

VOLUME FIVE OF SIX

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

Edward W. Miller, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

RECORD ON APPEAL

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VOLUME FIVE
PAGES 2001 – 2500

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1 evidence. Anything Mr. Gowdy has said is not evidence.
2 If there's anything that I say that you think you heard
3 different from the witness stand, then you take it the way
4 you heard it from the witness stand, not me. I'm just
5 trying to give what I perceived was some of the evidence
6 or lack thereof that was presented. Anything Mr. Gowdy
7 said is not evidence. You take the evidence the way you
8 heard it and you, of course, get to discuss anything you
9 want to back there. Again, I'm not presenting evidence.
10 I'm presenting a summation.

11 The State has got the burden of proof. They brought
12 the charges. They've got the burden of proof. And that
13 burden requires that they prove each element of the
14 offenses charged beyond a reasonable doubt. Reasonable
15 doubt being the threshold that they must reach prior to a
16 verdict being rendered.

17 A reasonable doubt is the kind of doubt that would
18 cause a reasonable person to hesitate to act, to pause
19 momentarily before he acts. The Judge will give you the
20 exact definition. But if you're getting ready to cross
21 the street, for example, and you feel in your mind that
22 it's safe to do it, but before you step out into the
23 street, you look and see if a car is coming, something
24 caused you to pause, to hesitate to act. That's an
25 example of reasonable doubt as to whether or not it's safe

1 to go across.

2 Mr. Gowdy -- it was interesting, because a case is
3 decided on evidence. That evidence can be either
4 documentary evidence or taped, a videotape. It can be
5 based upon testimony of the witnesses. Mr. Gowdy has told
6 you that he has a theory of the case. Ladies and
7 gentlemen, we don't convict somebody on a theory. You
8 reach a verdict only based upon the evidence. Theories
9 are fine. They make for great talk and great surmise and
10 conjecture, but you don't convict somebody on a theory.
11 You convict somebody only on evidence that surpasses the
12 threshold of reasonable doubt.

13 How do you determine if the Solicitor has met his
14 burden? How do you determine if the Solicitor has
15 exceeded this reasonable doubt? Well, first of all, you
16 weigh the evidence. You weigh the evidence and determine
17 whether or not it's credible evidence, whether or not it's
18 evidence that makes sense. You also, as Mr. Gowdy pointed
19 out to you, judge the credibility of the witnesses. You
20 judge whether or not what they saw, how they related it,
21 whether or not it's credible, whether it's believable.

22 And then, you also get to apply good common sense.
23 Because, basically, that is the greatest asset that you
24 have is your good common sense. A lot has been thrown at
25 you. You're going to have a lot thrown at you by Judge

1 Miller when he gives you charges on the law. But when it
2 comes down to it, common sense is one of the explain
3 factors.

4 You can also consider the lack of evidence to
5 determine reasonable doubt or the failure to bring
6 evidence. The Solicitor has the burden of proof, as he
7 said, and you would think he would want you to have all
8 the evidence that's relative to the case so that you, as
9 jurors, have all the information before you make a
10 decision. Before you make a decision, wouldn't you want
11 all the evidence?

12 I was kind of surprised and kind of wondering why
13 Kathy Phillips wasn't brought in to testify. She gave a
14 statement to Jason Yown. He told you what a portion of
15 that statement was. I wonder why the Solicitor didn't
16 bring her in and put her on the stand. You can consider
17 that as lack of evidence.

18 The other thing is I wonder why Terry Cochran had to
19 be brought in by the Defense. The Defense has no burden.
20 But he had relative information. Why did the Defense have
21 to bring in Terry Cochran? And what is the significance
22 of those two.

23 Well, think back to Jason Yown's testimony and think
24 back to what Terry told you yesterday. They are the two
25 people, the only two people, that saw Rhonda and Fred

1 together after they left the Cigarette's 4 Less. They're
2 the only two people. And their testimony goes directly to
3 kidnapping and criminal sexual conduct. And one of them
4 wasn't brought to you and the Defense had to bring one,
5 consider that.

6 I also wonder a little bit -- and it may not have --
7 it may not concern you at all. You take what you think is
8 important and judge it. But Mr. Gowdy has talked about 12
9 stab wounds over and over and over. And yet, his own
10 expert said that's not true. I was wondering where are
11 the pictures of these wounds? Why not let you see them?
12 You're the ones that have to make the decision. Why not
13 let you see them? 12 stab wounds, he says, but his expert
14 says no. Why not let you have the opportunity to make
15 your own decision?

16 At the beginning of the case, we talked about this
17 case was, actually, made up of four separate trials. Each
18 trial has to be decided on its own. Each trial stands
19 independently. And I submit each trial has a specific
20 order. The State charged Fredrick Evins with kidnapping,
21 the very first trial you have to consider. You must reach
22 a decision on kidnapping independently of the other
23 charges.

24 The second trial the Solicitor brought a charge on
25 was criminal sexual conduct. That is an independent

1 trial, an independent case. You must make a decision on
2 that. The third is a homicide. Mr. Gowdy brought a
3 charge of murder. That is an independent case to be
4 decided on its own. And the fourth is larceny, an
5 independent case in the timeline. It has to be decided on
6 separately. There are four separate trials. Four
7 separate decisions. Four separate verdicts.

8 Let's look at the very first case that Mr. Gowdy
9 brought, kidnapping. Kidnapping -- and Judge Miller will
10 read to you what the definition is. But the Solicitor
11 must prove beyond a reasonable doubt that Fredrick
12 unlawfully seized, confined, inveigled, decoyed,
13 kidnapped, abducted or carried away Rhonda Ward. That's
14 the legal definition of kidnapping. What's the evidence
15 in the kidnapping case? I submit there are four critical
16 pieces of evidence. The most critical being the one that
17 came in. Nobody knew what was on the tape. You look at
18 it. You look at this tape one time. You look at it 50
19 times. You look at it a hundred times and it doesn't
20 change. You've got an opportunity to review it. This is
21 the most important piece of evidence you can have.

22 The second piece of critical evidence in the
23 kidnapping case -- or kidnapping trial is the statement
24 Kathy Phillips gave to Jason Yown. The third was the
25 testimony of Terry Cochran. And then the testimony of

1 Daniel Bridwell. I submit there are four significant
2 pieces of evidence that you must consider in reaching a
3 decision on the very first trial that you have, the
4 kidnapping charge.

5 And let's look at what the significance of the tape
6 is. And, again, you interpret this tape the way you see
7 it, not the way I saw it. People see different things.
8 But what happened at the Cigarette's 4 Less store? Let's
9 look a little bit at the testimony.

10 I remember when Detective Steve Denton was
11 testifying, and he was testifying about he had gone back
12 and reviewed previous days tapes. And I think he said,
13 well, I went back and I looked at four previous tapes.
14 And in the first of those tapes, Ms. Ward drives up to the
15 Cigarette's 4 Less, gets out and goes into the store. And
16 then he said, in the second one of those tapes, the second
17 tape I looked at, she drove up to the store, she got out
18 -- when she drove up, she got out, and she went in the
19 store. The third tape, she drove up, she got out, and she
20 went into the store. And in the fourth tape he looked at,
21 she drove up, she got out, and she went into the store.

22 On February 13th, 2003, Ms. Ward drove up, turned off
23 her lights, and she sat there and did not even get out of
24 her car until Fredrick came into the parking lot. You'll
25 be able to see it on the tape again, and you saw it the

1 other day. You can see Fredrick walking up, and she's
2 waiting. She's sitting there. She didn't get out of her
3 car like Detective Denton said she did every other day.
4 She didn't. That's not a theory. That's a fact.

5 When Fredrick walks into the parking lot, she opens
6 her car door and starts to talk to him. You can look at
7 the sequence on the tape and you see it the way you see
8 it. But what I saw on the tape is there was a
9 conversation, Ms. Ward gets back into the car, Fredrick
10 walks around the front of the car, he gets in the
11 passenger side, the car starts up, and drives off.
12 Determine whether or not that looks like kidnapping to
13 you.

14 And even more than that, it's really puzzling and
15 took me several times to look at this tape before it,
16 actually, struck me, because I knew there was something
17 that was really bugging me about that tape. What it was,
18 if Ms. Ward was approached and she was threatened, if she
19 was fearful and if she was the victim of a kidnapping at
20 that point, when Fredrick Evins walks around the front of
21 the car, why not lock the doors and just lay on that horn?
22 Why not lock the doors and put your hand on that horn and
23 blow it until one of those cars you see passing on Drayton
24 stops or until Fredrick runs off? But it seems really
25 inconsistent that if a person felt that he or she was the

1 victim of a kidnapping and had the opportunity to thwart
2 it, why not do it? And, again, you put whatever weight
3 you feel is necessary on the opportunity. If there was an
4 abduction, the opportunity was there to either lock the
5 doors or blow the horn.

6 The next person to see Rhonda and Fred was Terry
7 Cochran. You remember Terry's testimony from yesterday.
8 He was driving down Gano Road, he passed and saw the white
9 car and thought two people might be fooling around and
10 wanted to look. He saw and could tell it was a black male
11 and white female. So he slowed down to see what was going
12 on. And he was driving. And when he got right to the
13 car, Ms. Ward turned her head 90 degrees and looked.
14 After that, he speeded back up and went on to work.

15 The thing that would confuse me about that was --
16 well, first of all, if Mr. Cochran had seen anything usual
17 or anything that he felt needed investigation, he would
18 have stopped. But the other thing that he didn't notice
19 was there was no fear on Ms. Ward's face. She was not
20 mouthing, help me, I'm in trouble. The importance of that
21 is on Gano Road, there was no kidnapping. There was no
22 indication of kidnapping at all from when Terry Cochran
23 goes by. She was sitting there. And he doesn't see
24 anything unusual. And she had the opportunity to ask for
25 help at that point.

1 The next person to see Fredrick and Rhonda was Kathy
2 Phillips. And she told Detective Yown when he testified
3 that she saw Fredrick and Rhonda walking into --

4 MR. GOWDY: Your Honor, that is not -- that is a
5 mischaracterization of evidence.

6 MR. BOGGS: That's what he testified to.

7 MR. GOWDY: That is not what he --

8 THE COURT: All right. Thank you.

9 Ladies and gentlemen, I'll just tell you, you are the
10 sole judges of the facts. And it has been told to you
11 that the arguments of counsel are not evidence.

12 All right. Go ahead, Mr. Boggs.

13 MR. BOGGS: That's correct.

14 MR. GOWDY: Your Honor, can we approach for a moment?
15 This is a pretty significant misrepresentation of --

16 THE COURT: Wait.

17 (WHEREUPON, a bench conference was held with the
18 attorneys.)

19 MR. GOWDY: What is in evidence is the objection to
20 what Kathy -- nothing she said came into evidence because
21 it is hearsay. He tried to put her statement in yesterday
22 and you didn't let it in. So why in the world is he going
23 to be allowed to now --

24 MR. BOGGS: He said -- when I asked him, he said they
25 were walking side by side. That's what I was getting

1 ready to say.

