this -- the brain poster that we've just ---

MR. HUMPHRIES: It's been marked for identification, has not been admitted.

MR. HEMBREE: Without objection.

MS. WILLIAMS: And ---

THE COURT: All right.

MS. WILLIAMS: ---So admit that, Defendant's Number 20.

THE COURT: All right. Was it -- had you entered it, Madame Court Reporter, for identification at any point in time?

COURT REPORTER: No sir.

THE COURT: I didn't see that it had either. So, you are wanting to admit it for identification at this point in time, or you are trying to get it in evidence at this point in time?

MS. WILLIAMS: Your Honor, what I really want to do is make sure we have the demonstrative evidence and -- and the record clean, so I can move to admit it into evidence, if they don't object, otherwise I'll just mark it for identification.

MR. HUMPHRIES: We are not objecting.

MR. DIGGS: Your Honor, let's put it into evidence, because when you read that transcript it's going to say, now what about this and this. They are not going to know what we are talking about.

THE COURT: Well, I mean, I don't -- I don't care, I mean, if it's admitted for identification then it's part of the record, and it would be part of the Appellant record.

MR. DIGGS: That's fine.

MS. WILLIAMS: Well, I'd like to move it -- Fran doesn't object, so I would like to move this into evidence,

and it will be Exhibit Number ---

COURT REPORTER: 20.

MS. WILLIAMS: Twenty.

THE COURT: All right, Solicitor, is there any objection to Defendant's Exhibit Number 20 coming into evidence?

MR. HUMPHRIES: No, Your Honor.

MS. WILLIAMS: Now, my second question, Your Honor ---

THE COURT: Wait a minute. Defendant's 20 is in evidence without objection. If you'll hold on a second so I can make my notes, please Ma'am. Thank you.

(COLOR PICTURE DIAGRAM OF HUMAN BRAIN ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 20.)

THE COURT: Yes Ma'am.

MS. WILLIAMS: Your Honor, secondly, I would like the Court's guidance as to what to do with my little brain. Fran and I talked about it yesterday, and rather than actually submitting it, and entering this, is it okay with you if I take pictures and have the pictures marked for identification in the record? Just because, really they are actually expensive.

THE COURT: I appreciate that, but the -- since the witness is gone now it's still going to be extremely difficult -- even if you take pictures of the whole thing, and every little part of it, it's now going to be very hard to tie what

those pictures are to the actual testimony of the particular witness, because then they didn't identify which picture was the item they were talking about when they were testifying at that point in time. I don't know that I have a problem with you doing it, but it really doesn't solve the problem as far as the record is concerned because it's not then tied in any way to the testimony. There is just some -- now some pictures in the record. Do you see my point?

MS. WILLIAMS: I apologize. I did it wrong.

THE COURT: No, I'm not saying you did it wrong, I'm just saying -- you know, I'll be glad for you to do that. I'll be glad for you to take some pictures and put them in there for identification, but now we don't have any way to tie them to what the witness was pointing to, or had in their hand, or we are talking about when they gave their testimony. So, if you want to make pictures, be glad for you to do, and we can mark them for identification, but there's just no way to tie them to the testimony now. I don't see how, because the witness didn't identify them in any way, but if you like to, you can mark them for identification, take the pictures and do so. Okay.

MS. WILLIAMS: Okay. Thank you.

All right. I'll see y'all back tomorrow morning at 8:30.

MR. HEMBREE: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE ON THE NEXT DAY, MONDAY, NOVEMBER 16, 2009, OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Is the State ready for the jury?

MR. HEMBREE: Judge -- we are ready to proceed, Your Honor. We may want to take one moment prior to bringing the jury in. Our next -- well, I guess -- our next -- well, I guess we will -- upon the Defense resting our first witness will be Dr. Pam Crawford, will be testifying regarding the Defendant's criminal responsibility and capacity to conform his conduct to the Law.

THE COURT: All right, sir.

MR. HEMBREE: And in the course of her evaluation of the Defendant Stanko she -- Defendant Stanko related a version of the facts of the events that occurred at the Turner home leading up to and -- when the murder occurred. We intend to elicit that testimony from her as it was essential in making her diagnosis of Mr. Stanko, and under the -- well, in accordance with the order that authorized Dr. Crawford to conduct this evaluation -- which I will hand up to the Court -- the Order was issued -- as you can see the evaluation was requested by either party after the Defendant asserted an insanity defense, so it was pursued in that context.

I would turn the Court's attention to page four which covers the access to information in paragraph (B). This is

the paragraph that applies, in this circumstance, evaluation requested by either party after assertion of insanity defense, and the next to the last sentence of that paragraph, "Examiners and agency staff may not be compelled to testify regarding statements made during the criminal responsibility and capacity to conform examination for any purpose other than the issue of criminal responsibility and capacity to conform", and it goes on to say that they can't use to impeach the Defendant. We would not be offering these statements to impeach the Defendant. We would not be offering these statements for any other purpose but to -- but on the issue of criminal responsibility and capacity to conform.

Furthermore, Your Honor, the statement is just -- and we -- well, just -- I'll give you the quick version of it. The statement essentially says -- Mr. Stanko says that he -- that Mr. Turner approached him with a gun, and that he struggled for the gun, took -- was in the process of taking the gun away from Mr. Turner and he shot and killed Mr. Turner. So it's a self-serving, kind of a self-defense statement. It's not a -- it's not an inculpatory statement. It's actually an exculpatory statement, but it is, in conversing with Dr. Crawford it's extremely important, and is a part of her -- it's an important component of her diagnosis and opinion in this case.

Furthermore, Your Honor, we have the case of **State**

versus Slocum which deals with this very issue. Your Honor, in **Slocum** the State was allowed to cross-examine a defense -- in this case it was actually a defense expert, a psychiatrist, regarding the number of sexually inappropriate acts committed by the defendant when he was a juvenile at D.J.J., and the Court found that they were the types of -- the defense psychiatrist acknowledged that these were the types of incidents that would be relied upon by an expert to reach an opinion, that this expert did, in fact, review those incidents, and considered those incidents in reaching that opinion. The difference -- the only difference in this case and the statements were -- the State was permitted to cross -- actually cross-examine the defense expert about these incidents. The only difference here is, those incidents were inculpatory. They were much more prejudicial in that sense, where this statement is a -- in no way prejudicial, and it is in accord -- well, according to Dr. Crawford, highly probative in reaching her opinion.

THE COURT: All right. Don't you think a huge distinction there is that that was a defense witness, and the reason that State was allowed to go into those facts was to test the opinion of the defense expert, and to test the veracity, the credibility and believability of that defense expert before the jury? That was the reason that the State was allowed to cross-examine him on the facts, not just

because those facts were part of the opinion.

In this case you've got your witness that you are putting on that's going to state a conclusion. It seems to me it serves absolutely no purpose to allow the State to ask that question, except in re-direct. Now, depending on what questions the Defense might ask of the expert you might very well then be able to go into that, but here -- and it's not only this issue, it's an issue of relevant evidence, and then testing that relevant evidence as far as the prejudice that might be resulting from that, under the South Carolina Rules of Evidence.

Mr. Williams, let me hear from you.

MS. WILLIAMS: Well, Your Honor, what I was going to say it, it seems to me that that absolutely crosses the line against the Defendant's right to not have to testify, not have to -- I mean, you know, his statements don't come in. He doesn't have to testify. He doesn't have to give his version of it, and I would think that it would be extremely prejudicial in this case to go into it, Your Honor. I mean, I think Your Honor was absolutely correct. In that case it was the defense witness. This is their witness. It is absolutely self-serving. It is absolutely redundant. I think that Dr. Crawford can say she explained the versions with him. She talked about it. I think she can go into the fact that she fully discussed it with him, but I think the details of it are

not appropriate.

THE COURT: And he discussed with her certain statements, but not to say what the statements were.

A. Absolutely. I think to get into the details are completely inappropriate and extremely prejudicial that -- that the probative value simply can't compare to it.

THE COURT: Solicitor.

MR. HEMBREE: Your Honor, this is -- this is absolutely right out of the Rule. This is a -- this is an element. This is a part of her examination. It is part of her opinion. We are allowed to ask our witnesses, just as we are allowed to ask defense witnesses what they base their opinion upon. That's a critical, critical fact for this jury to understand.

The Defense has been repeatedly allowed to ask their experts what they base their opinion upon. That's admissible. That's appropriate under ---

THE COURT: I'm certainly going to allow you to ask her what she based her opinions on, that is, statements made to her by the Defendant. It's just the actual statement that is the problem.

And I appreciate it and I will -- continue with your statement for the record, but I'm not going to allow it. Under Rule 403 I am not going to allow this.

MR. HEMBREE: Your Honor, can we -- is it -- the ruling of the Court is that the probative -- the prejudicial effect

outweighs the probative value?

THE COURT: Yes sir. That, although relevant, this evidence may be excluded if it's probative value is substantially outweighed -- and I don't think there's any question about that -- by the danger of unfair prejudice, misleading the jury, also considerations that would now be not proper for them. I just -- there's no question that it needs to be excluded.

I will be glad for you to state anything else on the record you want to.

MR. HEMBREE: Thank you, Your Honor. I appreciate that. I don't want to argue after your ruling.

THE COURT: Well, no. You -- you just state your -- make your case on the record, but I'm not going to allow it.

MR. HEMBREE: I guess I would ask this question. Would it be helpful for the Court to actually hear very brief testimony that Dr. Crawford would offer as to the statement that was made to her ---

THE COURT: Well, it's probably good for the record to allow that, and I'll certain listen to it, but I'm just telling you, **State versus Slocum** doesn't allow this. It's a completely different reason that the State was allowed to do that.

MR. HEMBREE: And Your Honor, let ---

THE COURT: All right. Why don't you call the Doctor

up and put in the record what you would like to put in the record.

MR. HEMBREE: Thank you, Your Honor.

THE COURT: And for that examination did you want to make this previous Order of the Court an exhibit?

MR. HEMBREE: Yes, Your Honor.

(STATE'S REQUESTS TO CHARGE MARKED COURT'S EXHIBIT NUMBER 106.)

(COURT'S ORDER FOR EVALUATION DATED JULY 12, 2006, MARKED COURT'S EXHIBIT NUMBER 107, NOT TO GO TO THE JURY.)

PAMELA CRAWFORD, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. HEMBREE:

Q. Dr. Crawford, you are a Forensic Psychiatrist, been qualified many times in courts of record in this State.

A. That's correct.

Q. And you were called upon to conduct a competency criminal responsibility and capacity to conform evaluations on Defendant Stephen Stanko.

A. Yes.

Q. That was ordered by the Circuit Court on July 12, 2006, I believe.

A. That's correct.

Q. And this was an Order that was requested after the Defendant had indicated he was going to assert an insanity

defense.
A. Yes.
Q. You undertook to evaluate him and covered many different -- reviewed many different materials, and talked to many different witnesses.
A. I did.
Q. You also interviewed the Defendant regarding the Henry Turner event over the course -- well, you interviewed him over the course of about seventeen hours?
A. Yes.
Q. And in the course of that interview you discussed the Henry Turner event.
A. Yes.
Q. If you would, tell this Court, in summary, what Mr. Stanko revealed to you regarding the Henry Turner event.
A. What Mr. Stanko told me was that Henry Turner was anger with him when he found out that he had -- had killed Ms. Ling, and that Mr. Turner pulled a gun on him, that Mr. Stanko begged him to call 911 and not to shoot him, but Mr. Turner approached him with the gun and that he wrestled with Mr. Turner and two shots went off, one went into Mr. Turner and the other went into the room somewhere.
Q. Very good. Now, Dr. Crawford, you've testified in these types of cases many, many times.
A. Yes.

Q. Is this the type of testimony that is relevant and important in forming your opinion?
A. It's very important. When I'm asked to do a criminal responsibility evaluation part of what I'm looking for is, you know, does this person have a psychiatric diagnosis. The other thing that I have to look at is the state of mind during the time of the events that led to the charges, and so I have to look very specifically at what happened before, during and after those events. And what's crucial here is that -- the question that's brought up is is this -- did he not know legal or moral right from legal or moral wrong, and it's clear from what he told me that, not only did he remember the events, but that he's asserting that he was defending himself, which is -- it sort of ruled out a insanity defense in the sense that he said, I remembered it, and I did this because I was trying to protect myself, and that's just pretty crucial.
Q. Those -- Dr. Crawford, are those -- without going into the details of the events, are the significant portions of his conversation with you about these that he was aware of them --
-
A. Yes.
Q. ---And that he claimed that he was doing these things in self-defense?
A. Yes. That's very important, because we are looking at legal or moral -- knowing legal or moral right and wrong, and

what he is saying is, I had to protect myself, I remember exactly what happened, I had to protect myself, this is not an issue of mental health, it's what he is telling me in his story of what happened, but this is something he did in order to protect himself, he didn't do this out of rage, he didn't do this out of losing control, he did this to protect himself, and that's, in my opinion, crucial to my opinion that this has nothing to do with a brain injury or -- this has to do with him saying that he was protecting himself.

MR. HEMBREE: Thank you, Dr. Crawford.

THE COURT: Do you have any questions that y'all want to ask or -- on that particular issue?

MS. WILLIAMS: Not at this time.

THE COURT: All right. You can step down, Ma'am.

Let me ask you a couple of questions, Solicitor. As it stands now do you expect to request any charge of the jury as to an inference of malice from the use of a deadly weapon? As part of the Court's charge on murder do you expect to ask the Court to do that?

MR. HEMBREE: That's a standard charge, Your Honor ---

THE COURT: And I understand that ---

MR. HEMBREE: ---And yes, yes.

THE COURT: ---But if you do, and I allow this testimony, then have I not -- do we now put in the issue of self-defense; there is now evidence of self-defense in the

record, so that under that decision that was just made by the South Carolina Supreme Court in October, this year, **State versus Belcher**, then it wouldn't be proper if I allow that testimony, so that's an issue.

Now, going back to -- going back to **Slocum**, the Court in **Slocum**, as I indicated said, because the State's cross-examination was proper under 705, South Carolina Rules of Evidence, we disagree with **Slocum's** contention that the evidence was inadmissible under **Lyle**, or constituted improper character evidence.

And we look at 705. "The expert may testify in terms in an opinion or inference and give reasons therefor without first testifying to the underlying facts or data unless the Court requires otherwise. The expert may, in any event, be required to disclose the underlying facts or data on cross-examination."

That was my point. That was why it was proper, because the defense put in a witness, an expert, on the stand. The State was allowed to test the veracity, the believability, credibility of that particular witness in front of the jury by going to the underlying facts. That's not what we have here. That's not the situation here, so that case is not applicable.

What I do have is, are we treading on ground that goes against the principle that the Defendant -- that we just talked about, the Fifth Amendment to the Constitution of the

United States of America, the defendant is not required to testify would -- could be an improper aspect of that, and the 403 analysis. I just don't see how it's proper, besides the fact that it creates other issues that I don't think are necessary to be created in this matter, so again, other than the statement made to the witness as to the facts, you can talk all around it, did you get facts from him, what was your opinion from the facts, but the facts themselves may not be testified to in front of the jury. That's the Court's ruling.

All right.

MR. HEMBREE: Thank you, Your Honor. The -- as a point of clarification I think I -- I think I understand, but I don't want to create a problem.

THE COURT: All right.

MR. HEMBREE: The witness in Court's -- in considering the Court's ruling, would the witness be permitted to testify that the Defendant could clearly recall the events, that he --

-

THE COURT: Well, she discussed the events with him, or he discussed the events with her ---

MR. HEMBREE: Very good.

THE COURT: ---And based upon her discussion of the events with him she reached certain conclusions, whatever they may be. She just cannot relate what he told her. That's where I'm drawing the line.

MR. HEMBREE: Understood, Your Honor, and we can certainly ---

THE COURT: Now, again, obviously then, dependant upon the Defense's cross-examination, you know, you may be able to go into it further, but I'm just going to caution the State, or caution the Defense, that you can't make an issue here that I just raised about self-defense and Supreme Court Decision by your question, and I'm not going to allow that. You are not going to raise an issue in that regard because, again, it's just not proper for this jury.

MR. HEMBREE: Thank you, Your Honor.

THE COURT: All right. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Good morning, ladies and gentlemen.

(JURY ANSWERED IN UNISON, GOOD MORNING.)

THE COURT: All right, Solicitor, any reply witnesses or testimony in this case?

MR. HEMBREE: Yes sir, Your Honor. We do have reply testimony. I'm not certain -- has the Defense formally rested?

THE COURT: Yes. They did rest on the record yesterday, they did.

MR. HEMBREE: The State calls Dr. Pam Crawford to the stand.

THE COURT: All right. Please come around to be sworn, Ma'am.

PAMELA CRAWFORD, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. HEMBREE:

Q. Dr. Crawford, if you would, give the benefit of your training and experience in the field of Forensic Psychiatry to the jury.

A. Okay. I'm a Forensic Psychiatrist. Let me just kind of give you my brief educational background. I went to Emory University and graduated in 1983 with a Bachelors in Psychology, and then I went to Emory University School of Medicine and became a physician, and finished that in 1988. I then completed my residency in Psychiatry, also at Emory, in 1992, and then I took -- I was Board Certified in General Psychiatry, and then later took my Forensic Psychiatric Boards. I was in the Air Force for several years, and that's when I was introduced to Forensic Psychiatry, and the Forensic Psychiatry is anywhere -- any place where legal issues and psychiatric issues intersect, and so that was my first introduction to that, was when I was in the Air Force.

And my career kind of went along and then I came to South Carolina about eleven years ago, and that's when I

became much more involved with Forensic Psychiatry.

Q. In what capacity -- when you came to South Carolina what sort of work did you do?

A. Well, initially I worked as a general Psychiatrist, but then, once I completed my Forensic Boards I ended up becoming the Head of Forensics, basically, for the State of South Carolina, at William S. Hall Psychiatric Institute, so I was the lead person who was administratively responsible for all the evaluations throughout the State that were ordered by the Court, Court-ordered evaluations for not -- people who are not guilty by reason of insanity, and for competency, so for three years I did hundreds of those evaluations, and also supervised all the doctors doing that.

I also ran the unit for people found not guilty by reason of insanity.

Q. You've been qualified in courts of record in this State and other states to testify as an expert in the field of Forensic Psychiatry?

A. I have.

Q. How many occasions?

A. Several hundred, probably close to three hundred times.

MR. HEMBREE: Thank you, Doctor.

Your Honor, at this point we would offer -- I offer Dr. Pamela Crawford as an expert in the field of Forensic Psychiatry.

THE COURT: Any -- do you wish to examine Dr. Crawford?

MR. DIGGS: Your Honor, no questions, and we don't have any objection.

THE COURT: All right. I'm going to qualify her to give her opinion in the field of Forensic Psychiatry.

Q. Dr. Crawford, you are licensed in the State of South Carolina?

A. I am.

Q. You are Board Certified as a Forensic Psychiatrist?

A. Yes.

Q. And you were called upon back in 2006, I believe, to conduct an evaluation of Defendant Stephen Stanko.

A. I did, yes.

Q. And how did you come into that role? What process brought you into this case as the evaluating Forensic Psychiatrist?

A. This case is a little bit unusual in terms of how I became involved with it. At that -- my initial involvement in the case was, I was the consultant with South Carolina Law Enforcement Division, a Psychiatric Consultant with them, and when a bunch of the issues with Mr. Stanko happened, right around the time of the crime, they asked me to come in and be involved in that case. So initially I was involved from a law enforcement perspective, trying to give them advise about what might be going on, and so that was when I thought that my

involvement with this case would end.

However, the case -- in 2006 I was ordered to do an evaluation of him, and I brought to the attention of both the Defense and the Prosecution, I said, look, you know, I've already had some prior involvement, you need to make sure that you understand that, but I understand that the Court wants me to do this evaluation, but I want it out on the table that I've had some prior involvement, and both sides agreed that they thought that I could be fair with that, and so I was ordered by the Judge to do an evaluation of Mr. Stanko, as a Court's expert, not for one side or the other, as a neutral expert.

Q. All right. Let me talk to you about that, because that's -- I think that's a real important point when evaluating your credibility, is, who are you representing, I mean, who are -- when you begin this evaluation of Mr. Stanko at the Court's request, who are you working for?

A. The Judge, and only the Judge, and that's why I was so clear about disclosure of prior involvement to both sides, because I think as the Court's witness you have to be above reproach in terms of a bias in the case, and so I made it very clear any prior involvement, so I am solely working for the Judge.

Q. And continued in that role ---

A. I do.

Q. ---Throughout the process?
A. I do. My information is available equally to both sides. And what happens in these cases is, you know -- and again, I've done a lot of these court-appointed cases -- is that I'm -- I tend to be called by the side who my opinion is favorable for, so if my opinion is favorable for the defense that's who calls me to the stand, and that's happened a good bit, as you are aware, so ---
Q. And then, of course, if your opinion is favorable for the prosecution, the prosecution calls you?
A. Exactly.
Q. Now, you indicated that you were involved in the not guilty by reason of insanity, N.G. -- when you said N.G.R.I. --
A. Uh huh **(indicating positive)**
Q. ---That's not guilty by reason of insanity.
A. That's correct.
Q. That you were in charge of the unit that oversees that group of people.
A. Right.
Q. Tell us about your experience in that unit.
A. Well, I was in charge -- I ran that unit as the main doctor. I was also -- I was in charge of the process of helping, you know, the courts to see who got into that unit. I was also involved in what's called the Forensic Review

Board, who helps determine when the N.G.R.I.s are ready for release from the hospital back into the community, so I was involved in all phases of that program, I mean, I sort of lived in the world of N.G.R.I. for a number of years, so knowing how they get in there, how they -- what they do while they are there and how they get out, and so became very familiar with the whole issue.

Q. It's a -- I mean, within the field of Forensic Psychiatric you have had a really an exceptional amount of experience with not guilty by reason of insanity and this type of issue.

A. Yes, absolutely.

Q. Let me draw your attention, or kind of bring you up to this particular evaluation process of Defendant Stephen Stanko. When you begin an evaluation what's the first, I mean absolutely first step you take?

A. As trivial as this may sound, I always get the statute, and put the statute in front of me. I've done hundreds of these evaluations. But I take the Court Order and I look at the statute and I say to myself, again, what does not guilty by reason or insanity mean. You know, I think it's fairly easy in a lot of these cases to kind of get lost in all the details, and so you always have to go back to the statute, because that is the question that the Judge is asking me, does this person meet that standard.

Q. Okay. And the statute being the State Law that covers this question.

A. That's correct.

Q. And tell us what that statute says.

A. And I'll have to refer to my notes so I get it right. The statute has three parts, (A), (B) and (C), and the first is that it's an affirmative defense to the prosecution for a crime that, as a result of a mental disease or defect -- so I'm looking for that -- as a result of a mental disease or defect at the time of the commission of the act constituting the offense the defendant lacked the capacity to distinguish moral or legal right from moral or legal wrong, or to recognize the particular act charged as morally or legally wrong. And so I always remind myself it's moral or legal right and wrong, that they have to have mental disease or defect, and they have to lack the capacity to distinguish between moral or legal right. So that's the (A) part.

The (B) doesn't involve me so much. That's the defendant has the burden of proof of proving the defense of insanity by the preponderance of the evidence.

The (C) part is also very important, and that's evidence of mental disease or defect that is manifested only by repeated criminal or other anti-social conduct is not sufficient to establish the defense of insanity. That's the other part that I always remind myself. It's not enough just

to be an anti-social personality to be found insane. You have to have a specific mental disease or defect, and they put, you know, the (C) part which is, it's not enough to have -- be manifested only by criminal repeated anti-social acts.

Q. Well, Doctor, let me ask you a -- I guess sort of a hypothetical question. If another psychiatrist, let's say from Georgia, testified from that very witness stand that -- that Mr. Stanko's condition manifests itself by repeated criminal or other anti-social conduct, then that would not be sufficient for an insanity defense, would it?

A. That's correct. You could not -- and this is -- having done this hundreds of times -- you could not have simply a diagnosis of Anti-social Personality Disorder in order to meet the standard of an insanity defense. That's what this -- what the statute is saying.

Q. Now, you've reviewed the statute ---

A. Yes.

Q. ---In the process of evaluating Mr. Stanko.

A. Yes.

Q. What is the next step in the process?

A. The next step in the process is -- what I tell both sides is, I need every scrap of information that you have, I need witness statements, I need crime scene photos, I need to know everything that I can possibly know that's happened in the commission of this crime, or alleged crime, because I

never know when I start. I also tell them that I'm going to need access to police officers, I'm going to need access to witnesses, I'm going to need access to any materials that may have been found in the defendant's home, anything that's going to give me any clue to this person's mental condition, state of mind. I very typically, if I have a chance, you know, we go to the actual crime scene and try to see what I can see, because what I'm trying to do is really two things. One is, I'm trying to see, does this person have a mental disease or defect, and then two, if they do, what was happening at the time that influenced their state of mind. I'm also going to do things like try to talk to their teachers, try to get information certainly from their family.

And then I'll have all that information, and then what I do is, I need to interview the person, the defendant. I take that information and then, if there's questions -- sometimes issues will come out -- come up in a case that are outside of my area of expertise, like, I'm a Psychiatrist, I'm not a Neurologist, so if something specifically comes out about a neurology issue, or a neuroradiology issue, I consult with somebody, so I've interviewed the person, I've gotten all this information, and then I consult with folks, say, help me understand this, and I go to people that I know are neutral, that don't have a dog in the fight, to tell me, you know, explain this to me, because I can't be an expert in all

things, I really am kind of confined to Psychiatry, and so I do that as well.

Q. And that brings up an interesting point. So it's your testimony that you would consult -- if you were going to interpret an M.R.I. you wouldn't interpret as a Psychiatrist --

A. Absolutely not.

Q. ---Because it's not your role to interpret an M.R.I.?

A. No.

Q. You would look to whom to interpret an M.R.I.?

A. What I would probably do is go to a Neurologist, and a Neuroradialogist. I would go to somebody specifically. I do not have training and certification in that.

Q. And if you were familiar with a P.E.T. scan ---

A. Uh huh **(indicating positive)**

Q. ---Would you interpret that P.E.T. scan?

A. Absolutely not.

Q. Not appropriate for a Psychiatrist ---

MR. DIGGS: Your Honor, object. He's leading a little bit, and I would object.

THE COURT: I'm going to allow it.

MR. DIGGS: All right.

THE COURT: You may continue, sir.

MR. HEMBREE: Thank you, Your Honor.

Q. You would not interpret that P.E.T. scan. You would go

to someone else to interpret that P.E.T. scan.
A. That's correct. I would be risking malpractice. I am not trained, I am not certified to do that, and so I would -- one thing that we have to do in this field is be very clear of our boundaries, this is what I know, this is what I can do, and this is what I can't do, and what I can't do I need to ask for help with.
Q. Let's zero in now on the specific -- the specific material and acts that you took in preparing for your interview with Mr. Stanko. What materials did you review, collect, interviews did you undertake in preparing for this evaluation?
A. Okay. I interviewed a large number of people. Do you want me to go through the specifics of who I interviewed, not all of which pertain exactly.
Q. No. That's not necessary. Perhaps just tell the jury. I think it's important for them to know the degree that ---
A. Okay.
Q. ---And care that you took. How many people did you interview?
A. Okay. I looked at all the Arrest Warrants, Incident Reports, Investigative Reports, witness statements, medical records from the Richmond County Jail, medical records from S.C.D.C. back in 2006, and also asked for new records since then, mental health services notes from S.C.D.C.,

administrative records ---
Q. When you say S.C.D.C..
A. I'm sorry, South Carolina Department of Corrections.
Q. Okay. ---All regarding Mr. Stanko, a R.A.P. sheet records from Pardon and Parole Services. I interviewed one, two, three, four, five, six, seven, eight, nine, ten -- ten witnesses or people that knew him. I interviewed Dr. Sachy, or Sachy. I looked at the report of Dr. Einhorn. I reviewed the reports that had to do with the P.E.T. scans, and the report of Dr. Gur. I reviewed a Forensic evaluation by Dr. Frierson, I reviewed a report by Dr. Sachy, and I also reviewed one recently by him. I did a consultation with Dr. Brandon, who is a Neurologist. I did a consultation with a Neuropsychologist, Dr. Brawley, I examined records from Berkeley County Mental Health, looked at crime scene photos, autopsy photos, autopsy reports, e-mails, school records of Mr. Stanko, some court documents regarding some filings that he had done. I listened to recordings of telephone conversations between him and one of the witnesses. I got hold of a lot of fiction and non-fiction writings of Mr. Stanko, records from the Greenville County Sheriff's -- I mean, Greenville County Detention Center, incident reports, a letter Mr. Stanko had written, and then I spent approximately seventeen hours with Mr. Stanko, interviewing him.
Q. In the -- it's a client -- what you would consider the

clinical interview process.
A. Clinical interview process.
Q. And even had an opportunity to reinterview Mr. Stanko within the last few weeks to update your ---
A. With regards the competency.
Q. And there's no need to go through the details, but you get a -- did you review his -- what did you find about his family history and his upbringing?
A. Family history was -- I mean, he was a very bright young man without a lot of significant behavioral problems, very superior student, that he was described as kind of cocky or arrogant by some of his fellow students and teachers, but you know, not -- not disliked. He was near the top of his class when he graduated, and no major behavioral problems as a kid that came out.
Q. Let me bring you up to -- kind of focus on the -- did you -- did you interview Mr. Stanko regarding the events surrounding the death of Henry Turner?
A. I did.
Q. Could you tell us about his state of mind? Well, just tell us -- without telling us the details of the conversation ---
A. Uh huh **(indicating positive)**
Q. ---Details of the conversation, tell us how he presented.

A. Okay. He -- and again, this whole interview was about seventeen hours, so I spent a lot of time with him. He -- regarding these events he was very clear about his version of events. He was very calmly able to describe them. He remembered -- he claimed to remember every detail of it. He --

Q. Would it be fair to say that he remembered the details leading up to it, during it, and after it?

A. He did. And I'm -- and when I say he remembered it, I had questions about the veracity of what he was telling me, and I brought that up to him with some of the other information that I had, but he told me he could clearly remember, and that there -- there weren't any particular psychiatric or psychological factors involved in those events.

Q. Did he indicate that he was in a rage?

A. Not at all.

Q. Did he indicate any kind of amnesia?

A. No, he did not.

Q. Alcohol or drug abuse?

A. No.

Q. I mean, anything of psychiatric significance that would explain, other than -- in a psychiatric -- I guess to offer some sort of psychiatric explanation why.

A. No. I mean, there was none, which, you know, it was interesting. When I'm dealing with an insanity defense one of

the most important things is to try to understand what happened at the time because you are looking at how those factors played in psychiatrically, but gave a plausible, logical explanation that involved no particular overriding emotion or psychosis, or hearing voices, or being particularly angry, very clear discussion of what happened, and was able to -- said that he remembered the details.

Q. He -- Doctor, do you have an opinion, within a reasonable degree of medical certainty as to Mr. Stanko's diagnosis?

A. Yes.

Q. What is his diagnosis?

A. Mr. Stanko has a severe personality disorder. The diagnosis I've given him is personality disorder, not otherwise specified, with anti-social and narcissistic features. He meets almost all the criteria for an Anti-social Personality Disorder. There is one he doesn't meet, which is why you can't just give him that diagnosis, and that is, that a person, to have an Anti-social Personality Disorder has to have evidence of a conduct disorder before the age of, I believe it's fifteen, and he doesn't have that. He has all the other aspects, but he doesn't -- he didn't -- he wasn't a bad actor as a young kid. So what he has is a combination of those traits as well as severe narcissistic traits.

Q. Well, tell this jury, what does that mean when you say

narcissistic traits.
A. Well, we use the Diagnostic and Statistical Manual Four to discuss diagnoses. It's just so that all psychiatrists are kind of on the same page.
Q. Let me stop you there for one second.
A. Yes.
Q. But that's what also referred to as the D.S.M.4.
A. The D.S.M.4(TR) actually.
Q. Okay. (TR), and it's a book about that thick ---
A. Yes.
Q. ---And it is the document -- tell me if this is correct, it's the document used by Psychiatrists all over the United States ---
A. It is.
Q. ---To diagnose a whole host of psychiatric, psychological issues.
A. That's correct.
Q. And that's what -- I mean, that's the standard. That's what ever ---
A. It's a standard, so that we can all speak the same language.
Q. Got you. And it's a document that's peer-reviewed and ---
A. Yes.
Q. ---I mean, it's the Bible when it comes to this issue.

A. Right. I never like to call it the Bible, but it is the standard text which describes each of the conditions, and that way it's less subjective, and so that we can -- so I can be talking about an illness here, and someone in Alaska can, and we can be talking about basically the same kind of problem.

Q. Doctor, let me -- what would be your response to hear a fellow psychiatrist say that every diagnosis in the D.S.M.4 is insanity?

MR. DIGGS: Your Honor, I would object to the pitting.

THE COURT: Rephrase your question, Solicitor.

Q. Dr. Crawford, is every diagnosis in the D.S.M.4 equate to insanity?

A. Absolutely not.

Q. Okay. And tell this jury why that is the case.

A. Well, for a variety of reasons. The diagnosis -- for example, nicotine dependence is a diagnosis in there, and I mean, maybe you do have to be crazy to smoke, but you wouldn't meet the South Carolina Statute. There is not any diagnosis in there that it -- that, standing alone, means that you are insane. You have to go back to the standard, do you have a diagnosis of a severe mental illness, or defect, and are you, because of that, at the time the events that led to your charges -- are you unable to determine legal and moral right and legal and moral wrong, meaning you can actually be

schizophrenic, but if you are schizophrenic and you shot Bob at the grocery store when you were robbing the grocery store, that doesn't mean you are insane. Now, if you were schizophrenic and the voices told you if you did not shoot Bob you would -- the world would end, and you shot Bob, then we could be talking about an issue of insanity, but having a diagnosis, it's one part, but -- and you also have to look at -- there are numerous diagnoses in there. For example, parent/child problem, that's not a diagnosis that's going to get you an insanity defense, and again, like nicotine dependence, like -- there's numerous. I mean, most of them would not even get you in the ballpark.

Q. Now, you were testifying about the narcissistic aspects ---

A. Yes.

Q. ---That Defendant Stanko's personality, and I know you've referred back to -- I think you touched on D.S.M.4. Tell the jury what that means.

A. A personality disorder is essentially a behavioral disorder. It's a disorder of interaction of -- it's a pervasive pattern of behavior that begins in early adulthood, and that sort of lasts a lifetime. It's a pervasive pattern of mal-adaptive behavior, a behavior that doesn't help you too much getting along with people, and there's all sorts of different personality disorders. They are not mental

illnesses in the sense of, if you've schizophrenia, or if you have major depression you are given medication to make you better. It's a mal-adaptive way of interacting with the world.

And when you talk about Narcissistic Personality Disorder -- and let me refer to the definition. It's a pervasive pattern of grandiosity, in either fantasy or behavior, need for admiration, and lack of empathy beginning in early adulthood and present in a variety of contexts. So the narcissistic part, you are looking at things like, one, has a grandiose sense of self-importance, exaggerates achievements and talents, expects to be recognized as superior, believes that they are special, requires excessive admiration, has a sense of entitlement, is interpersonally exploitative, that takes advantage of others to achieve his or her own ends, lacks empathy, is unwilling to recognize and identify with the feelings of others, shows arrogant, haughty behaviors or attitudes.

So what the D.S.M.4 does is, it give you, you know, nine of these characteristics and you have to have five of them to be considered to have a Narcissistic Personality Disorder. So -- and in Mr. Stanko's case it was my opinion that he had the grandiose sense of self-importance, required the excessive admiration, the entitlement, he was interpersonally exploitative, and he lacked empathy, so those were there. So

I thought that he had some elements of the Narcissistic Personality Disorder, and he had some elements of an Anti-social Personality Disorder.

Q. And tell us about that, Dr. Crawford.

A. An Anti-social Personality Disorder, it's a pattern -- a pervasive pattern of disregard for, and violation of the rights of others, occurring since the age of fifteen, and it was my opinion that he had all seven of the characteristics, failure the conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest, deceitfulness, as indicated by repeated lying, use of alias, or conning others for personal profit or pleasure, impulsivity, or failure to plan ahead, irritability and aggressiveness, as indicated by repeated fights or assaults, reckless disregard for the safety of others, consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations, and lack of remorse, as indicated by being indifferent to, or rationalizing having hurt, mistreated or stolen from another. It was my opinion he met those criteria.

Q. Let me talk with you about one of those criteria regarding assaults.

A. Yes.

Q. And without going into any detail about the nature of the assaults, what was his -- did he have a history of lots of

assaults, where he committed lots of assaults?
A. No, he committed several, in very specific circumstances, not a -- yes, not lots of assaults.
Q. As a matter of fact, is it fair to say that he had a fairly ---
MR. DIGGS: Leading, Your Honor, and we object.
MR. HEMBREE: I'll withdraw -- I'll rephrase, Your Honor.
THE COURT: All right, sir.
Q. How would you characterize, if you could, his propensity toward violence on a regular basis?
A. Not -- I mean, he was not a particularly violent person. It was only, I would say, on about three circumstances. And so even -- yes, I mean, in a confined setting not so, and not in other settings, but there -- it -- just in ---
Q. Essentially in his entire life?
A. Yes, about three.
Q. Do you have an opinion as to his ability to control his violent tendencies?
A. Based on my evaluation of him and my evaluation by looking at his history of behaviors, he's shown very good control. He's been in numerous situations, particularly over the last maybe ten years, little bit longer, where he, at least reports to me that he's been threatened with assault,

that he's been threatened where his life might actually have been in danger where he was able to not respond, and he was able to appropriately remove himself from the situation.

Q. The -- tell this jury a little bit about what steps you took -- you consulted with some other professionals ---

A. I did.

Q. ---That were outside of your scope of -- your -- the scope of your expertise.

A. Yes.

Q. Tell the jury about your consultations with those professionals.

A. Well, it was pretty clear to me -- the D.S.M. -- and in Psychiatry we base our diagnoses really on what the symptoms of the patient, and what we see of the patient. I think one of the things you would notice in the D.S.M.4 is, there is no mentioning of imaging, of testing of -- even psychological testing of M.R.I.s or P.E.T. scans, because the science just isn't there at this point to diagnose people based on those things. It's based on what symptoms that we see.

So when it became apparent to me that somehow the Defense was involving using P.E.T. scans and M.R.I.s to diagnose a psychiatric condition I said, wait, wait, wait, I need to talk to a Neurologist about this, because this is going a way that didn't make a lot of sense to me.

Q. Is it fair to say that that's outside the scope of

generally accepted medical scientific practice?
A. It is. I think that we would all like, at some point in the future, to be able to -- as a Psychiatrist I know I would -- to give somebody a P.E.T. scan and be able to say, oh my gosh, he's schizophrenic, or he's going to become this way, or he's (X), (Y) or (Z), because that would make our jobs a lot easier. We are not there yet. We are nowhere near there, and the D.M.S. is pretty clear on that. I mean, that's not a criteria listed. Even -- you know, we do know that there are some abnormalities with Schizophrenia, but we don't know enough to have them as a diagnosis, and so when we start going into these areas which are kind of research, and speculative, and have more to do with Neurology, I was like, hold on, I need to talk to a Neurologist, let's let them look at the P.E.T. scan, and the Neurologists, let's let them look at this stuff.
Q. And you consulted with whom in connection to the P.E.T. scans -- P.E.T. scan?
A. It was Dr. Brannon I consulted with. He's a Neurologist who I respect tremendously at the University of South Carolina, and again, I'm always looking for people who wouldn't have a dog in the fight, and so I said, you know, these are the issues, and there's an M.R.I. and a P.E.T. scan -- let me see who else I talked to -- and could you please look at it and tell me what you think, and so Dr.