2 MR. GOWDY: Judge, that's hearsay.

3 MR. BOGGS: It's in evidence. He testified to it.

4 THE COURT: All right. I'm going to send the jury
5 out and we'll listen to it. Okay. We'll do it that way.

6 MR. BOGGS: No. I'm going to continue, but I want to
7 put it on --

8 THE COURT: Oh, I'll stop.

9 MR. BOGGS: No. That breaks everything up.

10 THE COURT: I know.

11 MR. GOWDY: That's an important thing, a very
12 important fact. And it was not testified to.

13 THE COURT: Well, we can stop and listen to --

14 MR. BOGGS: I'm going to go on, but I want to go on
15 the record saying that -- well, no.

16 THE COURT: Wait. Tam, I will give you every
17 opportunity if you want to stop and listen to the
18 testimony.

19 MR. BOGGS: No. I don't -- I didn't want to stop to
20 come up here.

21 THE COURT: I know.

22 MR. BOGGS: Thank you, Your Honor.

23 (WHEREUPON, the bench conference was concluded.)

24 MR. BOGGS: Again, you take to the testimony as you
25 heard it. You take it the way you heard it. But Jason

1 Yown, the kind of short blond-headed detective, the one
2 that took the statement from Kathy Phillips, go back in
3 your mind and remember his testimony. Because the
4 importance -- the testimony of Terry Cochran and whatever
5 Detective Yown relayed to you about Kathy Phillips, the
6 actions, not only on the videotape, but the actions that
7 were observed by the witnesses does not indicate
8 kidnapping at all. There is no kidnapping. It was
9 voluntary, getting into the car, the opportunity to not --
10 to not seek out help from Terry Cochran.

11 But the other thing that did puzzle me about the
12 whole kidnapping situation and the whole Gano Road, if I
13 were going to kidnap somebody and I had pulled up on Gano
14 Road beside the apple orchard and there had already been
15 cars going by, would I have parked my car and gotten out
16 and walked down to the woods? Or if I were kidnapping
17 somebody, would I have said, drive down the road?

18 You remember the testimony, the car was parked right
19 by the road going into the apple orchard. If I were
20 kidnapping somebody, would I have parked my car, got out,
21 cars going by, have to struggle with somebody 200 yards or
22 however far it was right down a little dirt road when all
23 I had to do was say, drive down to the woods? Think about
24 it. Do those actions sound like a kidnapping? No. It
25 wasn't a kidnapping.

1 And once you've reached your decision based upon the
2 evidence, once you make your determination on that, then
3 you move to the second case, the second trial in this
4 case, criminal sexual conduct. The Solicitor must prove
5 beyond a reasonable doubt that Mr. Evins committed a
6 sexual battery, not consensual sex, and that either force
7 was used or Ms. Ward was the victim of a kidnapping,
8 robbery, housebreaking, extortion -- there's several
9 criteria for that the Judge will give you.

10 Now, what kind of evidence do we have about the
11 criminal sexual conduct case? Again, it's the testimony
12 of Jason Yown relative to however you perceive it to what
13 he said about Kathy Phillips. Again, the testimony of
14 Terry Cochran. Everything that they -- up to this point
15 appears to be a consensual thing. What about the autopsy
16 report and the significance of the SLED, DNA expert?
17 Mr. Gowdy wants to make a big deal out of ten -- whatever
18 that was, quadrillion, whatever that figure was. Well, it
19 seems to me that the DNA expert only confirms what
20 Fredrick had already told them. That's all he did. So
21 ten quadrillion or whatever that figure was has no
22 significance here at all. I mean, he just confirmed what
23 they already knew.

24 But let's look at the autopsy -- what the autopsy
25 report says. You'll have the autopsy report in the jury

1 room, because I introduced that into evidence. Look at
2 the portion that deals with the genitalia area. No cuts,
3 bruises, contusions, or any indication of force. The
4 other thing is -- and I asked Mr. Barron, I said, now,
5 when you receive a packet from the Sheriff's Office, do
6 you physically examine the swabs? And he said, yes. No
7 blood. Where is any testimony of forced sex? Where is
8 any testimony at all in the State's case of forced sex?
9 That's a theory they've got because they brought the
10 charge, so they've got to have a theory when they don't
11 have the facts.

12 You don't convict somebody on theory. You make a
13 decision based on the facts. When you go back to the jury
14 room, ask yourself what fact has been presented, not all
15 these smoke screens, but what fact has been presented for
16 criminal sexual conduct? Their own expert, Dr. Wren, in
17 his report says, no abnormalities at all. Their own
18 expert, the DNA guy, says no blood.

19 So, ladies and gentlemen, she got in the car
20 voluntarily and went out and sat on Gano Road. Terry
21 Cochran said there was nothing going on. He thought they
22 were just out there. And then Mr. Williams even refers to
23 where they were as lovers lane. No one saw any indication
24 that anything was wrong. Now, what does that imply?
25 Consent. But even more than that, on top of that, the

1 State's own experts, try as they might, did not come in
2 here and present one piece of evidence. And that's what
3 you've got to ask yourself, is there any evidence of
4 criminal sexual conduct? And there's not. There's
5 evidence of sexual conduct, but nothing as far as a sexual
6 battery in this case.

7 Once you make your decision on the second case, the
8 criminal sexual case, you move to the third trial. The
9 third trial in this case is a homicide. And when this
10 charge was brought, it was brought -- when this trial
11 started, it started out as a murder trial based upon the
12 evidence and the testimony that's been presented in the
13 murder trial, the homicide trial. Judge Miller will
14 charge you on two types of homicide, not one, two types.
15 And that's based on the testimony and the evidence
16 presented. And those two types are manslaughter or
17 murder. Manslaughter is the unlawful taking of another --
18 or unlawful killing of another in sudden heat of passion
19 with sufficient legal provocation. Murder is the unlawful
20 killing of another with malice aforethought. Fredrick
21 Evins caused the death of Rhonda Ward. He did not kidnap
22 or commit criminal sexual conduct, but he did cause her
23 death. Unintentionally, but he did.

24 In the third trial, I submit what the evidence shows
25 is he did not commit murder. What do we know about the

1 circumstances leading up to February 13th of 2003? Well,
2 it's uncontroverted that Fred and Rhonda knew each other.
3 There have been no witnesses to come in for the State to
4 say otherwise, no coworkers, no friends. So it's
5 uncontroverted that Fred and Rhonda knew each other. It's
6 uncontroverted they had some sort of relationship. It's
7 uncontroverted that they would talk at the Hot Spot on
8 Henry Street and they developed a friendship. This Hot
9 Spot being only a couple blocks away from where Rhonda's
10 apartment was and where Fredrick's mother's apartment was.
11 It's uncontroverted that Fredrick moved to a trailer out
12 on Drayton Avenue. It's uncontroverted that Rhonda gets
13 transferred over to Cigarette's 4 Less from the Hot Spot
14 right up the street from where Fredrick had moved a month
15 earlier. It's uncontroverted that Fredrick visited Rhonda
16 at the Cigarette's 4 Less.

17 What do we know about the circumstances on February
18 13th, all of that that was preceding February 13th?
19 According to Ms. Ward's supervisor, Bill Southerland, who
20 I think was the very first witness that testified, Rhonda
21 sometimes opened Cigarette's 4 Less early in the morning,
22 sometimes it was dark. On this particular day, it was
23 dark. We know that Rhonda sometimes closed Cigarette's 4
24 Less at 11:00. Obviously, dark. We know that she did
25 this alone.

1 We also know from Bill Southerland that there was
2 money in the store. You know, for protection purposes,
3 there are a lot of women that carry mace. There are a lot
4 of women that carry a whistle, particularly, in a
5 circumstance like that where they're responsible for
6 money. There are a lot of women that carry stilettos.
7 Would it be unreasonable to think that maybe Rhonda wanted
8 something to protect her while she was alone in that store
9 with that money leaving at 11:00 at night, going in at
10 7:00 in the morning? I don't know. But common sense,
11 could she have had that knife in that big puffy jacket
12 that they described? I don't know. Use your common
13 experience. I encourage my three daughters to do whatever
14 they can to protect themselves. But, again, you use your
15 common experience. Is that possible?

16 What else do we know about February 13th? We know
17 from the tape that Rhonda and Fred voluntarily got into
18 the car. If there was any other way, there was a way to
19 prevent that. So we know that they voluntarily got into
20 the car. We know from Terry Cochran that they were out on
21 Gano Road, no apparent fear of force or concern on his
22 part. And no fear on the face of Rhonda, no plea for
23 help. So we know that they were there in some sort of
24 consensual-type situation. We know that they didn't drive
25 down the road. They didn't drive down into the woods. We

1 know that they parked on Gano Road. Kidnapping? No, they
2 were parked on the road. We know from the autopsy and DNA
3 expert that there was no forced sex.

4 What happened in that short period of time down in
5 the wood line in the apple orchard was tragic. We know
6 that Fredrick hurt Rhonda's feelings. We know that he
7 possibly humiliated her, and that wasn't right. We know
8 that an argument started. We know that a fight started.
9 We know that Rhonda got stabbed. And we know that she had
10 one fatal stab. And that was the result of not 12 stabs
11 and not 12 incisions, but one, according to the doctor.

12 Ladies and gentlemen, I'm not a crack addict. And
13 about all I know about them is what I've either read or
14 heard. So I don't really know how a crack addict
15 responds. But Fred acted like a crack addict. Did he do
16 the responsible thing? No. Did he do something almost as
17 disgusting by leaving? Yes. Should he have called 911?
18 Yes. Should he have called the police? Yes. That's what
19 you and I would do, but we're not addicts. We don't know.
20 I hope I never do. I don't know what kind of power it
21 has. All I know is what I've read and what I've heard.
22 But, apparently, it's powerful. And what Fredrick did is
23 the most irresponsible thing that you and I can think of,
24 but we don't know.

25 Because what Fredrick did is he got in Rhonda's car

1 and went straight to the place that they had originally
2 started to go, to Pop's. And he got crack any way he
3 could, any way he could. He sold the stereo to get crack.
4 At some point, he went to Walker Road and looked in
5 Rhonda's wallet and there was money in it. And the
6 interesting thing that Teresa Johnson -- remember her
7 testimony? When he came out with the money, she asked
8 him, why are you selling all this stuff if you had all
9 this money? And his answer was, I didn't know it was
10 there. It doesn't mitigate it, but it shows he was acting
11 just like a crack addict and, doing anything he could do
12 to get it. Is that the way you and I would operate? No.
13 Is it the way an alcoholic operates? Probably. You've
14 heard stories of somebody who is an alcoholic and the more
15 he drinks -- because he thinks he's doing that until you
16 have this crash. He's losing his job. But he's getting
17 drunk and thinking he's being successful. Maybe an addict
18 is the same way. I don't know.