Brannon reviewed the M.R.I. as normal, and Dr. Brannon reviewed the P.E.T. scan as normal, and he consulted with a Radiologist at M.U.S.C., and he also looked at what we call the Schoop's Neurological signs. Apparently -- the Psychiatrist, I believe -- the Psychiatrist for the Defense was saying that there was some Schoop's Neurological signs, so he did a detailed neurological evaluation and said there were no Schoop's signs. So I just wanted to make sure I wasn't missing something.

Q. Nothing -- and you felt confident in their opinions, and it was consistent with your ultimate opinion.

A. Yes. I felt very confident.

Q. And did you also consult -- have a consult on a neuropsychological evaluation?

A. Yes. I asked a neuropsychologist to see him, because those are -- it's a psychologist who does specific testing on neurological issues, and -- as well as personality issues, and so she -- she did some testing for me, and she found no evidence of neuropsychological impairment at all, so that was helpful to know that.

Q. Anything else, Doctor, of significance in your findings, or in your evaluation of Defendant Stephen Stanko?

A. Not that I can think of.

Q. Fair enough. Let me ask this question and then I'll be finished. Do you have a -- an opinion as to Stephen Stanko's

criminal responsibility, within a reasonable degree of medical certainty?

A. Yes, he -- under the South Carolina statute he would be criminally responsible for his acts.

Q. And do you have an opinion regarding his capacity to conform his conduct to the requirements of the law?

A. He also -- he does not have a condition that would make him unable to conform his conduct.

Q. And that's within a reasonable degree of medical certainty?

A. Yes.

Q. And you've provided those findings to the Court, as was your responsibility in this case?

A. Yes, I did.

Q. And to both sides?

A. Yes.

MR. HEMBREE: Thank you, Dr. Crawford. Please answer any questions Defense counsel may have for you.

THE COURT: All right, Mr. Diggs or Ms. Williams.

MR. DIGGS: May it please the Court.

THE COURT: All right, Mr. Diggs.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Dr. Crawford, how are you this morning?

A. I'm doing well.

Q. Good. Good.

Now, you were -- I understand that you've been a Court witness, but are you actually a Court witness in this prosecution?

A. Yes. In this case, yes.

Q. Yes. And at the time that you were initially appointed in the case, tell us again where you were working and who you -- with whom you were consulting.

A. Okay. When I did this case I was working for the South Carolina Department of Mental Health, doing sexually violent predator evaluations. I have had, since 1998, I believe, or '99, I've been, as part of my job with Mental Health, a consultant with the South Carolina Law Enforcement Division.

Q. All right. And who is -- what do they do, the South Carolina Law Enforcement Division?

A. That's the State police.

Q. All right. And the initial report that you wrote was on a letterhead that was -- it's dated what, do you remember?

A. I put -- the letterhead I put was for the State -- was for S.L.E.D., and the reason that I did that was -- I made clear to everybody from the beginning that that was my initial involvement, was through them. I didn't want ever it to seem that that was a hidden fact, and I talked with you very specifically about that, that everybody needs to know that that was my initial involvement, so I chose that to emphasize that point.

Q. Now, in your testimony -- and you've given your reasons for doing so ---

A. Yes.

Q. ---But you deferred reading M.R.I.s and P.E.T. scans to others.

A. I did.

Q. Okay. And you didn't do that, and you don't claim any personal knowledge about what those technologies reveal?

A. I read the reports. I mean, I know what -- what is said about them.

Q. Right.

A. I didn't read them, no.

Q. And you consulted with individuals from M.U.S.C. with respect to the P.E.T. scan and the M.R.I.?

A. U.S.C., and I think there was someone from M.U.S.C. as well.

Q. All right. And U.S.C. meaning ---

A. University of South Carolina.

Q. Okay. Got you. In Columbia?

A. Yes.

Q. All right. And did you rely on the P.E.T. scan report from M.U.S.C.?

A. I consulted with Dr. Brannon about the P.E.T. scan from M.U.S.C..

Q. All right, now, is he from M.U.S.C. or ---

A. He's from U.S.C.. And then the Radiologist at M.U.S.C. found no abnormality in the P.E.T. scan.
Q. That is Dr. Spicer?
A. You know, I'm not sure. I don't remember.
Q. Okay. Now, you made a statement in your testimony that -- you remember when you said -- now, if he heard voices say shoot Bob, and he did shoot Bob, that would be insanity?
A. No, I didn't -- I didn't say that exactly.
Q. Tell us what you said.
A. It's actually much more complicated than that.
Q. Okay.
A. If he heard voices that said shoot Bob and he shot Bob you would be in the realm where that might be considered, but for example, if he heard the voices that told him to shoot Bob, and he knew it was wrong, he still wouldn't meet the insanity statute. He would have to -- if he heard voices that told him to shoot Bob, and he thought it would save the world, that would be a delusional belief that he was doing the right thing, and then he likely might meet the insanity statute. So it's very, very specific to the actions at the time.
Q. Correct. And so the voices really are -- don't have anything to do with whether or not the statutory requirements have been met there ---
A. They do.
Q. ---With respect to sanity or insanity?

A. They do, in that you have to have the first part, that somebody has a mental disease or defect.
Q. Right.
A. So we are saying mental disease or defect, does it apply to knowing right from wrong, and is it not an Anti-social Personality Disorder, so those are the three things that you are looking at.
Q. But voices wouldn't be one of them?
A. Yes. Voices would be a significant factor into, does the person have a mental disease or defect. Yes, I would be -- I would be going, okay, we've crossed that barrier, because we have something -- now it could be voices because he was using crack cocaine. If I found that out I would be saying, well, that might not meet the standard, but when I see that somebody is hearing voices I'm thinking, in my differential, it might be Schizophrenia, might be Bi-polar Disorder, might be something that's going to get us in the ballpark. Without being in the ballpark, you know, it's ---
Q. Okay. But voices are not necessary?
A. Voices are not necessary. I have definitely rendered opinions that people are not guilty by reason of insanity for -- if they've, for example, had delusional beliefs, if they've had firmly held false beliefs that, you know, if I don't kill my children God will end the world, so I have to do this. They may not be hearing a voice telling them that, but

they have that belief. I -- it's usually a psychotic process of some sort, either hallucinations or delusions.

Q. The statute that you read, you indicated that you went to it and consulted with it, and, in fact, almost do every time you get involved in a case ---

A. Yes.

Q. ---Which is a -- I agree, you need to do that every time. But it really doesn't say anything about delusional, or voices, it's pretty straight-forward.

A. It says mental disease or defect.

Q. Right. And that can be in a number of different forms. Tell us ---

A. It can, but it's -- here's the thing, I mean, it can't just be anything, I mean, you know, if -- again, nicotine dependance, in D.S.M.4, you aren't going to get from nicotine dependance to insanity.

Q. Right. We -- and I understand that. Let me ask you to ---

A. Yes.

Q. ---Tell us what -- what the scientific community means when they talk about a mental disease or defect.

A. You know, that -- those are legal terms. Those aren't medical terms, and that's -- you know, that's where Forensic Psychiatry has difficulties.

Q. In fact, insanity is the legal term ---

A. Insanity is a legal term, and so what we have to do is take what the legal folks say, which is mental disease or defect, and apply it to Psychiatry, so what we come up with is psychiatric diagnoses, or you could have, for example, a neurological disorder such as Alzheimer's where, you know, you grab the gun and shoot your wife and, you know -- or you could be in a delirium, where you don't know what you are doing at all, don't know here or there, and then do something, so it can either be a psychiatric diagnosis, or something that's such a severe neurological impairment that it causes those problems, but we are talking severe, severe problems.

Q. Let me ask you, I've heard you mention the term D.S.M. ---

A. Uh huh **(indicating positive)**

Q. Am I correct? Tell us what that is. Explain to me, please Ma'am, what that is, and what it's purpose is.

A. The Diagnostic and Statistical Manual, it's -- it's a book that gives Psychiatrists, Psychologists, a common language to talk about diagnoses. It lists diagnoses and the characteristics that they have, so that we can sort of be on the same page.

Q. Okay. And so when a person comes in to you and -- they are referred, and the referring individual says, we believe this person needs psychiatric help or ---

A. Right.

Q. ---You do an evaluation and make a diagnosis of him.
A. Uh huh **(indicating positive)**
Q. In part when you do that, do you gather instances, or trends in that person's behavior?
A. Yes.
Q. And how does that play into the diagnosis that you get for that person ---
A. Well, you are looking at ---
Q. ---Or the diagnosis that you made.
A. ---At behaviors, and at symptoms of an illness, and behaviors may be part of that.
Q. All right. It would be a lot like a medical doctor in a -- for a sick person, physically sick. Would that be true?
A. Uh huh **(indicating positive)** Yes.
Q. Look at what the symptoms are, and then think, well I've got -- you've got this, and so you need this kind of medicine, or -- is that ---
A. Kind of. I mean, yes, I mean it's ---
Q. All right.
A. ---It's maybe a tiny bit more complicated, but it's ---
Q. All right. I'm sure that it is more complicated than I just set out, but let's say when you look -- you came to a conclusion that Mr. Stanko has anti-personal -- antipers -- tell us what he has.
A. He has a combination of Anti-social Personality

Disorder traits, and of narcissistic traits.
Q. Okay. And you reached that conclusion based on things he does, his conduct.
A. In his case, yeah.
Q. Yes. And in most cases you would?
A. Well, I mean, when somebody has Schizophrenia, I mean, or any other -- or a, I would say a true mental illness ---
Q. Uh huh **(indicating positive)**
A. ---You are much more getting it from the interview, you are much more getting it from how they talk, and from, are they hearing voices, are they responding to internal stimuli. In his case he's clear as a bell.
Q. Uh huh **(indicating positive)**
A. So there's none of those kind of characteristics.
Q. Now, is that true in every respect? Are you saying that he's always been clear as a bell?
A. When I've seen him he has ---
Q. Okay. All right. But ---
A. ---The seventeen hours I've spent with him.
Q. All right. In reviewing any reports you've seen about Mr. Stanko's behavior in the past, did you see anything that might be contrary to that?
A. That -- no. I mean, I -- not that I've seen. I mean, he's -- he's always been organized and clear from everything I've looked at.

Q. Okay. Now we know that, in the Defense -- you looked at Dr. Sachy's report?
A. I did.
Q. He said personality disorder, in part, did he not, anti- ---
A. He said -- he uses the term psychopath, which isn't -- you know, again, it's sort of like using insanity. It's not an accepted term. I think he ---
Q. Did it used to be?
A. Not in the twenty years I've been doing this. No, not really. I mean it's a -- it's sort of a -- kind of shorthand for saying somebody is a bad guy, he doesn't have a conscience ---
Q. Uh huh **(indicating positive)**
A. ---And the closest thing we have to it is Anti-Social Personality Disorder. You say psychopath, it's kind of a lay term where somebody is really a bad guy, you say he's a psychopath.
Q. Anti-social personality can encompass a broad range of behaviors ---
A. Yes.
Q. ---Do you agree with me ---
A. Yes.
Q. ---From slight to very exaggerated.
A. No, you've got to be -- you've got to be pretty -- to

actually meet the criteria for Anti-social Personality Disorder you've got to be pretty bad.

Q. Pretty bad. Okay. And we agree that that includes certain factors, certain types of behavior that regularly are engaged in by that person.

A. I'm not exactly sure what you are asking.

Q. What do you look for -- if you saw certain behaviors and you concluded, like in Mr. Stanko's case, that he had an anti-social personality.

A. Yes, the ---

Q. What did you base that on in terms of his behaviors?

A. The deceitfulness ---

Q. Okay.

A. ---The lying, the disregard for the safety of others, the financial irresponsibility, the lack of remorse, failure to conform to social norms. I would say -- the main ones I would say would be failure to conform to social norms, deceitfulness, irresponsibility, lack of remorse.

Q. Okay.

A. Yes.

Q. And that is a definition that evolved over a number of years, did it not?

A. I'm not sure what you mean, I mean, it has been the definition of -- for years and years, of Anti-social

Personality Disorder.
Q. How long?
A. I'm not sure. At least -- that, or something close to it, for twenty years probably, thirty years.
Q. In fact, it was invented by a psychiatrist, was it not?
A. You know, I don't know who invented it. I know that there had to be consensus about the diagnosis.
Q. Well, if they didn't invent it they kind of adopted it, or brought it into ---
A. What they did is, again, they came up with the best they could in terms of a set of features so that, you know, when I'm talking about somebody with Anti-social Personality Disorder, you know, some -- another psychiatrist basically knows what I'm talking about.
Q. Do psychiatrists look at a person and try to determine why people have these characteristics?
A. Sure.
Q. And can you tell us generally, or even in Mr. Stanko's case, why he has these tendencies to engage in deceit and lying, and why he has a lack of remorse?
A. That's a tough question. I think -- I think he's a highly narcissistic, entitled person, who really feels special. I think he, throughout his life, has not really wanted to work very hard, so he's done a lot of illegal activities for quick gain. He's a very, very smart person,

but I would say that, rather than applying himself in a way that was consistently, you know, improve his lot in life he would look for the fast deal, the fast scam, in a lot of ways because it's easier, and also because I think that, given how narcissistic he is, that his fear of failing might have been significant. Why he doesn't have a conscience, I don't know. I don't think anybody can tell you why he doesn't have a conscience.

Q. Are you of the opinion that Mr. Stanko is here in the courtroom this morning because of choices that he freely made?

A. Yes, I am.

Q. And we acknowledge, he was smart in school, he was a good student ---

A. Yes.

Q. ---In terms of grades at least.

A. He was.

Q. And he could have, you would expect, been successful in any career that he chose.

A. Had he chosen to apply himself I think that that's -- but I think what you see with him is, it was so important, you know, when he didn't get into the Air Force Academy, when there was failure it was so important for him to be a success that he -- it's like, couldn't risk trying to do things the right way, so he -- he got really good at scramming people.

Q. Okay. Did you have an opportunity to interview his

family?
A. You know, I think I did. I think I talked with -- and this was a while ago. I believe I talked with his sister.
Q. Do you know how many siblings Mr. Stanko has, by the way?
A. And I'm going from my notes, because again, this was in 2006, but he has two older sisters and two older brothers.
Q. And his parents, are they alive, or do you know?
A. The last I heard I think they were.
Q. His mom -- did you get any information about his mom passing, and I don't -- certainly don't want to testify.
A. No.
Q. All right. So you don't ---
A. I don't know anything about ---
Q. You don't have any information about that. Okay.
And do you have anything in your notes that indicates whether you had an opportunity to interview each of the siblings?
A. I believe I just interviewed one sister. I think that was the only one that I got.
Q. All right. And let me just ask you generally, are they roughly in his age group?
A. I don't recall.
Q. All right. Okay. If the sibling you had had an opportunity to interview had been abnormally, either older or

younger, you would have made a note of that probably ---
A. Well, I don't -- I have my notes from those interviews here, but I didn't make note of that in my report.
Q. Okay. So there wasn't anything out of the ordinary in terms of the age range?
A. I don't recall.
Q. Okay. Were you able to interview any friends of Mr. Stanko?
A. Yes, I was.
Q. Do you remember who they were?
A. I have a list of names here. I have a John Fulmer, who I believe was a teacher. Wanda Brooks, Rebecca Tucker, Tim Baldwin, Terry DeSinzo.
Q. Now, were those people generally from Mr. Stanko's earlier years, school years?
A. They were. I also interviewed a woman that he lived with ---
Q. Okay.
A. ---That he had had another charge for.
Q. All right. Now, I don't want to go into the specifics of anything about that other than, do you recall any information that was provided to you about unusual behavior, in terms of voices, or anything of that nature?
A. Well, there was the behavior where he tied her up and tried to kill her, and that was unusual to me, where he put

the -- some kind of clorox on her face ---
Q. Okay. And ---
A. ---And that was unusual, but I thought what was significant in that was that he did not kill her, that he was able to calm himself and make -- but he was angry, and so yes, I would say that his -- that's an unusual act.
Q. All right. Did that individual indicate to you that he was either singing or whistling, or talking, but not to her?
A. I recall something about that he was -- he was -- may have been singing or something. Again, there was no -- I remember not -- when I evaluated him there was not an evidence of a psychosis ---
Q. All right.
A. ---But I remember that she was terrified, and he had tried to suffocate her, and then he maybe was taking a shower -- I can't remember -- but then ended up letting her go.
Q. All right. And that was year -- just -- that was years ago?
A. Yes.
Q. Yes. Okay. And it really doesn't have anything to do with what we are here about in this case, other than ---
A. Oh, it does. I mean, I think that what it ---
Q. In terms of his mental history, you know, from your perspective, I mean, other than that, we are not here to make

a decision about his conduct, you know, whether ---
A. Oh no, does it make a decision -- I mean, it's important information ---
Q. Of course.
A. ---His history of violence, and the nature of that ---
Q. All right. All right.
A. ---And the sort of sadistic stuff. But yes, that's significant, but ---
Q. Okay. And that was a person he lived with?
A. Yes.
Q. Yes.
MR. DIGGS: Bear with me just a moment, Ms. Crawford. I beg the Court's indulgence.
Q. Now this -- and I'm almost finished, and I appreciate your time. The term Anti-social Personality is, you said, around -- came into being about twenty years ago?
A. I don't know. It's been around as long as I've been practicing.
Q. All right. And I'm sorry to ask you this, how long have you been practicing?
A. About twenty years.
Q. Okay. All right.
A. But it's been -- I'm thinking it was a good bit longer ago than that.
MR. DIGGS: Dr. Crawford, thank you very much ---

A. Thank you.

MR. DIGGS: ---For your time. I don't have anything else at this point.

THE COURT: Very good.

Any redirect?

MR. HEMBREE: No, thank you, Your Honor.

We ask this witness be excused.

THE COURT: Any reason the witness cannot be excused?

MR. DIGGS: Not from the Defense.

THE COURT: All right. Very good.

All right, Dr. Crawford, you are released from your Subpoena. You may go back to your regular duties.

A. Thank you.

THE COURT: Thank you.

MR. HEMBREE: Your Honor, may we approach briefly on a scheduling matter?

THE COURT: Sure. Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen, if you would go to your jury room for a short break, please. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready to resume?

MR. HUMPHRIES: Yes sir, Your Honor.

MR. HEMBREE: Yes, we are.

THE COURT: And is the Defense ready, Mr. Diggs?

MR. DIGGS: Your Honor, the Defense is ready but Ms. Williams is out, I think, and she will be back in just a second.

THE COURT: All right. Well, it will take a minute for the jury to come in anyway.

Why don't we go ahead and ask them to come in.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, your next witness, please.

MR. HUMPHRIES: State calls Dr. William Brannon.

THE COURT: All right, sir. Please come around to be sworn, sir.

WILLIAM LESTER BRANNON, JR., being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. HUMPHRIES:

Q. Dr. Brannon, good morning.

A. Good morning.

Q. Tell the jury what you do for a living.

A. I'm a Clinical Neurologist. That means that I spent three years of training after I finished an internship in medicine, three years of training in Neurology, then I took an extra six months of training in Neuropathology, which is the

study of the brain itself, and what's wrong with it in the autopsy situation, and after that I took six months of training in what would now be called behavioral Neurological, at the hands of Dr. Edwin Weinstein, who arguably was the leading Neurobehavioralist of his day, and then I spent twenty years in the Navy, on active duty, as a medical officer. When I retired from the Navy I spent the last thirty years, almost twenty-nine years, at the University of South Carolina School of Medicine, teaching, practicing, and doing a little bit of research, not much.

Q. Very briefly, give the jury the benefit of some of the places in which you served during your Naval career.

A. Well, bless your heart. I joined the Navy primarily to see the world, and they sent me from Charleston, where I finished medical school, to Portsmouth, Virginia for one year, then to Washington, D.C. for seventeen years.

Q. And where in Washington, D.C. -- in what hospital or hospitals did you serve?

A. I was at the National Naval Medical Center for the -- for the time of my staff training. I also did part of my specialty training at Georgetown University Medical Center, so those two hospitals. Georgetown covered the City. I worked at the big D.C. General Hospital, which is a public hospital. I worked at Georgetown Medical Center, which is more of a private hospital, then I worked at the National Naval Medical

Center, Bethesda Naval Hospital, as many people know it. I had some time at Walter Reed Army Medical Center with colleagues there, and time at the Armed Forces Institute of Pathology, which is on the campus of Walter Reed, so I went around the town pretty well during those seventeen years.

Q. And again, tell this jury, were you to be qualified by this Court as an expert in what field would that be?

A. I've been qualified in South Carolina as a Neurologist, and as a Neuropsychiatrist because of my training in Behavioral Neurology, and the fact that, through the first probably ten years or so in the Navy Medical Corp there was not a Department of Neurology, it was called Neuropsychiatry, and then when I came to the University of South Carolina there was not a Department of Neurology, it was called the Department of Neuropsychiatry, and I interacted on a daily basis with the Psychologists and the Psychiatrists, which make up that Department at the University of South Carolina. It's a three-part department. Neurology was me, Neuropsychology was Dr. George Holmes, and Psychiatry was -- when I was there -- Dr. Alec Donald, so the three of us worked closely together and interacted in their teaching and my teaching and that sort of thing.

Q. Thank you.

MR. HUMPHRIES: Your Honor, at this time the State would offer Dr. Brannon as an expert in the field of Neurology

and Neuropsychiatry.

THE COURT: Do you wish to examine the witness, Mr. Diggs?

MR. DIGGS: No, Your Honor, we don't, and we don't object.

THE COURT: All right. Very good. I'll qualify Dr. Brannon to give his opinion in the fields of Neurologist, or as a Neurologist, and Neuropsychology.

MR. HUMPHRIES: Psychiatry -- I'm sorry, Neuropsychiatry.

THE COURT: I mean psychologist, Neuropsychologist. I'm sorry.

MR. HUMPHRIES: It's Psychia -- Neuropsychiatry. I'm sorry. Just so the record ---

THE COURT: All right. Neuropsychiatry.

MR. HUMPHRIES: Yes sir, Your Honor. Thank you.

THE COURT: All right. Very good. Go ahead.

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: He's qualified.

Q. Dr. Brannon, let me ask you, are you, on occasion, asked, by way of consult, to interpret M.R. images?

A. Yes sir. In consultation, as well as in the patients that I see personally.

Q. Very good. And how long have you been looking at M.R. images, Doctor?

A. Since there have been M.R. images, in fact, that M.R., Magnetic Resonance Imaging, started in the late 1970s or early 1980s, and at that time, in the late 1970s, I was still at the Naval Hospital, Bethesda, interacting with the colleagues across the street, which is the National Institutes of Health, in which Radiology and Research Neurology were all a part. In fact, one of the doctors there brought the first C.T. scan that was ever seen in the United States to a conference that I happened to be attending when it was shown, and from there the Magnetic Resonance Imaging evolved. In fact, one of the doctors, who was a dentist, who also had a PhD. in Physics, created his own Magnetic Resonance Image machine, and he called it a different thing, and so that was sort of the beginning of Magnetic Resonance Imaging in the late 1970s or early eighties, so I've been there since that was done.

I've also taught Radiology students, or resident physicians in Radiology, the anatomy of the brain as demonstrated by the Magnetic Resonance Image.

Q. For how long?

A. Golly, I guess probably three or four years.

Q. And let me ask you, we've established that you were practicing at the inception of M.R. images. Have you remained current in terms of the technology, the advances that have been medically accepted in your line of work throughout your career?

A. Yes sir. Mostly the clinical interpretation as opposed to the details of the physics. Magnetic Resonance Image is a principle of Physics rather than a principle of Radiology, and I've not kept up with the basic physics of that, in fact, I don't think I ever knew them, but certainly the clinical interpretation I stay current with.

Q. And let me ask you, is it important for you to have kept up with the physics in order to be an accurate Clinical diagnostic -- or in order to render a clinical diagnostic opinion?

A. No sir, it's not. In fact, I don't know of anybody that is expert in both of those areas. It's important for the person who is actually doing the running of the Magnetic Resonance Image machine to know the physics, so that he knows the quality of the image that he's generating. We can -- you can tell the quality of the image by looking at it, but if something is wrong with the quality then the Physicist who is with the machine has to correct that so that the machine works as well as they need it to work to produce the image that's going to be useful to people like me. So what's important to me is the quality of the image that is rendered, either by computer, or sometimes those images are printed on an X-ray film, and we can look at that.

Q. In connection with your responsibilities as a Neurologist and a Neuropsychiatrist, did you have an occasion

to do a consult with the Court's expert, Pam Crawford, in connection with Stephen Stanko?

A. I did.

Q. And tell the jury what was provided, and what were you asked to do as a result of that consult.

A. I had a number of medical records that were provided me from Dr. Crawford, and I also had a C.D., which I have here, that demonstrated the Magnetic Resonance Image that was done on Mr. Stanko, and I reviewed both of those, and as I recollect I examined Mr. Stanko at the -- as a result of that consultation.

Q. Now let me ask you, did Dr. Crawford indicate to you that there should be any certain result as a result of your reviewing these images and examining Stephen Stanko?

A. No. No, in fact at the time this came about I had never met Dr. Crawford. She worked in our Department, but she worked in the William S. Hall Psychiatric Institute, where I was not working, and had no real affiliation. I worked at the University, so our paths did not cross physically, so to speak.

Q. Again, let's talk about the -- now you did an assessment as well as interpreting the M.R. images. Is that correct?

A. That's correct. Yes.

Q. And let's talk very briefly about your assessment.

What is it comprised of, and what were your results?
A. Well, it's been a long time, and I don't have the records anymore, but I believe I examined Mr. Stanko, and found that that examination was normal. Certainly in reviewing the medical records that I saw, and the Magnetic Resonance Image those records did not indicate any abnormality that one would suspect as being a Neurological issue, and certainly the Magnetic Resonance Image was a normal image in all respects.
Q. Now, I'm not going to ask you to look at these right now, but let me ask you -- this is State's Exhibit 32. These would be the M.R. image. You actually had these on a disk. Is that correct?
A. I have those on disk, and I've seen the ones that you have in the package.
Q. And let me ask you, after having reviewed those what was your opinion regarding the status of Defendant Stanko's M.R. images?
A. They are normal.
Q. Any question in your mind about that?
A. No, they are as normal as any images would be called normal. There's just nothing there. And I even looked at them with -- initially with a Neuroradiologist who did not know anything about the case. He did not know anything about my opinion. I simply handed the disk and we loaded it into

the computer, and I said, what do you think about this set of images, and without any further consultation he would have rendered a normal view, and I agreed with that, and then he agreed with me as we discussed the issues that I had been made aware of that should be evaluated, so I think he corroborated my opinion, which is that they are perfectly normal.

Q. Now, have you been given the benefit of the report of Dr. Thomas Sachy, the Defense -- one of the Defense experts in this case?

A. I've seen that, yes sir. Yes.

Q. And Dr. Sachy or Sachy, testified yesterday, and he indicated at that time, two new findings regarding the M.R.I.. I'm going to ask you specifically about those, and I'm going to read them.

He indicated Frontal Horn Periventricular White Matter Hyperintensities capping is apparent. Based on your interpretation of the M.R. images would you disagree or agree with that particular finding?

A. I would very much disagree with it. It's just simply not there.

Q. And as to his second finding, Dorsolateral Prefrontal Atrophy.

A. It's -- that's not there either.

Q. Any question in your mind?

A. No question.

Q. Let's talk just a moment about Dr. Gur and his -- his statistical analysis of, I believe the P.E.T. scan of Defendant Stanko coming from Dr. Wu. Are you aware of -- it's his finding, and I believe it's indicated in Defense Exhibit 31, this chart in particular. You've seen this before.

A. Yes sir, I've seen that chart.

Q. Now let me ask you before we start talking about his particular findings. Can you tell this jury, is it medically appropriate or efficient to use a statistical analysis in order for the diagnosis of an individual?

A. No. No. In fact, it's -- there are lies, and there are damn lies, and then there's statistics, and what happens in a statistical analysis is, you are looking at a large group of people, and to try to pick, out of that large group of people, something that applies to an individual is almost random. The -- the other point I would make in this statistical analysis is, when you do a statistical analysis you have to have a control group, or a baseline group. Their baseline group is forty people, and forty people out of what, three hundred and twenty million we have in the United States, and you expect that to represent the norm, is that statistical analyses, and that anything that deviates from that is not normal? I think that's ludicrous to come up with something like that.

Now I also noticed in Dr. Sachy's updated report that he

attempts to counter that by using a statistical analysis to explain the statistical analysis, and what he -- what he's trying to say is, well, you drop out one person from that group of forty, then you re-analyze it, then you drop out another one, and he thinks that by the end of the time you get something like a matrix of -- the best I can tell it's forty times forty, but I don't think it works that way. If you drop out one then you are looking at thirty-nine. If you drop out another one you are looking at thirty-eight, and that's where your statistics are.

The other issue is that -- in terms of the P.E.T. scan, is that the isotope that is used in order to get to the P.E.T. scan is a glucose-labeled isotope, sugar. The brain works on sugar, so when you are doing a P.E.T. scan what you are thinking, what you are looking at, what you are hearing, and a variety of different inputs are coming to the patient's brain which causes the blood flow to increase because the brain demands more glucose for that particular function, and so you could almost program a patient in having an abnormal P.E.T. scan compared to their statistical group of normals, depending on what you ask them to do during the P.E.T. scan. So I think that's probably not a valid concept either.

In the M.R. scan they are looking at volume, the volume of tissue, and the volume of tissue, in and of itself, doesn't mean anything much. It simply tells you what -- that some

people have brains that weigh twelve hundred grams, some that weigh fourteen hundred grams, some that weigh nine hundred grams, and it doesn't tell you anything about what the clinical circumstance might be, or should be, or even could be. It's just a statistical analysis, and we haven't moved to that point in history where there are enough data about statistical analysis to validate even the statistical analysis. So I just can't make anything out of that except, you know, it's interesting that he did that.

Q. Now, in connection with your duties with the Navy over the course of years did you have occasion to review birth records that were typically used by the Armed Forces?

A. Yes. I've probably filled out about five hundred of those birth records. I was at the Naval Hospital in Portsmouth, Virginia delivering babies until I wasn't sure I wanted to have babies. We delivered about -- I think we delivered three hundred and sixty babies a month, so I delivered well over a hundred babies during my two months of time on the obstetrical service.

All three of my children were born in the Naval Hospital at Bethesda, Maryland, so I'm well familiar with the Navy standard record.

Q. And let me show you Defendant's Exhibit 22, the birth records from Guantanamo Bay, Cuba, related to -- again, the Defendant. You've had an opportunity in the past to review

those records, have you not, Doctor?
A. Yes sir.
Q. And without going into specifics, although we certainly can, but at this point, without going into specifics, is there anything, anything in those records that would indicate that Defendant Stephen Stanko had some -- any neurologic concern, or brain defect at the time of, or shortly after his birth?
A. No. In fact, in the -- this -- whatever page this is, is the Diagnostic Clinical Summary, and this is what you put down when the patient is discharged. He had two diagnoses, one is that he was a term birth, living child, which is the standard, second, he had hyperbilirubinemia, parenthesis, jaundice, coma, physiologic, and -- I can't read the last work, e.x. something, but anyway ---
Q. Well, it's in a doctor's handwriting, so ---
A. Yes. The physiologic jaundice is a very common phenomenon, and doesn't mean any abnormality at all, in fact it's a -- I don't know what percentage it would happen in, but frequent.

MR. HUMPHRIES: Thank you, Doctor, and I'm going to ask you one last time, to a reasonable degree of medical certainty, in your field, what is your opinion regarding the status of Defendant Stanko's M.R. images?
A. They are normal.

MR. HUMPHRIES: Thank you, Doctor.

THE COURT: Cross-examination.

MS. WILLIAMS: Thank you, Your Honor. May it please the Court.

THE COURT: Yes Ma'am.

CROSS-EXAMINATION BY MS. WILLIAMS:

MS. WILLIAMS: Good morning, Dr. Brannon.

A. Good morning.

Q. I don't have many questions. Are you here under a State's Subpoena, or just a Subpoena from the Defense?

A. I don't know. I was contacted by Mr. Humphries' office and asked to be here, and I agreed to do that.

Q. So the State brought you here today. Is that correct?

A. I guess so.

Q. Okay. Now -- and the Solicitor asked you, and I'm just going to verify. You said when Dr. Crawford contacted you she didn't ask you one way or the other to -- didn't lead you to give an opinion, isn't that right?

A. I'm sorry. You said, did not lead me ---

Q. That's right.

A. No, she did not.

Q. Because, in fact, it would be unethical to do so, right?

A. I don't know about that. Certainly it's not something commonly done, although I've seen it done.

Q. But it would be improper for the most part?

A. I think, in general, if somebody -- an attorney or a doctor would call and say, would you see this patient and say such and such and such I would say, thank you, no.
Q. That's absolutely right. You are suppose to make your decision based on what you see, and not what anybody else tells you, isn't that right?
A. Yes.
Q. Okay. Let me ask you this. You said, in part of your -- when you were discussing some of your background and your training, that you do a little bit of research, but not very much.
A. Yes.
Q. Can you explain that to me.
A. Well, most of the research that I've done has been what's called clinical research, and that is that, in my case, applying drug trials, particularly in the area of Epilepsy, and stroke. We've done a fair amount of research in trying to learn whether new drugs for Epilepsy work -- will work, or whether they may have more side effects than benefit, and the same is true in drugs of stroke, can we minimize the damage to the brain, or can we remediate some of the damage that's been done. Those are the two areas in which I've done mostly clinical research.
Q. Are you actively involved in any current research?
A. I'm trying to retire. I retired first in 2002. I

stepped aside from my tenured faculty position, but then I had to stay on until June the 30th of this year, when finally I packed up my office, moved out, gave the Dean my key and said, thank you very much, and I'm now a Distinguished Professor Emeritus rather than a working doc.

I still do some work at the V.A. though. I still do a clinic there every week.

Q. But we are trying to get out of it. Is that right?

A. Well, as soon as they can find another Neurologist that will take over the clinic that I have -- and as you might imagine, with all of the operation Iraqi Freedium, and Afghanistan, with all the head injuries that we are seeing we are now about nine hundred patients behind in evaluating those Veterans for benefits, so I'll probably stay on.

Q. Let me ask you, are you familiar with a functional M.R.I.?

A. Yes. Yes.

Q. Can -- does the -- what does the functional M.R.I. suppose to tell us, Doctor?

A. Well, it's a special technique in doing Magnetic Resonance Image in which the -- you load them with a contrast material, and try to show that one area of the brain is working more than another area, based on the paradigm that's been set up for that particular issue. For example, if we were studying a patient with Epilepsy, considering maybe that

surgery would be helpful, we would give that patient an isotope, then do a Magnetic Resonance Image and see if the contrast would light up the area of abnormality in the brain that would help guide the Neurosurgeon into what area would be best for surgery. That's sort of the concept behind functional M.R.I., will the Magnetic Resonance Image demonstrate the function of the brain.

Q. And then there are regular M.R.I.s, which is basically a still -- a still shot in time, in essence, is that fair to say?

A. Yes. You can look at it that way.

Q. Okay. And can a still M.R.I. show any type of function in the brain, or do they -- meaning, do they show function, or do they actually show structure?

A. Well, the -- I'm not sure where you are -- what you are asking, but the function -- the purpose of the Magnetic Resonance Image itself is to show the structure of the brain, the anatomy of the brain, and then, if you see an abnormal anatomy you might then begin to infer function from that, but the M.R.I. is not demonstrating the function.

Q. Let me ask you something -- let me switch gears for just a minute. You -- of course you've delivered a -- you said you had attended the birth, and been around a lots of deliveries of the babies. Is that correct?

A. Have done what?

Q. Delivery of babies.
A. Oh, I've delivered some, and been around lots of babies, yes. Yes.
Q. Okay. And when babies are born there are two types of reflexes that are tested for. Is that right? And I'll say, a swimmer's reflex, and I think it's a moro reflex, are the two.
A. Well, yes, you would -- you would observe a moro reflex. I don't know that you would specifically test for a swimmer's reflex. That's just a postural reflex, and it doesn't really mean much of anything in a newborn.
Q. So you don't think having a swimmer's reflex is a good or a bad thing?
A. No. I don't think it's good or bad. The most important issue in looking at the newborns at the time of birth is something called the Apgar Score, and the Apgar Score takes into account movements and respiration, primarily, and I think Mr. Stanko's was ten, which is the top level, and that, in itself, is -- maybe you've heard of the Glascow Coma Scale, and the purpose of that is to predict an outcome, and the same is true for the Apgar Score. The Apgar is predictive. If an Apgar Score is ten then you expect that you will have almost no cases of abnormality of brain function. If the Apgar Score is zero then you expect a hundred percent of the cases to have abnormal brain function.
Q. Doctor, let me ask you, I would presume in those babies

that you've delivered -- you delivered, certainly quite a few of them would be healthy -- good, healthy babies. Is that a fair statement?

A. Fortunately most of them were.

Q. Absolutely fortunately. And on those healthy babies tell me what you typically -- what was the typical procedure once that healthy baby was born, like in the first day or two?

A. Well, in the -- nothing, because they are transferred to the Pediatricians, and after I delivered the baby, cleaned them up, had with mom an opportunity to begin bonding, they then went to the nursery, and the Pediatricians took over. We did the -- as an Obstetrical Intern I did the initial Apgar Score.

Q. Uh huh **(indicating positive)**

A. Okay. Now, as a Pediatric Intern I picked the follow-up in those babies that somebody else had delivered. If that's what you are asking. I'm not sure.

Q. And that's it. And so if it's turned over to a Pediatrician, and the Pediatrician -- if it's a good, healthy baby the Pediatrician would maybe just make notes of, I saw the baby, the baby is looking good, no additional problems, no problems noted, things of that nature would be what you would expect in the notes. Is that fair to say?

A. In the normal baby, yes.

Q. That's right. And so if you saw notes where it said,

make sure you look after that baby, make sure you don't leave that baby alone very long, make sure you check for that baby, those types of things would -- wouldn't that be fair to say, that would indicate that that doctor had some concern?

A. No.

Q. It wouldn't?

A. No.

Q. Tell me what you think that would mean.

A. It would mean he probably does that to all of them, all new mothers.

Q. And so, if a doctor said, if this baby continues to throw up make sure you call me at home tonight, that would mean ---

A. That would mean that he wanted to hear if the baby didn't resolve an issue.

Q. And if he didn't -- and he would want to hear that because of why?

A. Well, you would worry, primarily, about a stenosis -- what's called Pyloric Stenosis. Food goes into the stomach, and there's a value that keeps it in the stomach long enough for the acid to begin to dissolve the food so it can be transferred into glucose, sugar. It then opens that value and the food goes from the stomach into the small intestine. That valve is called the pylorus, and a number of babies have a tightening of that value called Pyloric Stenosis. Vomiting is

a clear clinical sign of that, and so babies continuing to vomit would not imply, or suggest brain damage. It would suggest a concern for G.I. tract disturbance, and that's why you would want to hear that. If that continued the next step would be to put some contrast material, barium, into the stomach, and see whether that pyloric sphincter is tight, and if it is the surgeon will go there and resolve that issue very quickly, and with little risk to the patient.