19 There are four separate cases. Not kidnapping based
20 on the evidence, not criminal sexual conduct, based on the
21 evidence. The murder case is now not a murder case, it's
22 a homicide case, on which, based on the evidence, the
23 Judge is going to charge you it's either murder or
24 manslaughter.

25 And there is a fourth case. The fourth case is

1 larceny. And in the larceny case, the Solicitor has got
2 to prove beyond a reasonable doubt that Fred took Rhonda's
3 car from her. And he's done that. He's done that. He's
4 met the burden of proof in that case. And what Fred was
5 charged with under the larceny indictment, there is direct
6 testimony and there is direct evidence and this isn't a
7 theory, so he's guilty of that. The only reasonable
8 verdict in the larceny case is guilty. Because it isn't
9 based on conjecture. It isn't based on surmise. It's not
10 based on smoke screens. So the only thing you can do in
11 the larceny case is find him guilty.

12 Fredrick Evins waived his right in front of Jason
13 Yown and in front of Steve Denton. He waived his right to
14 remain silent when he was questioned. He waved his right
15 to an attorney, never asking for one. He waved his right
16 and talked to the police. He signed a consent form to
17 give hair samples, saliva, blood samples.

18 Now, his statement, it wasn't 100 percent true.
19 There's no doubt about that. His statement wasn't 100
20 percent true. But what I heard the police say -- and,
21 again, you take it the way you heard it. It seemed to me
22 that what the police wanted to know from Fred was, did you
23 stab Rhonda. And what was his answer to that? Yes. It
24 seemed to me that the police wanted to know, did you have
25 sex with Rhonda? And what was his answer to that? Yes.

1 Everything else in this statement, some of it's true and
2 some of it is not true.

3 But when you look at the statement and you take that
4 in the context of him totally giving up any challenge to
5 that by giving up his right to remain silent, by not
6 asking for a lawyer, by giving up all his Constitutional
7 rights and voluntarily letting samples be taken and you
8 get right down to it, he answered the questions that they
9 wanted to know. He told them, I stabbed her. He told
10 them, I had sex.

11 Ladies and gentlemen, I submit that attacking that
12 statement is a smoke screen. Because all the State has on
13 the first three trials is a theory. So if you don't have
14 the facts to support the theory on kidnapping, you don't
15 have the facts to support the theory on criminal sexual
16 conduct, and you don't have the facts to support the
17 theory on murder, what do you do? You attack from the
18 middle. You attack from a different angle. What you try
19 to do is wave this statement in front of the jury and say,
20 oh, Fredrick lied about this, he lied about that. The two
21 most critical things that he told the police is all they
22 wanted to know and he told them that.

23 It doesn't matter whether he called from the
24 Cigarette's 4 Less or called from Applebee's. What does
25 it really matter? The point is he made a phone call. It

1 doesn't matter whether he walked from Applebee's or he
2 walked from his trailer a block down -- or two or three
3 blocks down the road. What does it matter? The point is
4 he was there. It doesn't matter if he walked from
5 Milliken. He was there. That's what he told them. So
6 all this smoke screen, oh, he lied about walking from
7 Applebee's. He lied about calling from Applebee's. It
8 doesn't matter. He did it. That's what he told them, he
9 did. So don't fall for the smoke screens the State has
10 not proved. On the critical issues, his statement is
11 true.

12 I'm not going to stand up here and go over every
13 piece of evidence, you've seen it and you have it in front
14 of you. On February 13th of 2003, 21 months ago, a
15 tragedy occurred, a tragedy that's been very, very
16 difficult on the Ward family and very difficult on the
17 Evins family. And it's time for closure. But that
18 closure has got to be based on truth and on justice. That
19 closure would be meaningless if it was based on
20 speculation, gossip, outside interference, or in this
21 case, if it was based on theory. That closure can only
22 have meaning if it's based on the truth and justice. It
23 goes with Fredrick Evins is not guilty of kidnapping.

24 Look at the tape, use your common sense. Review in
25 your mind the testimony of the people that, actually, saw

1 it. Think about the location of the car, not driving down
2 the road. If you're going to be kidnapped, why not drive?
3 If you're going to be a victim, lock the doors and honk
4 the horn. Fredrick Evins in the first trial you will
5 consider is not guilty of kidnapping.

6 Fredrick Evins is not guilty in the second trial, the
7 criminal sexual conduct. The State's own witnesses really
8 proved that. You need to consider what Terry Cochran
9 said. You need to consider whatever Jason Yown said that
10 Kathy Phillips said. But what you really need to consider
11 is what the State's witness said, and that's there's no
12 evidence of criminal sexual conduct.

13 Fredrick Evins is guilty, he's guilty of voluntary
14 manslaughter. There's no testimony at all of anything
15 other than that. In fact, the only testimony is that for
16 whatever reason, there was a problem. Heat of passion.
17 The heat of passion does not mean, as the Solicitor tried
18 to imply, a romantic-type thing. This is two people
19 getting angry, two people's emotions welling up and one of
20 them dies as a result.

21 Criminal intent is a necessary element and it is a
22 mandatory element in any homicide. And the State has not
23 proven any criminal intent in the homicide case. To the
24 contrary, they've shown up until the time that Fredrick
25 and Rhonda got to the woods, everything before that

1 indicates a total lack of criminal intent. But Fredrick
2 is guilty of manslaughter. Fredrick is also guilty of
3 larceny in the fourth case, the fourth trial. The State
4 proved that one beyond a reasonable doubt. They did do
5 that. That's not based on any theory or speculation.

6 Verdict means to speak the truth. That's the literal
7 definition of it, and that's all we want. When you walk
8 out of this courtroom, the only verdicts that you can
9 carry with you that has been proven is not guilty of
10 kidnapping, not guilty of criminal sexual conduct, guilty
11 of manslaughter, and guilty of larceny. Those are true.
12 Make sure that the closure, that the end to the end is one
13 that speaks the truth.

14 Thank you.

15 CHARGE ON THE LAW

16 THE COURT: Madam Forelady, and, ladies and gentlemen
17 of the jury, during this trial, you and I have certain
18 duties to perform. As the trial judge, it is my
19 responsibility to preside over the trial of the case and
20 to rule on the admissibility of the evidence offered
21 during the trial. It is also my duty to charge you the
22 law applicable to the case. And it is your duty, as
23 jurors, to accept and apply the law as I now state it to
24 you. If you think you have any idea as to what the law is
25 or what the law ought to be and it does not agree with

1 what I tell you the law is, you must forget that idea.
2 Because you are sworn to accept the law and apply the law
3 as I now state it to you.

4 Now, in every case tried in this court before a jury,
5 the jury is the sole and exclusive judge of the facts.
6 And as such, you are to consider only the evidence before
7 you, that is the testimony and any exhibits which have
8 been made a part of the record. And, as I've stated, a
9 trial judge cannot comment on or make any statement about
10 the facts in a case.

11 Now, I instruct you that the fact that the Defendant
12 was arrested, charged, and indicted in this case is not
13 evidence of guilt, nor does it create any presumption or
14 inference of guilt. These documents are simply the formal
15 written instruments which contain the charge made against
16 a Defendant. They serve as the formal documents by which
17 the case is processed or brought into court.

18 Now, there are three indictments with four charges in
19 this case, and they are murder, criminal sexual conduct in
20 the first degree, kidnapping, and grand larceny. Each
21 charge contains a separate and distinct offense. And you
22 must decide each charge separately on the evidence and law
23 applicable to it uninfluenced by your decision as to any
24 other indictment.

25 Now, the Defendant may be convicted or acquitted on

1 any or all of the offenses charged. And you will be asked
2 to write a separate verdict for each of the charges.
3 Necessarily, you must determine the credibility or
4 believability of the witnesses who have testified in this
5 case. It becomes your duty as jurors to evaluate the
6 evidence and determine which evidence convinces you it is
7 true.

8 In determining the believability of the witnesses,
9 you may believe one witness over several or several over
10 one. You may believe a part of the testimony of a witness
11 and reject the remaining part. You may believe the
12 testimony of a witness in its entirety or reject that same
13 testimony in its entirety. You may consider whether the
14 witness has an interest in the result of the trial,
15 whether the witness is prejudiced towards either the State
16 or the Defendant, the opportunity for that witness to have
17 seen the matters and things about which that witness has
18 testified, and the way the witness acts on the witness
19 stand or what we call the witness's demeanor.

20 Now, the rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or conclusions. An
22 exception to this rule exists for witnesses we call expert
23 witnesses. A witness who by education and experience has
24 become expert in some art, science, or profession may give
25 an opinion and may also give the reasons for that opinion.

1 You should consider any expert opinion given by a witness
2 and like any other evidence give it the weight that you
3 think it deserves. If you decide that an expert witness's
4 opinion is not based on sufficient education and
5 experience, or if you decide that the reasons given in
6 support of the opinion are not sound or that the opinion
7 is outweighed by other evidence, you may disregard that
8 opinion entirely.

9 An expert witness's testimony is to be given no
10 greater weight than that of other witnesses simply because
11 the witness has been qualified as an expert. You do not
12 have to accept an expert's opinion, even though it is
13 uncontradicted.

14 Now, some of the witnesses who have testified in this
15 case have past criminal records. And I would tell you
16 that a person who has a past criminal record is competent
17 to testify during a trial. A past record does not effect
18 the ability of that witness to testify. The past record
19 may only be considered by you, if at all, in determining
20 the witness's believability. Remember, you are the sole
21 judges of the facts in the case and the believability and
22 credibility of any and all of the witnesses.

23 You have further heard evidence that the Defendant
24 was convicted of a crime other than the one for -- or the
25 ones for which he is now on trial. This evidence may be

1 considered by you, if you conclude it is true, only in
2 deciding whether the Defendant's testimony is believable
3 and for no other purpose. You must not consider the
4 Defendant's prior record as any evidence of the
5 Defendant's guilt on the charge we are trying -- or
6 charges we are trying today.

7 Now, the Defendant has pled not guilty to this
8 indictment. And that plea puts the burden on the State to
9 prove the Defendant guilty. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove themselves innocent. I charge you that
12 it is a cardinal and an important rule of the law that the
13 Defendant in a criminal trial, no matter what the
14 seriousness of the charge may be, will always be presumed
15 innocent of the crime for which the indictment or
16 indictments are issued, unless guilt has been proven by
17 evidence satisfying you of guilt beyond a reasonable
18 doubt.

19 Now, the presumption of innocence is not a mere legal
20 theory. It is not just a legal phrase. It is a
21 substantial right to which every Defendant is entitled
22 unless you, the jury, are satisfied from the evidence of
23 the Defendant's guilt beyond a reasonable doubt.

24 Now, a reasonable doubt is the kind of doubt which
25 would cause a reasonable person to hesitate to act.

1 Reasonable doubt may arise from the evidence which is in
2 the case or from the lack or absence of evidence in the
3 case. And you, the jury, must determine whether or not
4 reasonable doubt exists as to the guilt of this Defendant.