Q. So the doctor was concerned, at least about something -- and I understand you don't think it was about brain damage, you think it was about ---

A. No. I don't know that ---

Q. ---This little baby's stomach?

A. ---It was concern about anything other than maybe bad food, but certainly the most common thing you would tell a new mother, if a baby is vomiting, is to be sure, if that vomiting continues, you let me know so I can follow up on it. I think that's all it means.

Q. I understand that, but you would -- wouldn't you -- you -- so, if I'm hearing you right you say it's not significant if the doctor -- or the nurses put in her notes that the doctor said, don't leave the baby alone for long, make sure you take care of him, make sure you are there, and if anything happens, call me.

A. No, I didn't say I thought it was not significant. I

guess the best thing to say is that it doesn't portend anything ominous. It doesn't mean that there's something dangerous there. It's advice that I would give all new mothers. In fact, in the military many of the new mothers were first time mothers and yes, that's good advice to give new mothers, particularly first time mothers.

Q. I understand for new mothers, but we are talking about nurses who do this for a living, they are pediatric nurses who are in there tending to the babies.

A. And so what's the point?

Q. Well, my point is, you are saying that it's not significant at all ---

A. No, I didn't say that was not significant.

Q. ---And when the doctor tells that to the nurse ---

A. I said it did not -- it does not suggest that anything bad is going on with that patient, and particularly, it doesn't suggest anything with brain dysfunction.

Q. And I understand that's ---

A. Okay.

Q. ---Your opinion, absolutely. Now, let me ask you this, are you familiar with -- I think what you testified is that you can't use statistics for analysis or a diagnosis?

A. No. No.

Q. Explain to me what you were saying.

A. Okay.

Q. Maybe I misunderstood.
A. Okay. Well, what I said was that a statistical analysis applies to large groups of patients. It's very rare, if ever, that a statistical analysis of a large group applies to an individual. It may occur, but that would probably be almost a random occurrence, so you can't look at a large statistical analysis and say that applies to each patient in the world that doesn't fit these pre-defined norms that the statistical analysis said.
Q. But Doctor, aren't statistical analysis used to get the norm, exactly what you said?
A. No. Statistically a hummingbird can't fly, okay, but yet we see hummingbirds flying all the time, and so ---
Q. But ---
A. ---Statistical analysis are used to look at generalities in large groups of patients. They are not, in my opinion, best used to try to apply individually to a particular circumstance.
Q. They are used for gen -- to get generalities of patients. That's correct, right?
A. Yes. That's right. It's a big profile.
Q. A big profile.
A. Yes.
Q. So that we know that statistically, when you are older, we can expect this type of problem, (A) problem, (C) problem,

(B) problem. If you've been a smoker for twenty-five years we expect this problem, we expect that problem. Is that correct?

A. Well, I wouldn't say that you would expect those problems. You would say that, statistically a smoker has a higher risk of developing lung cancer than one who doesn't smoke, or has never smoked, but that does not mean that all smokers will get lung cancer, and that all non-smokers will not get lung cancer.

Q. That's correct. It is meant to be a baseline to ---

A. Not a baseline, but a broad generality.

Q. And then you take the individual person and you compare that person.

A. If you need to. If you find something unusual in a neurological examination, then I would certainly consider looking to statistics to see if there's any application that might benefit, but I wouldn't expect to find it.

Q. Dr. Brannon, are you familiar with the National Health Institute?

A. National Institutes of Health.

Q. Yes.

A. Yes.

Q. Are you on the -- do you participate with them in any way?

A. Not now, but when I was at the Naval Hospital, Bethesda I served on their Protection of Human Subjects Committee,

which means that I was their outside consultant, not affiliated with the N.I.H. directly, that I gave them opinions as to whether the research they were doing on people was likely to be productive, and was unlikely to cause any harm to the patient, thus protection of human subjects. Yes.

Q. And Doctor, I would say, it is pretty -- I mean, I think it would be a pretty fair statement to say to actually get on the Board, to be able to participate -- I'm going to use the abbreviation, the N.H.I..

A. N.I.H..

Q. N.I.H. -- to get it wrong. See, I got it wrong then. Just to be fair -- pretty safe to say that, to be able to get on those Boards, and to participate that is -- for lack of a better term -- is a pretty big deal.

A. Well, it was helpful to them, if that's what you are saying.

Q. Well, I mean ---

A. I didn't solicit that position. They asked me to do it and I was available and close by, and happy to help them.

Q. So if they come -- they came to you because they thought you could be helpful. Is that right?

A. Yes, and I was available.

Q. And so one would expect that the doctors that they put on that, and doctors that they ask to do that they anticipate to get pretty helpful information from them, and that they are

available. Is that right?
A. Well, I think they anticipated that I would give them a fair appraisal of their research project, and tell them what I thought about them, and particularly would be outspoken if I thought the project was dangerous to the people.
Q. That's right. If the projects that any -- they were doing or funded would be dangerous to the people we shouldn't be doing them. Is that right?
A. Well, yes. I think most people would agree that you try your best to not harm patients.
Q. In fact, what we are trying to do is figure out new and better ways to treat all these things that we don't know how to treat. Isn't that right?
A. Well, much of the N.I.H. research is not directed toward treatment. It's trying to -- it's directed toward understanding the basic mechanisms of disease. Most of the treatment protocols at the N.I.H. are not inhouse projects of research. They are farmed out to clinical institutions, particularly, say cancer research, you know, you can get the same cancer resear -- or cancer treatment in Charleston, South Carolina, or Myrtle Beach, South Carolina, probably Conway, as you can get if you go to the N.I.H. itself, and go to the National Cancer Institute, because their interest is more in understanding the mechanism of disease.
Q. And they want to understand the mechanism so we can

figure out how to treat it ---

A. That's true.

Q. ---One would assume.

A. That's true.

MS. WILLIAMS: Beg the Court's indulgence for just one moment.

THE COURT: Yes Ma'am.

MS. WILLIAMS: That's all the questions that I have. Thank you.

A. Thank you.

THE COURT: Any redirect?

MR. HUMPHRIES: No sir. We ask the witness be excused, Your Honor.

THE COURT: Any objection to the witness being excused?

MR. DIGGS: No sir.

MS. WILLIAMS: No sir.

THE COURT: All right.

All right, Doctor, you are released from your Subpoena. You may go back to your regular duties, sir. Thank you.

All right, Solicitor, any other witnesses?

MR. HEMBREE: Yes, Your Honor. The State calls Dr. Kenneth Spicer to the stand.

KENNETH M. SPICER, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. HEMBREE:

Q. Good morning, Dr. Spicer.
A. Good morning.
Q. Where are you employed?
A. At the Medical University of South Carolina in Charleston.
Q. In what capacity?
A. I am a Diagnostic Imager. I interpret the patients' images, supervise them and make a report to tell referring physicians what we see in the images, and help them as they diagnose diseases and manage therapies in their patient.
Q. And Dr. Spicer, if you would, give this jury the benefit of your training and experience in the fields of Diagnostic Radiology and Nuclear Medicine.
A. Well, the training -- I went to high school, like everybody, and then on to college. Did some graduate school work, seeking a PhD. in Physical Chemistry, and then switched in mid-field to go to medical school, and thereafter medical school, completed my PhD. work in Biochemistry, and also took residency training in Diagnostic Radiology, and finishes that I went up to N.I.H. for a few more years and did Fellowship training in Nuclear Medicine.
Q. What's N.I.H.?
A. Excuse me. National Institutes of Health in Bethesda, Maryland, the Federal Government's headquarters for health care.

Q. All right. After you finished up your training at N.I.H. where did you go?
A. Well, I came back to Charleston. I had a taste of it was like a golden pair of handcuffs, I couldn't leave, so I came back to Charleston in 1980, and have been there since.
Q. And working with the Medical University ever since?
A. At the Medical University in Charleston, yes.
Q. Dr. Spicer, have you been qualified in courts of record in this State or other states in the fields of Diagnostic Radiology and Nuclear Medicine?
A. Yes, I have.
Q. On how many occasions?
A. Uh goodness. Well, at least a half dozen, if not more.
MR. HEMBREE: Your Honor, we would offer Dr. Spicer as an expert in the fields of Diagnostic Radiology and Nuclear Medicine.
THE COURT: Any objection, or do you wish to question the witness?
MR. DIGGS: Your Honor, we don't have any objections.
THE COURT: All right. I will qualify Dr. Spicer to give his opinion in the field of Diagnostic Radiology and Nuclear Medicine.
Q. Dr. Spicer, your -- in your Department at M.U.S.C., what sort of testing goes on?
A. We, in general terms, refer to it as Diagnostic

Imaging. The discipline of Radiology and Nuclear Medicine have changed over the years to where we now primarily utilize the ability to make images of patients, or portions of patients, their organs, looking at those images, then make decisions about what type of disease they are likely to be suffering from, and/or whether therapy that has been tried in them is working or not.

Q. So you are looking at what sort of images ---

A. Okay.

Q. ---In reaching a diagnosis?

A. Okay. Now I think I understand your question a little better.

Well, you've all heard of C.A.T. scans, and we do M.R. scans, and in Nuclear Medicine we do heart scans, or S.P.E.C. scans, oftentimes referred to, or bone scans, those kind of things.

Q. And what sort of equipment is used to conduct these type of scans?

A. Well, in the area I've practiced the most in in the last couple of years, in Nuclear Medicine we use a gamma camera, that's just a instrument that can sense radioactivity coming out of the patient's body, and develop or make images from that.

And then in other areas I also do Diagnostic Radiology, so I do ultrasound, with ultrasound probes, and we have large

magnets that make images with radio waves of patients, called M.R. instruments, and of course you have all heard of C.A.T. scans, which is an X-ray source that transmits through a patient to make images.

Q. And Doctor, let me get you to keep your voice up. That ---

A. Okay.

Q. You might even want to move that microphone up a little closer, but ---

Do you have -- tell us about a P.E.T. scan. What is a P.E.T. scan?

A. Okay. A P.E.T. scan is, in essence, a scan of the whole body, starting from the top of the head down through the thighs, generally, but it can be made of certain areas, more specifically, or with higher resolution if you would like, such as the head or the heart.

The instrument that makes the images looks a lot like a C.A.T. scanner nowadays. It's a big cylindrical tube, and it's run by a series of very powerful computers. The images are made from energy that is emitted from the patient's body, so the routine is, we inject a radioactive compound, or a radiopharmaceutical, and then for my testimony it will probably be, I sense, that we use something called F.D.G., standing for Flurodyoxyglucose -- it's a sugar molecule -- with a fluorine atom on it -- it's radioactive -- so when we

inject, or put a needle in a patient's vein and inject slowly the radiopharmaceutical into the vein it goes through the body very quickly. In every thirteen to fourteen seconds it transits around the whole body again, and different organs will take up this radiopharmaceutical to different extents. Generally those organs that use the most sugar will take it up the most avidly, such as brain, G.I. mucosa, and heart, and as well as skeletal muscle, so these organs then will have grabbed onto, sequestered, or holding onto a lot of the sugar, and when our detector system, our scanner, is placed over the patient it senses all this radioactivity coming out of the patient, and uses that information to make images, slice images or it interrogates, or it looks at the whole volume of the patient, and then sense where, in this volume, the radioactivity is coming from to make the images.

Q. All right, Dr. Spicer, and let me kind of take you back to this case involving Stephen Stanko. Was your Department called upon to conduct a P.E.T. scan on Defendant Stephen Stanko?

A. It was. A physician sent in a requisition to the Department, requesting a P.E.T. scan of the brain be obtained on Mr. Stanko, and we did so.

Q. And that physician was Psychiatrist, Dr. Thomas Sachy --

A. I believe that's correct, yes.

Q. ---At the Georgia Pain and Behavior Clinic?
A. Yes.
Q. And he -- the P.E.T. scan was completed May 18th, 2006?
A. That's -- 2006, in April or May. I'm a little fuzzy on that detail.
MR. HEMBREE: Bear with me one minute, Doctor.
A. Okay.
MR. DIGGS: Your Honor, no objection.
MR. HEMBREE: Your Honor, this is --
State's 118 in evidence, Your Honor.
THE COURT: I'm sorry, 118?
MR. HEMBREE: 118, yes sir.
THE COURT: All right. State's 118 is in evidence without objection.
(REPORT OF M.U.S.C. ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 118.)
Q. Dr. Spicer, let me share with you State's Exhibit Number 118, and ask if you can identify that report?
A. Yes. This is a Report utilizing our information system, IDX/RAD, and it states that Dr. Thomas Sachy was the requesting Physician, and his title is, from the Georgia Pain and Behavioral Center in Gray, Georgia.
Q. And Dr. Spicer, I'm going to -- now this Report was dictated by Dr. Eva Zachlubera. Who is Dr. Eva Zachlubera?
A. Dr. Zachlubera was our Nuclear Medicine Fellow at that

time, in 2006.
Q. All right. Working with your Department?
A. Correct.
Q. And have you reviewed her report and her efforts on this?
A. I have.
Q. Do you agree with her Report?
A. I do.
Q. And what does this Report indicate to you?
A. That a F.D.G. -- that's Flurodyoxyglucose P.E.T. scan of the brain was obtained on Mr. Stanko, and after production of the images the analysis of the images revealed them to show no areas of abnormality. It was no focal regions in either increased or decreased glucose metabolism compared to what we would normally expect to see.
Q. So in layman's terms that would be a perfectly normal P.E.T. scan?
A. Correct.
Q. Have you prepared a PowerPoint presentation in anticipation of your testimony today?
A. I have.
Q. Would it assist you in presenting your testimony to this jury?
A. Yes, I think so.
MR. HEMBREE: Very well.

Your Honor, I've provided a disk to the Defense.

MR. DIGGS: Can we approach?

THE COURT: Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

MR. HEMBREE: Offered without objection, Your Honor. Thank you, Mr. Diggs.

THE COURT: What number would that be?

MR. HEMBREE: State's 119, I believe, Your Honor.

THE COURT: All right. State's 119 is in evidence without objection.

Is that correct, Mr. Diggs? I'm sorry.

MR. DIGGS: Yes sir.

THE COURT: All right. Very good.

(D.V.D. ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 119.)

Q. And Dr. Spicer, I'm going to ask -- and we've got this presentation on a computer here, with the projector. It may be -- I don't know how -- can you see pretty well from where you are, or would you rather come down here?

A. It will be hard to face both ways. The microphone are a difficulty too, I guess.

THE COURT: All right.

A. Maybe I'll stay here then if ---

THE COURT: There's a microphone right there if you need to use it.

A. Oh, okay.

THE COURT: Do you wish to step down?

A. I'd like to try that.

MR. HEMBREE: And Dr. Spicer, you can either use this microphone or you can -- certainly can use that one if it would be ---

A. This one, or this one?

THE COURT: That's good.

(FOREPERSON RAISES HIS HAND.)

THE COURT: I'm sorry. Yes sir.

FOREMAN: Some of the jurors can't see ---

THE COURT: Because of the podium. All right, so you are going to have to use that microphone on the desk over there. You probably need to just -- completely out of the way.

A. Okay. Is it possible to dim that light that's on the screen that throws light across ---

THE COURT: It is possible. The Clerk isn't in the room right at the moment.

A. Maybe not the first try, but in two or three.

THE COURT: We'll see how far that goes.

A. While that's happening, I was asked to interpret the -- look at the scans that have been interpreted as normal, and we have had an interest in brain imaging for about twenty years, and have the brain imaging center like at many academic

institutions, and we are able to take the P.E.T. imaging data, as we have for other patients, not so much in this kind of an atmosphere, but more often we are asked to look at patients who had strokes or early signs of dementia, and other patients who have had seizure foci, or seizure, to see if we can find out a focus in the brain that might be causing their seizures, and we use more sensitive computer analysis to decide whether the scans are normal or abnormal, and if they are abnormal, where the abnormalities are. All of our images are seen on computer screen. We have had a -- what's called P.A.C.s, or Picture, Archive and Communication System now since 1993 in Nuclear Medicine.

THE COURT: Doctor, could I stop you for one second.

Mr. Diggs, the cups that are in front of you, and in the middle, and then one that's right in front of you too, apparently is blocking part of the -- very good.

All right. Good. Thank you. I'm sorry. Go ahead.

A. So this is a digital copy then of one of images from -- produced from Mr. Stanko's scan. This is referred to as the axial, or transaxial slices. The computer labels it up there, transverse, and we, in the vernacular, call it axial.

And now, as I said earlier, what we do is have the radionuclide injected into the vein of the patient. It goes through the whole body and very quickly is absorbed by the brain. Typically, within about -- well, the most absorption

goes on while the blood levels are the highest, and the blood levels fall very quickly, so in every pass, every fifteen seconds or so, the amount of activity in the blood falls off, so generally by about three to four minutes most of which is going to the brain is there, well over half, and we know this from animal experiments as well, so it's giving you a little bit of a snapshot of what the brain function is at the time we inject the radionuclide, certainly by about ten minutes it's well fixed.

Then we wait another twenty to thirty minutes after that for the blood levels to fall in structures that don't relate to brain, neurons and neuron function, structures such as the blood vessels in the brain, in the scalp, and in the areas under the brain. Then the P.E.T. scan -- or the patient sits, or lies rather, in the P.E.T. scanner for about fifteen to twenty minutes, of which only about ten minutes is actually required for sampling the brain radioactivity, to make the images.

Once this occurs then the technologist and/or the Nuclear Physician will take the data that's been acquired and process it in computers, taking a volume of data and dividing it up into slices and different projections or different orientations, and here you see what are referred to as the transverse slices. Remember, this is a volume of data, and in essence -- you can see up in here -- we are starting at the

very top of the brain, and making sideward slices, like so, until we get all the way down to the bottom of the brain. So the first slices are right up in here. These are across the top of the brain. And you are looking at these slices as if you were underneath the slice, looking up at it, so this would be the front of the brain, the back of the brain. This would be a patient's right side, and this would be the patient's left side. Again, you are looking at the slice from below, looking up. This is a consensus that we do for all imaging now. It's varied through the years, but by now we are all doing that for P.E.T. scanning, for M.R. scanning, and for Nuclear scanning as well.

So then, as we move down through the brain, very, very thin slices -- each of them is about one and a half millimeters, and it's, you know, one tenth, or about one-sixth of seventh of a centimeter, which is about the size of a -- your little fingernail on your hand, so it's about one-sixth of that size, very thin slices, until we get all the way down to the bottom of the brain, and here you see, in the bottom slices, the orbital muscles, so the eyeballs are -- these are the inferior orbital muscles. Muscles, like brain, use sugar, and take a lot of it up.

And then if we move back up into the brain, leaving the orbits -- right in through here are sort of the orbital slices -- we get into the inferior-most margins of the brain, the

frontal lobes, as you see up in here, and the inferior temporal, and high temporal, and then parietal lobes, and then back in here you can see some of the brightest areas. These are the areas referred to as a visual cortex, the area of the brain where signals that our eyeballs send us go, so there's -- if the patient is looking out of their eyes at the time of the dosing they will be hot, and that's as we would expect.

Next slide.

The same data then can be projected in different orientations, looking again at that sagittal, or axial slice you see here, we'll start in the front of the brain again and make slices perpendicular to this slice, and these are referred to as coronal slices, mainly because they are parallel to the coronal sutures. We all -- if you take our scalps off, or have ever looked at a skull you will see all these cracks that run through the brain, like a brain bone, and those are called the sutures. The one down the middle is the sagittal suture, after William Tell, I suppose, the one along the side that's parallel to these slices here is referred to as a coronal suture because it parallels the coronal tiaras that the princesses of Austria used to wear back in the 1500, 1600s

And then finally we have the next series of slides. I'll show you what's referred to as a sagittal, and these are -- each of these slice orientations are parallel to one of

these sutures, so this one is parallel to that big suture that runs up and down the middle of the brain, and here we are starting off on the patient's right side, moving into the middle of the brain, right about in here, in the middle, and then we are moving back over toward the left slide, so we sort of made slices from the right, down to the middle, all the way across till we got to the left.

And take a second here to orient -- oops, sorry. Go back on, please.

Orient you here. The front of the brain is up here, or the frontal lobes, the posterior of the brain. The visual cortex is some of the hottest area -- because evidently Mr. Stanko's eyes were clearly open at the time he did the dosing -- is in the back.

And the primitive brain, the cerebellum, is down here below. Okay. Next.

Q. Dr. Spicer, I note that you've got -- that's -- you are fine ---

I note that you've pointed out certain -- had certain indications with a little red arrow. What is significant with that arrow?

A. This is the area of -- referred to as the inferior frontal and medial frontal regions of the brain, that the Defense has mentioned in previous testimony, so I thought I would highlight it so you all could see.

What we look at when we interpret these images is two things, one -- well, first let me back up. You have to understand that most of the radioactive sugar is going to the most active part of brain. The connective tissue, the blood vessels, after things are cleared away -- the insulation or the myelin around nerve cells doesn't use much sugar at all. What uses a lot of sugar is the gray matter, the gray cells, the neurons, and so we know that. The ventricals, obviously, are just pools of water, and they don't have much radioactivity either in them. So the two things we assess when we look at the scans are the thickness of the gray matter in different areas, and it's a pretty thin rhine all the way around, with certain areas as you get near the center of the brain, near the falx, is a little bit thicker, and the center is thin, and then as you get out to the sides it looks thicker, and that's natural because you are slicing through, tangentially, some of the brain that makes it look thicker.

The second thing we look at then is, not only the thickness of the area in relation to what we would normally expect knowing the anatomy, but also the amount of radioactivity which is present, the intensity, the signal you see on there. The brighter it is on these gray and white -- black, gray and white images, the brighter it is the more radioactivity that the brain took up. The darker it is the less metabolically-active, or the less functioning, or the

less amount of sugar that was used by the neurons that are there.

And I highlighted this area because -- excuse me -- in the nasal frontal. Here is the eyeball right here. Right above is this -- these are frontal region, and I think you can appreciate the intensity of the amount of sugar activity in that area compared to the remaining, or the most active areas of the brain, is very similar, if not even maybe a little bit brighter.

Q. So, is it significant to you that you are seeing a bright pattern in the frontal cortex, or the frontal lobe of the Defendant's brain here?

A. Well, significant only in that that's normal. That's what I would expect to see, and I wasn't disappointed in that. It's clearly as much -- it's not even a close call. I mean, if it were subtly down then I would have to look for other indices that would help me decide if it was normal or abnormal. In this case it's very intense, and normal thickness and normal.

Okay.

Q. Next slide.

A. Next slide, please.

Now, to make these easier we can display the images in another color pattern. Instead of using just shades of gray, and black and white, we can -- because these are computer

digital images -- change the scale of the intensity of our radioactivities display in the image using different colors. And this is -- was a very popular one back in the early -- late eighties and early nineties, called the N.I.H. Color Table, but it essentially shows pretty much the same thing. If you -- if you look at the area right up in here where the red arrows are, this is just above the eyeballs, and this is the inferior frontal, nasal frontal area, and I think you can see the intensity of the radioactivity in this transaxial slice. It is very similar, if not more so, than back in the parietal region, which is a comparable region in terms of neuronal function, and intensity of glucose utilization.

Next.

So, as I said earlier, when I was asked to come back and look at these images I took them to our computer system and used a program referred to as, now sold by the vendor, called Hermes, H.e.r.m.e.s., and I don't know if it's on -- yes, it is on there.

Q. Let me ask you about that Hermes ---

A. Yes.

Q. ---Data base ---

A. Okay.

Q. ---That computer system. Is that an F.D.A. approved data base?

A. Yes. For commercially available vendors -- for

commercially available software that are used in the clinical setting the F.D.A. has purview, or complete control over the situation. No vendor is allowed to sell it until their software has been approved, if it's to be used for clinical use. If somebody is going to use it, and then bill a patient for making a diagnosis, it has to be safe, well-known, problems with it are taken care of, or accounted for, and so this is one of the first products available to anyone back in the eighties, or no, actually it's the early nineties. Hermes came up with the first program to do that. It's what we used throughout the nineties.

In essence what you do is -- well, I'll get into how we do the analysis, and we will talk about the data base then. Okay.

I just wanted to point out, we've changed the color table on your again. This is another one that this company lies, and we've used for many years. And it's -- the essence, the brightest or most sugar used is reflected by white pixels with yellow, the next most intense down to orange, and when you have very little you get down into the purples and mauves, and then very, very little, like in the ventricles, it's blue, or purple then down to blue, and then eventually getting down to black.

And here again, you can see that the -- I've marked the inferior medial frontal regions, and the intensity of the

radioactivity in use in that area is very comparable to what you would see in the parietal region, which is another band of similar thickness, maybe a little bit thicker, than the frontal lobes.

Q. Doctor, I note that in the back it looks a little bit brighter, sort of yellow -- yellow ---

A. Yes. Particularly when we get up a little bit higher you will see, back in here -- this is, again, the visual cortex, so obviously Mr. Stanko's eyes were wide open, there were lights on, his optical cortex was being stimulated at the time we gave the dose.

Okay. This is the same data set again, the same color table, referred to now as the coronal slices again, parallel to the coronal sutures, and I'm marking here for you the same areas, and these are frontal, or inferior frontal regions.

Next.

Q. And what significance is -- I mean, what's your medical opinion of that slide?

A. Well, the same as on the previous slides. There is considerable radioactivity in this very thin cortex in the frontal row, normal thickness and normal level of intensity in that region.

Perhaps it's a little easier for everyone to look at on this slide. You can take that same region of cortex and again, compare it to the parietal region on both the right and

the left sides, and see that there's very similar levels of radioactivity.

Now what would I be expecting if it was abnormal, okay. Then you would see something in the shades of mauve, or purple in that region, and if -- for one or two reasons, either the brain could be damaged and the neurons lost in that area, in which case they are much thinner, and you wouldn't have much radioactivity come from that area, or secondly, you could have the normal number of neurons there, but they are not functioning very much, and they have less sugar use, and hence, less intensity on these images.

But another case, you can see clearly, these are orange here, not at all anywhere a mauve or a purple or a blue, so normal level of intensity.

Okay. The next then, we analyze these images just to document that our perceptions as experienced imagers was correct, we took Mr. Stanko's data, his image data, the volume data, transferred it into this Hermes system, displayed it in the images you just saw, and looked at those, but we also asked the computer then to compare, pixel by pixel, regions of Mr. Stanko's brain to a normal data base.

We had two data bases to work with at the time. One was acquired from the Society of Nuclear Medicine, the Brain Imaging Council that I have been working on for a number of years, which contained a large number of patients. They were

from many areas of the world, and many different parts of our Country, so it is a very nice data base in that it's very large, over a thousand patients in it, but it's not very rigorously controlled, in terms of, there wasn't a lot of follow-up of the patients two to three or four years later, after the scans, to make sure they, in fact, were normal, which is a critical feature. The Hermes system itself has a data base of about forty or so patients, and those are a little bit more rigorously scrutinized. I'll be candid with you. The data base is normal, mature adults, ages forty to seventy, but they are primarily from Scandinavia, where Hermes companies come from, so they tend to be blonde and from that part of the world. But their brain function wouldn't be -- the Danes might think the leads are a little different, but most of us would the Swedes as having reasonable brain function, so we consider that a normal data base.

And what we do then is take Mr. Stanko's brain and morph it, or transfer it into a template, or onto a template, and that just stretches some areas of the brain, but it keeps the radioactivity the same, just stretches it so it matches, or morphs, or assumes the same shape as our normal data base. This allows us then to go to specific regions and look at the amount of radioactivity which is in each of these regions and decide if there's a difference, or significant difference between the data base and Mr. Stanko's brain, and that's what

we've done here. And this slide just shows you how well his brain matched the standard data base. The blue line is the line of the standard data base. Mr. Stanko's brain images, the P.E.T. scan data you see in the normal color table. And there are a few spots around the tops of the brain, as you would expect with everybody -- we all have different shaped brains to a certain extent. Just like our noses and ears and eyes, and hair are different from person to person the brain shape is also, but certainly well within the normal variability. Mr. Stanko's brain fit our brain template beautifully.

Then we -- next -- ask the computer to decide whether there were any areas in Mr. Stanko's brain that had too much radioactivity, or too little radioactivity. And here you see on this slide the comparison of Mr. Stanko's brain to the normal data base at what's referred to as two standard deviations from the normal. In other words, if Mr. Stanko's brain had less sugar metabolism, or decreased radioactivity in any area that was significant -- and we use the criteria two standard deviations significance -- this is what we've been using in our discipline for more than twenty years -- that means that we have -- in other words, the amount of variability, twice that level of variability has to occur before we would call it abnormal. And that gives us ninety-five percent confidence that what we are looking at is, in

fact, with ninety-five per -- or, you know, ninety-five times out of a hundred will be due to a real difference, and not just random because the, you know, variability of the procedure itself.

And this is a serious concern to us because, if I took any one of you people and did a scan on you today, and brought you back tomorrow, it will be different. Circumstances are different, the dose is different, the time between the dose and scan varies. Your blood sugar levels change dramatically over time. So, all of those factors and many others can influence it, so we have to be very careful not to attribute change to any of these other variables, but to be confident that the change is really a real one. And that's what this slide is illustrating for you. If, in fact, there were any regions in Mr. Stanko's brain that were different, with ninety-five percent confidence -- and I will hasten to point out to you, ninety-five is pretty lax. Most sites now, and with F.D.A. approval and guidelines, require three standard deviations to be able to call it abnormal.

Well, as you see in this slide the -- if there was an area in Mr. Stanko's brain that was different from the normal data base by two standard deviations, or ninety-five percent confidence, that area would be -- have it's picture element, or little piece of the image, replaced with green, such as you see here on the top of the brain, up in here and up in here.

These are not in the gray matter. These are on the surface of the brain. As you would expect, if Mr. Stanko's brain was a little different shape, then the normal data bases.

Q. So Doctor, are there any -- any -- there's no green in the frontal lobes, nothing that shows any abnormality in the frontal lobes of this ---

A. That is correct. And in particular, I labeled again, the medial frontal region, and you can see, I think, pretty nicely, and on the other side there are no green pixels there, and again, the level of intensity is very comparable to what you are seeing the parietal cortex. This is our frame of reference there.

So the computer analysis substantiated what we thought just visually looking at the images, as there is no significant difference between Mr. Stanko's brain and -- particularly in the frontal lobes, and the normals.

Just to illustrate for you, I took an anonymous patient, or I anonymized the patient, took the patient's name off the study, to show you, here is a patient who has had some brain function loss in the frontal lobes, and you can see the radioactivity here is markedly decreased compared to other areas of the brain, and I only did the computer analysis on it.

Next line. Those areas where there is abnormal brain activity show the decreased metabolism.

Go to the next slide. For some reason there is -- those areas have their pixels, or picture elements, replaced with green to illustrate for you the regions that have ninety-five percent confidence that the area is abnormal, and indeed, it substantiates what you see, and it's pretty rare that you don't see the abnormality and have the computer come up with it, but this is a bit more rigorous, and takes out the subjectivity of a human looking at it.

Just to illustrate for you, we also looked at Mr. Stanko's M.R. Images, and his P.E.T. images, and fused them to make sure we were looking at the correct areas, and this is the mesa frontal area annotated up in here, and you can see the intensity again. It's the same as in other areas of brain.

Q. So as a result what was your -- what was your opinion after fusing the two and doing this analysis?

A. One, there was no anatomical abnormality, and two, there was no metabolic abnormality. Again, both M.R. and the Nuclear scans were perfectly normal.

Since this analysis a couple of years ago we have acquired a new computer program which is referred to and sold commercially as Neuro-Q. This program primarily does the same things we just went through on the previous study. It is more rigorous in that in two areas, it has almost double the data base. It has a data base which has been examined by the

F.D.A. and found to be clinically very relevant. The patients went through questionnaires. I shouldn't say patients -- the subjects for the data base went through questionnaires, and then were followed up two years later to make sure they did not have any infections, any psychiatric illnesses, any brain tumors or anything like that, so the patients included in this data base were normal at the time of scanning, and found two years later to also be normal, which is a much more rigorous data base, and hence, I think more reliable.

The other advantage of this program is that the computer looks, not at just forty-five -- forty-eight areas of the brain, but looks at two hundred and forty-four areas of the brain, so it much more sensibly looks for very small regions for very, very subtle, small areas of decreased or increased metabolism, and this has proven to us to become very important as we look at patients who are suspected of having Alzheimer's Disease, or early Alzheimer's Disease, because if we can find small areas that are characteristic of Alzheimer's Disease we can now begin treating it and prolong the disease course, not cure it, but help patients significantly.

Well, in this arena we thought this might be of benefit too. It's going to look at six or so times more reasons of interest much more carefully, and it has what we thought was a much more rigorous data base. It was -- it's made of Americans cross section of the U.S..

Okay. This is -- I'm sorry. You'll have to go back for me, if you would.

This is the first slide. This is called the Neuro-Q, as I said, analysis software here. This is Mr. Stanko's brain data. This is the normal standard data base data. And what we do first is process the data, so that limits for the software, to take away all the scalp activity and the base of the brain activity, and get it out of the way. Then we ask the computer to morph this data, or transfer it again, like the previous program did, to a standard brain template, and then merge Mr. Stanko's brain scan with that standard data base, and here on the top right you can see Mr. Stanko's, and the normal data base, and in color down below -- you may not be able to see it too well here -- but Mr. Stanko's brain is in the color pattern -- and superimposed behind it, or on it, but well fused, is the gray data of the normal data base, and we look at this and decide if the fusion of the two data sets are correct. You are looking at very, very small regions of interest. Even small areas of mis-registration or non-proper fusion can make errors, so we have to be very careful of this.

Next slide. After the processing we have the same, but I think you can appreciate here now that the two sets -- well, at least I hope you can -- the two sets of images are fused so well that you no longer see any gray areas of the normal data base that Mr. Stanko's brain does not match up to correctly.

So having done that we then -- that's fine. Next slice.

Then we ask the computer to go through this entire data base of brain activity and look for areas that have either decreased metabolism or increased metabolism. Now we use increased when we are looking for seizure foci, and when we are looking for abnormal brain function or brain destruction we look for areas of decreased or hypo-profusion, or hypo, rather, metabolism. And the computer then prints out for us this listing like you see on the left describing one of -- any number of two hundred and forty-four regions of the brain, and gives us the standard deviation over here from the normal data base.

Now, with F.D.A. approval the company states, and we follow the standard, that you must have three standard deviations or more to call it abnormal, and I think you can see here that the only reasons they found -- the computer software found were in areas like the palms, and the temporal lobes, and nowhere near frontal lobes. There's no (F) in any of these over in here. And anyway, all the standard deviations were in the realm of one to two standard deviations from the normal data base.

Q. And so the bottom line, this was just an additional test, a newer test or data base you ran it through ---

A. Yes. A new comparison that showed that Mr. Stanko's brain, and especially this frontal area where there was

concern, is completely normal, and equal intensity to what we would expect in the data base -- in a normal individual.

The next slide we used, and looked for hypermetabolism, just to make sure there wasn't some abnormality there, and here again, you can see that there were no areas of hypermetabolism, which we wouldn't have expected. Interestingly enough, some of the real high -- excuse me -- frontal lobes, way up about the level of where the scalp line is, did show some increased metabolism, and if you go back one slide, when we are looking for hypometabolism, that -- those same areas of the brain also showed you hypometabolism, which implies to us that there's a great deal of variability going on there in that reason, so standard deviations are going to be up, so if you wanted to look in that area you would have to be very careful, and have to have very significant change to be able to call something abnormal. But clearly in the region -- I didn't point out to you here, the computer is sort of like the U.S. Navy's Electronics Handbook. It's made by geniuses, to be run by idiots. They are considering the Radiologists and Nuclear Physicians an idiot, I guess. But what they did in their program was, whenever they found a statistically significant difference from the normal data base they would replace the image pixels, or the elements of the picture, with a color table, and when it's significant or clinically abnormal the color is red. When it's borderline

it's purple, and when it's getting close but not significant it's mauve, and then any variability at all from zero is replaced with a blue. And here you see in the area of Mr. Stanko's lower frontal lobes, in front, there are no even blue variability pixels there. It's as normal as normal could be.

Okay. Next. And same when we go to hypermetabolism, also normal, so there wasn't even a great deal of variability in that region.

Okay. And this was -- I think this is -- not necessary. You have to be careful when you are doing images and displaying images for people to look at, to change the contrast range up and down in the images. You can narrow the contrast range and make things look abnormal sometimes, or expand it and make disease go away, so how you set the presentation of the image to someone to look at is critically important. And I threw this slide in just to show you that changes the images by adjusting everything to the ponds, which is this area right down in here, normalizing that the ponds does not change anything. This is the area we were concerned about, in the frontal lobe.

Next slide. If you normalize it to the center motor cortex, which is very active in somebody who is not sitting still and moving their arms or legs, again, it doesn't change the display of the image, and it certainly didn't change the statistical analysis in the least.

And I think the last slide -- no, that's it. Go back.

So, in conclusion, it looks to us by the most rigorous clinically accepted standards that the brain scan of Mr. -- the P.E.T. brain scan of Mr. Stanko is completely normal.

MR. HEMBREE: Thank you, Dr. Spicer. You can please take your seat on the witness stand.

Q. Dr. Spicer, were you aware -- or are you aware that prior to this P.E.T. scan ---

MR. DIGGS: Your Honor, we object to the leading.

THE COURT: Rephrase your question.

MR. HEMBREE: Thank you, Your Honor.

Q. Are you aware of anything unusual, or different in the testing procedure that was used on Mr. Stanko?

A. I -- I have become aware that the normal pattern, the clinically-accepted standard for acquiring this study was perturbed by the Defense in requesting the scan and actually having it accomplished, and actually I -- during the time of the scan I was sort of aware of that, as well as the technologist called me and asked me if they could go ahead doing what further perturbations they were going to do, and we ---

Q. What -- what was the word you just used?

A. Perturbations, changes, alterations.

Q. Changes, or perturbations. What -- could you describe to this jury the nature of those -- those changes that they

proposed?

A. Certainly. Let me explain what normally is done first. Because the brain is very sensitive, neuronal function is very sensitive to external stimuli it's important to get a standard brain scan for everybody so we have the ability to compare reliably from patient to patient. As I've said, the variability in P.E.T. scans is pretty significant, just from person to person, from day to day, from emotions, from blood glucose levels, from timing and dose, all those factor and can dramatically change a P.E.T. scan, so we work rather rigorously to make sure that we do every brain scan and every P.E.T. scan on every patient, as closely as possible, the same way, day in and day out. And what this means is, we have special dosing rooms, with barcalounger-like chairs in them, the technologist brings the patient in, settles them down in that lounger, they sit there for about fifteen to twenty minutes, then the technologist comes back in, puts an I.V. -- a venous access, puts a needle in the arm, which, as you can imagine, it's somewhat irritating and excites the brain a bit, then the technologist leaves, and turns the lights down in the room, closes the door and asks the patient to relax, not to talk, make sure that they are not chewing gum or have any other thing that would stimulate muscle activity and sugar use.

Then in approximately twenty minutes after that we will

come back in and dose the patient and immediately leave the room and close the door again. And the room is not completely black, it's dark enough though that there's not a lot of visual stimuli going on. There's no sound. There's no music playing. There is no noises as best as we can control that in our P.E.T. suite, so that the external sensory stimuli are minimized, and then practice what we do for ninety-nine percent of our patients.

Well, in Mr. Stanko's situation the Defense chose to change that. Without asking us or talking to us ahead of time they arranged for a Psychologist to fly in from Atlanta -- I don't know, I've been sequestered -- you all may know this already, and I'm sorry if I'm repeating it too much -- but he came to our Institution and administered a computer test to Mr. Stanko, a brief one, and then as I'm told by my technologist, they dosed the patient and waited a little bit, and then they started this computer test up again. So the computer-generated test where the patient, or Mr. Stanko in this case, sits in front of a computer screen with a mouse and reads the screen contents and clicks on the mouse to reply -- clicks with the mouse to reply or answer questions, and this occurred. It was a brief test ahead of time, and then a prolonged one after the dosing, and this, of course, changed the scan, or as you saw on that scan, the visual cortex was really quite bright. Generally it's the brain stem or the

ponds area that is one of the brightest areas in the brain when we do our scans. In this case it was the associative parietal cortex and the visual cortex that was the brightest in our scan, and that presumably comes from Mr. Stanko staring at a computer screen.

Q. Does that surprise you -- does it surprise you, Doctor, that the area ---

A. Oh, not at all. In fact, if Mr. Stanko had closed one eye and done that, you know, for twenty minutes, only one side of the brain would have lit up. It's very sensitive to that kind of input.

Q. So this -- the fact that that test was administered, what impact does that have on your opinion about -- about Mr. Stanko's brain -- or P.E.T. scan?

A. Well, when I first looked at the scan I was concerned that something was happening in the visual cortex, then I saw that it was bilateral, symmetrical, and the associative cortex in the posterior parietal regions were also increased, so I inquired back of the technologist and found out that, yep, this is the gentleman that had that test done during the test, and clearly he was looking at a light source that would have stimulated that area of his brain. So then when interpreting the study I could account for those changes as I looked at the scan.

Q. So even considering -- it sounds like what you are

saying is, even considering that he took this test you got the results you expected even though he took this test.

A. Yes, that is correct. The results were quite ordinary.

Q. Once again, Doctor -- and I know I've asked you this many different ways -- let me -- let me review this with you, make sure I've covered -- covered, or I understand everything.

You did the visual observation review of Mr. Stanko's P.E.T. scan.

A. That is correct.

Q. Then you -- then you ran it through one F.D.A. approved computer program to compare it against -- to compare it to confirm your findings ---

A. That is also correct.

Q. ---Which it did.

A. Yes.

Q. Then you ran it through -- more recently you ran it through the newest, most recent F.D.A. approved data base.

A. That's correct also ---

Q. ---And once again found that your initial diagnosis or opinion was accurate?

A. Ran it the second time through the most rigorous one commercially available, that we routinely use now, and have discarded the Hermes because it is so much more sensitive and can look for smaller areas, and again, it showed very much the same, normal.

Q. And that's -- I guess you have answered this for me, but I'll finish with this. Within a reasonable degree of medical certainty is there any question as to Mr. Stanko's brain function?

A. No sir, not in my mind, or the mind of my colleagues, or anybody else I've shown this to. It's a perfectly normal looking brain P.E.T. scan.

Q. Would you have concern about a colleague that would use a data base that's not F.D.A. approved?

A. Certainly. In a clinical sense, or even in a legal sense. Our society of Nuclear Medicine has worked for more than fifteen years, a sub-set of fifteen thousand members in the society of Nuclear Medicine, which are imagers that use exclusively radioisotopes to do imaging has what's called a Brain Council, and we've met always through the years, developed our own data bases, and discussed technique and instrumentation changes, and worked through the procedures, and the Society of Nuclear Medicine has come out with standards clearly stating what is appropriate and what's not appropriate in the use of these imaging modalities, and in their standards they've clearly shown that only very few deliberate applications of this clinically can be utilized and this type of analysis, and that's in cognitive impairment, Alzheimer's, precurderers, malcognition, seizures, and in brain tumor areas of the brain.

Q. Those are ethical standards?
A. Those are the ethical standards, correct.
Q. And you've followed those ethical standards
A. Yes sir, certainly do.

MR. HEMBREE: Thank you, Dr. Spicer. Please answer any questions Defense counsel may have.

MR. DIGGS: Your Honor, could I take a very brief break before we get on cross?

THE COURT: I really would like us to continue. Is it possible or not?

MR. DIGGS: Well, I'll see if they can. Let me ---

THE COURT: All right. All right. Very good.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Dr. Spicer, how are you this afternoon?
A. It is afternoon, isn't it?
Q. Yes, it is.
A. Fine. Thank you.
Q. Good. Couple of things I want to ask you. I notice that -- when did you use the motor -- hold on a second, let me get the right name.
A. Sensory Motor Cortex.
Q. Yes. When did you do that analysis initially -- analysis?
A. When did we carry out this analysis? With that Neuro-Q program, Friday afternoon.

Q. Friday -- okay, last ---
A. This past ---
Q. Three days ago?
A. Yes.
Q. All right. And initially when you rendered your opinion in this case that was a couple -- two or three years ago, wasn't it, initially?
A. Yes.
Q. Right after the scan was done?
A. Well, even that was a couple of years after the scan, but yes, correct, in general terms.
Q. All right. And so you were looking at your opinion and tweaking it right up until the last minute, as well as other people might have been?
A. Well, I'm not sure I characterize exactly. I was subpoenaed last week. I ---
Q. I don't want to go over ---
A. ---happen last week, so ---
Q. Okay.
A. ---So on the spur of the moment I grabbed the software and worked out the analysis on Friday.
Q. And just out of curiosity, who manufactures the Sens Motor Software?
A. Oh, the software is called Neuro-Q, N.e.u.r.o.-Q, the name of the company in Atlanta.

Q. Neuro-Q.
A. Right.
Q. A company in Atlanta?
A. Yes sir.
Q. And what is the purpose of the software?
A. To analyze -- well, they have this software for brain imaging. They also have a software package for cardiac imaging, but in general it's taking Nuclear Medicine imagers, analyzing the amount of activity in any one specific area to assist in diagnosis and evaluating whether therapy was ---
Q. And what is it's data base, or does it have a data base?
A. Yes sir.
Q. What does it consist of?
A. It consists of a cross section of Americans, both male and female, between the ages of sixty and seventy-five -- excuse me -- forty and seventy-five.
Q. All right. And do you know how many people are put into the data base?
A. In the version we have -- the latest version has a few more, but our version, I've been informed by the vendor, is sixty-eight individuals.
Q. Sixty-eight?
A. Yes sir.
Q. And how long have you been using that particular

software?
A. We started about a year and a half ago.
Q. All right. So you didn't even use that software at the time Mr. Stanko's scan was initially done?
A. No sir. It wasn't available until just about a year ago.
Q. All right. And are you aware of any of the conditions under which the Neuro-Q software data base -- do you have any information about how those scans are done?
A. Yes. The company, as is appropriate, requires that you acquire the data, the brain P.E.T. scan data, in the standard format as set up by both the American College of Radiology, American Society of Nuclear Medicine, so it's the standard format, similar to what I just described a few minutes ago.
Q. Okay. And tell us how those scans are conducted, how the -- when the person's brain is actually scanned. Tell us what they are doing, and how they are positioned and so forth.
A. Well, the most critical feature, I think, that you are alerting to -- alluding to, is at the time you make the administration of the dose the radionuclide goes through the body and gives you a snapshot of the way the brain is functioning at that time. So we take patients, as I described to you, in a room, isolated room where sound and light is kept low, and sensory input is minimized as much as possible. Patient is in a barcalounger, and injected in that sedate --

not sedated, but relaxed as much as we can, situation, and then the patient waits in there, well, about twenty to twenty-five minutes, typically, then is moved from there to the scanner, and scanned for about fifteen minutes.

Q. Okay.

A. And then gets up out of the scanner and goes home.

Q. And so they are at rest?

A. Correct. Lying supine, lying semi-supine in the barcalounger.

Q. All right. And that's with respect to the Hermes ---

A. Correct.

Q. ---And which would you use three or four years ago, whenever you initially analyzed the results ---

A. Right.

Q. ---And is that the same with the Neuro-Q?

A. ---Neuro-Q?

A. Yes sir. In fact, it's the same data, just analyzed with a different software program.

Q. All right. Well, the data -- you are not talking about Mr. Stanko's data.

A. Mr. Stanko's P.E.T. data, right.

Q. Yes, but before we get there, it's data base is comprised of people at rest as well.

A. Correct. Well, Hermes had one data base, the Neuro-Q has another one.

Q. Yes, but they are -- they are all comprised of -- the reason they are compatible in your mind, would this be fair to say, is because there are controlled conditions under which those people were tested?

A. There's that. They were screened appropriately to make sure ---

Q. Of course.

A. ---They did not have a disease, and then subsequently were screened a few years later to make sure that, in fact, the screening succeeded.

Q. Of course, and you want to do that with a data base ---

A. Certainly.

Q. ---Because that's what you are using to compare the test subject against a ---

A. Certainly.

Q. So you want to get as far and normal a data base as is possible to get a reliable result? We are on the same page there, correct?

A. Yes, I think so.

Q. Okay. We are, or in my mind we are.

A. All right.

Q. All right. You agree -- you've had a chance to see the images that Dr. Wu presented?

A. No sir. I've been sequestered and been ---

Q. No, no, no. I don't mean during this trial, but they -

- haven't you had an opportunity to view them ---
A. No sir.
Q. ---In the past?
A. Actually, on Friday I received, for the first time, some trial transcripts -- it was about three inches thick -- and I tried to look at that, and it didn't contain any images, sir, so I haven't seen ---
Q. All right, so you've never -- you don't recall ever having seen any images that Dr. Wu produced?
A. I think in a previous ---
Q. On some other ---
A. You showed me a ---
Q. I'm not asking you where, I'm just asking you if you ever had an opportunity to see them?
A. Yes. I've seen some images you, in fact, presented to me in a ---
Q. All right. I wonder if we could put those up at this point so that you could look at them.

Without having to put up the big thing, let me show you a picture.

A. Fine. Good Lord.
Q. And Dr. Spicer, I can tell you -- and I realize you haven't been in the courtroom, but these are some pictures that are in evidence in this case.
A. Okay. A picture. You've got quite a few there.

Q. Well, you remember all those little things you had up there on the screen. They are similar.
A. Okay.
Q. All right. Dr. Spicer, this has been marked as Defendant's Exhibit Number 13.
A. Yes sir. Okay.
Q. All right. Now, I'm not going to ask you where, or anything like that, but I'm asking you if that kind of rings a bell. Have you had an opportunity to ever view that particular image before, at any point?
A. I do remember you previously showed me some 3-D renderings of the brain. They weren't static, they were rotating around.
Q. Right. Okay.
A. And this ---
Q. And Dr. Spicer, that is the image that we've used here in this trial ---
A. Okay.
Q. ---Just for your information.
A. So this is a 3-D rendering of the frame?
Q. Right. Now, do you -- let me ask you, first of all, what your reaction is to that particular image.
A. I'm not sure what you mean by my reaction. This isn't something we routinely use for a clinical diagnosis. It's demonstrative. It shows, you know, the brain. It's kind of

impressive, but ---

Q. All right. To you what is it depicting?

A. It's the exterior surface of the brain, and the activity associated with the exterior surface of the brain.

Q. Exterior surface?

A. Well, the neuron -- I assume what they've done here is strip the scalp away and the M.G.s and the C.S.F. and all, so you are looking at the surface of the neuronal activity in a P.E.T. scan ---

Q. Okay.

A. ---Not the full thickness of the cortical region, but just the surface rendering.

Q. And what's depicted there in terms of function, if anything?

A. Well, it's showing Stephen Stanko on the left of the image, labeled right, and normal control on the left of the image, labeled left, and it's -- I'm not quite sure of the orientation, but if I take it -- this head at the bottom ---

Q. Yes sir.

A. ---It's trying to show us the -- the deflection of the next back, then we are looking tangentially up through the chin at the undersurface of the frontal lobes, primarily ---

Q. Okay.

A. ---And it's less activity, bilaterally, in those areas as compared to what's labeled the normal control.

Q. All right. Now, I'm not asking you to make credibility determinations, you know, in terms of the people that put that image together, I'm asking you if that image shows a decrease in function in the frontal lobe area?

A. I don't think I can make that observation for you, sir. I have no idea how this was done, more or less how it was rendered and leveled, or any of that kind of thing. There are so many variables involved here. And further, looking at surface renderings is just not clinically done.

Q. All right. Suppose that that is presented for the purpose of comparison frontal lobe function, okay, of Mr. Stanko, with a controlled data base. Does it show, in your opinion, a reduced frontal lobe function?

A. I clearly see, as I'm sure everyone in the room does, there's differences in color between the two.

Q. All right.

A. I just can't make the extraction -- function is a big leap from looking at amount of radioactivity ---

Q. Well ---

A. ---On a color scale of an image.

Q. Okay. What is the color scale intended to convey?

A. Well, I assume it's the amount of radioactivity which is present.

Q. All right. And would that translate into function?

A. It can. But ---

Q. Okay. Well, let's assume in this ---

THE COURT: Mr. Diggs, he's answering the question. Please let him finish.

Q. All right.

A. It can, but we've learned through the years we have to be very careful, and you cannot make a direct correlation between amount of radioactivity and function. You have to have a number of other variable taken into account as you make that.

Q. And what are those variables?

A. Well, some of which I've mentioned already, blood glucose levels, time of dosing versus time of scan, the way things were put on in there, certainly the computer analysis. One of the biggest factors is how you set the contrast range in these images, windows and levels, that sort of thing.

Q. Yes. And is it your opinion -- let's assume that those things are done -- well, I understand.

A. Okay.

Q. So your opinion -- your position is, you are not in a position to give us an opinion about what's depicted in this exhibit?

A. That's correct.

Q. Okay. That's correct.

A. Yes.

Q. Now, the Hermes software -- let's talk about that for

just a minute. It is a data base of a certain number of people, correct ---

A. Correct ---

Q. ---Done at rest?

A. Correct.

Q. ---Scanned at rest?

A. Yes, that's true.

Q. And you have used that data base to interpret Mr. Stanko's P.E.T. scan.

A. That's also correct.

Q. All right. Now, what -- tell us, if you will if, in your opinion, that's a correct use of the Hermes software.

A. Well, in my opinion it is ---

Q. Uh huh **(indicating positive)**

A. ---In that it has met a number of criteria to allow us to do that, the first and foremost of which is, multiple sites have utilized it, and studied it after the fact to see how efficacious it was, and ---

Q. You are referring -- excuse me, not to interrupt, but you are referring to the testing and approval of the Hermes software?

A. Well, not just the software, but you are alluding to the data base as well.

Q. No, I -- all right.

A. Sorry.

Q. I'm sorry. I probably wasn't clear.
A. Okay.
Q. I'm not challenging the validity of the University's -- or the Hospital's use of the Hermes software ---
A. Okay.
Q. ---In general. I want you to understand that.
A. Sure. Okay.
Q. ---But I'm challenging -- what I'm questioning is the appropriateness of the use of that software with respect to Mr. Stanko's P.E.T. scan when the P.E.T. scan was taken under the conditions of -- including the administering of a Continuance Performance Test. Do you understand?
A. Yes, I think I do now.
Q. Okay.
A. And the -- well, let me back up a little. The variability in P.E.T. scans is profound. It's something we have to struggle with all the time, and perhaps not so much in this arena, but a large part of my practice is dealing with young people who have seizures, and the maturation of the surgical discipline now in handling patients with seizures has approved so much that we see a great number of scans coming through to us, to where on at least three or four times a week we are asked to evaluate these patients' P.E.T. scans to determine whether they have a seizure foci present, and it's very easy for us to say, whoa, you know, that little mesal

temporal are down there, hippocampal area, that's low, and then the surgeon goes and operates on, but the consequences of that are profound. You are taking out brain and damaging brain getting to the brain, so we've learned very carefully to do our scans, see our diagnosis, and then test the diagnosis against outcomes that have occurred, and this can't be done just by one institution. It has to be done by multiple institutions, not necessarily academic, but generally. Academic institutions lead it, and then you will find a number of others that do, and when you've gone through that kind of peer review you are able to determine, not only a sensitivity, but the specificity of your procedure. And what we have learned as a consequence of this, is to back off on our rigorousness of our diagnoses, particularly in the seizure area, but I would hesitate -- would not hesitate to say that, even in this area much more so. Until we know -- whenever you are very sensitive, like these scans are, they are very, very sensitive, they will show things that C.T. and M.R., and all of our imaging modalities won't. Whenever you are very sensitive you lose something very important, and that is specificity, the ability to know that what you are seeing is, in fact, what's happening, so you can be very sensitive but not very specific, and that, unfortunately, is the situation oftentimes on a brain image, and in this situation it's -- a data base comparison is not nearly as rigorous or as tight as

I would like to make it, because we have to back away so that we don't -- well, we don't know the error that we generate when we do these scans very well.

So the reason that there's only three products out there now that will do this kind of analysis the F.D.A. has approved is just for those reasons. You have to be sure that your analysis is not creating an error in there, so determination to specificity and knowing your error of your data base analysis is critically important, and as a consequence we've been restricted now, vulnerable to unethical practice and concerns with attorneys if we utilize this data base comparison in areas which have not been approved by the F.D.A., and those are tumors, seizure foci, and in stroke ---

Q. Right.

A. ---And in certain circumstances now, just in the last two years, in early dementias.

Q. So, my question, again is, do you believe that this is an appropriate use of the Hermes software, to analyze Mr. Stanko's P.E.T. scan data with the use of that software that you used in this case?

A. I understand your question, and I would say it's not perfect ---

Q. All right.

A. ---But it's the best we have, and so, you know, just to substantiate what my eyeball was seeing, I think it was a

reasonable application.
Q. All right. It's the best software that you have that's available.
A. That's correct.
Q. Now, at the time you did the initial evaluation of the software you looked at it on the Hermes initial evaluation of the data, and you used -- looked at it on the Hermes software, you weren't aware that Mr. Stanko had been engaged in a Continuance Performance Test, correct?
A. I was only aware that -- the technologist called me and asked me if the person there could administer the test to the patient and I, through a phone conversation, learned that he was going to be doing something different ---
Q. Okay.
A. ---And that was the on -- I had no idea it was called a continuous performance evaluation ---
Q. Okay. And that's fair. But you took the leap to go ahead and make an analysis even though you didn't have that information, and you didn't -- you weren't aware of that procedure in this case?
A. I knew none of the details of the procedure. It wasn't a leap, but I did go ahead and interpret the images. I agree.
Q. All right. You interpreted the images with the use of software that measured people who were at rest.
A. Correct.

Q. And Mr. Stanko was not at rest, he was engaged in a Continuance Performance Test at the time of his P.E.T. scan.
A. That's also, as I have learned to -- recently, to be the case.
Q. All right. So the assertion that Mr. Stanko's brain, fully engaged in a thought process, using the frontal lobe, equates with a normal person at rest. Is that your testimony?
A. I'm not sure I would phrase it the way you just did it.
Q. All right. How would you phrase it?
A. I understand what you are saying is, Mr. Stanko had a task, to look at a computer screen, and ---
Q. Do you even know what the task was?
THE COURT: Mr. Diggs, I've asked you, please let him finish answering.
Q. Yes sir.
A. Okay. He was undertaking a computer task which involved looking at computer screen with lights on before dosing, and then for a -- about an eight to ten minute period after dosing, whereas most of our patients are completed at rest. We see this occasionally in some of our seizure patients, where they will -- they will have to have lights on to be monitored and everything if they are going through that, and so we've learned to look at their scans and see the visual and parietal cortex as more intense. I certainly did not know exactly what the test was doing or anything like that, if

that's your question.
Q. All right. And therefore you didn't know the purpose for the test.
A. No sir.
Q. And neither did your associate that read the scan and said this is normal?
A. It was a well-kept secret.
Q. There you go. And did you ever ask anybody about those things?
A. Well, that's an open question. There's a lot of time interval in here.
Q. All right. You are right.
A. At the time I asked what was going on, what was the test, and they said it was a -- you know, a mental function test and that was all.
Q. All right. Did you ever ask anyone, or inquire of Dr. Sachy, for example, why are you doing this Continuance Performance Test for P.E.T. scan, and what does it involve? Did you ever make that inquiry before you communicated to the Prosecution that this was a normal P.E.T. scan?
A. We made inquiry of the Psychologist who came and gave the test and he said he couldn't tell us exactly what the test was, it was -- he was hired to do the test and he didn't know specifically what was going on. I did not ever speak with this Dr. Sachy, no.

Q. All right. Did you ever attempt to make an inquiry to find out what the purpose of the test was in this case?
A. No sir.
Q. You just went ahead and rendered an opinion that this was a normal scan without making any further inquiry?
A. Well, no, that's not entirely the case. When you know there has been a perturbation of the normal technique and normal routine you interpret in a little different manner than you would if you knew it was going to be a typical resting study with sensory input deprived.
Q. All right. Let me ask you, when you say a normal routine, and a perturbation ---
A. Perturbation. Sorry.
Q. ---Of the normal routine you are talking about the normal routine that is anticipated for use of the Hermes Brass software.
A. That's correct.
Q. And not necessarily the normal routine that would be used in a -- for an analysis that was done in this case, like that done by Dr. Wu to produce these images.
A. I'm not sure, but Dr. Wu could have used the Hermes software, and then he would have wanted to use his -- or whatever data base are used to come up with this from.
Q. All right. Okay.
A. I mean, that's not a commercially da -- data base, so I

don't know if Dr. Wu could get that or not. I assume he has some proprietary interest or something and ---

Q. So when you -- let's get this clear. When you talk about normal routine, and deviations from the normal F.D.A. accepted routine, you are talking about those tests that were done as anticipated by the manufactures of the Hermes software.

A. Oh, it's not only anticipated, but dictated ---

Q. All right.

A. ---By them and the F.D.A., yes.

Q. While at the same time those individuals done -- engaged in the type of research that resulted in this might have an entirely different normal set of procedures that are to be followed. Is that possible?

A. Well, I'm sure they had, as you are -- leading research procedures which were followed ---

Q. All right.

A. ---But I wouldn't call them normal procedure. This is very much out of the ordinary.

Q. Well, normal procedures, depending on the context, correct?

A. No. I mean -- I'm sorry. What -- giving a patient a stimulation at the time that you are doing the P.E.T. scanning is, by no manner or means, the normal. This is outside of the standards that have been set up for all our societies.

Q. All right. Have you ever read any peer-review articles on this particular procedure that we are talking about that resulted in image number thirteen, Defendant's Exhibit 13?
A. I'm not sure what you mean by the procedure. In terms of evocative testing and P.E.T. inspect imaging. Yes.
Q. I'm talking about any -- yes. And I assume you are talking about the Continuance Performance Test, provocative?
A. Well, not the Continuance Performance Test. We, ourselves were involved, in the late eighties and much of the nineties, in looking at Attention Deficit Hyperactivity children, and some adults, and doing evocative tests on them. I must have done at least three or four dozen on those, and then doing the scans, and then following them up with repeat studies after they've had medication to see if they change things, and we did that, and we've had a lot of experience doing it, but have backed away from that in the last five years because of it's lack of clinical reliability, don't ---
Q. All right. So you haven't read any articles, peer-review articles on this particular procedure recently?
A. Not on this Continuance Performance Testing, C.P.T. you call it.
Q. That's all I'm asking.
I want to ask you, I notice that in your use of the Neuro-Q brain metabolism software you talked about -- there was an image up there that talked about standard deviations.

A. Uh huh **(indicating positive)** Yes.
Q. And how can the use of standard deviation analysis, statistical analysis be important in this setting?
A. Well, as I've tried to, I guess explain before, these scans are so sensitive to any number of variables that if you don't account for those variables you are going to make false diagnoses, or make statements that are clinically very damaging, or potentially damaging to patients, so we have to strive very hard to minimize those, and even doing that we still have a great deal of variability, so we have to decide as we look at a scan how big the change that you are seeing is from what you expect normally to see before you call it normal -- excuse me -- before you call it abnormal. You have to have everything go from those yellow areas up there, or orange areas down to black to call it abnormal, or can you go down to purple to call it abnormal. So what we do is measure the amount of radioactivity in a specific area of the brain, and then we do this over large numbers of patients, and hopefully we do this over the same patients multiples times -- maybe not patients, that's not a fair word -- subjects, normal volunteers, and in effort of repeating it we get some idea, having held all the variables as closely as we can, how much variation there still exists.

You come in today with a hundred and twenty milligram per deciliter blood sugar level because you had a Snickers

four hours early because we made you skip breakfast, and the previous time we did the scan you had a blood sugar level of ninety, you are going to see entirely different amounts of radioactivity in the brain because of the production of insulin with the Snickers bar and what that does to the sugar when it goes to muscle instead of brain.

So to account for these kind of changes we need to have some level of confidence doing it, and we do these studies on many people, over many times, and at multiple sites, because it's important not just to do it in Charleston, but you've got to do it at L.A., and you've got to do it in Houston, Texas, you've got to do it a number of places where different people are involved, and having done that then you can determine the amount of error that is introduced into your procedure. And have done that in other areas than what we are talking about right now we've learned that you need at least three standard deviations to feel relatively confident that what you are looking at is real, and not just a random event that happened because of the variability of the procedure. And typically we like to see four standard deviations, and that's what -- when we are talking about standard deviation I assume that the jury has had some of this before, or do I need to explain what a standard deviation ---

Q. No. I had asked -- I was just asking you to confirm for me that was a legitimate technique, or ---

A. Oh, I'm sorry.
Q. --Legitimate practice in the use of ---
A. Yes, it is.
Q. ---This kind of data and ---
A. Just all in the Neuro-Q there.
Q. Sure. And so you -- I think you have confirmed that for me.
In the -- when you were looking at the fusion of your M.R.I. data, and the P.E.T. scan data ---
A. Yes.
Q. ---And you said that was normal ---
A. Yes sir.
Q. ---Were you doing that by eyeballing the image?
A. There's two images that are fused there. Are you ---
Q. Yes.
A. We certainly -- we use computers to look at the images, to fuse them and make sure that the volumes were properly registered against each other.
Q. And did you use anything other than simply looking at the image?
A. In terms of the P.E.T., we've described all of that. Are you talking in terms of the M.R. then?
Q. Yes, the fused image that you showed us.
A. We did not do computer analysis on the fused image.
Q. All right. So you are eyeballing that to tell us it

looked normal to you.
A. Correct.
Q. Okay. And with respect to the -- that Sens Motor, again, you talked to us about areas in the brain that were lit -- had lighted up -- lit up ---
A. Correct.
Q. ---By various movements of the patient at the time the scan was done.
A. Yes.
Q. All right. And so you saw the motor areas of the brain lit ---
A. Right. Well, they normally are.
Q. ---As you would expect it to be.
A. Correct.
Q. All right. So that would, in effect, be a form of the procedure done by Dr. Wu here, but in a different area of the brain.
A. I'm not quite sure what you are saying. You could, in essence -- and showed back in the seventies -- have a patient move a hand repetitively, and make your dose at the moment they are moving the hand, and see an area of the motor cortex of the brain light up. Is that what you are asking?
Q. Yes. And ---
A. And that is true.
Q. And specifically, if I'm not mistaken, you testified

almost in that fashion in this -- in your direct-examination.
A. Well, sure, because the visual cortex was very bright, and the associated visual cortex just bordering that ---
Q. Right, and you ---
A. ---Indicating ---
Q. ---Testified specifically about motor skills and brain -- the brain activity occurring in that area of the brain when those motor skills were being activated.
A. I didn't really notice that. In other words ---
Q. Okay.
A. ---I didn't see specific areas of the motor strip light up more than others and extrapolate from that ---
Q. All right.
A. ---He was doing some sort of muscle activity.
Q. And it might be that I didn't hear it correctly, but I thought that you had mentioned something about that.
A. I guess that's possible I ---
Q. In fact that -- I took it that's why this software is called Sens Motor.
A. Oh no. The Sens Motor Cortex, frequently that is an area of the brain that is -- as hard as we try to make people lie in a lounger for a long period of time it still lights up pretty much.
Q. Uh huh **(indicating positive)**
A. ---So when you are trying to set the window and level

on your images -- sorry -- by window and level, the contrast range -- you can narrow the contrast range and make things look very bright, or widen it out and make things very dark. You have to decide -- if you narrow them down you make everything look abnormal, or some areas much more than others, and you take it way back out, the contrast range, and everything looks normal. You can't see any abnormality, so you have to decide how to narrow your contrast range down, and one way is to take one of the more active areas of the brain and say that's the top hottest area, and that could be the sensory motor cortex, because that frequently is, in spite of our efforts. Some people use the ponds.

The third way of doing it is to take the whole brain scan, look at all the radioactivity in it, and find out the average, then make that average the average of the range of the contrast you use. It's the latter technique that we use. But I showed you sensory motor cortex used is the hottest area in the brain and how, when you window and level it, or adjust the contrast range relative to motor cortex, it really didn't change the analysis at all. That was the purpose of that slide.

MR. DIGGS: Beg the Court's indulgence for just a second.

THE COURT: Yes sir.

Anything else, Mr. Diggs?

Q. Let me ask just this very briefly. Dr. Spicer, if an individual, like in Mr. Stanko's case, is engaged in an activity that requires use and concentration in his frontal lobes, and a scan is doing under that circumstance, would you expect it to be -- what would you expect it to show in terms of the scan data?

A. I'm assuming that it would look just like all our other scans, in that, as I sit here and you there, we are all using our frontal lobes constantly.

Q. All right. So your testimony is, it would make no difference?

A. Not that we could -- I mean, not enough difference, significant enough difference for us to be able to distinguish an abnormality.

Q. All right. Even though the machines are sensitive to the extent that you have already alluded to.

A. Oh, they are very sensitive. I agree with you. It's just that when we read them we have to be certain we are not falling into a trap of looking at things too sensitively and overcalling.

MR. DIGGS: All right. That's all I have.

Thank you very much, Dr. Spicer.

A. Okay.

THE COURT: Any redirect?

MR. HEMBREE: No redirect, Your Honor.

We would ask that Dr. Spicer be excused.

THE COURT: Any objection to that?

MR. DIGGS: No sir.

THE COURT: All right, Dr. Spicer, you are released from your Subpoena. You may go back to your regular duties, sir.

A. Thank you, sir.

THE COURT: Thank you.

Yes sir, Solicitor.

MR. HEMBREE: With that, Your Honor, the State rests with it's reply testimony.

THE COURT: All right. Very good.

All right, ladies and gentlemen, we are going to break for lunch. As I understand from the Clerk your lunch is here, so if you would leave your pads and pens and go enjoy your lunch.

Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: As I understand it then, we have finished the testimonial portion of the trial. Is that correct, Solicitor?

MR. HEMBREE: That's correct, Your Honor.

THE COURT: From the Defense?

MR. DIGGS: Yes sir.

THE COURT: All right. Why don't we -- like I said, we'll take a short break.

How long has it been taking for the jury to eat lunch. Do you know? How long has it been?

CLERK OF COURT: Around forty minutes.

THE COURT: All right. Let's just say we'll break for thirty minutes. We'll come back in and discuss matters at that point in time.

Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, counsel, the state of the proceedings is that the evidentiary portion of the case has concluded, so are there any motions from the Defense at this point in time?

MR. DIGGS: Your Honor, we would move for a directed verdict at the close of all of the evidence now on the issue of insanity. The only reasonable conclusion, I would submit, that the factfinder could find beyond a reasonable doubt would be insanity.

Dr. Crawford, of course, opined that he was sane, but didn't have any information or knowledge about the M.R.I. or P.E.T. scans. She believed that he had an Anti-social Personality Disorder, but did not know why he would have such a disorder. Those -- I would submit that the evidence shows

that he has a defect, it's there in the scans that were interpreted by Dr. Wu, and the only reasonable conclusion is that, as stated by Dr. Sachy, the Defendant was not sane at the time of the incident.

THE COURT: All right. As I did at the end of the State's case, which is set forth that the Defendant is entitled to a directed verdict when the State fails to produce of the offense charged, and the Trial Court is concerned with the existence of evidence, not with it's weight, credibility or believability, and if there's any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused then the case would be properly submitted to the jury.

In this particular case I find that there is more than sufficient evidence, if that evidence is so believed by the jury, to find the Defendant guilty of the crimes charged beyond a reasonable doubt, and there being that sufficient evidence, and indicated, more than sufficient evidence that the jury could use to find the Defendant guilty of the crimes charged beyond a reasonable doubt I would respectfully decline to grant your motions for a directed verdict.

All right. Verdict form. As to how it should be presented to the jury, the possible outcomes, besides guilty or not guilty, Mr. Diggs, what would you present on behalf of the Defense?

MR. DIGGS: I'm sorry, Your Honor. Could you repeat that?

THE COURT: The verdict form, besides the choices of guilty or not guilty being presened to the jury, what would you suggest on behalf of the Defense?

MR. DIGGS: Not guilty by reason of insanity.

THE COURT: All right. And we would not be arguing, in any way, guilty but mentally ill, correct?

MR. DIGGS: Is not supported by our evidence, Your Honor.

THE COURT: All right. Very good.

MR. HEMBREE: Your Honor, if I may ---

THE COURT: Yes sir.

MR. HEMBREE: ---And we may want to take a quick look at the statute on that. My recollect is that, when the issue of sanity is raised by the Defense that, under the statute all four verdict forms must be offered to the jury, regardless of the ---

THE COURT: Where would that be? I'm ---

MR. HEMBREE: That would be -- bear with me, Your Honor. That would be 17-24-30, I believe.

THE COURT: All right.

MR. HEMBREE: I'll read this, Your Honor. I have it.

THE COURT: Hold on. Well, let me just go to the Code here. All right. It's 17-24-10 is insanity, and 17-24-20 is

guilty but mentally ill. It's not in either one of those, but you said 17-24-30 ---

MR. HEMBREE: Yes sir.

THE COURT: ---So let's look at that.

MR. DIGGS: Your Honor, it's either 30 or 40, and I agree with the Solicitor.

THE COURT: So 17-24-30 says "Form of the Verdict" so let's see. All right. 17-24-30 says, "Form of the Verdict". In a prosecution for a crime when an affirmative defense of insanity is raised sufficiently by the Defendant, or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence the Trier of Fact shall find under the applicable law, and the verdict must so state whether the defendant is guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill.

Mr. Diggs.

MR. DIGGS: Well, I don't read that statute as the Solicitor does. I read it as saying, of all of these are supported by the evidence this is the way it should read, or sufficient -- or when sufficient evidence of a mental disease or defect of the defendant is admitted into evidence, prior facts shall find, under the applicable law, and the verdict form must so state.

And so I -- I mean, from our perspective, if the Judge -- if the Court chooses not to submit guilty but mentally ill

then that possible verdict wouldn't be in the form. You follow what I'm saying?

THE COURT: I understand what you are saying, but I'm just trying to understand what the statute says. I mean, the Defense's expert certainly didn't give -- or none of them. There wasn't any expert that opined that he was guilty but mentally ill.

I mean, Solicitor, you asked a direct question of Dr. Sachy, and clearly he indicated that -- he was indicating that the Defendant was insane at the time the crime was committed under the legal definition, and not relying at all on guilty but mentally ill.

So, are you reading 17-24-30 to say, even if there isn't any evidence of guilty but mentally ill I have to give that choice to the jury?

MR. HEMBREE: Your Honor, I will admit that I am reading it in the most liberal sense possible, simply because it's a death penalty case.

THE COURT: All right.

MR. HEMBREE: And I mean, I'll say it just like that. I would agree -- I would agree with Mr. Diggs that there is no evidence in this record that would support a verdict of guilty but mentally ill, that even by the Defendant's own experts he would not qualify for a charge on that -- on that possible form of verdict. I have just -- that's the only reason I

raised the question.

THE COURT: All right. Well, let's just look at what it says. It says, in a prosecution for a crime when the affirmative defense of insanity is raised sufficiently by the defendant, or when sufficient evidence of mental disease or defect of the defendant is admitted into evidence -- so those parts are taken care of -- the Trier of Fact shall find, under the applicable law, and the verdict must so state whether the defendant is guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Trier of Fact shall find, under the applicable law.

MR. HEMBREE: It's a very confusing -- I mean, I hope the Court can understand the reason for my concern.

THE COURT: Yes sir, I understand your concern. Let's see if there's anything that -- there is a notation of a case, and I'm not reading the case, I'm just reading the notation here. We might have to look this case up. It's State versus Campen, C.a.m.p.e.n. -- it's an Appellate Court Decision from 1996. It's 469 S.E.2d 619, but the note and the annotations under the statute say, "The Defendant's own testimony, and the testimony of the Defendant's Psychiatrist, raised the issue of the Defendant's sanity so as to oblige the Trial Court to submit a verdict form for guilty but mentally ill, even though the Psychiatrist testified that the Defendant had the capacity and ability to differentiate right from wrong at the time of

the incident, and had capacity to conform his conduct accordingly, where the Psychiatrist, as well as the Defendant, testified as to the Defendant's long history of mental illness and his treatment thereof."

And they have **State versus Remmert**. We'll look at that one. **State versus Remmert**, 446 S.E.2d 400. Rehearing denied, Cert denied by the U.S. Supreme Court at 115 S.C.T. 730, 513 U.S. 1080, 130 Lore's Edition Second 634. Section 17-24-30 requires a submission of four different verdict forms, guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill wherein a prosecution for a crime the Defendant raises the affirmative defense of insanity.

MR. DIGGS: Your Honor, going back to **Campen**, you know, it says "Provisions of 17-24-30 are mandatory, and may not be waived.

THE COURT: Well, then we are going to submit all four of them to the jury then.

MR. HEMBREE: Thank you, Your Honor.

THE COURT: All right. So, if you would, let me hand to you then -- make sure I've got a copy of it -- a verdict form ---

All right, Madame Clerk, could you give a copy to each table, please Ma'am.

If y'all don't mind, take a moment to review that possible verdict form, please.

MR. DIGGS: Your Honor, we'll hand this up to you too.

THE COURT: All right.

MR. DIGGS: This is the only additional charge that we are going to specifically request ---

THE COURT: All right.

MR. DIGGS: ---And that is -- I didn't put it on there, but it's right out of the statute that defines insanity, and ---

THE COURT: Okay. And I was going to ask y'all about that. I appreciate that.

MR. HUMPHRIES: And Your Honor, as to that charge we would obviously request the entire statute, (A), (B), and (C).

THE COURT: Well, okay -- well, let's not get -- let's not get into that yet.

Y'all tell me when you've looked at the verdict form. If y'all have finished looking at ---

MR. HEMBREE: The verdict form is acceptable to the State.

MR. DIGGS: Yes, and it is to us.

THE COURT: All right. Very good.

All right. All right, now, the State has submitted a Request to Charge number one -- did you give a copy of that to the Defense?

MR. HUMPHRIES: I did, Your Honor.

THE COURT: All right. Is there an objection to that

from the Defense?

MR. DIGGS: Your Honor, if that -- I notice the Court of Appeals cite -- and I mean, if there's a State Supreme Court cite that says that then I don't object to it, but if there isn't we would object to it, and ask the Court to stay with the Common Law definition of robbery, or armed robbery.

THE COURT: Yes sir, Mr. Humphries.

MR. HUMPHRIES: You know, that -- that statement of law is literally a part of every capital case in which there is a murder and armed robbery, and the fact that I cited the most recent Court of Appeals case versus a line of cases from the Supreme Court and the Court of Appeals has absolutely no bearing as to it's authority of law in this State.

It needs to be charged in this case because it's applicable to the facts without being a charge on the facts, and the State would request it.

THE COURT: All right, sir. Y'all hold on one second, please.

All right, I find the State's Request to Charge Number One to be appropriate, and I will so charge to the jury.

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: Dixie, mark that as a court's exhibit, please Ma'am. Great.

COURT REPORTER: Court's 108.

(DEFENDANT'S REQUEST TO CHARGE MARKED COURT'S EXHIBIT

NUMBER 108, NOT TO GO TO THE JURY.)