5 The State has the burden of proving each and every
6 element of a crime beyond a reasonable doubt. And any
7 reasonable doubt that you may have in your deliberations
8 should be resolved in favor of the Defendant. If you have
9 a reasonable doubt as to the guilt of the Defendant, he is
10 entitled to that doubt and would be entitled to an
11 acquittal.

12 Now, the Defendant is charged with murder. And the
13 State must prove beyond a reasonable doubt that the
14 Defendant killed another person with malice aforethought.
15 Malice is hatred, ill will, or hostility towards another
16 person. It is the intentional doing of a wrongful act
17 without just cause or excuse and with an intent to inflict
18 an injury or under circumstances that the law will infer
19 an evil intent. Malice aforethought does not require that
20 malice exists for any particular length of time before the
21 act is committed, but malice must exist in the mind of the
22 Defendant just before and at the time the act is
23 committed. Therefore, there must be a combination of
24 previous evil intent and the act.

25 Malice aforethought may be expressed or inferred.

1 And these terms express and inferred do not mean different
2 kinds of malice, but merely the manner in which malice may
3 be shown to exist, that is either by direct evidence or by
4 inference from the facts and circumstances which are
5 proved. Expressed malice is shown when a person speaks
6 words which express hatred or ill will for another or when
7 the person prepared beforehand to do the act which was
8 later accomplished. For example, lying in wait for a
9 person or any other acts of preparation going to show that
10 the deed was within the Defendant's mind would be
11 expressed malice. Malice may also be inferred from
12 conduct showing a total disregard for human life.
13 Inferred malice may also arise when the deed is done with
14 a deadly weapon.

15 Now, a deadly weapon is any article, instrument, or
16 substance which is likely to cause death or great bodily
17 harm. Whether an instrument has been used as a deadly
18 weapon depends on the facts and circumstances of each
19 case. The following are examples of instruments which may
20 be deadly weapons: A pistol, a shotgun, a rifle, a dirk,
21 a dagger, a knife, a slingshot, metal knuckles, a razor,
22 gasoline, a fire bomb or Molotov cocktail. And a gun may
23 be a deadly weapon even if it is not operating.

24 Now, if you find that the State has failed to prove
25 beyond a reasonable doubt that the Defendant committed

1 murder, you may consider whether the State has proved
2 beyond a reasonable doubt that the Defendant committed
3 voluntary manslaughter.

4 To prove voluntary manslaughter, the State must prove
5 beyond a reasonable doubt that the Defendant took the life
6 of another in the sudden heat of passion based on
7 sufficient legal provocation. Both heat of passion and
8 sufficient legal provocation must be present at the time
9 of the killing to constitute voluntary manslaughter.

10 Sudden heat of passion may for a time effect a
11 person's self-control and temporarily disturb a person's
12 reason. The sudden heat of passion must be the type that
13 would make an ordinary person unable to coolly reflect on
14 his actions and would produce an uncontrollable urge or
15 impulse to do violence.

16 Sufficient legal provocation must be the type that
17 would make a person of ordinary reason and caution become
18 enraged and to lose control temporarily. The provocation
19 needed for voluntary manslaughter must come from some act
20 of or related to the victim. Words alone, however vulgar
21 or insulting, are not enough to be legal provocation.
22 Where death is caused by the use of a deadly weapon, the
23 words must be accompanied by some overt act or threatening
24 act, which could have produced the heat of passion.

25 Now, the exercise of a legal right no matter how

1 offensive is never sufficient legal provocation for
2 voluntary manslaughter. I further tell you that if the
3 heat of passion had cooled or if there was enough time
4 between the provocation, if any, and the killing for the
5 heat of passion -- excuse me, for the passion of a
6 reasonable person to cool, the killing would not be
7 voluntary manslaughter.

8 And in deciding whether a reasonable person would
9 have had enough time to cool off, you should consider all
10 of the circumstances surrounding the killing. You may
11 consider the nature of the provocation, if any, the
12 Defendant's mental and physical state, and the
13 circumstances and relationships between the parties.

14 The Defendant is also charged with kidnapping. The
15 State must prove beyond a reasonable doubt that the
16 Defendant knowingly and unlawfully seized, confined,
17 inveigled, decoyed, kidnapped, abducted, or carried away
18 another person without authority of law. I will define
19 those terms for you.

20 To do something unlawfully is to do it willfully
21 against the law. Knowingly means with knowledge, that is
22 consciously and not accidentally. Seize means to take
23 hold of suddenly or forcibly. Confine means to limit,
24 restrict, or enclose within bounds, imprison, shut, or
25 keep in. Inveigle means to lure, entice, or lead astray

1 by false representations, promises, or other deceitful
2 means. Decoy means to lure by or as if by decoy. And a
3 decoy is something to entice a person into a trap. Kidnap
4 is to remove a person against their will by unlawful force
5 or by fraud. Abduct means to carry off secretly or by
6 force for an illegal purpose. Carry away means to remove.

7 Now, I'll tell you, the State does not have to prove
8 that the Defendant did all of these things. Instead, if
9 you find beyond a reasonable doubt that the Defendant did
10 any of these things, you may find the Defendant guilty of
11 kidnapping. A further definition is something done
12 without authority of law is something that the law does
13 not sanction, permit, allow, condone or provide
14 justification for. And the kidnapping does not have to be
15 for any personal or monetary gain or for any illegal
16 purpose, but may be for any reason whatsoever.

17 Now, first degree criminal sexual conduct is another
18 charge. The first element which the State must prove
19 beyond a reasonable doubt is that the Defendant engaged in
20 a sexual battery with the victim. A sexual battery is
21 sexual intercourse, cunnilingus, fellatio, anal
22 intercourse, or any intrusion, however slight, of any part
23 of a person's body or any object into the genital or anal
24 openings of another person's body, except when the
25 intrusion is accomplished for medically recognized

1 treatment or diagnostic purposes.

2 Now, if you find that the State has not shown beyond
3 a reasonable doubt that a sexual battery occurred, you
4 would stop deliberating and your verdict would have to be
5 not guilty. If you find that a sexual battery did occur,
6 you must then decide whether the State has proven beyond a
7 reasonable doubt that the Defendant used aggravated force
8 to accomplish the sexual battery.

9 Aggravated force means the use of physical force or
10 physical violence of a high and aggravated nature to
11 overcome the victim. And this includes the threat of
12 using a deadly weapon or the victim submitted to sexual
13 battery while the victim was also the victim of forcible
14 confinement, kidnapping, robbery, extortion, burglary, or
15 any other similar act or offense.

16 Finally, the Defendant is charged with grand larceny.
17 And the State must prove beyond a reasonable doubt that
18 the Defendant took and carried away the property of
19 another against the will or without the consent of that
20 other person. The slightest removal of the property or
21 the complete possession of the property, even for an
22 instant, by the Defendant is enough to show a taking and
23 carrying away of the property. The State must also prove
24 beyond a reasonable doubt that the Defendant intended to
25 permanently deprive the owner of that property. And,

1 finally, the State must prove beyond a reasonable doubt
2 that the value of the thing taken was \$1,000 or more.

3 Now, there are two types of evidence which are
4 generally presented during a trial, direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a fact,
7 such as an eyewitness. It is evidence which immediately
8 establishes the explain fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It
11 is evidence which immediately establishes collateral facts
12 from which the explain fact may be inferred. And
13 circumstantial evidence is based on inference and not on
14 personal knowledge or observation. The law makes
15 absolutely no distinction between the weight or value to
16 be given to either direct or circumstantial evidence, nor
17 is a greater degree of certainty required of
18 circumstantial evidence than of direct evidence. You
19 should weigh all of the evidence in this case. And after
20 weighing all of the evidence, if you are not convinced of
21 the guilt of the Defendant beyond a reasonable doubt on
22 any of -- each or any of the charges, you must find him
23 not guilty.

24 Now, ladies and gentlemen, as to each charge, there
25 are two possible verdicts. There is no significance

1 whatsoever in the manner in which I state them, one has to
2 be stated first, and those are guilty or not guilty. I
3 would tell you, ladies and gentlemen, that your verdict
4 must be unanimous, all 12 of you must agree. And you
5 should consider the evidence in this case calmly and with
6 measured reason, without passion, prejudice, bias, or
7 emotion.

8 Now, I have prepared -- we have prepared three
9 separate verdict forms which relate to the three
10 indictments in this case. The first one on top is the
11 murder. And if -- as I've said, the first choice on this
12 indictment -- on this verdict form is on the murder
13 charge, guilty or not guilty. If you find him guilty,
14 you're done with that form. If you find him not guilty on
15 murder, then you must consider the involuntary
16 manslaughter. The next one, the next verdict form
17 contains the charges contained in one of the indictments,
18 which are kidnapping and criminal sexual conduct. And the
19 verdicts are the same for each of those -- the choices are
20 the same for each of those, not the verdicts, the choices,
21 and that is guilty or not guilty. And, finally, a
22 separate verdict form for the grand larceny, and that is
23 guilty or not guilty.

24 Madam Forelady, when you all have reached a verdict,
25 if you will sign your name at the bottom -- check the

1 appropriate verdict, sign your name and date this verdict
2 form, and then signal to the bailiffs. And we will
3 receive you back into the courtroom for your verdicts.

4 I will tell you, I'm going to excuse you at this time
5 to go back to your jury room. I am going to ask you one
6 more time not to begin your deliberations. I have to make
7 sure that I have not omitted or misstated any of my
8 charges on the law to you. And when I -- I tell you, when
9 you receive these verdict forms and all the evidence, then
10 you may begin your deliberations.

11 Now, the other thing before you all leave, I want to
12 ask Ms. Means and Mr. Gwinn -- the law only allows 12
13 people to deliberate in this case. So we are going to ask
14 you all to step into a separate room while the jury
15 deliberates. And, unfortunately, I know you've sat
16 through the whole thing and everyone greatly appreciates
17 that, but the law only allows 12 to make the decision.

18 So, at this time, I'll excuse y'all back into your
19 jury room.

20 Thank you.

21 (WHEREUPON, the jury was excused from open court at
22 approximately 11:27 a.m.)

23 THE COURT: Any exceptions to the charge?

24 MR. GOWDY: No exceptions and no objections from the
25 State, Your Honor.

1 THE COURT: All right.

2 MR. BOGGS: Your Honor, on the kidnapping and sexual
3 conduct one, I realize those were both on there. And I
4 know you told them at the beginning that they've got to
5 treat each one separately. I feel like they need an
6 additional charge that even though you've got two counts
7 on that particular indictment -- we just -- if you feel
8 like you sufficiently covered it.

9 THE COURT: I feel like it was sufficiently covered.

10 MR. BOGGS: That would be the only objection.

11 THE COURT: I'll get the attorneys to collect all the
12 evidence, put it all together with the court reporter.
13 And make sure we've got everything to send back to them.

14 (Pause.)

15 MR. BARNETTE: Do you want us to put on the record
16 that we checked the exhibits?

17 THE COURT: Yes, sir.

18 MR. BARNETTE: Your Honor, the State has looked
19 through them and that's the ones that's been entered. I
20 think Mr. Boggs also had an opportunity.

21 MR. BOGGS: That's right.

22 THE COURT: Okay. Those are the verdict forms.

23 And I'll submit this as a Court's exhibit that the
24 jury just sent, it says, "Can we have the notepads?" So I
25 said, "Yes."

1 (WHEREUPON, Court's Exhibit Nos. 11 and 12 were
2 marked for identification and admitted into
3 evidence.)

4 THE COURT: I have asked Mr. Scruggs and one other
5 bailiff to operate the equipment in there. They've been
6 instructed not to talk to the jury. I've told them they
7 can watch it as long and as often as they want to. They
8 can say anything they want. Those bailiffs are sworn to
9 silence and not to disclose their discussions back there.

10 Any objections?

11 MR. BOGGS: No.

12 MR. GOWDY: No, sir.

13 THE COURT: That way anything -- I told them if
14 anything happened to the tape while they're watching, then
15 I could punish the bailiffs and not the jurors.

16 (Brief recess.)

17 THE COURT: Yes, sir, Mr. Boggs.

18 MR. BOGGS: I want to move for a mistrial, Your
19 Honor.

20 THE COURT: Okay.

21 MR. BOGGS: The basis of it is during my closing
22 argument, the Solicitor objected to my recitation of the
23 facts asserting to the Court that what I was making an
24 argument about was not in evidence. The tape shows that
25 it is in evidence. The hazard with that, first of all, is

1 that it prevented me from arguing about any evidence
2 relative to what I consider a witness very critical in the
3 Defense's case, that being the statement of Kathy Phillips
4 that she made to Jason Yown and testified that she did.

5 The second, and maybe even more significance, is it
6 effects whatever credibility that a defense attorney or
7 any attorney may have. Making an objection like that
8 would shadow the credibility that particular attorney
9 would have to have, a break of that type.

10 In addition, Your Honor, the Solicitor, as he was
11 approaching the bench was saying that that was a total
12 mischaracterization of the facts or misstatement of the
13 fact or something along those lines. The jury heard that.
14 And inasmuch I could not continue to make that argument,
15 the credibility issue by him saying that that was a
16 misstatement of the facts even exacerbated that particular
17 issue.

18 MR. GOWDY: Your Honor, if it please the Court.

19 Yesterday, the Defense tried to introduce the
20 statement of Kathy Phillips as an exhibit, despite the
21 fact that she has not testified. This morning, Mr. Boggs,
22 before the jury, said that the testimony is that Fredrick
23 Evins and Rhonda Ward were seen by Kathy Phillips walking
24 into a field.

25 As a point of fact, Kathy Phillips never identified

1 Fredrick Evins as the person. In fact, she picked
2 somebody else out. To stand in front of a jury and say
3 that a witness who has not testified saw this Defendant
4 and Rhonda Ward walking into a field, when the reality is
5 she picked somebody totally separate, is exactly why we
6 have cross-examination. If she had been called as a
7 witness to testify, that would have been the first thing
8 we pointed out, that you didn't even see the right guy.
9 But that's not what he wanted to do. He wanted to put in
10 her statement and then he wanted to summarize her
11 statement today. What he said was she saw Fredrick Evins
12 and Rhonda Ward walking into a field, and that is a
13 mischaracterization of the evidence.

14 THE COURT: Well, I am going to -- I'll just say we
15 had a bench conference, which I think was recorded on that
16 issue. I did offer the opportunity to counsel to take a
17 break and have that evidence played. And I understand the
18 strategical reason not to do that, but that opportunity
19 was there. I am -- well, I'm going to deny the motion for
20 a mistrial.

21 And if there's anything else you want to put on the
22 record about it, I'll be happy to hear it.

23 MR. BOGGS: No, sir.

24 THE COURT: All right. I would like to congratulate
25 both the Prosecution team and the Defense team on an

1 outstanding presentation of their cases. I thought it was
2 excellently presented and very professionally handled by
3 everybody.

4 We'll just be at ease. I'm going to do a little bit
5 of research.

6 MR. GOWDY: Thank you.

7 Mr. Boggs and I may not agree on anything else, but
8 we both appreciate the way you've conducted the trial from
9 last Monday on. I think we will agree on that.

10 THE COURT: All right. Thank you.

11 I appreciate it. We're not done yet.

12 (WHEREUPON, the proceedings were recessed at
13 approximately 11:57 a.m.)

14 THE COURT: I have been informed that the jury has a
15 verdict.

16 I will just say this, I have no idea what the verdict
17 is going to be, but I expect everyone in the courtroom to
18 behave with whatever the verdict is. I don't want any
19 emotional outbursts or improper or undignified behavior in
20 the courtroom.

21 Bring the jury in.

22 (WHEREUPON, the jury came into open court at
23 approximately 12:53 p.m.)

24 THE COURT: Madam Forelady, I understand you've
25 reached a verdict; is that correct?

1 FOREPERSON FRAWLEY: We have.

2 THE COURT: Would you hand the forms to the bailiff
3 for me, please, ma'am.

4 Madam Clerk, please publish those.

5 VERDICT

6 THE CLERK: In General Sessions Court, case number
7 2003-GS-42-2532, the State of South Carolina v. Fredrick
8 Antonio Evins, as to the charge of murder, we, the jury,
9 find the Defendant guilty. This is signed by the
10 foreperson and dated today's date.

11 Case number 2003-GS-42-2533, as to the charge of
12 kidnapping, we find the Defendant guilty.

13 As to the charge of criminal sexual conduct, we find
14 the Defendant guilty. This is signed by the foreperson
15 and dated today's date.

16 Case number 2003-GS-42-2534, as to the charge of
17 grand larceny, we find the Defendant guilty. This is also
18 signed by the foreperson and dated today's date.

19 Ladies and gentlemen of the jury, if these are your
20 verdicts and are still your verdicts, please raise your
21 right hand.

22 (All jurors raised their hand.)

23 THE CLERK: So say you all.

24 THE COURT: Thank you very much.

25 Now, ladies and gentlemen, I appreciate the hard work

1 that you've engaged in up to this point. You are not
2 finished. We are not finished. The law requires that we
3 have what is commonly known as a 24-hour cooling off
4 period or waiting period before we begin the second phase
5 of this trial.

6 So, at this time, ladies and gentlemen, I am going to
7 excuse you. We will reconvene court tomorrow afternoon at
8 1:00.

9 So again, ladies and gentlemen, thank you for your
10 service up to this point in this very serious proceeding.
11 And we will begin tomorrow at 1:00 p.m.

12 Thank you.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 12:56 p.m.)

15 MOTIONS

16 THE COURT: At this time, anything from any of the
17 attorneys?

18 MR. GOWDY: Not from the State, Your Honor.

19 MR. BOGGS: Your Honor, we'd move for a new trial on
20 the kidnapping and criminal sexual conduct. Specifically,
21 the only evidence that the jury could reach a decision on
22 would have been based on speculation, conjecture, and
23 surmise. We move for a new trial because there was
24 insufficient evidence on those particular charges.

25 THE COURT: Thank you very much. And --

1 MR. BOGGS: And, of course, we'd make it on the
2 murder and the larceny, but specifically on those two.

3 THE COURT: Thank you.

4 I am going to deny your motions.

5 Can y'all be ready to go at 1:00 tomorrow?

6 MR. GOWDY: Yes, sir, Your Honor.

7 MS. QUIMBY: Yes, sir, Your Honor.

8 I think that we -- I had some scheduling questions.
9 I think that I've talked to Mr. Barnette about those.
10 There are a couple of people that will be coming in from
11 out of town. And I was just trying to figure out when the
12 best time to tell them would be. I think probably late
13 Wednesday, early Thursday is what we've --

14 MR. BARNETTE: I think we need to talk to Your Honor
15 about some various issues.

16 THE COURT: I'll tell you what, we'll have a
17 scheduling conference in my office right now. If y'all
18 want to retire to my office, we'll talk a little bit about
19 this.

20 Is there anything else we need to put on the record
21 at this time?

22 MS. QUIMBY: No, Your Honor.

23 THE COURT: All right. I'm sorry, just one second.

24 (Pause.)

25 THE COURT: I have a note, "Are we to discuss the

1 trial?" And that's signed by the Forelady.

2 Do you all want me to bring them back out here and
3 tell them no?

4 MR. BOGGS: You can just write it on the note and
5 sign your name.

6 THE COURT: Is that all right with the State?

7 MR. GOWDY: Yes, sir, either way, whatever is more
8 convenient for the Court.

9 THE COURT: Mr. Scruggs, if you'll bring that back
10 after you've given it to them so we can enter it in the
11 record.

12 All right. Well, let's retire to chambers and
13 discuss the scheduling.

14 MR. BOGGS: Do you want us to give them a minute for
15 them to get out of the way.

16 THE COURT: Well, let's check.

17 Has the jury gone?

18 THE BAILIFF: We've got them in the room.

19 THE COURT: Well, just hold them in there while we go
20 by.

21 (WHEREUPON, Court's Exhibit No. 13 was marked for
22 identification and admitted into evidence.)

23 (WHEREUPON, a break was taken.)

24 THE COURT: Neddie Richards, Juror No. 306, is on
25 unemployment and he's been very concerned that he has not

1 been able to go apply for a job, which is a requirement.
2 And Agent Hendricks has contacted the Employment Security
3 Commission and they have faxed their policies over here.

4 And I don't see that he's cut off, although, I see
5 that his unemployment will be reduced by the per diem he
6 receives for jury service. So it's kind of a tempest in a
7 teapot. It's an issue concerning a juror that I wanted
8 y'all to be aware of and tell you about. I don't think it
9 disqualifies him in any way and, hopefully, this will ease
10 his mind about it.

11 MR. BOGGS: Okay.

12 THE COURT: He's apparently in rough financial shape.
13 Okay. I'm sorry to get you down here.

14 MR. BARNETTE: No problem. I just didn't know what
15 was going on.

16 THE COURT: Well, thank you.

17 I'll see y'all in the morning.

18 (WHEREUPON, the proceedings were concluded at
19 approximately 1:36 p.m., to be reconvened on
20 Tuesday, November 16, 2004.)

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25

1 THE COURT: I think what I'd like to do is get the
2 State to enumerate what it is that they would -- what
3 character evidence they intend to introduce.

4 Can you do that for me?

5 MR. GOWDY: Yes, sir. Go through them and save the
6 Huff matter until last?

7 THE COURT: Yes, sir.

8 MR. GOWDY: Not victim impact, just character, at
9 this point, Your Honor?

10 THE COURT: Yes, sir.

11 MR. GOWDY: There's an incident involving Candy
12 Hill -- and I apologize. I may have to turn to Mr.
13 Barnette or Mr. Anthony to verify something.