THE COURT: All right. The Defendant's Request to Charge Number One sets forth Subsections (A) and (B) of 17-24-10. It does not set forth Subsection (C) which says, "Evidence of a mental disease or defect that is manifested only by repeated criminal or other anti-social conduct is not sufficient to establish the defense of insanity."

You object to the (C) part of the Section being as the law in this case, and being charged to the jury, Mr. Diggs?

MR. DIGGS: Your Honor, what our objection is now is consistent with the prior objections we've made. We object to the Law in South Carolina that allows the jury to find sanity based -- or lack of sanity based on -- allows a lay juror, or a jury to find sanity based on lay testimony, and so in -- I don't -- we would argue that the language that was omitted from the statute is -- I mean, if you look at the testimony of Dr. Crawford when she says, look, we base these things on one's conduct, those opinions -- or I mean, those diagnoses are based on the fact that these characteristics are present, and so I would argue that it's unconstitutional to interpose that last section of the statute because it's arbitrary. There's no reason for it, and it should be omitted from the Court's charge. Secondly, it's confusing, because the jury really doesn't know, okay, what else is required. You know, we don't know what else is required to support it. We can't -

- it kind of leads to the conclusion that the jury has to forget about the conduct that appears to be result of insane -- of an insane state, so I'm asking the Court not to charge it.

THE COURT: All right. Solicitor.

MR. HUMPHRIES: Your Honor, it's a complete statement of the Law. To do anything else, under the circumstance, would be absolutely improper.

And also, the state of the Law is that a jury can determine sanity, surely from lay testimony, but we are not dealing with that. We are dealing with expert testimony, start to finish in this case, so the basis of that argument is flawed to begin with. We are not relying on lay persons' testimony. We are relying on experts' testimony. It was a -- and it was the basis upon which Dr. Crawford formed her opinion, it should have been the basis under which Dr. Sachy formed his opinion, although it was wholly lacking, it's the Law of this State.

THE COURT: All right. What I would intend to do is, consistent with the evidence in this case, that -- to read Sections (A) and (B) and (C), but how I will read Subsection (C) is, "Evidence of a mental disease or defect that is manifested only by repeated criminal or other anti-social conduct is not sufficient in and of itself to establish the defense of insanity", because I think that conforms to the

evidence in this case, so that would be how I intend to ---

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: ---Charge it to the jury.

All right, understanding then that we are going to use the verdict form that has all four possibilities.

Just so that y'all have an understanding, obviously I'm going to talk to the jury about the normal things that we talk about in any case, about expert witnesses, I allowed them to take notes in this, but that they should not be given any greater weight than the recollection of other jurors, if I told them to disregard any statements they had to disregard them and couldn't use them, I'll give them the charge about the fact the Defendant did not testify, and instruct them and emphasize that fact is not to be considered in their deliberations in any way, presumption of innocence, reasonable doubt, the kind of doubt that would cause a reasonable person to hesitate to act, insanity, what I would do is read the Section as I indicated, and then the Court's charge on that, and then go to basically the -- looking at 17-24-20, Subsections (A) and (B) of that -- (C) and (D) are really instructions to the Court, so they do not apply to what the jury could -- or would understand as the law in this case -- and then as to homicide or murder, obviously charge that law, and armed robbery, to the jury, along with the Request to Charge of the State that was -- just for the -- y'all's

information, it's Court's Exhibit 106 -- and then just give them an explanation of the four possible verdict forms in the matter, and obviously remind them that their decision has to be unanimous in this particular matter.

Anything further from the State?

MR. HUMPHRIES: No sir.

THE COURT: Anything further from the Defense?

MS. WILLIAMS: Yes sir. I do think the -- the Court, if I understood correctly, is going to give a charge on reasonable doubt, but as far as the insanity -- in the insanity statute (B) says, the defendant has the burden of proving the defense of an insanity by a presumption of the innocence.

THE COURT: Yes Ma'am.

MS. WILLIAMS: I believe we need a definition of that, and Your Honor, I'll ---

THE COURT: Well, it's in the -- I'm sorry. Let me go to ---

MS. WILLIAMS: Just make sure it is in there and that would be ---

THE COURT: All right. Just hold on. Hold on one second. Let me read it to you, so I'll see if you've got -- okay, "By raising the defense of insanity the defendant does not necessarily admit the crime was committed, the State must still prove, beyond a reasonable doubt, that the defendant

committed the crime, however, the defendant must prove insanity by a presumption of the innocence. A preponderance of the evidence simply means the greater weight of the evidence, or more likely than not."

MS. WILLIAMS: Thank you.

THE COURT: Anything further?

MS. WILLIAMS: No sir. That's it. Thank you.

THE COURT: All right. Very good.

MR. HUMPHRIES: Your Honor, the -- let me just -- let me comment briefly on that. There is -- there is that requirement that the defense raise the issue of insanity by a presumption of the innocence. The converse of that is then -- because that's not the end, obviously. The end is that the State must then refute that evidence beyond a reasonable doubt.

THE COURT: Reasonable doubt. Well, all right ---

MR. HUMPHRIES: I mean, you with me?

THE COURT: Let me -- all right, why don't I just grab the whole charge, read it to you.

MR. HUMPHRIES: I just don't want to leave the jury ---

THE COURT: I understand that.

MR. HUMPHRIES: Yes sir.

THE COURT: Hold on. Hold on a second. All right.

All right. I'll just -- after reading the Section to the jury, then I would charge to the jury, the Defendant has

raised the defense of insanity. The criminal intent -- I'm sorry -- criminal intent is required to prove that the defendant is guilty of the crime charged. A person who is insane cannot have criminal intent, and therefore cannot be found guilty of a crime. In order to be found not guilty by reason of insanity it must be shown that, at the time of the crime the defendant had a mental disease or defect which made him unable to distinguish moral or legal right from moral or legal wrong, or to recognize the crime as morally or legally wrong. By raising the defense of insanity the defendant does not necessarily admit the crime was committed. The State must still prove, beyond a reasonable doubt, that the defendant committed the crime, however, the defendant must prove insanity by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of the evidence, or more likely than not. If you find there is evidence in the record that, at the time the crime was allegedly committed it is more likely than not that, because of a mental disease or defect the defendant did not know the alleged crime was morally or legally wrong the State must then prove, beyond a reasonable doubt, that the defendant was sane. It is for you to decide what the state or condition of the defendant's mind was at the time the alleged crime was committed.

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: Any -- so there's no problem with that from the State?

MR. HUMPHRIES: None from the State, Your Honor.

THE COURT: From the Defense?

MR. DIGGS: And you plan to charge that, Your Honor. I'm ---

THE COURT: That's ---

MR. DIGGS: Yes.

THE COURT: ---Why I was reading it.

MR. DIGGS: Okay. Yes, no objection.

THE COURT: All right. Very good.

All right. Closing arguments.

MR. HUMPHRIES: Yes sir.

THE COURT: How long did the State plan on, and how did the State intend, if at all, to divide it's argument?

MR. HUMPHRIES: Your Honor, there will be one argument, and it will be approximately twenty-five to thirty minutes.

THE COURT: All right. And the Defense?

MR. DIGGS: Your Honor, we are going to do one argument, and it may go about thirty to forty minutes.

THE COURT: All right. I will leave it to you. I say that -- I mean, obviously if you go on excessively I will probably say something. I don't -- probably won't be so quick as Judge Floyd, and start rapping my pen or my hand on the bench, like he would, but I guess I ought to remind you just

like he did, that the jurors' seats can only absorb so much, and when that limit is reached their brains tune you out. So -- he would say it differently but I just chose not to.

All right. Is the State ready for the jury?

MR. HUMPHRIES: State's ready. I'm sorry.

THE COURT: Yes sir.

MR. HEMBREE: Your Honor, the -- I didn't know if the Court wanted to discuss with the Defendant his right to allocute in this phase of the trial.

THE COURT: You are exactly right, and I had that out but I put it to the side, and I did not stick it in front of me.

All right, Mr. Stanko ---

DEFENDANT: Yes.

THE COURT: Please stand.

DEFENDANT: I'm sorry.

THE COURT: Have your attorneys explained to you that you have the opportunity and the ability to address the jury at these -- stage of the proceedings?

DEFENDANT: We have had some discussion about it, sir.

THE COURT: All right, sir. Do you feel that you need to discuss it further with them at this time?

DEFENDANT: If only for a few minutes, and we can do it right here. We can ---

THE COURT: I'd be glad for you to -- please, go ahead

and y'all take what time that you would like. Please go ahead.

(DEFENDANT CONSULTS WITH HIS COUNSEL.)

DEFENDANT: Thank you, Your Honor.

THE COURT: All right, Mr. Stanko, have you had sufficient time to discuss the issue with your attorneys?

DEFENDANT: Yes sir, I have.

THE COURT: And did they answer your questions to your satisfaction?

DEFENDANT: Yes sir.

THE COURT: All right, sir. Understanding then your right to address the jury at this stage of the proceedings what is your choice, sir?

DEFENDANT: At this stage I will not address them.

THE COURT: All right. Very good. And you understand that we will, again, raise that -- should there be a subsequent phase of the trial we will, again, raise that issue with you. You understand that?

DEFENDANT: If this goes to sentencing we will address it again.

THE COURT: Very good, sir. Thank you very much.

DEFENDANT: Yes sir.

THE COURT: All right. Is the State now ready for the jury?

MR. HUMPHRIES: The State is ready to proceed, Your

Honor.

THE COURT: Very good.

Defense.

MR. DIGGS: Yes sir. Your Honor, we are ready. I'm going to step out and ---

THE COURT: All right. All right. Step out. And again, what we are doing is, the State is not going to have an opening, the Defense will start ---

MR. DIGGS: Your Honor, under this procedure the State will go first.

MR. HUMPHRIES: I'll go -- we go first, Judge.

THE COURT: All right, sir.

MR. DIGGS: And then we will close.

THE COURT: All right. Very good. That was only in the sentencing phase. All right. Very good.

MS. WILLIAMS: Your Honor, while he's gone I'll do this housekeeping on exhibit ---

THE COURT: Okay. Is that the photographs from yesterday?

MS. WILLIAMS: Yes sir.

THE COURT: All right. Very good. And you are marking those for identification? I mean, that's what we discussed yesterday. I don't know -- we -- if we are doing something different then I need to know.

MR. HUMPHRIES: They are marked for identification, I

believe. It was my understanding they would be available in the record.

THE COURT: For the record.

MS. WILLIAMS: Yes sir.

THE COURT: That's correct.

MS. WILLIAMS: Yes sir.

THE COURT: Okay. Very good. Why don't you go -- let Dixie have the photographs, since we know what we are doing with those.

MS. WILLIAMS: Well, that's the one you put down first. This is the PowerPoint, and that is -- these are the three photographs from Sachy's PowerPoint.

COURT REPORTER: All right. The photographs are being marked Defendant's Exhibit Number 40, and the ---

MS. WILLIAMS: Your Honor, Defendant's Number 31, for identification, are the three slides that were displayed during Dr. Sachy's testimony.

THE COURT: All right. And ---

MS. WILLIAMS: They are just for identification.

THE COURT: All right. Very good.

MS. WILLIAMS: And it's three pages that will be number 41.

THE COURT: Okay.

And 40, again, was what now?

MS. WILLIAMS: It is a print-out of the Power -- the

PowerPoint that Dr. Wu presented during his testimony.

THE COURT: All right. Very good.

(POWERPOINT PRESENTATION BY DR. WU ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 40.)

(SLIDES FROM DR. SACHY'S POWERPOINT MARKED DEFENDANT'S EXHIBIT NUMBER 41, FOR IDENTIFICATION ONLY, NOT TO GO TO THE JURY.)

THE COURT: The Clerk has given me a copy -- not the original, but a copy of the indictment. Did y'all want to look at that? We need to get that marked. Just make sure that there are no issues.

THE COURT: All right. So we will mark that as a Court's Exhibit then.

(INDICTMENT NUMBER (05-GS-26-02927) MARKED COURT'S EXHIBIT NUMBER 109, NOT TO GO TO THE JURY.)

THE COURT: Yes, so Court's Exhibit 109 is a copy of the indictment as against the Defendant in this case for murder and armed robbery, in **(05-GS-26-02927)**.

All right. Go ahead and bring the jury in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, ladies and gentlemen, we have concluded the evidentiary portion the trial. We are now going to go into the closing arguments by the attorneys, after which I will give you the law that you will apply to the facts as

you so find them to be in this particular case, and then I will submit the case to you for your deliberations and your unanimous decision in this particular matter.

I'll remind you as I did at the -- regarding the opening statements, the closing arguments of the attorneys are not evidence, cannot be considered by you as evidence in the case, but they are important. They are each side's summation to you of what they believe the evidence has shown to you during the course of the trial, and then, of course, ultimately what they are going to be asking you to do regarding your unanimous verdict in this particular matter.

So I would ask that you give your close attention to the attorneys as they give you their closing arguments in this case.

All right, Solicitor.

MR. HUMPHRIES: If it please the Court.

THE COURT: Yes sir.

MR. HUMPHRIES: Counsel.

Mr. Foreman, ladies and gentlemen of the jury, murder is the unlawful killing of one human being by another, with malice aforethought. Malice is a term of art. It means wickedness, depravity of heart, to wrongfully do an act you know is wrong. Aforethought means that the malice must exist in the mind of the killer an instant before the fatal blow or shot. He did that.

Armed robbery is the taking and carrying away of the property of another, from the person of another, while armed with a deadly weapon, and in this case it matters not whether the victim in this case was dead or alive, as long as it was a part of a continuous series of acts. He did that.

These are things about which there can be no argument. On all of these things we can agree. There's one issue, one issue, and it's really what this entire case is centered around, and that is, by the law of the State of South Carolina was this Defendant legally insane, and that's it. That's it.

We had the opportunity, such as it was, to hear from a number of people qualified as experts in this case. And the Defense provided you a number of people qualified as experts in this case. Let's talk just a bit about Dr. Albiniak. Dr. Albiniak gave us quite a lecture about the structure and function of the brain, but as an end result, as end result, what did he really tell us? What he really told us was that, absent a stimulus from the amygdala to the frontal lobe that would trigger an aggressive response, there was no excuse for shooting seventy-five year old Henry Turner in the back while he was shaving.

In fact, what he told you, based on the facts -- now, listen, folks, here's what we've got to do. We have to been mindful of what we know, not what someone suggests could have happened to him, but what we know, and what we know is that

Defendant Stanko, after an incident, a prior incident, went to a bank, took out a bunch of Laura Ling's money, and Laura Ling's car, called Henry Turner, his old buddy, 3:22 in the morning, told him, Henry, my daddy has died, do you mind if I come over. He goes there, arranged for a period of time, Henry Turner goes and buys him breakfast, and then sometime after that, while shaving, Defendant Stanko comes up behind him, and with a pillow over the mussel of the gun, shoots him in the back, shoots him in the chest, gets some going-out-of-town money, and steals his truck. Those are the things we know. okay.

When I asked Dr. Albiniak, under those circumstances, Doctor, can you identify for me the stimulus that would have provoked an aggressive response, an aggressive raged-filled response in that Defendant, and he couldn't. In fact I asked him, I said, Dr. Albiniak, you said that this amygdala -- and Lord knows, we've probably learned a whole lot more about the brain than we ever wanted to -- but that doesn't just -- that doesn't just, you know, provide an aggressive response. It provides responses that would lead someone to euphoria, or happiness. And I asked him, within the context of the things we know about this case, isn't it more likely that those things, taking him in, consoling him, providing him a place to lay his head, buying him breakfast, wouldn't those stimuli result in euphoria, or happiness, versus rage or aggression.

Yes sir. Yes Ma'am. That's Dr. Albiniak.

Dr. Thrasher. He's a Psychiatrist. Primarily, with the exception of the diagnosis -- this is important -- of Anti-social Personality Disorder, he testified a bit about birth records, and on direct, when he was talking to the Defense he was talking about all sorts of terrible things that happened to Defendant Stanko during his birth, but when pressed -- let's really look -- let's look at the records. Isn't it true, isn't it true, Doc, the most you can say about this youn'un, when he was born, is he was throwing up, which abated, which means it stopped, and that two days after his birth he was a little jaundice, isn't that true. That's Dr. Thrasher.

Dr. Einhorn. He opined that Defendant Stanko has an Anti-social Personality Disorder, and that neuropsychologically, in terms of his assessment, he was either normal, or above average, very high intelligence. Those are the kind of guys I can sort of line up with.

Now, we get a little further away. You go to Pennsylvania and California then you start to see some different things.

Dr. Gur. Dr. Gur takes results -- now keep in mind now, he's taking results, not straight from M.U.S.C. -- they've gone all the way across the Country, to California, and then back over to Pennsylvania -- and he opines, based on a

statistically analysis, that Defendant Stanko's brain is two standard deviations below what his data base considers normal, and in some cases four, four standard deviations. That's in the amygdala.

And here's what we know about Dr. Gur's statistical analysis, it's interesting, that's it, it's interesting, because it has absolutely no application and clinical diagnosis, it's not medically accepted as a means by which you clinically diagnose. It's interesting, which is not to say it's accurate, but it's interesting.

Dr. Wu. Now, that's a smart man, I'll give you that, but the thing that amazed me, really does, is that this, you know, what, twenty-six hundred mile trip across the United States, took a P.E.T. scan that, when interpreted by the folks who gave it -- and we ain't talking about all the data bases, and the comparative things that they did, we are talking about taking the pictures and looking at them, compared to nothing but them -- took a normal P.E.T. scan and went from normal to a fifty percent reduction, fifty percent, which ain't subtle, but you ought to be able to see, and it took twenty-six hundred miles to get that, and, and, the methods by which he did that analysis are not medically accepted in the community in which they operate, and they are not clinically approved for that purpose. The F.D.A. says no, and the medical community, as a whole, says no.

And Dr. Sachy. Now there's a fellow, folks, who was absolutely invested, invested in this Defense. One of the things that you are called upon to do as jurors is to determine bias, that is, does someone have a reason to line up with a particular side, and prejudice, they have something against the other side. Now, I don't know about y'all, but honestly, wouldn't you want someone coming in here testifying as an expert to give you the benefit of their knowledge and experience, wouldn't you likely be just a touch more on the impartial side, just a little bit?

Then, seems to me if I was going to come into a courtroom, in South Carolina, and give an opinion as to whether or not a particular defendant, in this case, Stephen Stanko, was legally insane, I think I would be just a touch more familiar with the law that determines sanity and insanity. I think that would be a good idea.

You know, we could really end this analysis right here, without ever having heard from the State's reply witnesses, without having a word, because the end result is this. We know he's got an Anti-social Personality Disorder. We've had some interesting statistical analysis which are not clinically approved for diagnosis of an individual. We've got P.E.T. scan analysis which is not F.D.A. approved or medically accepted, and then we've got Dr. Sachy who tells you, who tells you that he's anti-social -- he's got an Anti-social

Personality Disorder, and that that's based on this history of repeated criminal conduct.

Let me read something to you. I ain't making it up. "Evidence of a mental disease or defect that is manifested only by repeated criminal or other anti-social conduct is not sufficient -- and the Court will charge you -- in and of itself, to establish the defense of insanity. That's the law in South Carolina.

And folks, that's what Dr. Sachy said. He was asked directly, is that what you are saying, and directly he responded, yes. We don't have to go one step further, not one, but we did, we did.

Dr. Pamela Crawford. Folks, this one fact should not escape your attention, and I know it's not. Dr. Pamela Crawford was the Court's expert. The State called her, we did, but she's a Court's expert. She was appointed by the Court, she did her examination for the Court, she reached her conclusions for the Court, she had no friends to reward, no enemies to punish, and she rendered an opinion based on the law in the State of South Carolina that Defendant Stanko was not insane at the time he killed Henry Turner.

Now, she said a lot of other things, but based on the law in the State of South Carolina he didn't even come close. Now remember this, she gets called by the State, and she gets called by the Defense, dependant on where her opinion falls.

She doesn't generate an opinion in favor of the State, or in favor of the Defense, she generates the opinion for the Court.

And in terms of her background and experience I submit to you that there was no one else you heard in this case that approached her qualifications in that regard. For goodness sakes, she was the Forensic Psychiatrist for the entire State. She performed hundreds of Forensic Psychiatric evaluations, and supervised many more.

Now what you do when you are sitting in the jury box is, you watch witnesses because, folks, this is something that, you know, seems like an onerous task the a juror when they first start out, but we've been in this thing a long time. You know, we asked you to -- we asked you to assess and determine the credibility of a witness, and that is something that you do each and every day. Sometimes it's entirely unconscious, sometimes it's very purposeful. When you meet somebody new you listen to them, you don't just hear the words, you watch how they say them to you, and you don't just take them at their word, you compare it to things you know to be true. Now, compare the manner in which Dr. Crawford testified say to Dr. Sachy. That's not a hard job.

This is important. No less then five opinions, five opinions were rendered regarding the mental status, the mental state of Defendant Stanko as it relates to his mental condition. Without exception, without exception every expert

to a person, whether Defense, the Court's, or the State's, came up with one singular diagnosis, and that was Anti-social Personality Disorder.

As a result of a mental illness or defect the Defendant must not know, or cannot be able to distinguish moral and legal right from moral and legal wrong, as a result of a mental illness or defect. Folks, let me tell you something -- and Dr. Crawford told you -- Anti-social Personality Disorder ain't a mental illness, and it ain't a mental defect, it's not a major mental illness, it's not.

The D.S.M.4 -- everybody has been talking about the D.S.M.4. Well, that basically tells you what is and what isn't, okay. It's not. You don't get past the first phrase in the definition. If you don't have a maj -- a mental illness or defect that's it, and he doesn't. He's got a personality disorder.

You know, Dr. Brannon, a very storied career, both in the Navy and in private practice, was there at the inception of M.R. imaging, and has done it his entire career, told you that M.R. images of Defendant Stanko's brain are normal.

Dr. Spicer. Dr. Spicer testified -- and you know, there may be a lot made, honestly, there may be -- and you know, maybe there's some room for it -- there may be a lot made about what data bases were used in the comparison against the norm of these P.E.T. scan images, but let's not forget this.

Before Dr. Spicer ever put it in the computer program to compare against any data base whatsoever he did what every Radiologist does, and that is, he looked at them. It doesn't matter what the data base is.

Now, I agree with him that they are the only F.D.A. approved methods by which you can do such a comparison. They are the only medically accepted ways by which you can do a comparison, but just put that to the side. This is a man, since 1980, has been involved in brain imaging, he's a teacher, he's clinician, and those P.E.T. scans, until they traveled twenty-six hundred miles, were normal.

Let's talk just a bit about the facts, just a bit, because this is -- this is -- this is one of the ways you determine -- this is one of the ways Dr. Crawford determined whether or not Defendant Stanko understood the difference between legal and moral right and legal and moral wrong. She did that by the conduct of the Defendant. The second part of that, the Court will charge you, is that he had to have been unable to distinguish, or appreciate the moral or legal wrongfulness of his acts. Now that's important. In order to be not guilty by reason of insanity he had to have been unable to appreciate the wrongfulness of his acts. Well, we've already established there was no rage.

The crime scene -- you know, they had the fellow from Alaska who came in and basically told us everything we already

knew, and a few other things, which I appreciate. There is no prior conflict or assault between Defendant Stanko and Henry Turner, none whatsoever. Now, of course he wouldn't agree with me that there was planning involved. I think he tried a little too hard there. You know, he -- I think he gave Defendant Stanko just a touch too much credit, because I think he watches a lot of T.V., to tell you the truth. But we know he did this, we know he did this. We know that he took an opportunity -- and I submit to you, the opportunity was when he sent old Henry to get him some breakfast, but he took the opportunity to arm himself. He waited, he waited to the least confrontational moment possible, when Henry Turner had his back turned and was otherwise occupied in the task of shaving. He took a pillow -- now you know what, I'm familiar with handguns, I know better, but we are going to give Defendant Stanko that credit, that he knew that the sound wouldn't be muffled by the pillow. He had to get the pillow for some reason, I mean, he did it for some reason. It was planning, folks, it was planning, start to finish.

Now, I submit to you he probably was a bit surprised by the noise, but he still used a pillow. And it didn't work out all that well because Henry Turner didn't have the common decency to die with one shot, and he shot him again, and there really is no reason to ask yourself why, why he did that, why did he shoot Henry Turner, because he wanted his truck because

it was less conspicuous than the vehicle that he drove up in, he wanted his gun, which he had, wanted his money, which he got, and he wanted to get out of town. Now, are thee good plans? There again, we are going to give Defendant Stanko that much credit, but there were plans.

And folks, let me tell you something, if you can plan to do all that you appreciate the wrongfulness of your actions, you appreciate them, and if you appreciate them you ain't insane, not by the law in the State of South Carolina.

There were -- and then after that, for goodness sakes -- you'd have to go some to try and be able to explain Defendant Stanko's conduct after that unless you knew Defendant Stanko. I mean, it's galling, it's offensive to think about the things he did afterwards, in a matter of hours, folks, in a matter of hours, dressed himself up in his three piece suit, sat himself down in a bar in Columbia, hit on women, threw money around, went to another bar, stayed out till four o'clock in the morning. That would be bizarre if you weren't Defendant Stanko.

Leaves Columbia, goes to Augusta, the Master's Tournament, gazillion of people up there, from all over the world, and he's throwing money around again, making friends, adopting new identities. That started in Columbia. That would be bizarre if you didn't know Defendant Stephen Stanko. Co-ops into this sweet woman, Dana Putnam, takes advantage of

her. That would be bizarre if you didn't know Defendant Stephen Stanko.

But here's what we know, here's what we know. We know not only that he has an Anti-social Personality Disorder, but that he is highly narcissistic. Do you know what that means, really? It means that he's mean, and he likes himself that way. That's what it means. He believes he's smarter than everybody else, and he don't care. He doesn't care. But, that is not a major mental illness. It is not a mental illness or defect, and he's not insane.

You know, when we talked to you at the very beginning, and the Judge gave you the initial charge, he said this to you, your primary job, your primary obligation in this case is to hear the evidence, find the facts, apply the law as he charges it to you, and then find jury -- a verdict that speaks the truth, that speaks the truth.

He's tell you the State's, your State -- I ain't talking about me -- your State is entitled to a verdict that speaks the truth, the people impacted by this case, and his conduct, deserve a verdict that speaks the truth, and, and Defendant Stanko, he deserves a verdict that speaks the truth, and I submit to you, he wants nothing approaching that.

Thank you.

MR. DIGGS: Your Honor, could we -- may we approach for a second?

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Ladies and gentlemen of the jury, please go to the jury room.

Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: We'll take a short break. Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready for the jury?

MR. HEMBREE: Yes, Your Honor.

THE COURT: Defense?

MR. DIGGS: Yes sir.

THE COURT: Very good. Ask the jury to come in, please

MS. WILLIAMS: Your Honor, if I may ---

THE COURT: I'm sorry.

MS. WILLIAMS: ---If you will stop them. Could I make a motion for the record?

THE COURT: Yes Ma'am.

MS. WILLIAMS: Your Honor, we would like to object to the continued references that Pam -- Dr. Pam Crawford was a Court expert in this case. You know, we totally acknowledge that she was an expert appointed for the purposes of the Blair

hearing to determine, you know, if he was competent to stand trial, if he had the ability to assist us and understand his charges, and we acknowledge in that instance she was, indeed, a Court's witness, Your Honor, but we think that it is an incorrect characterization to call her the Court's expert when she was called by the State, she was here to testify on behalf of the State, and we think it just creates an unfair bias, and we would ask that that reference be stricken because her purpose at trial was not as a Court's expert, but as a State's expert.

THE COURT: So what would you have me do? I mean, the proper time to have raised this objection is when it's said, so that it can be cured at the time it's said, so now you want me to say something to the jury after the fact, when it was already done and you didn't object at the time that it was made?

MS. WILLIAMS: Your Honor, we would -- the only cure we are asking for is just a curative instruction.

THE COURT: To say what?

MS. WILLIAMS: That she was a -- a State's witness for the trial, and a Court's expert at -- for a prior hearing.

MR. DIGGS: And that status doesn't generate or ---

THE COURT: Well, I'm not going to comment on her status. I'll comment on all expert witnesses' status, ---

MS. WILLIAMS: That's all we want.

THE COURT: ---But I'm not going to comment on her status. I might indicate that she was initially appointed by the State -- I mean, appointed by the Court, and she was called in this matter by the State. Is that what you are asking me to do?

MS. WILLIAMS: Yes sir.

THE COURT: All right. I -- do you have an objection to that, Solicitor?

MR. HUMPHRIES: Well, that's what I told them.

THE COURT: All right. Well, I'll -- I'll be glad to tell them that. That's not a problem.

All right. Ask the jury to come in.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, ladies and gentlemen, before the Defense gives you their closing argument I want to tell you one thing, and I'll -- just to make sure it's clear, as to Dr. Pam Crawford, that she was initially appointed by the Court, and she was called in this matter by the State.

Thank you.

All right. Mr. Diggs.

MR. DIGGS: May it please the Court.

THE COURT: Yes sir.

MR. DIGGS: Good afternoon.

I think that we have a lot in agreement with what the

Prosecution said in it's closing. I don't think that we need a lot of expert testimony in this case to tell us whether or not Stephen Stanko is insane, because common sense tells us that he is. We have heard enough evidence in this case to be able to determine that sane people do not behave in the way that Stephen Stanko has, sane people do not do what Stephen Stanko does. Who is the person -- and think about this. Who is the sane person that attempts to kill people he loves, or that love him? You've heard, just today from Dr. Crawford, the girl he was living with, he's trying to kill her with a rag with some poison on it or something. I don't know if you heard her say this but we got her to admit yeah, she said something about him singing and whistling during that process. And think about that, who was the person that does that, other than an insane individual.

About -- this issue about avoiding detection and getting away, think about this as a practical matter -- and it was kind of a disjointed question, and Dr. Sachy didn't really understand it yesterday, but remember when he was there and I said, who are the most important people in an individual's life, finally I got him to say, of course, your family. Do you think if you could recognize the rightness or wrongness of your conduct you would certainly do it with your family members. You can have a man this man's age -- and see, I apologize to him, he's a human being, but he doesn't even know

what it is that alienates his family, his siblings. You heard Dr. Thrasher, I believe he said, isn't this the fifth birth in this family, that his mom had. He has four siblings. Not one of them is here. His parents, his mom, I believe -- I understand has passed away. His dad is alive. The family live down in Goose Creek, not very far from here. Who is the person that lives that lives day, after day, after day that alienates even their own siblings, all of them, not just one, but every single member of his intimate family, his immediate family, every single one has fallen to the side, they've given up on him, they can't stand him. Who was the per -- who is the sane person that treats their family members in such a way? Doesn't common sense tell you, there's a problem there, and a real serious problem, not to mention starting to kill the people that you live with, or that befriend you and do nothing but try to help you, like Henry Turner did. He kills them, or tries. Who is the sane person that does this?

Now the law requires us to present -- His Honor is going to -- and Mr. Humphries argument -- we can't just say, look at these crazy things he's done, because the law doesn't allow us to rely on that alone to show insanity, although we know in our common sense that's enough, that's all it takes. You are going to say, that man is insane, you are going to say that. Who, what sane person does that?

Now, there's not a big distinction between Anti-social

Personality, which is all those people that Fran -- that the Solicitor said was applicable to Mr. Stanko. There's not a lot of difference in that and insanity, because remember, insanity is a legal term, it's not a medical term. Anti-social Personality Disorder is the medical term, or the Psychiatric term. He has a severe case of it because it manifests itself not only in terms of lying and deceit, but killing. See, all that personality disorder encompassing all of that behavior, so there's not an either or, it's a matter of degree. So, really, in terms of Psychiatric terms there's not any disagreement.

In legal terms there's a disagreement. We heard testimony that at least in other -- in past times there have been a couple of psychiatric opinions that Mr. Stanko was insane, okay. How many times -- how many professional have to opine on that? How many family members -- if he had fifty immediate family and he alienated all of them would that make it a little more convincing? No. He has alienated all of the family members based on his deceit, lying, inability to be -- to even have a relationship with those people. That's a manifestation every day of his mental disease, defect. Okay. That's how it manifests itself.

Aren't you curious about why that is? Why is it that way? He's a smart man. He was a good student. He made good grades. Aren't we, in our society, in the Twenty-First

Century, aren't we capable of asking the next step, you know, going to next step, asking the next question, well, why, Dr. Crawford, why is he like that? And she says, I don't know, that's a really good question, but all he's got is an Anti-social Personality Disorder, he's not insane, I don't know why that is, but it's so.

And you've got Dr. Spicer and Dr. Brannon saying, you know, we don't know either, he's perfectly together, M.R. scan, the P.E.T. scan, they are normal, nothing shown there, he just must be -- yes, he makes bad choices. That's what they want us to believe.

I want to ask this question. Does anyone really believe that Stephen Stanko is in this courtroom because of some bad choices, you know, choices that he made, an independent, free-will, decision-making process, is that what brought him here? That is incomprehensible. He's got a personality disorder, and it's caused by a defect, whether it's trauma, you know, an injury to the head, or whether it was a depravation of oxygen at birth. He's got areas in the brain that don't function.

What is it with Dr. Spicer, with all due respect? The man has accomplished a lot of things in his life. He's gone a long way, but he is the one -- our Doctor, or Dr. Sachy sends Mr. Stanko down to M.U.S.C. for a P.E.T. scan, and like a bull in a china shop, Spicer and his associate come in to evaluate the results. They don't know anything about why Stephen

Stanko is there, what the conditions were under which the P.E.T. scan was being done, and for what purpose, what were they looking for. Maybe, unbeknown to Dr. Spicer, they were looking for a particular defect that they expected, that was predictable because of this crazy, bizarre, bizarre, bizarre behavior that Stephen Stanko was engaging in. Maybe it set off a red flag for them and they said, you know what, this sounds like he's not processing information up here in the right way, it sounds like he doesn't have any empathy, he's got -- he's not making good decisions here, you know, for such a smart man, maybe we ought to look to see if there's frontal lobe defect here.

And Dr. Sachy says, I happen to know a man who's publishing peer-reviewed articles in the literature who is conducting this type of research, it's Dr. Wu, out in California, he's been doing it for ten years at a P.E.T. scan clinic at the University of California in Irvine, he's a credible man because he helped make funding decisions for the National Institute of Health, the very man that Dr. Spicer says is unethical because he's using an F.D.A. -- unapproved F.D.A. software for his particular research. And I would suspect the next step is peer-review completion and F.D.A. approval. How do things get F.D.A. approved? Years and years of research and testing, and finally they stamp. It's because of people like Dr. Wu that things -- new technologies emerge,

and are approved, and that's what is happening here I suppose, peer-review. Remember, this is done in the context of a criminal case.

The State of South Carolina wants to execute this man over here. They want to kill him. We are not talking about taking somebody off the street to treat them ---

MR. HUMPHRIES: Your Honor, I'm going to object to this line of argument. It's not proper in the first stage.

THE COURT: Mr. Diggs, that's not what we are here about in this proceeding. Do not argue that.

Continue on.

MR. DIGGS: I'm sorry. I've been talking about F.D.A. approval.

THE COURT: No sir. You were not. Continue on.

MR. DIGGS: Depending on where I was, that would be the first step in seeking F.D.A. approval. We are talking about a man in a criminal prosecution, not a patient that walks in off the street who is seeking treatment. Do you see the difference? We are talking about research being done, and results being published in peer-reviewed literature, in the area of medical science, and medical technology. Of course, in that kind of setting there is nothing that's going to be available that's F.D.A. approved, for heaven sake, but it's peer-review approved. The doctors in the community know that it's approved, or that it's reliable, and it's those opinions

that the F.D.A. eventually will rely upon some day to make it available to the general public, for everybody who has a problem lying, being deceitful, and who are curious about why they do these things.

If -- I want you to -- I would ask what a parent would do in South Carolina with an infant who was born with the birth records that we have here with Mr. Stanko. Would those parents go to the doctor -- they saw -- they saw something that caused concern, and baby was throwing up, not a healthy color, years go on, it beings to manifest different unusual behaviors, and they want to get help for him. They go to Dr. Brannon, they go to Dr. Spicer, they go to Dr. Crawford. There's nothing wrong with the M.R.I., there's nothing wrong with the P.E.T. scan, he's just making bad decisions but I don't know why. That's the advice you would get. And I didn't hear anything from any of those people that would indicate there was any, not just hope, you know, for improvement, but explanation for why this was happening, and I would submit to you that it would be responsible to seek second opinions, to go where people are doing research that's leading the way for the development of medical technology, and that's what we've tried to do in this case, go for a second opinion, because he's just that way is not a good enough answer. He's alienating all of his family members. They won't even come to see him in his trial. He tries to kill his

friends. Why does he do this? Benefit -- for heaven sakes, what is the benefit for that? Does it make any sense? No, you know, think about it all -- all day, there's not going to be an explanation for it, other than, that's insanity, that's an inability to recognize that these actions that he is doing are wrong, legally or morally, he can't -- my suggestion would be, if you could recognize that you would change it. He doesn't recognize it, he doesn't change it. It's like that person with a limb that's not there, they can't change it. His brain doesn't function up there. We've shown you that it doesn't.

And here's photograph -- and I would submit to you, ladies and gentlemen, in terms of today's technology, that's as close as we can come to showing you what insanity looks like. It's areas of the brain -- you see how this is lit up here. It's not working in Mr. Stanko's brain. That's how insanity could look on a P.E.T. scan at the time the incident was occurring, but I would image that it would be even more of a disparity, because you've got someone running on that amygdala limbic system emotion. Up here, in this part of the brain, up in here, where the thought process occurs, to analyze that, and you make moral judgments, you determine whether it's legally right or wrong, you determine whether it's morally right or wrong. That limbic system impulse comes out of there and it's suggesting certain actions. If there's

not an analytical process up here, thought process, it's not going to be held in check, and you are not going to act in a way that a normal human being would act. That's because you fail to recognize that it's right or wrong, morally or legally. He lacks the capacity, not because of stupidity, okay. It's the intelligence, and stuff like that that's all around other areas, but right here where this analytical decision is made doesn't have the material in the head to make that analysis, and that's why his conduct in this case meets the legal test. It's all right, I would submit -- well, let me strike that. We have a responsibility to apply the law as it is in South Carolina. We ask each of you, could you apply the law to a particular verdict that was supported by the evidence, and every one said yes, and a lot of times we would say, even if you disagreed with the law, I don't recall anyone saying that they would even disagree with the law. Every one of you said, I'll follow the law as the Judge explains it, or charges it.

And the Judge is going to charge you that, if he lacked the capacity to distinguish moral or legal right from wrong at the time of the incident you've got to return a verdict of not guilty by reason of insanity. That's just the law. Where did the analysis take place, ladies and gentlemen? It didn't take place up here because the material is not there, and it's not working well enough, even if it were there.

Let's talk about the volume of matter. Dr. Gur came down to testify. This is a man who heads a department that's getting Twenty Million Dollars in funding this year. Unethical man? No, I doubt it. He heads part of some Psychiatric Department at the University of Pennsylvania, Philadelphia, for heaven sakes. Here's what he says his volumetric analysis shows. Deviations in the frontal lobe, two and a half on -- between two and two and a half standard deviations below the normal size in a healthy brain. That's what Dr. Gur says.

Now Dr. Brannon says, I don't -- we don't need that, I don't even -- I've never even read an article about that in the papers, he can't even -- it doesn't serve any purpose, but then Dr. Spicer comes up and starts using software that uses standard deviations, so Dr. Brannon is from a different era, and things progress, they advance, they change, and that is the normal course of things.

But down here, in the amygdala area, he's four deviations smaller. What was that syndrome he said people had when that happens to the amygdala, and it's not properly developed. He said, there is a syndrome -- and people are docile -- but all of a sudden strike out. Do you remember him saying that? I asked Dr. Sachy about it. He wasn't quite as familiar, but Dr. Gur -- I don't think I asked him about it, it was Ms. Williams, asked him about that -- and he explained

how you have these docile individuals with that kind of standard deviation in the amygdala, that went along, unemotional, and all of a sudden would strike out in rage. Now, that is what Mr. Stanko has going for him in the area of the amygdala. But then the double whammy is, when that rage goes out from the amygdala up into the frontal lobe area does it meet an area up there that analyzes it and makes an analytical assessment about what to do in terms of moral and legal judgment, among other things. There's nothing going on up here and bamb, there's the action, there's the death, there is the intent to kill, there's Henry Turner.

Now, Dr. Crawford explained a confrontation. One question I wanted to ask her, and I forgot to ask her, was what she heard from Stephen Stanko even remotely supported by the physical evidence in the case. No, not even close. I would submit it's because Stephen Stanko doesn't know what happened. Memories begin to be laid down when this area processes and makes analytical judgments. If that's not occurring you have to lay your memory down.

MR. HUMPHRIES: Your Honor, I'm sorry. I'm going to have to object. May we approach?

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Ladies and gentlemen, the Court instructs you that the last arguments of counsel are improper and I

order you to strike them and not use them.

Thank you.

You may continue, sir.

MR. DIGGS: I can't remember where I was.

I was talking about the analytical judgment that doesn't occur because of the lack of brain material, and the lack of function that's shown by the P.E.T. scan.

If you go back and look at the evidence that was presented by the Defense, Dr. Turvey -- I mean, Mr. Turvey comes in, and he goes through about twenty-five or twenty-six examples of just plain bad judgment that was made by the individual, Mr. Stanko, at the time of the incident in this case, starting with no attempt to conceal the incident that had occurred. He stole a -- or took a vehicle that would certainly tie him to the scene where Mr. Turner was left, he drove around for three days with a suitcase in that car that had blood on it, and he drove around with the gun in his possession that was used to kill Mr. Turner. The word that he used as a result of a question by the Solicitor was delusional. It's delusional conduct. How else are we to explain it?

If you are talking about being invested in the case, as the State says, oh, we can't believe Dr. Sachy because he's invested in the case. You've got Dr. Spicer that stakes out a position early on in the case with respect to the P.E.T. scan

being a normal scan, and then accuses the Defense witnesses of being unethical in their conduct. I would submit to you, it matters whether the data base that was used in Mr. -- or Dr. Spicer's software consists of people who were at rest or who were engaged in a Continuance Performance Test. As Dr. Wu explained, it's just like someone taking an E.K.G. at the hospital with you seated in a chair as opposed to doing a stress test on the treadmill. It's going to matter. Whether you are seated in a chair or you are on the treadmill it's going to matter. And I would submit to you, it was an unreliable and inappropriate use of the Hermes software. That software that he came in and went through on the screen, all of the little diagrams, software was never designed to interpret P.E.T. scan results that were taken under the circumstances and conditions of Mr. Stanko. We have to question whether he's truthful. We have to question or weigh his veracity. Is he trying to cover his own tracks by saying, yeah, but they are the ones who violated the protocols, not me, they are the ones who interjected these perturbations, whatever the word was he used, it wasn't me, they are the ones, they are the ones to blame. You know, nobody is to blame. He was looking for a certain thing, based on the information he had he was doing the best he could, he simply made a mistake. Ladies and gentlemen, I would submit to you, this is not the place for mistake to be made. We need to be

as careful and sure as we can be.

Now, Dr. Sachy was the Doctor who sent everyone over to M.U.S.C.. He is the one who said he didn't rely on himself. Contrary to what the Prosecution has argued, he's not the one who is invested in this case. He's the one who waited until the docu -- or the supporting corroboration information is back from the scanning technologies, from the likes of Joseph Wu and Ruben Gur, and armed with that information, made -- entered an opinion based on, not just their analysis of the technical data, but a lifetime of bizarre and strange behavior on behalf of Mr. Stanko.

Whether we like it or whether we don't like it, the State has this burden. If the Defense has convinced you with the -- by a preponderance of the evidence, meaning simply the greater weight, fifty-one to forty-nine, if we have convinced you just however slightly that Mr. Stanko was insane then the prosecution has the burden, as His Honor will charge you, of proving sanity beyond a reasonable doubt. Ladies and gentlemen, there is a doubt -- when we look out there and see an empty courtroom, with no family members here because of a lifetime of deceit, lying, abuse with family members, and we see the killing of a friend for no reason, that's insanity, and I would submit for Dr. Crawford to come in and say, well, I think he was sane, he's Anti-social Personality Disorder, but I think he was insane (SIC). That is not carrying the

burden, with all due respect, beyond a reasonable doubt. This case has with it presumption of innocence, and after all of that weighing and analysis that I've just disgusted, the bottom line is, the State has to prove, beyond a reasonable doubt. If you find insanity by a preponderance of the evidence -- the State has to prove beyond a reasonable doubt that Mr. Stanko is sane, and I submit they've failed in that burden, not because of their lack of effort, not because of their slackness, but because the facts are as they are. The State didn't make the facts, we didn't make them, they are as they are. We didn't make the law, but His Honor will charge you.

When we started this trial we said we would try to not take more time than necessary. We've kept true to our word on that, but at the same time, we wanted to take enough time to show you what we believe the facts are in the case, and I can tell everyone here, from my perspective the jurors have been attentive and we appreciate it.

I would submit to you, there is one verdict that's justified by the evidence in this case, okay, not that Mr. Stanko is innocent, but he is not guilty by reason of insanity. That -- insanity is the only reasonable conclusion when someone kills a friend with no reason, and that's what happened in this case.

Thank you very much, and I appreciate your attention.

Ms. Williams appreciates it. Mr. Stanko appreciates it.

Thank you very much.

THE COURT: Ladies and gentlemen, if you don't mind, before we start the charge on the law I would like for you to take a very short break, so we'll just take a break for five minutes, so go to your jury room for five minutes and we'll come back and finish.

Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Counsel, could y'all come up here for one second, please.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Is the State ready for the jury to come back in?

MR. HUMPHRIES: Yes, Your Honor.

THE COURT: And Defense?

MR. DIGGS: Yes sir.

THE COURT: Very good. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, ladies and gentlemen, it's now

my responsibility to give you the law that you are going to apply to the facts as you so find them to be in this particular case. I told you at the very beginning that you were going to be the deciders of the facts, and that I would not give you any opinion about the facts, and I believe that that has -- I've followed that, and in that same vein, if you came into this courtroom with any preconceived ideas of what the law is, what it ought to be, what it should be, what you hoped it would be, you will disregard that. You will take the law as I now give it to you and apply it to the facts as you so find them to be in this case. One of your jobs, as I told you, was to judge credibility and the believability of the witnesses that have presented themselves to you in this trial, and in doing so you can believe one witness against several, several against one, you can believe a portion of what a witness says and disregard the remaining portion of it, if you've got a good and sound reason for doing so you could disregard in it's entirety the testimony of a particular witness. You look at whether that witness has exhibited to you any kind of interest, bias, motive, prejudice they might have in giving you the testimony they gave you from the witness stand, and obviously you consider the opportunity for knowledge, how did they come about that information that they gave you from the witness stand.

Judging credibility and believability is something you

do every single day of your life. When somebody tells you something you are automatically judging whether or not you believe them, and how do you do that? You use your good common sense and your good judgment in conducting your own affairs. That's what we are asking you to do here today, use your good common sense and your good judgment, find that evidence which convinces you of it's truth, and you weigh that evidence against the State's burden of proving the Defendant guilty beyond a reasonable doubt.

You don't have any friends to reward, you don't have any enemies to punish, your verdict can't be the result of any kind of passion, prejudice or sympathy. It has to be an examination of the facts of this case, finding that evidence which convinces you of it's truth and again, weighing that evidence against the State's burden to prove the Defendant guilty of the crimes charges beyond a reasonable doubt.

Two types of evidence presented in this case, and in virtually every case that's tried. It's called direct and circumstantial evidence. Direct evidence. That's the testimony of a person who asserts or claims to have actual knowledge of a fact, what they saw, what they heard, that type of evidence. Circumstantial evidence is proof of a chain of facts indicating the existence of a fact, and the law doesn't make any distinction between circumstantial evidence or direct evidence. You weigh all the evidence the same in finding that

evidence which convinces you of it's truth.

Now in this case I allowed you to take notes, but I want you to remember that some people are better note takers than other people. A juror's notes should not be given any greater weight than the recollection of the other jurors. Recollection of individual jurors should be considered just as reliable as notes taken by someone else.

If the Court directed you to disregard any kind of statements or matters you must disregard it, and you may not use such statements in arriving at your verdict in the case.

Now the Rules of Evidence that we try cases under do not ordinarily allow witnesses to give their opinion. They've got to testify about what they say, what they heard, what they actually know about the particular matter, but sometimes, because some witnesses who, by their education or experience, their work in a particular field, have become knowledgeable in some kind of art or science, profession, the Court can qualify them to give their opinions. Sometimes they are called expert witnesses, but all we are doing is, we are just letting them give you their opinion. Now that designation by the Court to allow them to give you their opinion doesn't give them any greater weight than any other witness. You treat all the witnesses the same, you judge all the witnesses' credibility and believability the same. You look at all the evidence and you find, from all the evidence, that evidence which convinces

you of it's truth.

In this particular matter the Defendant did not testify. Now I tell you, and instruct you, and emphasize the fact to you that this is not a factor to be considered by you in any way in your deliberation or in your consideration of the evidence or the ultimate verdict in this particular matter. It must not be considered by you in any manner whatsoever. Any Defendant has the Constitutional Right to remain silent. The assertion of this right cannot be considered by you in your deliberation. You are to draw no conclusions from this. You are not to talk about it. You are not to consider it in any way. As I told you, a defendant is never required to prove to you their innocence. The burden of proof remains on the State of South Carolina to prove, beyond a reasonable doubt, the guilt of the Defendant of the crimes charged.

Defendant pled not guilty to the charges against him. Now that plea puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. This is an important rule of law that applies to any defendant in any criminal trial, no matter what the seriousness of the charge may be. The defendant is always presumed to be innocent of the crime for which he has been charged, unless that guilt is proven to you by the State beyond a reasonable doubt. And that presumption of innocence didn't end at the start of the trial, it hasn't ended now, it

does not end until you find that the State has produced sufficient evidence which you believe, and find to be true, that satisfies you of the guilt of the Defendant beyond a reasonable doubt.

This presumption of innocence is not some mere legal theory. It's not just some legal phrase. It's a substantial right to which every defendant is entitled, and to which this Defendant is entitled, unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

Reasonable doubt. Reasonable doubt is the kind of doubt that would cause a reasonable person, reasonable, ordinary person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Now, there are very few things we can know with absolute certainty, and the law doesn't require the State to give you that kind of proof. What is required is that, if you are firmly convinced, based upon your view of the evidence, of the Defendant's guilt of the crimes charged, you are firmly convinced the Defendant is guilty of those crimes you must find the Defendant guilty. On the other hand, if you are not firmly convinced that the Defendant is guilty of the crimes charged you must give the Defendant the benefit of the doubt and find him not guilty.

Now in this State it is an affirmative defense to the

prosecution of a crime that, at the time of the commission of the crime the Defendant, as a result of a mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong, or to recognize the particular act charged as morally or legally wrong. The Defendant has the burden of proving the defense of insanity by a preponderance of the evidence, and I'll define that in just a minute. Evidence of a mental disease or defect that is manifested only by repeated criminal or other anti-social conduct is not sufficient, in and of itself, to establish the defense of insanity.

The Defendant, having raised the defense of insanity, a basic principle is criminal intent is required to prove that the Defendant is guilty of the crime charged. A person who is insane cannot have criminal intent, and therefore cannot be found guilty of a crime. In order to be found not guilty by reason of insanity it must be shown that, at the time of the crime the Defendant had a mental disease or defect which made him unable to distinguish moral or legal right from moral or legal wrong, or to recognize the crime as morally or legally wrong. In raising the defense of insanity the Defendant does not necessarily admit the crime was committed. The State must still prove, beyond a reasonable doubt, the Defendant committed the crime, however, the Defendant must prove insanity to you by what is called a preponderance of the

evidence. A preponderance of the evidence means the greater weight of the evidence, or more likely than not.

If you find there is evidence in the record that, at the time the crime was allegedly committed it is more likely than not that, because of a mental disease or defect the Defendant did not know the alleged crime was morally or legally wrong, the State must then prove to you, beyond a reasonable doubt, that the Defendant was sane. It is for you to decide what the State or condition of the Defendant's mind was at at the time the crime was committed.

Another portion of our law states that a defendant is guilty but mentally ill if, at the time of the commission of the crime the defendant was able to distinguish moral or legal right from moral or legal wrong, or to recognize his act as being morally or legally wrong, but because of a mental disease or defect the defendant lacked the sufficient capacity the conform his conduct to the requirements of the law. The State still has the burden to prove, beyond a reasonable doubt, that the defendant committed the crime. The defendant has the burden of proving that he is guilty but mentally ill by a preponderance of the evidence, and again, preponderance of evidence means the greater weight of the evidence, or more likely than not.

The State has charged the Defendant, Mr. Stanko, with the crime of murder. The State has to prove, beyond a

reasonable doubt, that the Defendant killed another person with malice aforethought. Malice is hatred or ill-will, or hostility toward another person. It is the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury, or under circumstances that the law would infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act was committed, but malice must exit in the mind of the Defendant just before, and at the time the crime was committed, therefore, there has to be this combination of the evil intent and the act.

Malice aforethought could either be express or implied. Express malice is shown when a person speaks words which express hatred or ill-will for another, or when the person prepared beforehand to do the act which was later accomplished. Malice can be inferred from a conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.

A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

If one intentionally kills another during the commission of a felony the inference of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an

inference of malice to your satisfaction this inference would simply be an evidentiary fact to be taken into consideration by you along with all the other evidence in the case, and you give it what weight, if any, you decide it should receive.

The State of South Carolina has also charged the Defendant with the crime of armed robbery. In order to prove armed robbery the State must first prove, beyond a reasonable doubt, that the Defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within the person's reach, inspection, observation or control so that the person could, if not overcome by violence or prevented by fear, keep possession of the property.

The State must also prove, beyond a reasonable doubt, that the Defendant carried the property away, intending to permanently deprive the owner of the property, and to keep the property for the Defendant's own use. The slightest removal of the property, or the complete possession of the property even for an instant by the Defendant is sufficient to show a taking and carrying away of the property, and this taking and carrying away of the property must have been done with violence or putting the owner of the property in fear of violence.

Finally, the State must prove, beyond a reasonable doubt, that the Defendant was armed with a deadly weapon

during the robbery. Again, deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm, and whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

In order to be guilty of armed robbery, in conjunction with a homicide, the State must prove, beyond a reasonable doubt, the victim's death, and the taking from the person of -- - I'm sorry -- and the taking from the person, if the death and the taking are so connected as to form a continuous chain of events. If the taking was made possible by an antecedent assault the offense is robbery, regardless of whether the victim died before or after the taking of the property.

In this case there are four possible verdicts you may return. If you have any reasonable doubt as to the Defendant's guilt after considering all the evidence you must find the Defendant not guilty. If you have no reasonable doubt that the Defendant committed the crime, but you find that it's more likely than not that, because of a mental disease or defect the Defendant could not distinguish moral or legal right from moral or legal wrong, or to recognize the crime as morally or legally wrong, and the State did not then prove the Defendant sane to you beyond a reasonable doubt, you must find the Defendant not guilty by reason or insanity.

Another possible verdict is guilty but mentally ill. If

you have no reasonable doubt that the Defendant committed the crime, and that the Defendant has the mental capacity to distinguish moral or legal right from moral or legal wrong, or recognize the crime as morally or legally wrong, but you find that it is more likely than not, because of a mental disease or defect, the Defendant lacked sufficient capacity to conform his conduct to the requirements of the law you must find the Defendant guilty but mentally ill. As with insanity, the Defendant has the burden or proving that he is guilty but mentally ill by that preponderance or greater weight of the evidence.

The final possible verdict in this case is guilty. You may find the Defendant guilty if, and only if the State has proved, beyond a reasonable doubt, that the Defendant committed the crime, that the Defendant was able to distinguish moral and legal right from moral and legal wrong, and to recognize the crime as morally and legally wrong, and the Defendant was able to follow the law.

The Court has prepared for you a verdict form that sets forth both counts, murder and armed robbery, and sets forth all four possible verdicts. I, by necessity, had to put one before the other, and one first, one last, two in the middle. Don't assign anything to that. I had to put them in some kind of order, and I did. So, for murder, on the charge of murder, we, the jury, by unanimous consent, find the Defendant,

Stephen C. Stanko, not guilty, or not guilty by reason of insanity, or guilty but mentally ill, or guilty. Once you reach the unanimous verdict on that charge you go to the charge of armed robbery. On the charge of armed robbery we, the jury, by unanimous consent, find the Defendant, Stephen C. Stanko, again, not guilty, or not guilty by reason of insanity, or guilty but mentally ill, or guilty.

Now, I have said unanimous I don't know how many times in the opening, and in this closing. It means exactly what you think it means. It means twelve zero. It doesn't mean eleven one, ten two, any combination thereof. Whatever verdict you reach must be the unanimous verdict of each and every one of you.

So, Mr. Foreman, when you take this verdict form and you check the appropriate block, whatever it may be, and you sign your name to this verdict form, you are telling the Court that each and every member of the jury agrees to that verdict, and it is the verdict of each and every member of the jury regarding that particular verdict for each count.

What I'm going to have you do, Mr. Foreman, is take the twelve members of your jury to your jury room. The four alternates will remain with us.

Do not begin your deliberations until the bailiff hands to you the verdict form and the exhibits. When you have the verdict form and all the exhibits then you may begin your

deliberations, Mr. Foreman.

Please take your jury to the jury room.

(THE JURY EXITED THE COURTROOM AT 4:10 P.M.. THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Deputy, I need for you to take the four alternates to a separate jury room, not the jury room where the twelve jurors are deliberating, but to a separate jury room where they need to be kept, obviously, without contact by anyone else.

All right. Please do so.

(AT THIS TIME THE ALTERNATES LEAVE THE COURTROOM.)

THE COURT: Exceptions, deletions, additions to the charge from the State.

MR. HEMBREE: None from the State, Your Honor.

THE COURT: From the Defense?

MS. WILLIAMS: Yes sir. We have two.

THE COURT: Okay.

MS. WILLIAMS: The first one is to make sure that -- I know initially Your Honor charged the jury that they would consider only the evidence presented in this courtroom, and bringing nothing from the outside. I would like for that to be -- we would like for that to be reiterated.

The other issue, Your Honor, is the -- the Court alluded ---

THE COURT: First -- okay, I would appreciate it if

y'all had brought this to my attention when I asked you about requests to charge. Nevertheless, go on. Go ahead. What else did you want me to do?

MS. WILLIAMS: The second issue, Your Honor, is basi -- the Court referred to earlier in the recent opinion of **State v. Belcher**. In that case it was an affirmative defense of self-defense, and the Court ruled that it was improper to charge that, just by the mere presence -- you know, malice can be inferred by the mere presence of the deadly weapon.

Your Honor, we would assert that, in this case, that insanity too is a self-defense, and we would think that that same rationale would apply to this case, and we would ask that that charge be deleted, and they be so instructed, that that portion of that be deleted.

THE COURT: Solicitor.

MR. HEMBREE: Your Honor, I'm afraid I fail to understand the connection between insanity and the -- equating insanity to self-defense. I just don't follow the logic, and would object to any sort of charge -- well, would -- not a charge, I guess the request is that the charge be amended to treat this as if there is a self-defense case. There's no evidence in this record whatsoever of self-defense.

THE COURT: All right. I have -- I have read thoroughly **State versus Belcher**, decided by the South Carolina Supreme Court in October -- on October 12th, 2009. I find

nothing, absolutely nothing in the Supreme Court opinion that would so indicate -- certainly doesn't direct, but even indicate, in any way, that it would be proper under these circumstances for the Court to charge -- or delete that as far as the inference of malice. The Supreme Court didn't indicate that in the slightest. Now -- so I respectfully decline to do that.

MS. WILLIAMS: Yes sir.

THE COURT: Now, you wanted me to call -- on the other part, you wanted me to call the jury back in and tell them -- remind them that they have to decide this case based solely on the evidence presented in this case, and from no other source.

MS. WILLIAMS: Your Honor, one moment, please.

Your Honor, before we do that can I ask you this. If we could look at the charge that you actually read, because you addressed the two different types of evidence, and I'm thinking that it -- it may have sufficiently covered it. I just want to make sure.

THE COURT: Okay. Talking -- and I'm sorry -- you want to -- you want me to read to you what -- what part of it? I'm sorry.

MS. WILLIAMS: I was wondering that you may have actually said it when you said there would be evidence ---

THE COURT: I mean, I don't have a problem with bringing them back and telling them -- and reminding them that

they have to decide this case solely on the evidence presented in this case, and from no other source. If you would like me to do so, I'll be glad to do so.

MR. DIGGS: Your Honor, we would ask you to do that.

THE COURT: All right. Very good.

Ask the jury to come back in for a minute, please.

MR. HUMPHRIES: Yes. We need to bring the alternates back in too, Judge.

THE COURT: Yes. The alternates need to come back also.

(AT THIS TIME ALL JURORS, INCLUDING THE ALTERNATES, RETURNED TO THE COURTROOM.)

THE COURT: All right, ladies and gentlemen, I have been asked to remind you, if I did not do so, that you must decide this case solely upon the facts and evidence presented in this courtroom, and from no other source.

All right, Mr. Foreman, take your jury to the jury room. You will be delivered the verdict form and the exhibits. When you get them you can deliberate.

The alternates need to go back to the separate jury room.

Thank you very much.

(THE JURY EXITED THE COURTROOM AT 4:20 P.M.. THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Any objections or deletions or

additions from the State?

MR. HUMPHRIES: No, Your Honor.

THE COURT: From the Defense?

MS. WILLIAMS: No sir, Your Honor.

THE COURT: All right. Very good.

All right. We will be at ease till the jury needs us.

Please come forward to the Court Reporter, Mr. Diggs, Ms. Williams. Make sure we've got all the proper exhibits, and the proper ones are going to the jury, please.

Thank you.

(AT THIS TIME EXHIBITS WERE REVIEWED AMONG THE COURT REPORTER AND COUNSEL FOR THE STATE AND COUNSEL FOR THE DEFENSE. THE EXHIBITS WERE APPROVED BY ALL.)

(COURT CONFERRED WITH COUNSEL OFF THE RECORD CONCERNING COURT'S EXHIBIT NUMBER 109, THE INDICTMENT, AND ALL AGREED THAT COURT'S EXHIBIT NUMBER 109 WOULD NOT GO TO THE JURY.)

(THE EXHIBITS AND THE VERDICT FORM WERE THEN TAKEN TO THE JURY ROOM BY THE BAILIFFS.)

(THE JURY WAS INSTRUCTED TO BEGIN DELIBERATION AT 4:40 P.M..)

(THE JURY DELIBERATED AND THE FOLLOWING TAKES PLACE AT 5:10 P.M. OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: I understand the jury has reached a verdict in this matter. Is the State ready to receive the verdict?

MR. HEMBREE: State's ready, Your Honor.

THE COURT: Defense.

MR. DIGGS: Defense is ready, Your Honor.

(AT THIS TIME THE COURT ADMONISHED THE AUDIENCE CONCERNING ANY DISPLAY OF EMOTION OR RESPONSE TO THE VERDICT.)

(THE FOLLOWING TAKES PLACE AT 5:10 P.M., WITHIN THE PRESENCE OF THE JURY.)

(THE ALTERNATES WERE ALSO BROUGHT INTO THE COURTROOM AT THIS TIME.)

THE COURT: All right, Mr. Foreman, has your jury reached a verdict in this particular matter?

FOREMAN: Yes sir, we have.

THE COURT: All right, sir, could you hand the verdict form to the Clerk, please sir.

Madame Clerk, you may publish the verdicts.

CLERK OF COURT: (05-GS-26-02927), State of South Carolina versus Stephen C. Stanko, count one, murder, on the charge of murder, we, the jury, by unanimous consent, find the Defendant, Stephen C. Stanko, guilty.

On count two, armed robbery, on the charge of armed robbery, we, the jury, by unanimous consent, find the Defendant, Stephen C. Stanko, guilty.

Signed by Johnny Marvin Chestnut, dated November 16, 2009.

THE COURT: All right, Mr. Foreman, ladies and gentlemen of the jury, twelve members of the jury, if this is

your verdict please so indicate by raising by right hand.

(AT THIS TIME ALL JURORS AFFIRMED THE VERDICT AS PUBLISHED BY THE RAISING OF HIS OR HER RIGHT HAND.)

THE COURT: Thank you very much.

Does the State wish the jury polled?

MR. HEMBREE: No, Your Honor.

THE COURT: Does the Defense wish the jury polled?

MR. DIGGS: Yes sir.

THE COURT: Madame Clerk, if you would please poll the jury, Ma'am.

CLERK OF COURT: When I call your name will you please stand and answer when I say, is this your verdict, and is it still your verdict.

Johnny Chestnut, is this your verdict and still your verdict?

MR. CHESTNUT: Yes Ma'am.

CLERK OF COURT: Thank you. You may have a seat.

Lakenya Jordan, is this your verdict, and still your verdict?

MS. JORDAN: Yes Ma'am.

CLERK OF COURT: Thank you.

Stephen D. Williams, is this your verdict, and still your verdict?

MR. WILLIAMS: Yes Ma'am.

CLERK OF COURT: Thank you.

Brandon Boyd, is this your verdict, and still your verdict?

MR. BOYD: Yes Ma'am.

CLERK OF COURT: Thank you.

Margaret Bartomeo, is this your verdict, and still your verdict?

MS. BARTOMEO: Yes Ma'am.

CLERK OF COURT: Thank you.

James Berry, is this your verdict, and still your verdict?

MR. BERRY: Yes Ma'am.

CLERK OF COURT: Thank you.

Linda Morrison, is this your verdict, and still your verdict?

MS. MORRISON: Yes Ma'am.

CLERK OF COURT: Waverly Stanley, is this your verdict and still your verdict?

MR. STANLEY: Yes Ma'am.

CLERK OF COURT: Johnny Causey, Jr., is this your verdict and still your verdict?

MR. CAUSEY: Yes Ma'am.

CLERK OF COURT: Thank you.

Beverly Pitman, is this your verdict, and still your verdict?

MS. PITMAN: Yes Ma'am.

CLERK OF COURT: Thank you.

Ariane Joyce, is this your verdict, and still your verdict?

MS. JOYCE: Yes Ma'am.

CLERK OF COURT: Bonnie Oguin, is this your verdict and still your verdict?

MS. OGUIN: Yes Ma'am.

CLERK OF COURT: Thank you all.

THE COURT: The jury having affirmed the verdict in this matter, anything further at this point in time from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: From the Defense ---

MR. DIGGS: No, Your Honor.

THE COURT: With the jury.

MR. DIGGS: No, Your Honor.

THE COURT: All right. Very good.

Mr. Foreman, on the original indictment there is a space for you to sign on the back of the indictment. The Clerk will direct you. If you would put the verdict and then sign your name on the back of the original indictment, please sir.

(AT THIS TIME THE FOREMAN SIGNED THE VERDICT PORTION OF THE INDICTMENT.)

THE COURT: All right, ladies and gentlemen, the law of the State of South Carolina mandates a twenty-four hour

waiting period between the receipt of a verdict of guilty in a capital case, therefore we will abide by the State Law. It being the time that it is, I hope you will find with me that it would not make sense to bring you back tomorrow, five-thirty, and have some short period of testimony. My intention is that we will start against Wednesday morning. You will be here by 8:30 and we will start as soon thereafter as possible in the second phase, or the sentencing phase of this trial.

As I have indicated to you, we will proceed with that. There will be instructions that the Court will give you at that point in time, but as of now you will please accompany the agents and I will see you back Wednesday morning.

Thank you very much.

MS. WILLIAMS: Your Honor, may we approach?

THE COURT: Yes Ma'am.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: Deputy, can you see if you can catch Special Agent Howser real quick for me, please. Sheriff, if you don't mind.

SHERIFF THOMPSON: I think he's gone. Do you want me to ---

THE COURT: All right. Well, whoever is in charge right now. All right.

(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF S.L.E.D. AGENT ASSIGNED TO THE JURY.)

THE COURT: Yes Ma'am. I know that y'all have been very diligent in that. If you will just -- with the instructions of the attorneys, remind the jurors, obviously, not to talk about this matter in any way, and they will receive further instructions from the Court, but obviously not to discuss this matter while they are gone, until they return to the courtroom. All right.

AGENT: Yes sir.

THE COURT: Thank you, Ma'am. Appreciate it very much.

All right, for the record -- and I have checked with the Court Reporter to make sure her time reflects with mine, that the jury returned their verdict of guilty on the charges of murder and armed robbery this, the 16th day of November, 2009, at 5:10 P.M..

All right, Mr. Diggs, motions on behalf of the Defendant.

MR. DIGGS: Your Honor, we would ask for -- a motion for a new trial, based on the fact that the brevity in the deliberation process, and I would -- in my opinion, and I would respectfully submit, indicates that the juror -- there was a juror on the panel, on the jury, that had prior knowledge of the death sentence presently in effect in this case from Georgetown, and I would submit, even in Georgetown there was a four hour deliberation, it's my understanding, on the guilt -- issue of guilt or innocence, and in this case

there -- by my count it was less than an hour, and it's not enough time to undertake a deliberate deliberation -- deliberative process, and so I would ask for a new trial based on the fact that there was a juror in the deliberation process that had knowledge of the death sentence. I would submit she probably told everybody else about it, and they said, well, why are we here, you know, let's just go ahead and affirm -- do a death sentence as well.

I'm being told by co-counsel they were out -- they actually deliberated for thirty minutes, roughly, and so we would ask for a new trial on that basis, Your Honor.

In addition to that, of course we renew the motions that we made prior to the -- at the close of the evidence -- I'm sorry -- at the close of the evidence.

THE COURT: All right. Thank you.

Solicitor.

MR. HEMBREE: Your Honor, the argument that Mr. Diggs advances is based on nothing more than sheer speculation on what a juror, after being instructed by the Court that she would have to confine her -- her work here to the evidence that was before this Court, even receiving an additional instruction today to that effect, he speculates that she has violated that oath, and all the other jurors have violated their oaths by listening to her and taking that into account, and I -- that's sheer speculation.

Your Honor, I would submit that the short duration of deliberation springs from the Defense's strategic decision to essentially not fight the facts of the case, or fight about the guilt, other than on a mental defense, that they -- they essentially conceded and agreed that Stephen Stanko killed Henry Turner, and strategically decided to basically make the argument about insanity, and that was clearly rejected, so, Your Honor, we would just ask that motion be denied.

THE COURT: All right. As to the motion for a new trial, or a judgment in arrest of verdict, the Court would respectfully decline to grant your motion. There is absolutely no evidence of any kind of passion, caprice, prejudice, sympathy, undue influence, anything that would warrant this Court to grant your motion.

Further, as I indicated in denying the motions for a directed verdict, there was ample, and more than sufficient evidence in the record, if that evidence was so believed by the jury, and it must have been believed by the jury for them to return their verdicts of guilty in this matter, to convict the Defendant of the crimes of murder and armed robbery beyond a reasonable doubt, and therefore I would respectfully decline to grant your motions for a new trial, or a judgment in arrest of verdict in this matter.

Thank you very much.

Further motions on behalf of the Defense.

MR. DIGGS: Not at this time, Your Honor.

THE COURT: All right. Thank you.

All right, counsel, as I indicated to the jury, we will have the twenty-four hour waiting period. It did not make sense to the Court to come back at 5:30 or 6:00 P.M. tomorrow night and put up a witness and then send them back, so we will start back Wednesday morning. I will expect y'all to be here by 8:30 A.M.

All right. Anything further from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: Anything further from the Defense?

MR. DIGGS: No, Your Honor.

THE COURT: Thank y'all very much.

(THERE WAS NO COURT HELD ON NOVEMBER 17, 2009.)

(THE FOLLOWING TAKES PLACE ON NOVEMBER 18, 2009, OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, is the State ready?

MR. HUMPHRIES: The State is ready to proceed, Your Honor.

THE COURT: Are you ready, prepared, and -- to go forward with your motions, sir?

MR. DIGGS: Well, Your Honor, it's a motion in limine. I don't know if it's ripe at this point. It's going to depend on what kind of evidence that the State intends to introduce.

THE COURT: What is the motion in limine about?

MR. DIGGS: It's about the specific details of the Ling murder, and I think it's going to depend on whether the State intends to introduce specific details about that offense and if they do, then I would move to exclude it on the grounds that it has already been the basis, been used by the State as a basis to seek and obtain a death sentence against the Defendant and it shouldn't be permitted by the Court to be used for the same purpose again in a different setting. It's implications of the double jeopardy clause, and it's also, I would submit, a violation of the Eighth Amendment.

THE COURT: In what respect?

MR. DIGGS: It would be cruel and unusual to use the same evidence to include two separate death sentences. And secondly, it's also in the nature of being arbitrary.

THE COURT: All right. What's the State's position?

MR. HUMPHRIES: This -- this phase, as the Court is aware, allows the State to put into evidence, evidence in aggravation. That is not only evidence regarding the aggravating circumstances, but evidence specifically relating to the character and conduct of the Defendant. That is the basis upon which the jury will ultimately render their sentence.

As the Court is also aware, not only are we permitted -- and to providing evidence regarding specific acts of the Defendant's conduct, the rules are somewhat -- somewhat

reduced in terms of admissibility in this stage. In addition, Your Honor, the argument that the Ling murder, rape, armed robbery, kidnapping is -- is somehow precluded because it was the basis of a prior case and a prior sentence is completely without any kind of foundation in the law in terms of excluding it.

In fact, in the last case the State was prohibited -- we objected, but the State was prohibited from introducing evidence of the Turner murder because it was not the subject of a conviction. Of course, that's not the standard and the Court is aware of that. It's by clear and convincing evidence.

In this case, those acts were the subject of convictions well beyond that standard. There is no prohibition. It is essential, just as the Defense is going to have an opportunity to present it -- to put in evidence of good character and conduct, evidence in mitigation for this Defendant, it is essential for the jury to have a complete picture regarding this Defendant, his character, and his conduct, in order to make a reliable decision regarding the sentence in this case.

It is not prohibited under any standard, under any case law. It is the subject of a prior conviction and the State intends to go into it. There is absolutely no reason to exclude for any reason and clearly not for the reasons proposed by Defense counsel.

THE COURT: All right. The Ling murder is proper. It sits within the statutory aggravating circumstances. I reject the arguments of the Defense as presented and do find it to be proper to be presented to this jury as a statutory aggravating circumstance.

All right, is the State ready to proceed?

MR. HUMPHRIES: The State is ready to proceed, Your Honor.

THE COURT: Defense?

MS. WILLIAMS: Your Honor, if I just may clarify. I want to make sure I understand the Court's ruling, that the Court is going to allow the testimony regarding the Ling murder to go toward character, and obviously you can put in good character, you can put in bad character, and that's the purpose of that, not as to be a statutorily aggravating circumstance.

THE COURT: Well, it is a statutory aggravating circumstance. The murder was committed by a person with a prior conviction for murder. That's a statutory aggravating circumstance. He has a prior conviction for murder, ---

MS. WILLIAMS: And, Your Honor, ---

THE COURT: --- so it's not only -- it not only is evidence of character, it is an enumerated statutory aggravating circumstance. The murder was committed by a person with a prior conviction for murder.

MR. HUMPHRIES: Your Honor, and just let me -- let me make sure for the record that the State's position is clear. I appreciate the Court's ruling and obviously concur with it.

Purely for strategic reasons the State did not notice the Defendant regarding that particular statutory aggravator. That has nothing to do with whether or not it's viable. The State absolutely believes that it is.

It was purely for strategic reasons for future appellate concerns, so he has not been noticed as to that specific aggravator and we'll not rely on it before this jury. It clearly is an enumerated statutory aggravator. We will not ask the jury to make a finding regarding that particular aggravator. We rely on the general case law in sentencing regarding the Defendant's specific character and conduct, which is clearly admissible upon meeting the standard of clear and convincing evidence. Of course, that conduct has met the level of beyond a reasonable doubt.

THE COURT: All right. Thank you very much.

MR. HUMPHRIES: Thank you, Your Honor.

THE COURT: All right, is the State ready to proceed then?

MR. HUMPHRIES: Yes sir, Your Honor.

THE COURT: All right.

MR. HUMPHRIES: Your Honor, we will have one argument. It will be brief.

THE COURT: All right. Yes Ma'am?

MS. WILLIAMS: I was just going to remind you of a housekeeping, Your Honor. The only other thing at this point I need to make the Court aware of, we became aware of, I think day before yesterday, that other than the witnesses we have listed there's one other potential witness whose name is Frank Shealy. He's from the Charleston area, and I understand the purpose of notifying the jury to make sure they have no, you know, predisposed connection, or bias, or anything of that nature, but he's from the Charleston area, but we just became aware of him in like the last two days and confirmed that, but his name is Frank Shealy, and he would be the only additional witness who is not on our original list.

THE COURT: Do you have an address, because we need to -- we did not question this jury about that particular person.

MS. WILLIAMS: He's in Charleston, Your Honor. He lives in Charleston.

THE COURT: All right, and do you have his date of birth and Social Security number for the State?

MS. WILLIAMS: No, sir, but we will have that -- I can get that and provide that to him -- to them.

THE COURT: All right, and what is his name again?

MS. WILLIAMS: Frank Shealy.

THE COURT: And what does he do?

MS. WILLIAMS: He is -- my understanding is he is a --

he is an actual -- I think technically he is under the umbrella of a Department of Parole employee. Even though he does not have a salary from them, he goes and ministers in the Department of Corrections.

THE COURT: All right. All right, anything else from the Defense?

MS. WILLIAMS: No, sir.

THE COURT: All right. Ask the jury to come in, please.

Are y'all going to have an opening statement to the -- to the jury?

MS. WILLIAMS: We're going to do one, and it will be me.

THE COURT: All right, very good.

MS. WILLIAMS: Your Honor, may we approach briefly?

THE COURT: Yes.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, good morning, ladies and gentlemen. As a result of your verdict, the Defendant, Stephen C. Stanko, was convicted on November 16, 2009, at 5:10 P.M. of murder and armed robbery.

It is now November 18, 2009. It's 9:10 A.M. The statutory waiting period of at least twenty-four hours having concluded, it therefore becomes necessary for us to engage into the next stage of the proceeding which relates to the

penalty that will be imposed upon the Defendant.

Section 16-3-20, South Carolina Code of Laws, 1976, as amended, provides in part that in a capital case if a person is convicted of murder and if the State seeks the death penalty, then upon conviction the Court shall conduct a separate sentencing proceeding to determine whether the Defendant should be sentenced to death or life in prison without the possibility of parole, so our purpose in conducting this proceeding in which we are now engaged and with respect to your particular role in this proceeding is to determine whether the Court should sentence the Defendant, Stephen C. Stanko, to death or life imprisonment without the possibility of parole. Please understand that you, the jury, will unanimously impose the sentence, and whatever sentence you impose, the Court will then impose on the Defendant.