14 THE COURT: That's fine.

15 MR. GOWDY: I believe that was a conviction for
16 criminal sexual conduct in the second degree from 1986.
17 We would propose to call Ms. Hill herself and deputies
18 that investigated the incident, including taking the
19 statement from the Defendant.

20 Kizzy Smith --

21 THE COURT: That's the second one?

22 MR. GOWDY: Yes, sir.

23 Those are prior domestic violence convictions, with
24 Ms. Smith being the victim, and a law enforcement officer
25 who can speak to the injuries.

1 THE COURT: What are the dates on that?

2 MR. GOWDY: 1991 for that, Your Honor -- no, I'm
3 sorry, 2001 and 2002.

4 THE COURT: All right.

5 MR. GOWDY: Next, Your Honor, the State would propose
6 to move to a lady formerly known as Kimberly Dowden. I
7 believe her new name is Kim Carter. That was in January
8 of 1991.

9 That was an incident, Your Honor -- the State's
10 position -- I understand it would be contested, but the
11 State's position would be she was in a trailer, the
12 Defendant attempted a sexual assault on her and, actually,
13 completed part of the assault, but not criminal sexual
14 conduct in the first degree. She ran out of the trailer
15 with some degree of nudity and went to a neighbor's house.
16 We would propose calling Ms. Carter and the neighbor to
17 whose house she ran.

18 THE COURT: Was there any kind of judicial
19 determination with respect to that case?

20 MR. GOWDY: I'm sorry, Your Honor, I did not hear the
21 Court.

22 THE COURT: Any kind of judicial determination?

23 MR. GOWDY: No, sir. It was nolle prossed by the
24 Solicitor. I'll be happy to tell you why Ms. Carter says
25 that was done, if the Court wants to know.

1 THE COURT: Well, go through the list and then I'm
2 sure we'll have to discuss that.

3 MR. GOWDY: Then we've got a Geneva Greene incident
4 in Greer, which is a strong armed robbery in May of 1991.
5 That is a conviction. Then we have an incident involving
6 Grover Berry in November of 1991, where the allegation is
7 that Mr. Berry was either in his trailer or outside his
8 trailer and observed or heard an altercation. Mr. Evins
9 came up, began to beat him, including cutting him on the
10 neck with a box cutter. We have a witness Terry Smith,
11 who, actually, took the knife out of Mr. Evins' hands.
12 That was a non-conviction. Mr. Berry -- I'll be happy to
13 say why it did not go forward. I say a non-conviction, it
14 was nolle prossed. It was not adjudicated not guilty, it
15 was nolle prossed.

16 THE COURT: All right.

17 MR. GOWDY: Then we move to Annice Statin in 1995,
18 with the allegation --

19 THE COURT: What's her name?

20 MR. GOWDY: Annice Statin. I have it as S-T-A-T-I-N.
21 That is March of 1995. Those are allegations that this
22 Defendant raped and beat her in a wooded area. She was
23 left unconscious. When she regained consciousness, she
24 ran into a road and was found by a gentleman on the way to
25 church and taken to the hospital. There are photographs

1 and other corroborative evidence on Ms. Statin's account.
2 The Solicitor, at the time, decided to let this Defendant
3 plead to common law robbery.

4 THE COURT: So he's got two strong armed robbery
5 convictions?

6 MR. GOWDY: Yes, sir.

7 THE COURT: All right. Any others?

8 And the other two were, what, nolle prossed?

9 MR. GOWDY: The Candy Hill is a CSC conviction.

10 THE COURT: No, no. Annice Statin, you said --

11 MR. GOWDY: Annice Statin was nolle prossed, yes,
12 sir.

13 THE COURT: Which charges were nolle prossed? CSC --

14 MR. GOWDY: CSC. I don't know if there was a
15 kidnapping.

16 MS. QUIMBY: Kidnapping.

17 THE COURT: All right.

18 MR. GOWDY: That -- loosely, under the general river
19 of character, there would also be incidents from the
20 detention center and SCDC allegations of threats made
21 against detention guards and SCDC guards. There was a
22 probation revocation on the CSC second charge.

23 THE COURT: When was that?

24 MR. GOWDY: August 7, 1989.

25 THE COURT: All right. And then, finally, you've got

1 the Demaris Huff; right?

2 MR. GOWDY: Yes, sir. The Demaris Huff incident,
3 Your Honor, actually, predated the Rhonda Ward.

4 THE COURT: Yes. That was in September of 2002?

5 MR. GOWDY: September or October.

6 It was September of 2002, Your Honor.

7 THE COURT: All right. Well, let me hear from the
8 Defense.

9 What do you say about the Candy Hill 1986 CSC second
10 conviction?

11 Now, what are y'all -- you're going to put up the
12 victim to testify what he did; is that right?

13 MR. GOWDY: We have the victim in each one of those
14 cases, Your Honor, including the convictions and the ones
15 that were nolle prossed and certain corroborative
16 evidence, such as people who witnessed the attack. In one
17 instance -- actually, in two instances, police officers
18 who investigated and police officers that took statements
19 from him. With the exception of Ms. Greene, I don't
20 believe that there are any incidents where it is just the
21 victim alone.

22 THE COURT: All right.

23 MS. QUIMBY: Your Honor --

24 THE COURT: Candy Hill.

25 MS. QUIMBY: May it please the Court?

1 With respect to Candy Hill, I'll leave that in the
2 discretion of the Court. I would ask, however, if the
3 Court allows testimony from that incident that the Court
4 personally admonish Ms. Hill and any of the victims who
5 are allowed to testify about the limitations of their
6 testimony.

7 THE COURT: And what do you suggest those would be?

8 MS. QUIMBY: Well, specifically, about victim -- any
9 victim impact evidence. Anything about how it made them
10 feel, how it upset them, anything in that nature.

11 THE COURT: All right. Do you understand that?

12 I mean, we're not going into victim impact. We've
13 already had this discussion with the Solicitor. They
14 understand that we're not going into victim impact
15 evidence in these prior cases.

16 MS. QUIMBY: Yes, sir.

17 THE COURT: Right?

18 MR. GOWDY: Yes, sir, Your Honor.

19 We've instructed every one of those witnesses not to
20 speak about how this has impacted their life. But I have
21 met with several of them myself. They are going -- this
22 was very, very traumatic for some of them. I cannot
23 sanitize their testimony to keep them from having emotion.
24 I mean, they cry in my office talking about it. But they
25 have been clearly instructed not to discuss what impact,

1 if any, it's had on their life.

2 THE COURT: All right.

3 MS. QUIMBY: And our position on that, Your Honor,
4 would just be that while I have faith that Mr. Gowdy and
5 his office has done everything they could to instruct the
6 witnesses, I believe that they would take it as some extra
7 caution if they also heard it from the Court prior to
8 testifying.

9 THE COURT: Well, I do want to do that, because I
10 think there is a danger there that we want to avoid at all
11 costs, so I'll do that. I don't know how we're going to
12 do that logistically speaking. I don't know if we can get
13 them in outside the presence of the jury and do it at that
14 time, but we'll figure something out.

15 MS. QUIMBY: Thank you, sir.

16 THE COURT: You have no objection to Hill?

17 MS. QUIMBY: Sir, it's a conviction.

18 THE COURT: Let me take it back. You object to any
19 of this coming in, don't you?

20 MS. QUIMBY: Yes, sir, we do. We leave it to the
21 discretion of the Court as to convictions.

22 THE COURT: I'm not asking you to agree to it, but
23 you do not have a legal reason that you can give me why I
24 should keep that out?

25 MS. QUIMBY: That's correct.

1 THE COURT: All right. Kizzy Smith?

2 MS. QUIMBY: Kizzy Smith, Your Honor, the same as
3 with Candy Hill. Those are convictions. We leave that to
4 the discretion of the Court, but, again, ask for a Court
5 admonishment.

6 THE COURT: All right. Kimberly Dowden?

7 MS. QUIMBY: Your Honor, those charges were
8 voluntarily dismissed by the Solicitor's Office, the same
9 office that is trying to bring them up today. We believe
10 that State v. Arthur and State v. Young cover cases that
11 have been voluntarily dismissed, that they are deemed
12 irrelevant. Young and Arthur are still good law. They
13 have not been overruled by anything. And we believe they
14 should properly be kept out of the sentencing phase in
15 this case in that they were formal charges that were
16 brought, but then voluntarily dismissed.

17 THE COURT: Well, let's -- the Young case was where
18 they tried to introduce -- or they introduced indictments
19 of the greater offense when, in fact, the guy pled to a
20 lesser offense.

21 Am I correct about that?

22 MS. QUIMBY: Yes, sir.

23 THE COURT: Is this not distinguishable from that?

24 MS. QUIMBY: Your Honor, I don't -- I believe it
25 still remains that these were formal charges that were

1 ultimately dismissed by the Prosecutor voluntarily.

2 THE COURT: I understand that. But that's not the
3 question I'm asking you. The question I'm asking you is,
4 is there not a distinction between the State trying to
5 overstate what happened by introducing an indictment that
6 was a greater charge than what he, actually, pled to?
7 That's why Young was kicked, am I right? That's the
8 holding in Young?

9 MS. QUIMBY: Your Honor, it would be our position
10 that this case is distinguishable in that it is more
11 prejudicial in this case because this was -- we believe it
12 would be more prejudicial to introduce evidence of
13 Dowden's charge that was dismissed in the case.

14 I'm sorry, Your Honor.

15 (Pause.)

16 MS. QUIMBY: I apologize, Your Honor.

17 THE COURT: That's all right.

18 MS. QUIMBY: The issue in Young was that the charge
19 pled to was different than the charge indicted and that
20 the Solicitor did try to introduce the indicted charge.
21 Here, Your Honor --

22 MR. BROUGH: May I, Your Honor?

23 MS. QUIMBY: May Mr. Brough?

24 THE COURT: Yes.

25 Mr. Brough, what do you want to tell me?

1 MR. BROUGH: Your Honor, in the Young case, it was a
2 situation in which the Court found it was reversible error
3 to admit evidence of that affidavit -- or that charge that
4 was brought for a greater offense because they pled to a
5 lesser offense.

6 Here, our position is this case, it would be even
7 worse in terms of reversible error because we would,
8 essentially, be admitting evidence of the charge which was
9 ultimately dismissed, not to mention the fact that this,
10 in our opinion, would violate double jeopardy and that he
11 would be put in a place in limb -- or jeopardy, in this
12 case, seeking death penalty in a capital murder and in a
13 case in which they dismissed --

14 THE COURT: All it is going to be is evidence about
15 your client's character. He's not facing any punishment
16 for the conduct that he was engaged in back then.

17 Does not the Eighth Amendment require that all
18 evidence concerning the Defendant's conduct be admitted to
19 the jury when they're making a decision of this depth and
20 weight?