During this sentencing proceeding, the State and the Defendant will have an opportunity to introduce additional evidence in extenuation, mitigation, or aggravation, and both sides will have an opportunity to present arguments to you for and against the death penalty.

The only issue then that is left for you to determine in this case is what sentence should be imposed upon the Defendant, should it be a sentence of life imprisonment without the possibility of parole or should it be a sentence of death. You are not concerned with the Defendant's guilt or

innocence because that has already been decided. The Defendant having been convicted of murder, we must now consider what his punishment is to be.

After evidence is presented to you and after the last argument has been made to you concerning the punishment that should be imposed upon the Defendant, the Court will give you certain specific instructions and you will then retire to deliberate and to unanimously decide whether a death sentence or life sentence is appropriate.

I will recognize the State for a brief opening statement.

MR. HUMPHRIES: Please the Court. Counsel.

THE COURT: Yes sir.

MR. HUMPHRIES: Mr. Foreman, ladies and gentlemen of the jury, the Horry County Police Department charged the Defendant, Stephen C. Stanko, with the crimes that you've convicted him of. The State, that is the Solicitor's Office, presented indictments on those charges to the Horry County Grand Jury. The Horry County Grand Jury true-billed those indictments. The Solicitor's Office noticed the Defendant, Stephen C. Stanko, of their intention to seek the death penalty, and we're here.

Now, that's the procedural mechanism by which we arrive here today, but that's not the reason. There's one reason we're here today. It's a place, quite frankly, folks, that we were headed all along. The reason we're here is because of

the conduct and the character of Defendant Stanko.

In the penalty phase, as the Judge has told you, the guilt of the Defendant is not an issue, clearly not an issue. The issue is what sentence, based on his character, based on his conduct, this Defendant deserves.

You'll hear from us first. You'll hear evidence in aggravation, and we've alleged that in this case the murder was committed while in the commission of an armed robbery, or while in the commission of a grand larceny with use of a deadly weapon. Those are the statutory aggravating circumstances. Those are the things we have to prove to you beyond a reasonable doubt. You'll have to make a separate determination even having already found that he is guilty of armed robbery. I submit to you that that will not be difficult, but that's not all we're going to tell you.

We're going to tell you about Defendant Stanko. We're going to tell you that what you've heard in this courtroom in the first few days doesn't nearly touch on the character and conduct of Defendant Stanko.

After we present our evidence, the Defense will then have an opportunity to present evidence in mitigation if they choose to do so. They're not compelled to do so, but they may. At the end of that time, the Court will charge you and you will take up what I know you appreciate to be an awesome responsibility of returning a sentence.

It's at this stage that often as a prosecutor I feel compelled almost to apologize, to apologize to you, not for why we're here, not for what you've already decided or for what you will ultimately have to decide, but what you're going to have to hear and what you're going to have to see.

This stage is completely different than any other criminal case, and Lord knows by this time you folks have figured that out. In this stage of the trial, you will see things that you would have hoped throughout the course of your life you would never have to see. You will hear things in this phase of the trial that you would have hoped through the course of your life you would have never had to heard -- to hear.

I want to express to you now that it's important, because not only do you meet Defendant Stanko, because that presumption of innocence, that cloak of innocence, he wears it no longer. Not only do you meet him face to face in terms of his character and his conduct, but you meet his victims.

It will be difficult. It will be trying. At times it will so far beyond the pale that you will be tempted to turn your head. You will be tempted to place your hands across your ears, and again, there's one singular reason for that, and that's because this is the character and this is the conduct of Defendant Stanko.

I ask you to commit yourself, to resolve yourself to that

VOLUME SIX OF EIGHT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN CHRISTOPHER STANKO,

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**** DEFENDANT'S EXIBITS 2-19 (NORMAL BRAIN/STANKO BRAIN) HAVE BEEN TRANSPORTED TO THIS COURT****

purpose. Knowing the difficulty that you're going to face, I ask you to harden yourself for that purpose and that purpose alone so that you are able to fully hear, see, and ultimately find the truth of the evidence presented to you.

It will take approximately a day for the State. I suggest to you that you will probably have this case within the next two days. We appreciate your verdict, but we understand that all you've really done is to speak the truth. Sometimes it's a difficult thing.

We asked you, almost everyone to a person, given the right amount of evidence, given sufficient facts and circumstances, could you not only fairly consider, but impose the death penalty. Each of you said yes. We asked each of you, to a person, if you determined based on the facts and circumstances with sufficient evidence that the death verdict was appropriate, could you sign your name to the recommendation of death. Each of you, to a person, said yes.

We have no reason to believe that you cannot follow your oath in that regard. I thank you from the onset for the task that we've called you to do. I'm confident you will. Thank you.

THE COURT: All right, Ms. Williams.

MS. WILLIAMS: Thank you, Your Honor. May it please the Court.

THE COURT: Yes Ma'am.

MS. WILLIAMS: Good morning, ladies and gentlemen of the jury. You know, we've reached a very critical time in this part of the trial. You know, I think some of the things you're going to hear probably will just indeed be shocking, and there's no denying that, okay? I think you'll hear it, and I think that there's some things that will probably bring tears to your eyes, there's no doubt, but I also think that you're going to hear things that might make you say I just don't understand and it doesn't make sense.

The Judge will read the law to you and you will understand that absolutely you have to find that an aggravating circumstance did take place, and yet, even if you find that though, the Judge will tell you that you don't have to vote for the death penalty, and you don't even have to give a reason why you don't vote for the death penalty. You simply can say I don't want to do it, and that's enough.

You know, we -- we -- everybody sat up there and we -- we had all this conversation, and I understand that this has not been easy. It's not been easy on your life. I mean, it's been a real imposition, and I know that sitting in those chairs is probably going to be one of the toughest places you'll probably ever find yourself in, but what we ask you to do is to really do your best to keep an open mind.

As I said, I know you will hear some horrible, horrible things, and then you're actually going to hopefully get to

meet some of who Stephen Stanko was, who he could have been, who he should have been, and maybe we can ask ourselves the ultimate question, why.

I appreciate what you are doing. As I said, I know it's a tough, tough spot to be in, but all I can really ask is that you just hear everything, as bad as some of it's going to be. Just wait and listen to all of it.

THE COURT: All right, Solicitor, your first witness, please sir.

MR. HUMPHRIES: Your Honor, the first order of business, the State would move the evidence from the guilt phase into the second phase, incorporating it by reference. That is done by statute, but we do that on the record at this time.

In addition, Your Honor, pursuant to Rule 902, we intend to introduce and publish certified true copies of record or indictment and convictions committed by Defendant, Stephen Stanko. These indictments and sentencing sheets have been provided to the Defense. They are State's 75 and 76 for identification purposes.

THE COURT: All right. Is there an objection to those Exhibits?

MR. DIGGS: No, Your Honor.

THE COURT: All right. State's 75 and 76 are in evidence without objection, and the Court notes and allows the State to have made part of this proceeding the previous facts

and circumstances having been presented in this case.

(CONVICTIONS - CHARLESTON COUNTY ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 75.)

(CONVICTIONS - BERKELEY COUNTY ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 76.)

MR. HUMPHRIES: Thank you, Your Honor. Request permission to publish these -- these documents at this time.

THE COURT: Any objection to publication?

MR. DIGGS: No, Your Honor.

THE COURT: You may do so.

MR. HUMPHRIES: Thank you, Your Honor.

Indictment Number 93-GS-10-6592 out of Charleston County, indictment for breach of trust, that Stephen Stanko did in Charleston County on or about the 14th day of May, 1993, while employed at the New York Life Insurance Company, 200 Meeting Street, Charleston, South Carolina, while being entrusted with Six Hundred Dollars, then and there wilfully, unlawfully, and feloniously take and appropriate said monies to his own use and purposes with the intention of cheating and defrauding the said New York Life Insurance Company out of the NEC laptop computer which he was to purchase with the monies. This is a violation of Section 16-13-230, South Carolina Code of Laws, 1976, as amended.

On March 8th, 1995, Defendant Stephen Stanko was convicted of that offense, received a term of thirty days with

probation for twelve months.

Indictment Number 93-GS-10-6593, an indictment for breach of trust -- beg the Court's indulgence.

THE COURT: Yes sir.

MR. HUMPHRIES: Indictment for grand larceny, which is Indictment 93-GS-10-6594 out of Charleston County, that Stephen Stanko did in Charleston County on or about the 26th day of May, 1993, feloniously take and carry away the personal goods of another for a value of more than One Thousand Dollars, to wit, the goods of New York Life Insurance Company, 2000 -- 200 Meeting Street, Charleston, South Carolina, described as follows: One NEC laptop computer, model SL25C, with the intent to deprive the owner permanently of such goods, was sentenced to three years. That sentence was suspended upon twelve months' probation, with two hundred hours community service, probation to be terminated upon payment of restitution after six months provided restitution and the public service was completed in full.

Regarding State's 76, 96-GS-08-557, an indictment arising out of Berkeley County, an indictment for obtaining property by false pretenses, sentenced Stephen Stanko on July 31st, 1996, received a five year sentence.

96-GS-08-556, an indictment arising out of Berkeley County, an indictment for obtaining property by false pretenses, Stephen Christopher Stanko did in Berkeley County

on or about December 26th, 1995, by false pretense or representation obtain from Ray Crenshaw Eighteen Hundred Dollars in U.S. Currency with intent to cheat or defraud Ray Crenshaw of that property, this in violation of 16-13-240, South Carolina Code of Laws, 1976, as amended. On July 31st, 1996, he received a sentence of five years.

Indictment 96-GS-08-555, breach of trust with fraudulent intent, arising out of Berkeley County, Stephen Christopher Stanko did in Berkeley County on or about February 7th, 1996, while an employee of McElveen Pontiac-Buick-GMC became entrusted with a 1996 GMC Jimmy truck, a value in excess of Five Thousand Dollars, such truck being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the truck to his own use and purposes with the intent of cheating and defrauding McElveen Pontiac-Buick-GMC of the truck, this in violation of 16-13-230, South Carolina Code of Laws, 1976, as amended. On July 31st, 1996, received a five year sentence on that offense.

Indictment Number 96-GS-08554, an indictment arising out of Berkeley County, an indictment for breach of trust with fraudulent intent, Christopher -- Stephen Christopher Stanko did in Berkeley County on or about a date between February 4, 1996 and February 7, 1996, while an employee of McElveen Pontiac-Buick-GMC, was entrusted with a 1989 Buick Regal

automobile valued in excess of Five Thousand Dollars, such automobile being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the automobile to his own use for the purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the automobile, this in violation of Section 16-13-230, South Carolina Code of Laws, 1976, as amended. On July 29, 1996, Defendant Stanko received a term of five years.

Indictment Number 96-GS-08-553, an indictment arising out of Berkeley County, indictment for breach of trust with fraudulent intent, that Stephen Christopher Stanko did in Berkeley County on or about a date between February 4, 1996, and February 7, 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1995 Buick Century automobile valued in excess of Five Thousand Dollars, such automobile being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the automobile to his own use and purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the automobile, this in violation of 16-13-230, South Carolina Code of Laws, 1976, as amended. On July 29th, 1996, Defendant Stanko received a five year sentence.

Indictment Number 96-GS-08-552, an indictment arising out

of Berkeley County, indictment for breach of trust with fraudulent intent, that Stephen Christopher Stanko did in Berkeley County on or about a date between February 5th, 1996, and February 8th, 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1995 Buick Century automobile valued in excess of Five Thousand Dollars, such automobile being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the automobile to his own use and purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the automobile, this in violation of 16-13-230 of the South Carolina Code of Laws, 1976, as amended. Defendant Stanko on July 29th, 1996, received a five year sentence.

Indictment Number 96-GS-08-551, an indictment arising out of Berkeley County, indictment for breach of trust with fraudulent intent, that Stephen Christopher Stanko did in Berkeley County on or about a date between February 5, 1996, and February 8, 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1991 Pontiac Firebird automobile valued in excess of Five Thousand Dollars, such automobile being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the automobile to his own use and purposes with the intention of cheating and defrauding

McElveen Pontiac-Buick-GMC of the automobile, this in violation of Section 16-13-230 of the South Carolina Code of Laws, 1976, as amended. On July 29th, 1996, he received a five year sentence.

Indictment Number 96-GS-08-550, an indictment arising out of Berkeley County, an indictment for breach of trust with fraudulent intent, that Stephen Christopher Stanko did in Berkeley County on or about February 13th, 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1993 Pontiac Gran Prix automobile valued in excess of Five Thousand Dollars, such automobile being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the automobile to his own use and purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the automobile, this in violation of Section 16-13-230 of the South Carolina Code of Laws, 1976, as amended. July 29th, 1996, Defendant Stanko received a five year sentence.

1996-GS-08-549, an indictment arising out of Berkeley County, indictment for breach of trust, that Stephen Christopher Stanko did in Berkeley County on or about the date -- a date in January 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1995 Chevrolet S10 truck valued in excess of Five Thousand Dollars, such truck being the property of McElveen Pontiac-Buick-GMC, and then and

there did wilfully, unlawfully, and feloniously take and appropriate the truck to his own use and purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the truck, this in violation of Section 16-13-230, South Carolina Code of Laws, 1976, as amended. July 29th, 1996, Defendant Stanko received a five year sentence.

Indictment Number 96-GS-08-548, an indictment arising out of Berkeley County for breach of trust with fraudulent intent, that Stephen Christopher Stanko did in Berkeley County on or about a date in January 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1995 GMC Sonoma truck valued in excess of Five Thousand Dollars, such truck being the property of McElveen Pontiac-Buick-GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the truck to his own use and purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the truck, this in violation of Section 16-13-230. On July 29th, 1996, he received a four year sentence.

96-GS-08-547, an indictment arising out of Berkeley County, indictment for breach of trust with fraudulent intent, Stephen Christopher Stanko did in Berkeley County on or about February 12th, 1996, while an employee of McElveen Pontiac-Buick-GMC, became entrusted with a 1995 Buick Century automobile with a value in excess of Five Thousand Dollars, such automobile being the property of McElveen Pontiac-Buick-

GMC, and then and there did wilfully, unlawfully, and feloniously take and appropriate the automobile to his own use and purposes with the intention of cheating and defrauding McElveen Pontiac-Buick-GMC of the automobile, this in violation of Section 16-13-230 of the South Carolina Code of Laws, 1976, as amended. July 29th, 1996, he received a five year sentence.

1996-GS-08-546, an indictment arising out of Berkeley County, an indictment for assault and battery with intent to kill, that Stephen Christopher Stanko did in Berkeley County on or about February 20, 1996, with malice aforethought commit an unlawful act of violent injury to the person of J. Elizabeth McLendon with the intent to kill her, to wit, he did forcibly hold a bleach-ammonia-filled cloth over her face, nose, and mouth, this in violation of Section 16-3-620, South Carolina Code of Laws, 1976, as amended. On July 29, 1996, received an eight year sentence.

Indictment 1996-GS-08-545, an indictment arising out of Berkeley County, an indictment for kidnapping, that Stephen Christopher Stanko did in Berkeley County on or about February 20, 1996, unlawfully seize, confine, or kidnap J. Elizabeth McLendon by binding her hands and legs without authority of law, this in violation of Section 16-3-910 of the South Carolina Code of Laws, 1976, as amended. On July 29th, 1996, Defendant Stanko received a ten year sentence.

The State calls Elizabeth McLendon.

THE COURT: All right. Please come around up here, all the way up here, please Ma'am, all the way, and meet the Clerk.

ELIZABETH M. BUCKNER, being first duly sworn, states as follows:

DIRECT-EXAMINATION BY MR. HUMPHRIES:

Q. And tell the jury, if you will, Ms. Buckner, where do you reside, in what community?

A. I reside in Crowfield Plantation in Goose Creek, South Carolina.

Q. And, Ms. Buckner, how are you employed?

A. I'm employed with Marketing and Web Design.

Q. And tell the jury, previously indictments made reference to an Elizabeth McLendon. Who is that?

A. That is me.

Q. Let's do this, Ms. Buckner, tell the jury, are you acquainted with the Defendant, Stephen C. Stanko?

A. Yes, I am.

Q. And when did you first become acquainted with Defendant Stanko?

A. I became acquainted with Stephen in late Fall 1992.

Q. And under what circumstances?

A. We were both employed with the same company.

Q. What was that company?

A. Teleco of Charleston.
Q. What did they do?
A. At that time they sold -- excuse me -- telephone systems.
Q. You were both employed there?
A. Yes, we were.
Q. Let me ask you, as a -- as a result of your working relationship, did you come to become friendly or have a personal relationship?
A. Yes, we did.
Q. Tell us, if you will, how -- how that came to pass over the course of time, how did it develop?
A. It developed quickly. He took an interest in the department, the retail department, that I worked in, and he frequented the store in which I was located. We began working on sales training materials and things like that, and eventually we went to a company picnic or some company event together, and it continued from there.
Q. And to what extent did it continue, Ms. Buckner?
A. We were romantically involved, and Stephen eventually moved in to my apartment.
Q. Now, do you recall about what time, what year that would have been?
A. When he moved in, it was early '93, maybe late January, something like that.

Q. Okay. Who else was residing with you at that time?
A. My son.
Q. Now, you've let him -- you've allowed him to move in with you. How did you find him to be at that time?
A. He was very polite, very charismatic. He seemed like a nice guy.
Q. Now, was he -- was he still working with the company that the two of you started with?
A. No, he was not.
Q. Do you know why he was not working with them at that time?
A. As I was told, he was let go from that company due to fraudulent activity, sales activity.
Q. Now, was he employed somewhere else?
A. Not at the time.
Q. Okay, so when he moved into your place, he didn't have a job?
A. No.
Q. Did he ultimately obtain employment?
A. Yes, he did.
Q. And let's tell the jury just so we can have some parameters, how long did Defendant Stanko live with you?
A. Off and on for four years.
Q. Now, the -- the off and on, what -- what precipitated the off?

A. Stephen's cons, his lies, his inability to speak the truth about anything, no ability to keep a job. He ran into trouble at every position that he held.
Q. Let me ask you, that's the offs. The question, I guess, would be why the ons after the offs?
A. He was quite charming, and I cared for him at the time.
Q. Let's -- let's move towards 1996. In -- in the early part of 1996, where was Defendant Stanko residing?
A. In 1996, he was residing in my home.
Q. And in what business was Defendant Stanko engaged at that time?
A. He was working for a car dealership.
Q. McElveen?
A. Yes, McElveen.
Q. How did that seem to be going?
A. On the surface and by Stephen's comments, it was going great, and he had just received a promotion.
Q. Did -- did you learn at some point that that wasn't totally accurate?
A. I did.
Q. Tell the jury, if you will, how you came to learn that and what impact it had on your relationship.
A. How I found out that he was no longer employed is that he had been using my vehicle, my car, and I went to the grocery store and when I opened the trunk to put the groceries

in the car, I found all of his belongings from work in a box in the trunk of my car.

Q. Did you confront him about that?

A. Yes, I did.

Q. What did he tell you?

A. He told me that they were cleaning out the sales tower for the new position for him and that they had asked that he take all of his things home and -- while they were remodeling and doing the re-building of the tower.

Q. Did he have a sideline business about this time?

A. That's what he said to me, yes, he had a side business.

Q. And what was this side business?

A. He was supposedly in business with my neighbor with a used car lot that they were opening.

Q. And, of course, I think we've had indictments relating to your neighbor. That's Ray Crenshaw?

A. Yes sir.

Q. Who provided the capital for that side business, the used car lot?

A. As far as I know, it was Ray.

Q. Okay, and who did Defendant Stanko said -- how did -- how did he provide the automobiles for that lot?

A. How did he provide the automobiles?

Q. Well, how did -- what did he tell you about those automobiles?

A. That one of the McElveen boys allowed him to take the vehicles at night so that the other employees were not aware of what was going on, that he was helping him get into business with the used car lot, and that they were buying them from an auction house.

Q. And, in fact, did you learn that that wasn't really the situation at all?

A. I did.

Q. Did McElveen have any idea -- of course, we've got the indictments.

A. No, not at all.

Q. Was there a point at which this scheme, if you will, came to a head?

A. Yes, it did.

Q. I want you to tell the jury about how it came to a head and what resulted.

A. It came to a head following that Sunday afternoon when I found the items of Stephen's in the trunk of my car. The next day when I came home from work, Stephen was at my neighbor's, Ray Crenshaw's, in a -- what appeared to be an undercover police car, with Ray Crenshaw, and I immediately called my neighbor's wife and spoke with her, and she said that they were just concerned of some of the activity and behavior on Stephen's part and what was happening with the cars that were not making it to the new lot, so they wanted to

check further into it, and I got quite upset, and it was several hours after that before Stephen came into the house.

Q. When he came to the house, did you have some discussions about that?

A. Yes, I did.

Q. And tell the jury what the substance of those discussions was.

A. Immediately I was angry and very hurt because I felt that he had lied to me again, and I questioned him about what Natalie told me versus the other things that were all caving in, him losing his job at McElveen, and the car dealership that he was trying to get into was not coming to fruition as he had described, and we got into a huge argument. He said that I had hit him with my keys. My keys were on a bungee-cord, and I had asked him to please return my house key and to leave, and he became physical.

Q. Now, this altercation, how far did it get?

A. That evening it was mostly pushing and shoving, and again I told him that we had been down this road so many times and I needed him to leave, and he said that he would leave, and he began packing his items, and cursing, and just -- we were at each other's throats. Eventually I went to bed and he is still moving around in the house getting his items together, and I fell asleep and awoke the next morning.

Q. Tell the jury the condition you were in as you awoke

that morning.

A. Stephen was still moving around in the house, and he would come in and speak to me, and he said that he was leaving and he needed me to not talk about what was going on, and I suddenly smelled this strong Clorox odor, and I asked him if he was cleaning the house, and at that point he leaped over onto me and turned me onto my stomach and he held a Clorox and 409 mixture cloth over my face and was holding my head down trying to do whatever he was going to do.

At that point, he said it's not working, and I thought I was going to die, but he -- he eventually fought me and I was fighting him, and I bit him very hard on his hand, and that's when he let go, and he turned me back over and I realized that he had some ties, shirt ties on the foot of the bed, and he began to tie me up, and he was talking to me, telling me that he couldn't have me tell what happened and he had to keep me quiet. I'm sorry.

Q. It's all right.

A. So I asked him to please leave me alone and I won't say anything, I won't call anyone, I would not tell a soul what happened if he would just leave, and he put the cloth in my mouth and tied it and he said he needed me to be quiet, he was tired of me talking, and I was always nagging, and then he pulled me, and he went to take a shower in the master bath, and he put me on the toilet seat while he was in the shower,

and then he was humming and talking and acting like nothing had happened.

Q. After he took a shower, what then happened?

A. He walked around the house. I think he got something to drink. He was still trying to communicate with me, and he pulled me to the sofa and he said he had to leave and that he was sorry that he had done all those things, and he had to make it look bad so that they wouldn't suspect that I was involved in it, and I said I'm not involved. Why would they suspect it, and he said you've got to keep quiet, and he stopped the cuckoo clock at ten minutes till nine on the wall, which was his cuckoo clock, I think maybe his family, his mother or father, or someone had given to him.

And he kissed me on the forehead and he said goodbye, and I -- that's the last time I saw Stephen at that point. He left my home.

Q. Did you call law enforcement?

A. I called my neighbor, Ray and Natalie, and I don't know if I asked them to call or if I called. I can't -- I can't remember, and then I -- I did call the school and I checked on my son, and I called my family.

Q. Now, as a result of this incident, was Defendant Stanko arrested?

A. Eventually he was arrested in Greenville, South Carolina.

Q. And he was arrested for the offenses of kidnapping and assault and battery with intent to kill?
A. That's right.
Q. Was he returned to Berkeley County?
A. Yes, he was.
Q. Now, tell the jury, Ms. Buckner, while in pre-trial detention, did you have any communication with Defendant Stanko?
A. Yes, I did.
Q. Why?
A. I wish I knew. I think in some way I wanted him to have some remorse and I wanted him to explain why. That's the only conclusion. I don't know. I was still trying to help him.
Q. He ultimately pled guilty?
A. Yes, he did.
Q. And for the kidnapping received a ten year sentence?
A. Yes.
Q. He went to the Department of Corrections?
A. Yes.
Q. After the plea and sentence, did your communications with Defendant Stanko cease?
A. No.
Q. Why?
A. Do you want my version? I don't know why. I don't

know.
Q. Did you write him?
A. Yes.
Q. Did you take calls from him?
A. Yes, I did.
Q. Did you visit?
A. Yes, I did.
Q. Ms. Buckner, did there come a point in time when you did ultimately terminate your communication with Defendant Stanko?
A. Yes, I did.
Q. And for what -- for what reason at that time?
A. It came to my attention that even in prison he was still able to lie and con and conjure up stories about why he was in prison, and he was trying to help other prisoners with their defense, and he had stated that he was an attorney that had gotten locked up on some bad charges.
Q. And since you terminated your communications with Defendant Stanko, how long into his prison term do you think that would have been?
A. Months, maybe three, four months.
Q. Have you since had any communication with Defendant Stanko?
A. No.
Q. Were you notified when he was released from the

Department of Corrections?

A. Yes.

Q. Did he attempt any communication or contact with you upon his release?

A. No.

MR. HUMPHRIES: Beg the Court's indulgence.

I don't have any further questions of you, Ms. Buckner. Please answer any the Defense may have.

A. Thank you.

THE COURT: Cross-examination.

MR. DIGGS: Yes sir.

THE COURT: May it please the Court.

MR. DIGGS: Yes sir.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Ms. McLendon, ---

A. That's right.

Q. --- is there any doubt in your mind that Stephen cared for you at that time during your relationship?

A. During the relationship?

Q. Yes Ma'am.

A. I was all under the assumption that he did.

Q. And did it appear to you that he tried to engage in a normal relationship?

A. Many times.

Q. As two adults would be expected?

A. Yes, he did.
Q. Did it seem to you that he made a sincere effort?
A. I can't testify as to his sincerity. My interpretation was that he was trying to do what a normal person would do in a relationship or I wouldn't have been in the relationship with him.
Q. Sure, and he just -- he just failed? He couldn't do it?
A. He did.
Q. Did you know him before you started dating him?
A. Only briefly at -- at the company where we were employed.
Q. Okay, and where was that?
A. Teleco Charleston.
Q. And once you began to date him, did you begin to find out about his past, about who he was?
A. Yes, little tidbits, I did.
Q. And did you find out any good things about him?
A. He seemed intelligent.
Q. All right, and did you ever meet any of his friends or ---
A. A few friends.
Q. --- or family?
A. Family, yes.
Q. And by the way, how many family members does he have,

do you know?

A. Well, he has a brother that had passed away, so I did not meet him. He has a sister in California. He has a sister in Goose Creek, and a brother that was in the service, and a mother and a father at that time.

Q. All right, and you had an opportunity to meet all of his siblings and his parents?

A. I did not meet Jeff, I don't believe.

Q. And Jeff is the one in the military?

A. Yes, he was.

Q. Now, Steve was an intelligent young man?

A. He seemed to be, yes.

Q. Seemed to be, and he was handsome enough as looks go?

A. Yes.

Q. And he could be charming?

A. Oh, very.

Q. He had good qualities about him?

A. Well, he was very charming.

Q. Yes, but he never was able to tell the truth?

A. So it would appear.

Q. Yes Ma'am, and do you have any reason why that would be?

A. I don't have any idea why that is.

Q. Do you believe that he made choices, free will type choices, to lie to you and deceive you?

A. Yes, he did.
Q. Did he have to do that in your opinion in order to succeed?
A. No, he did not.
Q. He didn't have to?
A. He did not have to.
Q. Let's go -- and I apologize for having to do this, but I want to talk to you just a couple of minutes about the incident with the rag.
A. Uh huh **(indicating positive)**.
Q. Tell us -- he put some kind of chemical mixture on the rag, is that right?
A. Yes. It was Clorox and a 409 mixture.
Q. All right, and you said he put that in your mouth, or what did you say?
A. After. He tried to use it to put me out, I guess, and that did not work.
Q. And he made a statement that this isn't working?
A. Right, he did.
Q. Can you -- can you explain to us what ---
A. Obviously he had seen a movie because he said it worked in the movie.
Q. Okay, and he felt -- did you take it to mean he thought he was going to get the same result ---
A. As in the movie.

Q. --- with you in the ---
A. Yes, that's exactly what I thought.
Q. --- in that situation?
A. Uh huh **(indicating positive)**.
Q. All right, and then you say he tied you up?
A. Yes.
Q. And brought you into the bathroom?
A. Right.
Q. So he could shower?
A. Yes.
Q. And I want you to direct your attention to his conduct at that time. You -- you made the statement that -- that he was humming and talking?
A. Yes.
Q. Can you elaborate on that for us a little bit.
A. Well, his actions on what I perceived it to be is that he just didn't care about what had just taken place, that it was of no consequence to him.
Q. Okay, and had he ever expressed feelings of -- of love to you?
A. Yes, he had.
Q. He treated you as though you were genuinely someone he cared for?
A. Oh, yes, he did.
Q. And there's no doubt in your mind about that?

A. No doubt in my mind that he did?
Q. That he did -- that he did treat you with affection?
A. No doubt.
Q. And that made you think he cared for you?
A. Yes, I believe that he did at one time.
Q. All right, and when he was in the shower acting in this way that you're now describing, do you know if he cared for you at that point?
A. I don't believe that he did.
Q. Okay, and he did this at a time when he was angry, indicated he was -- you guys had had an argument about some other stuff he had done?
A. I believe that he did that because it had come to a head and we had found out the truth.
Q. All right, and again, this is a circumstance that didn't have to exist?
A. It surely did not.
Q. It didn't have to -- he had the ability seemingly to succeed on his own? He didn't have to resort to all of this lying, cheating, scheming?
A. No one has to.
Q. No one has to, and so when you found out about it and confronted him, he got angry?
A. Yes, he did.
Q. And this was in the evening?

A. That was Monday evening.
Q. Monday evening, and how did -- obviously it resolved before you went to sleep?
A. Well, not resolved. He was leaving, and I told him he could stay until morning, and he said he was going to be packing his things and he'd leave in the morning.
Q. And he was angry that Monday evening?
A. Yes, he was.
Q. And tell us what his mental state was or his -- was he still angry the next morning, or what? Can you describe that?
A. Well, I'm sure that he was still angry. He behaved as if he were angry, but he behaved like he had to get away, that he was running, and that's what he did.
Q. All right, and that is when this incident happened with the mixture?
A. The morning, yes, Tuesday morning.
Q. Now, you wrote him when he was in prison?
A. I did what?
Q. Wrote him letters?
A. Wrote him, yes, I did.
Q. And in those letters, or on at least one occasion you referred to his mental health?
A. I don't recall.
Q. I would ask you to look at something.
A. Sure.

Q. I don't want you to read that.
A. Right. Thank you.
Q. Look at it and see if it kind of refreshes ---
A. The underlined part?
Q. Now, is that a copy of a letter that you wrote to Stephen?
A. It appears so.
Q. All right, and you expressed concerns in that letter about him getting some mental health ---
A. Yes.
Q. --- help?
A. Yes, I did. Thank you.
Q. And was that a genuine concern that you had at the time?
A. Obviously it was.
Q. And even though he had done this thing to you, you still had some feelings for him, if nothing else other than a human being that you knew?
A. Absolutely.
Q. And that you had concerns for him because ---
A. That's right.
Q. --- that you knew -- you had seen things that I think you referred to as maybe a different separate identity, something ---
A. I didn't say separate identity. I think that what I

was referring to is this -- his ability to separate himself from what was really happening.

Q. Right; okay, but certainly you -- you had concerns that he wasn't normal?

A. I don't know what normal is, but ---

Q. Okay, fair enough, but he -- he didn't -- this conduct was inappropriate?

A. Yes, it was.

Q. And you did not see, is it fair to say, any justification for that?

A. I can't say that I did.

Q. Specifically I'm talking about the lying, and misrepresentations, and ---

A. No.

Q. --- certainly the attempt to do you harm?

A. Right.

Q. In other words, you didn't try to stab him or anything?

A. Never.

Q. He wasn't acting in self-defense or anything?

A. Absolutely not.

Q. Now, in this letter, and I'm not -- if you recall it. I'm going to ask you about it, and if you don't, that's fine, but it's a reference to a brother named Billy?

A. Yes.

Q. Could you tell us who he is?

A. He was Stephen's older brother and from my understanding, he died in a house fire in St. George, South Carolina, when Stephen was maybe sixteen years old.

Q. About sixteen?

A. I think, to the best of my memory.

Q. All right, and all of the other siblings to your knowledge, though, are alive?

A. To my knowledge, yes.

MR. DIGGS: Beg the Court's indulgence for a second.

THE COURT: Yes sir.

MR. DIGGS: Ms. McLendon, I appreciate it. Thank you very much.

A. Oh, thank you also. Thank you.

THE COURT: Redirect?

MR. HUMPHRIES: No, thank you. Request this witness be excused, Your Honor.

THE COURT: Any objection?

MR. DIGGS: No objection.

THE COURT: All right. Ma'am, you are released from your subpoena and may go back to your regular activities, Ma'am. Thank you.

Your next witness, please sir.

MR. HUMPHRIES: Darrell Lewis.

THE COURT: Please come up here to the Clerk, please sir.

DARRELL LEWIS, being first duly sworn, states as follows:

DIRECT-EXAMINATION BY MR. HUMPHRIES:

Q. How are you employed?

A. I work at the Berkeley County Sheriff's Office.

Q. How long ---

THE COURT: Could you scoot a little bit closer to the microphone, please sir.

Q. How long have you been so employed?

A. About twenty-two years now.

Q. And in what capacity are you employed with the Berkeley County Sheriff's Office at this time?

A. I'm a lieutenant with -- over Judicial Services, civil process and judgments.

Q. Back in early 1996, what was your position with the Berkeley County Sheriff's Office?

A. I was an investigator.

Q. Let me ask you, in connection with your duties as an investigator at that time, did you have an occasion to come in contact with the Defendant, Stephen Stanko?

A. Yes sir, I did.

Q. And tell the jury, if you will, the circumstances surrounding that -- that contact.

A. It was in '96, I think February. I was the on-call investigator and got a call -- got called out to his residence

and Miss Elizabeth's residence in reference to a kidnapping type situation. I wasn't sure till I got there.

Q. And once you got there, what did you find?

A. First off, it -- the neighbors next door met -- met me outside. The uniformed deputies were already there and securing the crime scene and what not, and one of the neighbors, Ray Crenshaw, asked somebody who I was when I pulled up and said my name, and he made mention something about some cars, that I was the person who had his cars or -- it just threw me off-guard, and I just continued on in the house with the investigation to see what had actually went on and why they were calling and what happened.

Q. What did you find?

A. Elizabeth McLendon, I -- at the time was her name, had been tied up and -- with neckties and smothered with a pillow, and I think used a rag with Clorox and bleach or -- or bleach and 409 or something was on it, and that was the statement that she gave at the time that she was held by Mr. Stanko.

Q. Let me ask you, based on your observations at the crime scene, did that appear consistent with her account of what had occurred?

A. Absolutely. There was phone cords and neckties laying around where this supposedly happened at.

Q. Let me ask you, Lieutenant, did you have an occasion to speak with Defendant Stanko after his arrest and return to

Berkeley County?
A. Yes sir, I did. He had already left the scene when I got there and he had actually called when he was away, didn't want to -- felt like he didn't want to turn hisself in at that time, but we did apprehend him in Greenville, and he was brought back to Berkeley County where he gave me a -- a written statement to his events of what happened that night -- that aft- -- that morning. I'm sorry.
Q. And let me ask you, were you a witness to that statement?
A. Yes sir. I took the statement from him.
Q. You took the statement. Tell the jury what Defendant Stanko told you in that written statement.
A. Well, the statement is -- it's nine pages. He explains what, in his words, what happened that morning and before that leading up to the events. There was a lot of car vehicles and stuff that were stolen, so it goes into that a lot first.
Q. All right. Well let's do that. Let's -- let's tell the jury what his words were concerning those events.
A. All right. He says I left Berkeley County Detention Center the last week of October 1995. I returned home with -- with Elizabeth McLendon at 110 Durham Drive in Goose Creek, South Carolina 29445, where I had intended to start my life over again and make the wrongs I had committed once again right -- right again -- I mean again right. I'm sorry.

The first problem occurred nine days after returning home when I had a job interview with 84 Lumber in Goose Creek. The night before, Elizabeth accused me of not caring for her and not being appreciative of what she had done for me to get me out. The argument became intense and into the night. The next morning, I was forced to walk to the interview, and I then walk- -- locked -- and then locked -- was locked out of the house. This lasted until the day until I was finally allowed calm conversation -- I'm sorry -- allowed -- calm conversation allowed us to come to a reason -- reason with each other.

In the eight weeks between getting out of here and when I first took money from Ray Crenshaw, I didn't do anything illegal or wrong in any way, shape, or form. Elizabeth and I had several fights because she believed I was not being loyal to her. These fights began -- became more and more aggressive. She would taunt me with my actions of the past, the way my family left me, and how I had lied before, but I wasn't -- I was not lying to her. I was not cheating on her. I love her, and I just wanted some love and respect from her and Chad. That's all I wanted. That's all I ever wanted from anybody.

Anyway, I went to work at McElveen Pontiac-GMC on November 14th, 1995. I was hired as a salesperson and began selling cars for the company. I had a good couple of weeks to

-- in November and brought home a good paycheck, which was helpful with the situation at home. However, there was a Two Thousand Dollar Note looming over me, which is for the attorney, Ray Buchanan, that handled my case. As this deadline cleared near and my constant battles with Elizabeth remained, I began to feel like nothing again and my self-esteem became -- became a pit.

I told Elizabeth that things were going so well at work, that they had offered me a position as assistant finance manager. That would take a trial period for them to decide whether I would get it or not. She was proud and happy for me, which I was truly -- which I truly wanted it, help her as -- help her a little with the long hours that I was working.

By this time I had also met and befriended our neighbor, Delray Crenshaw. We often spoke and played ball in the front yard, and we quickly became close. He owned some businesses and was very successful, and I had hoped that we could somehow combine these two lives and make more. Then one day I realized that Eliz and I had nothing to offer him, and I was not going to -- he was not going to just freely say, hey, let's do something together.

I called Ray up and told him that Ricky Davis, the used car sales manager at McElveen was going to an auction and he had an opportunity to buy a number of late-model cars for a low price. I told him that I had around Sixty Seven Hundred

Dollars and I needed another Twenty Two Hundred Dollars within hours. Ray had cash in hand. Instantly I was important and a part of something. I told him to keep it a secret from Elizabeth as I wanted us to open up a used car lot and business for her as a surprise, the latter being a dream that I truly had for us.

Anyway, the money from Ray went to help pay bills and things like that. For the first ten days or so, it was easy to keep Ray at bay. I simply made up stories about transporting of the cars from the auction to us. There were problems here, problems there, et cetera. I was also telling Ray that I had a GMC Yukon Sierra pickup truck that would be -- that we would be trading for them. Ray thought I was the next best thing since sliced bread, but as time went on, he became more impatient and the stories became more crazy and integrated.