21 MR. BROUGH: Your Honor, while they do -- while the
22 Eighth Amendment -- you know, they want to get the entire
23 picture of the Defendant. And we know that the case law
24 does say that to an extent. However, in light of the
25 Arthur case and then in the Young case, which was decided

1 five years after that, they found it was error to,
2 basically, admit evidence where the Prosecution would be
3 introducing evidence of something which would be
4 overstepping their bounds. This is not a conviction.
5 This is a charge that was dismissed. And I believe they,
6 actually, used the terms formal charges -- in both those
7 cases, they used this language, formal charges brought
8 that were ultimately dismissed by a prosecutor are not
9 admissible. And that would be our position.

10 MS. QUIMBY: And further, Your Honor, even in light
11 of the Eighth Amendment, it is still subject to a Rule 403
12 analysis. And we believe the admission would be too
13 prejudicial and would cause undue prejudice to Mr. Evins
14 over and above any probative value.

15 THE COURT: All right. Does the State want to tell
16 me anything?

17 MR. GOWDY: Your Honor, only -- well, I believe the
18 Court has already signaled through its question, which is
19 that Young and Arthur are distinguishable. Of course, you
20 can't produce an affidavit in support of a murder
21 indictment when the Defendant pled guilty to involuntary
22 manslaughter. Nobody, I don't think anymore, suggests
23 that you can. But what do you do with that entire line of
24 cases that says prior bad acts, including criminal
25 offenses, not subject to conviction are fair game in a

1 sentencing hearing. Under their reading, that line of
2 cases just doesn't exist.

3 The United States Supreme Court has said a sentencer
4 can take into consider criminal conduct for which there is
5 no conviction. This is prior bad act. It's character
6 testimony. We're not going to introduce the indictment.
7 We're not going to introduce an affidavit. We're calling
8 live witnesses subject to cross-examination, which was not
9 the case in Arthur or Young.

10 MR. BROUGH: Your Honor, if I may respond briefly to
11 Mr. Gowdy's argument.

12 Here, we're not dealing with a case that's not
13 subject to condition, we're dealing with cases that were
14 dismissed. And I believe that's the distinction that
15 needs to be drawn. We're not talking about evidence of
16 just necessarily SCDC cases, information in terms of
17 character along those lines. We're talking about charges
18 that were ultimately dismissed. That's what that line of
19 cases say. It does not say totally uncharged or cases
20 that are not subject to disposition. It says,
21 specifically, formal charges that are ultimately
22 dismissed.

23 THE COURT: Let me ask you this, what is the standard
24 of proof in the introduction of character evidence?

25 MR. BROUGH: It's by a preponderance of the evidence,

1 Your Honor.

2 THE COURT: Okay. So let me ask you this, let's say
3 that there was a criminal non-conviction, not guilty, and
4 they put up -- could they not introduce evidence of that
5 non-conviction under the standard -- under the law that
6 we've got and the standards that we've got?

7 MR. BROUGH: Your Honor, our position would be, no.
8 Because if it's not guilty, then the jury has already
9 indicated that it is not based on fact and a stricter
10 standard.

11 THE COURT: Well, I'm not going to -- a stricter
12 standard applies in a criminal case where the proof must
13 be beyond a reasonable doubt. A separate jury, are you
14 telling me, could not listen to the same evidence and find
15 by a preponderance of the evidence that it reflected on
16 his character? Is that not what our law says?

17 MR. BROUGH: Your Honor, again, we're just holding to
18 our previous position.

19 THE COURT: I understand. Well, I'm going to -- over
20 the Defense's strenuous objection, I'm going to allow the
21 Kimberly Dowden evidence, presuming that -- I mean,
22 they've got to show that.

23 You've got the Geneva Greene. That's a conviction.
24 I presume your position on that is discretion of the
25 Court; is that right?

1 MS. QUIMBY: Discretion of the Court with
2 admonishment.

3 THE COURT: The Grover Berry box cutter incident, is
4 the position the same as the Dowden?

5 MS. QUIMBY: Yes, sir.

6 THE COURT: Is there anything distinguishable in that
7 matter that's different from the Dowden? Otherwise, the
8 ruling is going to be the same. I'm going to allow it
9 because I think the cases -- I think our law says it's
10 allowable.

11 MS. QUIMBY: Only that -- understanding your ruling,
12 Your Honor, all of that is still subject to a Rule 403
13 analysis.

14 THE COURT: All right. Tell me what it is.

15 MS. QUIMBY: Well, it --

16 THE COURT: I mean, I understand the analysis. Where
17 is that going to inflame the jury? I mean, how is that
18 going to overwhelm their reasoning? Is it not your
19 client's conduct? Is that not what we're talking about,
20 his characteristics?

21 MS. QUIMBY: Yes, sir. We're talking --

22 THE COURT: I mean, I agree. It's prejudicial as it
23 can be, but --

24 MS. QUIMBY: It would still be our position -- the
25 same position as cited with Dowden.

1 THE COURT: All right. Annice Statin?

2 MS. QUIMBY: Your Honor, we have sort of a dual
3 position on Ms. Statin. It's sort of a conglomeration of
4 the two arguments.

5 THE COURT: Okay.

6 MS. QUIMBY: That same argument as with Dowden as to
7 the kidnapping and CSC charges. The strong armed robbery,
8 Your Honor, it was a conviction and it was as charged. We
9 leave that to the discretion of the Court. If the Court
10 allows that in, we would ask not only for an admonishment
11 as to limitation --

12 THE COURT: Well, I'm going to instruct -- I'm going
13 to give the -- what is it, Steadman or -- I'm going to
14 give the limiting instruction on all this.

15 MS. QUIMBY: Yes, sir. I understand.

16 We would ask for an additional limiting instruction
17 on Statin based on our arguments regarding Ms. Dowden and
18 Mr. Berry in that we think the jury would -- we think the
19 jury should only be allowed to hear about the
20 circumstances involving the strong armed robbery. We
21 think that for the same reasons we argued in Dowden and
22 Berry, the evidence of the kidnapping and CSC, formal
23 charges were ultimately dismissed. We believe that
24 testimony about those should be kept out.

25 THE COURT: All right. Well, same ruling.

1 MS. QUIMBY: Yes, sir.

2 THE COURT: His conduct at the jail and SCDC. I
3 mean, do you have an objection to that? I don't know what
4 it is, but I guess it's misconduct in the jail.

5 MR. GOWDY: Threatening detention officers, Your
6 Honor.

7 THE COURT: Are you going to have the actual officers
8 come up here?

9 MR. GOWDY: Your Honor, he pled guilty in both
10 incidents, so we have the records custodian. I think in
11 one case we have the officer himself. And then we have
12 Jimmy Sligh, who is the records custodian, where there was
13 an adjudication of guilt.

14 THE COURT: All right.

15 MS. QUIMBY: Our position on that, Your Honor, is
16 those are not penal convictions as far as the criminal
17 justice court system. Those would be more --

18 THE COURT: It would be hearsay is what you're
19 telling me to allow the records custodian to introduce
20 some record?

21 MS. QUIMBY: Yes, sir. That is one.

22 The other argument is -- the additional argument is
23 that those are simply administrative disciplines. Those
24 are not -- although they may use the terminology charge
25 and plead guilty and conviction, those are simply internal

1 administrative disciplines.

2 THE COURT: Well, it relates to his character, does
3 it not?

4 MS. QUIMBY: It relates to his character. We object
5 to it as hearsay. We also object as to the
6 characterization of it as a conviction.

7 THE COURT: If they've got the officer who he
8 threatened up here to testify to what happened, how is
9 that -- does that not go to his -- that is not hearsay.

10 MS. QUIMBY: Okay. Correct. The officer himself
11 being here on that one is not hearsay.

12 THE COURT: All right. I'll think about that other
13 one. I hadn't really thought that through.

14 MS. QUIMBY: Yes, sir.

15 THE COURT: All right. Violation of probation, I
16 mean --

17 MS. QUIMBY: That was an order of the Court. We
18 understand that. There was also an order of continuation
19 of probation dated approximately two months prior to that.

20 THE COURT: Do you want to go into that?

21 MS. QUIMBY: Yes, sir.

22 THE COURT: I don't have any -- does the --

23 MR. GOWDY: We agree to let it in.

24 THE COURT: All right. Then that brings us to the
25 Demaris Huff. And how is that distinguishable?

1 MS. QUIMBY: It's the same --

2 THE COURT: In a legal sense, because I understand --
3 I mean, everybody in here understands that that's highly
4 inflammatory and that it is extremely prejudicial to your
5 client. It is non-convicted conduct, so somehow
6 distinguish it from the other non-convictions. Because
7 I'll tell you, right now, I'm very conflicted about it.
8 So distinguish it for me.

9 MS. QUIMBY: Thank you, sir.

10 I have several points. First of all, it is simply
11 not a conviction. It is a pending charge.

12 THE COURT: I understand that. You don't have to go
13 through the history of it. Cut to the chase here.

14 MS. QUIMBY: It is factually distinguishable from any
15 case, I think, that can be presented in that in the Huff
16 case, there is one single piece of real evidence. It has
17 not been tested in court. It has not been put to
18 cross-examination --

19 THE COURT: Well, that's what they're talking about
20 doing. They're talking about testing this evidence in
21 court.

22 MS. QUIMBY: Yes. I understand that, Your Honor.

23 And, normally, in a situation where you have a
24 pending case and you're testing evidence, it's because
25 it's called for trial, not where there's a standard of

1 preponderance of the evidence. It's a pending charge that
2 is -- it's scientific evidence, Your Honor, that is, if
3 admitted, would be allowed to be treated -- it would be
4 allowed to be proven by a preponderance of the evidence,
5 which is in contravention to anything -- everything I
6 could imagine --

7 THE COURT: Well, we're -- they're not trying to
8 convict him. It's going to his character.

9 MS. QUIMBY: I don't think the jury would be able to
10 distinguish the character from the victim impact from a
11 trial of it, I honestly don't. And I know that that goes
12 down to 403 argument.

13 So our second argument over and above the fact that
14 it's a pending charge is that there's only one piece of
15 evidence. It's not been tested in a court of law on that
16 case yet with the standard that is required.

17 The next thing is that because this case produced so
18 much pre-trial publicity and community concern, outrage,
19 et cetera, it was constantly in the papers --

20 THE COURT: Okay. Well, I understand that, too, but
21 that is not the issue today.

22 How does it impact these 14 specific people who are
23 sitting on this jury panel?

24 MS. QUIMBY: Several of those specific people in the
25 jury panel knew something about the Huff case.

1 THE COURT: All right. Which ones?

2 And while I'm thinking about it, didn't the Holmes
3 case that we recently talked about with respect to third.
4 Party guilt refer to the strength of forensic evidence,
5 which would eliminate any -- I mean, didn't it speak to
6 that?

7 MS. QUIMBY: Your Honor --

8 THE COURT: Of course, I interrupted your train of
9 thought. We'll come back to that. Go ahead.

10 MS. QUIMBY: Okay. Well, first of all, Mrs. Kirby,
11 Betty Kirby, I believe she was from panel eight. She was
12 one of three people from that panel, who that panel was
13 the only panel out of all the ones we talked to who knew
14 about the case, but had somehow confused it with Cleveland
15 Park. We think that only could have happened back there
16 talking about it.