I even called Ray up another time and told him that we could get some trucks for a unbelievable price. Within hours, I had another Eighteen Hundred Dollars. This was the total amount as far as money that I took from anyone, the entire scenario. Please note that even though my name was on the bank account that Ray and Natalie opened, I didn't take any money from it. I also didn't -- did not take a penny from Elizabeth or McElveen. I had several opportunities of cash at work and I never took a dime. I did not do anything -- do any

of this for the money. I wanted love, admiration, and respect. The wrong way to go about it. I have a problem, psychological, but I am not just some kind of thief.

Finally I had to come up with some results for Ray. I went through spare keys in the used car office and took keys to the cars matching the description of the ones I told Ray we were getting. Then during normal business hours, I would drive them off the lot to 2135 NAD Road. I would tell Ray that Mr. McElveen didn't want the others, sales people, to know about the used cars, lot, and he had drove -- he would drive me back to the lot.

I would then take another and another. One night Ray, Natalie, and their son, Ray, came up and helped me take a couple other cars at once. I will make this statement now. Ray, Natalie, and Elizabeth had absolutely nothing to do with any wrongdoing. They did not know the cars were stolen. They did not know. To make myself out to be something that I was not, I lied to them. At this point, we had two pickup trucks, three Centuries, a Gran Prix, a Buick Regal, a Formula, and I believe that's it other than the Jimmy that Elizabeth was driving because I told her it was a demo.

Ray wanted the rest of the cars and I needed to do something to get him calmed down, so I took customers I had worked with at McElveen and we could not help at McElveen, that is, and got them up to the NAD Road, sold them on the

cars that we had there, wrote up fake contracts and placed them in the cars.

I took two guys that were borderline crooks themselves. Charles Day is going through a divorce and not paying his bills, repo-ing his trailer, and lying to his creditors and family, and R. C. Criswell is two months late on every bill that he has. He lied to me about almost everything I asked him.

Ray sold one of the Centuries to his parents. That was a cash deal, and Ray and Natalie took that money and put it in the account. I never touched nor -- I never touched that, nor the account. There never was any money from Charles Day, nor Anthony Huckmacker. There was none.

As far as Ricky Davis and any local law enforcement being involved, these were all lies. Ricky Davis never did anything. He had no clue. I just told Ray all these stories to hold him off. They were all lies. There is no chop-shop, nothing. Detective Darrell Lewis was in no way, shape, or form involved.

As far as the raspberry Blazer, there was no connection. Teddy Monique was de-horsed from her Jeep, which was on the McElveen lot. There was no attempt at any kind of theft. It was simply a mistake. When Ray brought Al Boise to the house that Monday night, I simply re-told all the lies that I had told Ray over the last couple of weeks. I re-told all the

stories about getting the cars, and chop-shop, all these lies. I am sorry.

Elizabeth got upset. We had been arguing for days. She came out, drove off -- I'm sorry. We had been arguing for days. She came out, drove off, and came back. When I finally left Mr. Boise, I was told that -- I was told to get back in touch with him and Ray in the morning.

When I went inside, Elizabeth verbally attacked me, telling me about how I didn't care for her, how I needed to leave. She followed me from room to room. There was a couple of times that I physically had to move her away from me to get her out of my face. She brought up the usual hateful comments and threatened to call the police numerous times. I went out into the sun room and she kept following me. She pushed me, kicked me, threw different things at me. Finally we both ignored each other and went to sleep.

I did pack up all of my clothes into a couple of suitcases, as she told me she wanted me gone. The next morning we awoke to a re-match of the same bickering. I couldn't take it any more. I just figured if I could keep her from fighting with me, I could get packed up and leave so that I never hurt her again mentally.

I put Clorox and Windex on a hand towel thinking it would knock her out. Never believe the movies. It didn't work. So I just told her, let me tie you up. I will let you go when I

leave. I never wanted to hurt Elizabeth in any way. In the past ten years, she is the only person that I have truly loved and has shown me love. I love her. I just can't go on hurting her or anyone else.

I tried to comfort her while I was shaving, showering, and dressing. I untied her about ten minutes before I left. She cried and waved goodbye to me as I drove off. I drove up 176 to Columbia, then I-26 to Spartanburg, Spartanburg to Greenville. I called for Detective Lewis twice from Greenville, and I was picked up yesterday at the Days Inn. I had no sexual relations with anyone, had no gun, robbed no one.

That's the end of the statement.

Q. Lieutenant Lewis, as a result of the arrest -- the statement -- Defendant Stanko was convicted of kidnapping and assault and battery with intent to kill?

A. Yes sir.

Q. Do you recall his sentence?

A. I believe he was -- plead -- plead to -- got ten years and did like eight or eight and a half years. He was in jail for a while.

MR. HUMPHRIES: Thank you. Answer any questions the Defense may have of you.

THE COURT: Cross-examination.

MS. WILLIAMS: Thank you, Your Honor. May it please the

Court.

CROSS-EXAMINATION BY MS. WILLIAMS:

Q. I believe you are a lieutenant now?

A. Yes Ma'am.

Q. Good morning.

A. Good morning.

Q. And how long have you been a police officer, Lieutenant Lewis?

A. About twenty-two years.

Q. Twenty-two years, and all of it at Berkeley?

A. At Berkeley County Sheriff's Office.

Q. Okay. May I see that statement that you read?

A. Yes Ma'am.

Q. Thank you. And this is the statement that you just read, is that correct?

A. Yes Ma'am.

Q. And that's the statement that Defendant Stanko -- that Mr. Stanko gave and prepared for you, is that right?

A. Yes Ma'am. He wrote it in his own handwriting.

MS. WILLIAMS: Your Honor, I would like to have this marked as Defendant's Exhibit Number 1 and move it into evidence at this time.

THE COURT: Any objection to that?

MR. HUMPHRIES: No, Your Honor. Thank you.

MS. WILLIAMS: All right. Defendant's 1 is in evidence

without objection.

MR. HUMPHRIES: I don't think it's 1, though.

THE REPORTER: 42.

THE COURT: I'm sorry. Defendant's 42. I'm sorry.

MS. WILLIAMS: I'm sorry; I apologize. Number 42.

(STATEMENT OF DEFENDANT ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 42.)

Q. And, Lieutenant Lewis, you're from the Goose Creek area, is that right?

A. Yes Ma'am.

Q. And did you know Mr. Stanko growing up?

A. Yes Ma'am, I did.

Q. Can you tell us how you knew him?

A. We went to high school together. He was a couple of years behind me. He also dated my sister at one time.

Q. Were he and your sister actually engaged, I believe, and lived together maybe?

A. I know they lived together. I don't know if they were engaged. I was like out of town when that was ...

Q. Okay, but -- but they had a pretty close relationship?

A. Yes Ma'am, they did.

Q. Okay. I believe you told the Solicitor -- in this statement it talks about he called you at least two times, either on the way to Greenville or from Greenville once this incident had occurred?

A. Yes Ma'am, that's what he stated.
Q. And do you recall if he told you during those calls that he knew he needed some help?
A. Yes Ma'am. I asked him -- when I answered the phone, I asked him just, you know, turn hisself in, and he told me flat out he was not ready to turn hisself in. He needed to get some help first is what he told me.
Q. Okay. Isn't it -- you read a part in here, I believe you said it said there's nothing Detective -- that Darrell Lewis -- nothing Detective Darrell Lewis was involved in, is that correct?
A. Yes Ma'am.
Q. What was he talking about?
A. Apparently he was talking about a chop-shop that was -- I had something to do with, chopping up cars and -- or stealing cars from our drug seizure impound, and ---
Q. But he said in here you had nothing to do with it, is that right?
A. Correct.
Q. So he didn't want you involved, having to take any blame, any anything, is that right?
A. That's right.
Q. So basically if -- would it be fair to say that he was taking all the responsibility for it?
A. He absolutely took responsibility for everything.

Q. Okay. Let me ask you this. You said you've been a police officer for twenty-two years, is that correct?
A. Yes Ma'am.
Q. How long have -- how much of that were you a detective?
A. Eight years.
Q. Eight years. Have you got any idea of the number of defendants that you spoke to and took statements from?
A. In this particular case or all cases?
Q. In -- in general, in the time. That's why I'm asking. I'm sure it's ---
A. It's hundreds.
Q. In the hundreds?
A. I'm sure, yes Ma'am. I'm sure I've interviewed a hundred people or more.
Q. Let me ask you this. Would you say that given a nine page statement with all these details is pretty typical of the normal hundreds of statements that you got?
A. It has happened before, but typically, no, it's not.
Q. Typically it's not? I don't -- I mean, ---
A. I mean, ---
Q. --- I think it would be safe to say if you got two pages from a defendant, you might be doing good?
A. I've gotten more than that before in the past, yes Ma'am, but you could say when it gets down to it, they want to stop and they don't want to talk any more. I mean, that

happens, too.

Q. Okay.

A. You have some people that cooperate and some people don't.

Q. Okay.

MS. WILLIAMS: Beg the Court's indulgence for just one moment.

THE COURT: Yes Ma'am.

MS. WILLIAMS: That's all the questions that I have of this officer. Thank you, Your Honor.

THE COURT: Any redirect?

MR. HUMPHRIES: No, Your Honor. Ask the witness be excused.

THE COURT: All right. Very good.

MS. WILLIAMS: It's without objection, Your Honor.

THE COURT: All right. All right, sir, you are released from your subpoena and may go back to your regular duties.

A. Thank you, Your Honor.

THE COURT: All right, sir.

Ladies and gentlemen, let's take a very short break for about five minutes, please. All right, thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, we'll come back in five minutes. Thank you much.

MR. HUMPHRIES: Thank you.

MS. WILLIAMS: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Solicitor, are you ready to resume?

MR. HUMPHRIES: Yes, Your Honor.

THE COURT: Defense?

MR. DIGGS: The Defense is ready, Your Honor.

THE COURT: Very good. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, your next witness, please.

MR. HUMPHRIES: Kathleen Crolley.

THE COURT: All right. Ms. Crolley, if you would come around up here, please, to be sworn.

KATHLEEN A. CROLLEY, being first duly sworn, states as follows:

DIRECT-EXAMINATION BY MR. HUMPHRIES:

Q. Good morning, Ms. Crolley. How are you?

A. Good morning.

Q. Tell the jury, how are you employed?

A. I am employed with Owl-O-Rest Furniture in Surfside Beach, sir.

Q. Let me ask you, how long have you been so employed?

A. I've been employed there for twenty-six years. My family is actually involved with the ownership.

Q. What's your position at Owl-O-Rest?

A. Pretty much whatever it takes, administrative, sales, purchasing, advertising, cleaning, or whatever we can do to help.

Q. And tell the jury what type of business is Owl-O-Rest?

A. We are a furniture, mattress, and accessory store, and we offer a lot of special orders for our customers as well.

Q. And where are you located?

A. We are in Surfside Beach.

Q. Let me ask you, in the context of your work, did you have an occasion to come into contact with Defendant Stanko?

A. Yes sir, I sure did.

Q. Tell us about it.

A. Okay. He was -- I was actually working on the floor one afternoon and Mr. Stanko came into the store and indicated that he was in the market to purchase two desks for his wife for a Christmas gift. They had just recently built a house in the Litchfield-Pawleys Island area and it was to be a surprise for her.

Q. Were these nice desks?

A. They were -- they were pretty nice desks. I didn't have anything right in stock at the time, and I would have had to special order and time would have been of the essence

because of it being so close to Christmas.

Q. December 8th or so?

A. Yes sir.

Q. Tell the jury how -- how this meeting with Defendant Stanko sort of progressed.

A. Okay. He was very professional, very polite and courteous. As I said, I didn't have anything right in stock that would fit the exact sizes that he needed, so I began pulling out some catalogs from companies that I could get in time for Christmas, and as he was looking at the pictures, he started receiving numerous phone calls. There were at least four or five phone calls where he had to get up and go take a cell phone call, and I couldn't help but overhear the conversation where it -- it sounded to me as if he was receiving funds from people for something, some type of great work.

He was thanking people for their donations and talking about how other organizations were going to match their donation, and maybe he could meet them for lunch, and it went on for a good while, and then I finally told him that I hated to be nosy, but that I wanted to inquire, you know, what was taking place, and he proceeded to tell me.

Q. And what did he tell you?

A. He told me that he had had a niece that had been diagnosed with cancer, a young, teenage girl, down at M.U.S.C.

and that he had taken off -- that he was actually a corporate attorney, but that he had taken off from his work for the past year to year and a half so that he could start the Childrens Cancer Research Foundation to help raise funds for his niece and that he was happy to say that she was in remission. There was some type of blitz going on where corporations and individuals were trying to get a bunch of money together at one time. He was very happy with the work and the research that they had been able to do.

Q. He indicated he had taken off from his work as a corporate attorney to head this fund-raising campaign for the what, again?

A. For his niece, his teenage niece, for the ---

Q. And the name of the organization was?

A. The Childrens Cancer Research Foundation.

Q. Now, let me ask you, did he ever explicitly ask you for a donation?

A. No sir, he did not.

Q. Did you feel personally and morally compelled to give him one?

A. Yes sir, I did.

Q. Tell -- tell the jury a bit about that.

A. M.U.S.C. holds a special place in my heart, and we had talked briefly. I have a daughter who is now nine years old, very healthy, but she was born in 2000 three months early,

weighing one pound, twelve ounces, so M.U.S.C. holds a very special place in my heart.

It was close to Christmastime, and we have to be very careful with what donations we give because we don't have a lot of money that we're able to afford to give, but I just felt that it was a very worthy cause, and I talked to one of my partners and asked if he thought there was any way that we would be able to give to this cause.

Q. And did you?

A. Yes sir, we did. I was able to get it worked out where the store could give Mr. Stanko or the foundation a Hundred Dollar check, and then I gave him a small Twenty Five Dollar check from me personally.

Q. You gave him a personal check?

A. Yes sir.

Q. Let me show you State's 77 for identification purposes. Tell me if you can identify it.

A. Okay. Yes sir.

Q. What is it?

A. As I gave Mr. Stanko the checks, right at the last minute he said that I would need to make them out to him personally, and I told him if that was the case, I was going to have to receive some type of receipt, and this is the receipt that he gave me.

MR. HUMPHRIES: Move to introduce State's 77.

THE COURT: Any objection?

MR. DIGGS: No objection.

THE COURT: 77?

MR. HUMPHRIES: Yes sir, Your Honor.

THE COURT: State's 77 is in evidence without objection.

(DONATION RECEIPT ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 77.)

Q. And that's the receipt?

A. Yes sir.

Q. And State's 77 in evidence is that receipt, is it not?

A. Yes sir.

Q. Will you read it to the jury?

A. Certainly. Dated December 8th, 2004, receipt by Owl-O-Rest Factory Outlet, Inc., Stephen Stanko, One Hundred Dollar check, Number 35445. Kathleen A. Crolley, Twenty Five Dollar check, Number 231, donations made to the Childrens Cancer Research Foundation, certificate to follow, and then it's signed Stephen C. Stanko.

Q. Certificate to follow, what was the significance of that?

A. He had indicated that the businesses that were giving were to get a special thank-you, and it was just to be proof that the money was to go to the charity.

Q. And can I see a copy of that certificate?

A. No sir.

Q. Why not?
A. It was never received.
Q. Did he place an order for desks?
A. He indicated that he still wanted the desks. He -- since it was a surprise for his wife, he didn't want her to see the funds for the deposit. We talked the next day and he asked if it would be okay if he used his brother's credit card to place the down payment, and at that time -- well, he wanted to know if I would have to speak with his brother, and I told him yes, whoever's credit card was used, I would need to speak with them directly.
Q. Did you have any other communications with Defendant Stanko after that?
A. No sir.

MR. HUMPHRIES: Thank you, Ma'am. Answer any questions the Defense may have.

THE COURT: Cross-examination.

MR. DIGGS: May it please the Court.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Ms. Crolley, how are you this morning?
A. Doing okay, sir.
Q. Good. How long have you been in the Surfside Beach area?
A. Twenty-six years.
Q. Twenty-six years?

A. Yes sir.
Q. The address of your store is what?
A. 4 -- 410-A Highway 17 North in Surfside Beach.
Q. Okay, and you had been at that location for a good while?
A. We had been at that location for fifteen, sixteen years. We were across the street just a block from there the other -- balance of the time.
Q. All right. Did Mr. -- at any time did you ever ask Mr. Stanko for any identification?
A. No sir. He was -- this was my customer, and I simply got his cell phone number and his delivery address for the desks, but no sir.
Q. And you didn't feel there was a need at that point to do so, to ask for identification?
A. When he was placing the order for the desks or when I was giving him ---
Q. Generally in your encounter with him at that time?
A. Right. No sir.
Q. He was pretty convincing to you? He seemed straight up enough to you?
A. Yes sir, absolutely.
Q. Any -- any reflection -- I mean, without reflecting back on it, any reason -- did you see anything in his mannerisms or anything that now you think should have tipped

you off?
A. No sir. I mean, I had little signs. The delivery address, I was fairly familiar with the area, didn't make a lot of sense, but I ---
Q. But in terms of his personal conduct, ---
A. No.
Q. --- he was right on, ---
A. Yes sir.
Q. --- seemed to be right on accurate in terms of what you would expect?
A. Yes sir, other than asking for the check to be made out to himself.
Q. That was a little unusual?
A. Yes, it was.
Q. And he used his real name. You don't have any doubt about that?
A. I mean, I never asked for identification, but yes, right.
Q. Yes Ma'am, and do you recognize him in the courtroom today?
A. Yes sir.
Q. All right, and so you have independent recollection that he used the name Stephen Stanko?
A. Yes sir.
Q. All right, so he didn't make any effort to conceal

that?
A. No sir.
Q. All right, and you don't have any knowledge, or do you, as to where he went?
A. Other than the address he gave us as a delivery address, which I don't believe to be a real address.
Q. But you have come to learn he lived in the area, or did you?
A. At this point in time do I know that -- yes, yes sir.
Q. He lived in the area at that time, and he was clearly scamming your business and you personally for a Hundred and Twenty Five Dollars, gave his real name to a business that had been in the area for a number of years, and it's a well-established business. He made -- do you remember how he was dressed?
A. Very, very nice, as a businessman.
Q. And he claimed to be a corporate attorney, is that what he said?
A. Yes sir.
Q. And he looked the part?
A. I suppose, yes.
Q. And tell me -- and maybe we're getting a little more detailed than we need to, but at -- when you had actually given him the money, or did you; you gave him a check?
A. Yes sir.

Q. That was negotiable?
A. Yes sir.
Q. And did you ever -- did you follow up to make -- to see if he had actually cashed it?
A. Yes, I did.
Q. And did he cash it?
A. Yes. He cashed the store check right away, and then he held my personal check for a couple of weeks.
Q. Okay, and did he eventually cash that?
A. Yes.
Q. When did you begin to suspect, if you ever did, that he had not been truthful with you?
A. Immediately after he left, I did check, you know, after he asked about the receipt. I tried to contact the Better Business Bureau, and -- but again, he was still my possible customer the next day, so I wasn't, you know, there to interrogate him, and then I was just hoping that somehow there was some kind of glitch where the charity wasn't registered properly. Had it been a scam, I really didn't want to make an enemy over Twenty Five Dollars personally, you know, and just let it -- decided to let it go.
Q. After he got the money or, you know, the checks and the -- the two checks, ---
A. Yes sir.
Q. --- after he got those, do you remember specifically

what he did? Did his conduct change in any way?
A. No. It was after that point that he gave me the -- his cell phone number, the delivery address, the directions to his home.
Q. And did you or anyone on behalf of the store ever call the number or follow up on the address, check the address?
A. I called him the next day to double-check about the deposit that he was to bring, ---
Q. Yes Ma'am.
A. --- and at least talked to him at least that one time on the cell phone and made no mention of the charity, or certificate, or anything.
Q. All right, and did he answer the phone?
A. Yes, he did.
Q. So he gave you his real number?
A. Correct.
Q. And was there any effort to your knowledge to follow up and verify the address?
A. I don't believe so because the time that it would have been for the desks to come in at that point, I knew that things were not as they should be.
Q. Okay, and when you called him, do you remember how he answered the phone?
A. No sir, not exactly.
Q. In other words, hello ---

A. It wasn't anything unusual.
Q. Didn't -- what I'm getting at is did he answer it as a business or a private, you know, individual?
A. I can't remember.
Q. Okay.
MR. DIGGS: Just a second. Ms. Crolley, we appreciate it. That's all we have at this time.
A. Okay.
THE COURT: Any redirect?
MR. HUMPHRIES: No. We request this witness be excused, Your Honor.
THE COURT: Any objection?
MR. DIGGS: No, Your Honor.
THE COURT: All right. Ma'am, you are released from your subpoena and may go back to your regular activities.
Your next witness.
MR. RICHARDSON: Steve Lee.
THE COURT: All right, Mr. Lee, come up front with -- to the Clerk, please sir.
RICHARD S. LEE, being first duly sworn, states as follows:
DIRECT-EXAMINATION BY MR. RICHARDSON:
Q. Do you go by Richard or Steve?
A. Steve.
Q. Steve, where do you live, please?

A. Murrells Inlet or Horry County on 707.
Q. All right, and how about where do you work?
A. A self-employed mechanic.
Q. Were you a self-employed mechanic back in March of 2005?
A. I was.
Q. And where were you working back then?
A. At Sonny's Auto Body.
Q. And, of course, you say you're self-employed. How did that work?
A. I done -- I rented a place from him.
Q. All right. Did you have an occasion to meet Mr. Stephen Stanko back in March of 2005?
A. I did.
Q. Tell this jury about that first meeting.
A. He brought his car in and it was running hot, had car problems.
Q. What kind of car was it, Steve?
A. A Mustang.
Q. Do you remember the color?
A. Red.
Q. All right, and it was running hot. Was there anyone else with Mr. Stanko when he came in?
A. No sir.
Q. Were you able to strike up a conversation with Mr.

Stanko?

A. Had general conversation, asked him what he did.

Q. What did he tell you?

A. Said he was a paralegal for ten law firms, Myrtle Beach, Columbia, Charleston.

Q. All right. Did you need any legal help at the time?

A. I did.

Q. All right. Please explain to the jury what kind of legal help you needed.

A. Had a friend that had passed away and I was under the impression that there was some things left in the Will for me, and he said that he could help me out.

Q. So it was a Probate issue?

A. Correct.

Q. Who was the friend?

A. Mr. Donald Calvert.

Q. All right, and tell the jury a little bit why you would expect to receive something from Mr. Calvert.

A. There was supposed to have been some insurance policies and this and that for myself, and my girlfriend, and my child.

Q. Did Mr. Stanko give you any information or tell you he thought he might be able to help you?

A. He said that he could. He said that he could get one of the firms from Charleston to help me out with that and supposedly he got names, social security numbers, and said

there was policies for myself, my girlfriend, and my child.

Q. All right. Now, did he do all of this for free?

A. No sir.

Q. All right. Tell us about any payment that you may have made to Mr. Stanko.

A. He said he'd need a Thousand Dollar retainer. I paid him in cash.

Q. And you paid him on that first date that you had met him back in March of '05?

A. Not the first date, no sir.

Q. So there was a second meeting?

A. Right.

Q. And you met with him and gave him a Thousand Dollars?

A. Right.

Q. Cash. Did he give you any sort of receipt?

A. None at all, sir.

Q. All right. After giving him the One Thousand Dollars, did you call him back to check up on whether or not there was any insurance?

A. He -- he called me back and said that there was a Two Thousand Dollar policy on me, Eighty Thousand on my girlfriend, and Forty Thousand on my child.

Q. He said Two Thousand on you. Was that right?

A. Two Hundred Thousand.

Q. Two Hundred Thousand for you, Eighty Thousand for your

girlfriend, and Forty Thousand for your child?

A. Correct.

Q. All right, and how long after the time that you had given him the One Thousand Dollars did he call you back and tell you about this Three Hundred and some odd Thousand Dollars?

A. Oh, it was four or five days. He said it was just a matter of getting the paperwork handled and they would send the money right on.

Q. And were you impressed with Mr. Stanko's legal ability?

A. I was at the time, yes sir.

Q. Matter of fact, you referred some -- one of your friends to him?

A. Yes sir, Mr. Jack Jackson.

Q. You referred Mr. Jack Jackson to Stephen Stanko. Tell us about that.

A. He had a legal issue going on. I told him that I had met someone that I thought could do him a good job, and they got together.

Q. Did there ever come an occasion where you were skeptical about your Three Hundred Thousand Dollars?

A. I kept waiting and waiting, calling and calling, said the check would be here soon, Fed-X was going to deliver; nothing.

Q. Nothing?

A. Nothing.
Q. All right. Did -- did you ever check into this attorney that he was telling you about in Charleston?
A. Actually, I went on-line and it was a legitimate firm, and the attorney that he said he was using was legit, yes sir.
Q. Okay. Now, you kept calling. Did you ever meet Stephen again personally?
A. I did. I kind of got aggravated with the situation and I met him on April the 7th in the Food Lion parking lot in Murrells Inlet.
Q. And when you met with Stephen, Defendant Stanko, on the 7th of -- did you say April 7th?
A. Yes sir.
Q. Of 2005?
A. Correct.
Q. Tell us about that meeting.
A. It was short. I was aggravated by the promises, and he said that he would get in touch with me at nine o'clock the next morning.
Q. That he would call you on April the 8th at nine o'clock?
A. Yes sir.
Q. Were you expecting your money any time soon?
A. I was hoping at nine o'clock that next morning.
Q. Did he call you on April the 8th at nine o'clock?

A. No sir, he did not. I called him.
Q. What did you do -- I'm sorry.
A. I tried to call him.
Q. Okay. Did he answer his phone?
A. No sir. The South Carolina Law Enforcement answered his phone, and I thought it was a joke. I hung up, called back. I was aggravated with everything, and I told them I'd be over in about five minutes, that I was going to see what was going on, and when I got over there, the house was taped off and they were doing an investigation on a murder.
Q. And that was the house that he shared with Laura Ling?
A. Yes sir.
Q. Had you ever been to that house before?
A. No sir, I had not.
Q. All right. How much of the Three Hundred Thousand did you ever get?
A. Nothing.
Q. Nothing. How about your girlfriend?
A. Nothing.
Q. And your child?
A. Nothing.

MR. RICHARDSON: I have no further questions. Please answer any questions Mr. Diggs or Ms. Williams might have for you.

A. Thank you.

THE COURT: Cross-examination.

MR. DIGGS: Yes. May it please the Court.

THE COURT: Yes sir.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Mr. Lee, how are you this morning?

A. (No response.)

Q. I say how are you this morning?

A. I'm fine, sir. I'm sorry.

Q. When Mr. Stanko gave you the -- or you gave him the Thousand Dollars, was it cash?

A. Yes sir, cash.

Q. And you didn't ask for a receipt?

A. He was going to bring me one at a later date.

Q. Let me ask you how long it was to your recollection between your paying that money and the time you called him and the law enforcement people answered?

A. The third week in March is when I gave him the money, somewhere in -- somewhere along in that date, by then a few days after, and then it was April the 7th when I made the call to find out, law enforcement.

Q. Okay, so the third week in March?

A. Was when he received money.

Q. All right, and so there was about a two week period in there that ---

A. He was working on everything.

Q. --- he was working on your case? Had you had conversations with Mr. Jackson that had led you to believe -- not Mr. Jackson, I'm sorry, but your friend that had passed away? Prior to his death, had he led you to believe that you would be receiving money of some sort?

A. I knew that I was in the Will. I didn't know to what extent.

Q. And what's -- and what was that individual's name?

A. Mr. Donald Calvert.

Q. Okay. What county did he live in?

A. Horry County.

Q. Do you know if his Will -- did he have a Will and was it ever probated?

A. It's still in Probate right now.

Q. Still there?

A. Yes sir.

Q. The Estate is still open?

A. Yes sir.

Q. Did Mr. Stanko, to your knowledge, ever do anything on the real estate, on the legitimate estate?

A. No sir.

Q. You looked on-line to see if he had given you the name of a legitimate attorney?

A. Yes sir.

Q. Did you ever call that law office?

A. After it was all over.
Q. Okay, but not until ---
A. No sir.
Q. When I say until, you made the call and law enforcement answered the phone?
A. Right.
Q. Of course, you understood at that point that he wasn't working on your case?
A. Right.
Q. All right, and prior to that time, you had never contacted the firm in Charleston?
A. No sir, just seen that it was legit on-line.
Q. Did you do the work on the car that he brought in?
A. Yeah. It was running hot, did some -- don't remember exactly what it was, ---
Q. Right.
A. --- an over-heating issue.
Q. And did he pay you for that?
A. Yeah.
Q. You don't remember how much the bill was, do you?
A. No sir, I do not.
Q. Okay. It's a pretty run of the mill, routine type ---
A. Yeah, a routine type thing.

MR. DIGGS: All right, Mr. Lee, I don't think that we have anything else of you this morning. Thank you very much.

A. Thank you, sir.

THE COURT: Any redirect?

MR. RICHARDSON: No sir, Your Honor.

THE COURT: Do you wish the witness to be excused?

MR. RICHARDSON: Please sir.

THE COURT: Any objection?

MR. DIGGS: No sir.

THE COURT: All right, Mr. Lee, you are released from your subpoena, may go back to your regular duties, sir.

A. Thank you, sir.

THE COURT: All right, sir. Your next witness, please.

MR. RICHARDSON: James Jackson.

THE COURT: All right, sir, come right up front to where the Clerk is, please sir, and be sworn, all the way up here.

JAMES CARSON JACKSON, being first duly sworn, states as follows:

DIRECT-EXAMINATION BY MR. RICHARDSON:

Q. Mr. Jackson, what do you go by? What would you wish us to call you? What is your first name?

A. Jack.

Q. Jack?

A. That's my nickname.

Q. Okay. Mr. Jackson, did you get referred to a Stephen Stanko?

A. Yes; yes, I did.

Q. And that was by your good friend, Mr. Lee?
A. Yes.
Q. Tell us about when that occurred?
A. I believe it was on the 6th day of the day -- the month that it happened. I didn't write it down or anything.
Q. Was it back in 2005?
A. Yes, whenever it -- whenever it ---
Q. About the same time Steve was going through his work ---
A. Yes.
Q. --- with Mr. Stanko?
A. The same time.
Q. Okay, and tell me a -- tell us a little bit about that first meeting that you had with Mr. Stanko.
A. Mr. Lee set it up with him to call me, and I -- we got together, and he met at my house that evening, and then we talked about, you know, and -- we talked about it, and he told me how much it would cost and everything, and all about that.
Q. All right, and now, what kind -- did he ever hold himself out to be an attorney?
A. Oh, yes.
Q. All right. Mr. Stanko told you he was an attorney?
A. Yes.
Q. All right. Did -- how much did he tell you it was going to cost?

A. A Thousand Dollars to, you know, initial, you know, and then from there, maybe some more later down the road.
Q. Did you give him the Thousand Dollars?
A. No.
Q. How much did you give him?
A. Five Hundred.
Q. You gave him Five Hundred Dollars?
A. Yes.
Q. Did you give him that in cash or check?
A. Check.
Q. All right. What were you -- what were you seeking his help on?
A. A problem that I had of character discrimination of character, dec- -- how do you pronounce it?
Q. Defamation?
A. Defamation of character, yes.
Q. All right. Somebody had defamed your character?
A. Yes.
Q. All right, and you got a good reference on Mr. Stanko?
A. Yes.
Q. Did he appear to be able to help you?
A. Sounded good to me.
Q. All right. What did Mr. Stanko tell you about your situation?
A. When I mentioned his name, he said, well, you know,

we've been after this guy for several years. I said, okay, sound like a good man to me.

Q. All right. Well, who were you saying had defamed you?

A. Cooper Wellon.

Q. Cooper Wellon?

A. Yes.

Q. And he told you that he had heard that name in the past and they had been after Cooper Wellons?

A. Yes; yes.

Q. And you gave him Five Hundred Dollars of the One Thousand Dollars?

A. Yes.

Q. You may have said this, but did he give you any sort of receipt?

A. No; no, he didn't. To my knowledge, he did not.

Q. All right, and was there anything ever done with regards to a suit filed against Cooper Wellons?

A. No sir.

Q. Did you ever try to contact Mr. Stanko again about the -- how your case was progressing?

A. No. I was letting him handle -- whenever I gave him the money, that was -- that was the last I heard from him.

Q. And did you go with Mr. Lee for that meeting on the 7th when he met in the Food Lion parking lot with Defendant Stanko?

MR. DIGGS: Your Honor, he's kind of leading there and we would object to the form of the question.

THE COURT: All right. Rephrase the question, please.

Q. Did you ever see Stephen Stanko again?

A. To my knowledge, no.

Q. All right, and you ever try to call him again?

A. No.

Q. All right. Did you ever pay him the rest of his money?

A. No.

Q. All right.

MR. RICHARDSON: I have no further questions. If you'd answer any questions that Ms. Williams has.

THE COURT: Cross-examination.

MS. WILLIAMS: Yes sir. May it please the Court. Beg the Court's indulgence for just one moment.

THE COURT: Yes Ma'am.

CROSS-EXAMINATION BY MS. WILLIAMS:

Q. Mr. Jackson, ---

A. Yes.

Q. --- good morning.

A. Good morning.

Q. You met Mr. Stanko at your house, is that correct?

A. That's correct.

Q. Approximately when was that?

A. The day before the incident happened.

Q. So in early April of 2005?
A. Yes, somewhere around the 6th, 5th, 6th, somewhere there.
Q. And you gave him Five Hundred Dollars, is that right?
A. I gave him a check for Five Hundred Dollars.
Q. But you did not get a receipt, is that correct?
A. To my -- a bank statement, yes. From him?
Q. Yes sir.
A. No; no Ma'am.
Q. He didn't write you a receipt saying here is a Five Hundred Dollar receipt?
A. No Ma'am.
Q. Okay, and when you made the check out, did you make the check out to Mr. Stanko or did you make it out to some law firm, do you recall?
A. I think -- I'm almost positive I made it out to Stanko.
Q. So you made the check out to him?
A. Yes.
Q. Okay, and when you talked to him, did you have any means or did you retain any type of means by which way to contact him once you had given him this money?
A. To my knowledge, after I gave it to him, I let him -- I left it in his hands. He was so, you know, encouraging, that I left it up to him, you know, from there on.
Q. Do you or you don't know that you had a way to ever

call him to follow up?
A. To my knowledge, no.
Q. Okay.
A. I had some numbers previous that Mr. Lee gave me that whenever I tried to call him, I couldn't get him. I got, you know, somebody else that, you know, ---
Q. That's fine, but so you did have phone numbers, even though they weren't given to you by Mr. Stanko, they were given to you by Mr. Lee?
A. By Mr. Lee, yes.
Q. So that you could call him, is that right?
A. Yes.
Q. Okay. Now, let me see, you contacted him when you thought you needed a lawyer because you wanted to file a lawsuit, is that right?
A. Correct.
Q. And can you tell me why you wanted to file that lawsuit?
A. Defamation of character.
Q. And can you tell me about what the defamation was allegedly?
MR. RICHARDSON: Objection, Your Honor, just as to relevance.
MS. WILLIAMS: Your Honor, may we approach on that?
THE COURT: Yes Ma'am.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

Q. So, Mr. Jackson, can you tell me what it was that you were going to file that lawsuit about?

A. It was defamation of character.

Q. And can you tell me how your -- what basis?

A. What basis?

Q. Yes sir.

A. About what Mr. Wellon said to me at a party as I was leaving. He made it clear that he wanted the crowd to hear what he was saying.

MS. WILLIAMS: Your Honor, beg the Court's indulgence just one moment.

THE COURT: Yes Ma'am.

MS. WILLIAMS: Your Honor, that's all the questions I have.

Thank you, Mr. Jackson.

A. Thank you.

THE COURT: Redirect?

MR. RICHARDSON: No sir, Your Honor.

THE COURT: Do you wish the witness to be excused?

MR. RICHARDSON: Yes sir, please.

THE COURT: Any objection?

MS. WILLIAMS: No sir, we don't have any objection.

THE COURT: All right, sir, you are released from your subpoena and may go back to your regular activities, sir.

A. Thank you.

THE COURT: Your next witness, Solicitor.

MR. RICHARDSON: The State would call Don McAlister.

THE COURT: All right, Mr. McAlister, come on up front and be sworn, sir, please, all the way up here.

DON M. MCALISTER, being first duly sworn, states as follows:

DIRECT-EXAMINATION BY MR. RICHARDSON:

Q. Mr. McAlister, where is it that you work?

A. I own Don's Rock & Stone Masonry on 707, Murrells Inlet.

Q. And tell the jury a little bit about that business.

A. We have all types of stone for fireplaces, different building stones, landscaping.

Q. Do you -- and you sell that? What kind of people do you generally sell stones to?

A. Individuals, landscapers, builders.

Q. And did you have an occasion to meet with Stephen Stanko?

A. Yes sir, I did.

Q. About when was that, the first time you met with him?

A. I don't remember the dates. It's been a while back.

Q. Okay. Was it back in 2004?

A. Yes sir.

Q. All right, and tell the jury a little bit about the

first time or the first few times that you met with Defendant Stanko.

A. Stanko came by the yard and said he was building a house, and he wanted to look at some different materials for the house, for patios, and landscaping, and so forth.

Q. All right. What -- did he ever tell you what kind of business he was in?

A. He said he was a -- presented hisself as a lawyer. He handed a card, and that was -- he was in the market to building a new house.

Q. Did he tell you about where the house was being built?

A. No sir. He never gave me the location.

Q. All right. Let me pass to you what has been marked as State's Exhibit Number 78; it's a packet. Please look over those and tell me if you recognize that.

A. Yes sir, I do. Yes sir.

MR. DIGGS: No objection.

THE COURT: All right, that's 78?

MR. RICHARDSON: Yes sir, Number 78. The State would move it into evidence.

THE COURT: State's 78 is in evidence without objection.

(DOCUMENTS GROUPING (MCALISTER) ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 78.)

Q. Mr. McAlister, did Stephen Stanko ever -- did he ever decide on what sort of stones that he wanted for this house?

A. Yes sir.
Q. And on March 14th, 2004, speaking of this document, please tell the jury what that is.
A. This document is a purchase order to purchase the stone that he wanted, part of it.
Q. All right, and who did you work with on coming up with that order?
A. He worked with myself and my girlfriend.
Q. All right, and what's her name?
A. Teresa Rower.
Q. And y'all live?
A. We live at the location.
Q. All right, and whose name is on that as far as filling out the form?
A. Don. That's myself.
Q. All right, and Stephen Stanko at the top there. Approximately -- and I don't want you to go through all of the stones, but what was the total figure that you gave him as an estimate on March 14th of 2004?
A. This estimate on this document here is Five Thousand, One Hundred, Fifty Nine Dollars and thirty-eight cent.
Q. Okay, and did Mr. Stanko pay you Fifty One Hundred and Sixty some odd Dollars?
A. No sir. They was a special order with this here, and the whole total bill was Eleven Thousand, Five Hundred, Fifty

Five Dollars.

Q. Okay. Now, did you go ahead and special order some more stones for him?

A. We don't special order until the check clears.

Q. Okay, and did he give you a check for Eleven Thousand, Five Thousand and Fifty Five Dollars?

A. Yes, he did.

Q. And whose account is that a check on, please?

A. Laura H. Ling.

Q. All right, and is that -- whose signature? Is that Stanko's signature?

A. I have no idea. That's -- it's got her signature on it.

Q. At the bottom of the check?

A. Yes sir.

Q. Now, he brought this check to you on April 5th of 2005?

A. Yes sir.

Q. Did you try to take that check to the bank?

A. I took the check to the bank.

Q. On what day?

A. The next day.

Q. The 6th?

A. Yes sir.

Q. Was the check any good?

A. No sir.