17 THE COURT: You know, I understand your bias and
18 fully appreciate your dedication to your job. But
19 don't -- just because you think it, if you don't have some
20 empirical evidence or something, that doesn't need to come
21 in here.

22 MS. QUIMBY: Okay. Your Honor, I do not have my list
23 of jurors with me, but I do remember that there were seven
24 jurors who -- there were four jurors, I believe, who knew
25 about both cases. I think that the fact -- and, again,

1 I -- we don't have empirical evidence. What we have is
2 when we asked general questions about, do you know
3 anything about Mr. Evins, do you know anything else, their
4 memories weren't jogged.

5 I would submit to the Court that if they polled the
6 jury right now, they absolutely would probably remember.
7 I think the admission of Huff in this case would confirm
8 that to them. Any suspicions they may have about any
9 other case, any other murder that Mr. Evins was charged
10 with, that would only confirm it. And I believe that a
11 death warrant would be almost guaranteed based on the
12 admission of Huff alone.

13 It's our opinion that -- besides the other reasons,
14 that due process requires it not be admitted in this case.
15 We also have the 403 argument that the Court is well aware
16 of. Even if the Court considers the Huff incident as
17 relevant and admissible, it is still subject to 403
18 analysis. And the probability of unfair and undue
19 prejudice flowing to Mr. Evins from the admission of that
20 evidence would outweigh tremendously the probative value
21 that it might have as to his character. Because there are
22 other incidents of his character that are coming in.
23 There are convictions. There's a rape conviction coming
24 in.

25 THE COURT: Yes. I understand that. It's your

1 client's conduct which goes to his character; right?

2 MS. QUIMBY: Yes, sir.

3 Mr. Evins has pled not guilty to the murder of
4 Demaris Huff. He is awaiting trial on that charge. It
5 was in the -- it's been in the papers for two years now.

6 THE COURT: I heard something about that last night
7 on the 6:00 news. That little blond reporter was here,
8 and she was talking about how evidence of the Huff trial
9 might come in during this.

10 MS. QUIMBY: No, she said it would come in. I taped
11 it, Your Honor. She said it will be coming in today.

12 THE COURT: I wonder where she got that.

13 MS. QUIMBY: Certainly, not from me, and I would
14 assume not from opposing counsel.

15 MR. GOWDY: I can do better than that, Your Honor.
16 They've been reporting that -- ever since they reported
17 that the Ward case was coming up, they have been reporting
18 that both of these trials are going to be done together.
19 I certainly have not spoken --

20 THE COURT: I know. I don't think anybody in this
21 case has. I was just curious where it came from.

22 MS. QUIMBY: And, furthermore, as far as the
23 television news goes, before the entire jury venire was
24 admonished not to read the paper, watch the news, there
25 was -- as we told the Court on Monday the 8th, there was a

1 news broadcast on Channel 7 that morning, before the
2 jurors would have reported, where it did mention that --
3 it, actually, said that the Demaris Huff case was going to
4 be the one tried today and that as a side note, he's also
5 charged with the murder of Rhonda Ward from the
6 Cigarette's 4 Less store. That was the same morning that
7 there was a newspaper article in the Herald Journal about
8 the trial being on the Ward case, but the final paragraph
9 discussed Mr. Evins being charged with the other.

10 THE COURT: Well, I understand all that. And I'll
11 just tell you, from my notes -- and I stopped making notes
12 about after the sixth panel on who had heard of it. But
13 there are three jurors that I've got that have heard about
14 the case or had heard about it. That was Richards, Bower,
15 and Kirby.

16 MS. QUIMBY: Your Honor, I believe Ms. Kanipe knew a
17 great deal about both cases as well.

18 THE COURT: Okay. That's four.

19 Let me hear from the State.

20 MR. ANTHONY: Yes, sir, Your Honor.

21 Is there any particular issue that's been raised that
22 you want to hear?

23 THE COURT: Well, I'm conflicted about it. Okay.
24 It's clearly -- I think it's clearly admissible character
25 evidence. I don't think there's any -- I think under the

1 law that it's clearly admissible and it's relevant. I
2 mean, it's extremely prejudicial. I mean, what could go
3 to Mr. Evins's character more in the penalty phase in a
4 kidnapping, CSC, murder case than the fact that he had
5 done the same thing two months before?

6 How can that -- I mean, that is just extremely -- it
7 goes to his character. It would be whether -- and the
8 fact that he's done this over a period of time goes to his
9 character. So I don't see how -- and under the law, it
10 appears to me to be relevant and probative.

11 So in my mind, and somebody can convince me
12 different, the question is the 403, is it going to inflame
13 a jury and overpower a jury's reasoning so that the
14 decision is based on passion and prejudice? Am I right?
15 I mean, does that make sense to everybody.

16 MR. ANTHONY: Yes, sir.

17 MR. GOWDY: Yes, sir.

18 MS. QUIMBY: Yes, sir.

19 THE COURT: So talk to me about it.

20 MR. ANTHONY: Well, Your Honor, the point that I make
21 is there's three cases -- at least, three cases that we
22 found where juries in the sentencing phase of death
23 penalty cases had heard that the person, the Defendant,
24 has committed another murder. And that's what would
25 happen with this evidence being admitted is that the jury

1 would hear that Mr. Evins had committed another murder.

2 The State just does not see any reason why a jury
3 should not be allowed to evaluate this evidence when
4 making its determination as to whether Mr. Evins's
5 character is such that they should either sentence him to
6 death or give him life without parole. I mean, it is a
7 very prejudicial fact, but that's also what makes it so
8 relevant. This is a very relevant thing for a jury to
9 hear that Mr. Evins had done this. It's prejudicial just
10 like all the other things in this record he's created for
11 himself are prejudicial, but those things need to be
12 heard. And even though this is the worst thing he's done,
13 aside from killing Ms. Ward, this should be heard too,
14 basically, because it is the worst thing he's done. They
15 need to know everything that he's done that we can prove
16 beyond that preponderance that he's guilty of. And we
17 believe we can make a showing beyond that preponderance.
18 And we feel like the jury should hear this.

19 MR. BOGGS: Your Honor, may I ask the Court a
20 question?

21 THE COURT: Yes, sir.

22 MR. BOGGS: Are the cases he's talking about
23 convictions?

24 THE COURT: Not Freddie Owens. Freddie Owens went
25 back and killed a guy that night himself.

1 MR. BOGGS: But Owens is distinguishable, is it not?

2 THE COURT: Well, they overruled Owens because of
3 the --

4 MR. BOGGS: Because of the time lapse. But didn't
5 they make a specific reference that the issue was not
6 raised in that case? Again, I'm not a book lawyer, but it
7 seems to me there was some reference to that that we don't
8 address this issue because it was not raised by the
9 defense attorneys. Again, I'm not sure, but I seem to
10 remember something like that.

11 THE COURT: This is -- he made a statement -- let me
12 make sure this is the right statement. And I'm looking
13 at -- this is Owens. I don't have the cite right in front
14 of me. I'm looking at subsection paragraph -- Roman
15 numeral six, Owens. It's towards the end of the case.
16 Paragraph Roman numeral six, Subparagraph C, down at the
17 -- it's in the fourth paragraph of that -- no, the third
18 paragraph.

19 "Relevant evidence may be excluded if it's probative
20 value is substantially outweighed by the danger of unfair
21 prejudice. Unfair prejudice means an undue tendency to
22 suggest a decision on an improper basis. Appellant
23 statement is relevant evidence of his character, an issue
24 under consideration during the penalty phase, while,
25 clearly, prejudicial does not suggest that decision on an

1 improper basis."

2 And I believe that is his statement, if I'm not -- if
3 I haven't forgotten. That's his statement with respect to
4 the second and subsequent. I think that's right. Let's
5 take a minute and make sure.

6 MR. BOGGS: I'm just now finding it. My pages are
7 different.

8 THE COURT: Okay.

9 MR. BOGGS: Well, as the Court read, according to
10 that case, it says, "Relevant evidence quoting 403 may be
11 excluded if the probative value is substantially
12 outweighed by the danger of unfair prejudice." Which,
13 basically, is the substance of our argument. When you
14 take the combination of the pre-trial publicity, the fact
15 that everybody else that's going to be used by the State
16 is so dimetrically different than Ms. Huff and that Ms.
17 Huff's social standing, neighborhood, et cetera, is
18 completely different from the others. And the fact that
19 because Ms. Huff's case was an unsolved case in which her
20 husband was the primary suspect up until the arrest of
21 Mr. Evins, the news media had a feeding frenzy. You
22 either had to be out of this state, absolutely never see
23 TV, talk to anybody, or read a newspaper not to know
24 about.

25 The danger to it -- and we just want to make -- the

1 danger is this, there's absolutely no way to get inside a
2 person's mind and say, forget it and disregard that last
3 statement. The danger in this case is Huff information,
4 and whether or not those jurors remember it now, we're
5 certainly going to spring it. You can't spring it if you
6 were in this county between September 2nd of -- I mean,
7 September of 2000 until today.

8 The problem with this -- and this is what we're
9 asking the Court to consider under 403, the potential for
10 a death warrant being signed on the evidence on Ward -- I
11 mean, a death penalty signed on Ward based upon the
12 reaction to the Huff, which is still unsolved and which
13 has absolutely no evidence, except one piece of contested
14 evidence, it would far outweigh the relevant evidence in
15 that the State has so much more. And, again, I think this
16 is a decision that the Court can make based upon what the
17 State says is coming in. Even though this could go to
18 character, we've been --

19 THE COURT: It does. It goes to his character.

20 MR. BOGGS: And I can't concede that. I respect the
21 Court's ruling, but I can't concede that. But what the
22 Court has to view under 403 is, even if it is relevant,
23 does the prejudicial effect in a particular case outweigh
24 the need or probative value to bring it in?

25 If this was the only thing that the State had to

1 bring into the Court on character, I think the decision of
2 the Court would almost be a situation where you couldn't
3 decide whether you wanted it or not. You'd say, if that's
4 all you've got, that's one thing. But when you have all
5 this other testimony and there's the risk of one piece of
6 evidence, one piece of character evidence, being the lynch
7 pin for a death warrant being signed, we're asking the
8 Court to leave that out.

9 The State has got plenty. They've got plenty from
10 the jury's decision yesterday. You know, they've got
11 everything they need from yesterday. If they bring in
12 what the Court has already ruled is coming in, then that
13 just bolsters what they got a jury to agree to yesterday.
14 We're asking the Court just to look at Rule 403 and make a
15 decision on the potential.

16 And I realize that's the dilemma you've got, but if
17 it doesn't come in, how does it really hurt the State?
18 How does it really hurt? They've got another CSC coming
19 in. They've got another kidnapping coming in. In fact,
20 they've got another attempted CSC coming in. So how does
21 it really hurt them? And I think that's one thing that
22 the Court is allowed to weigh when you start weighing this
23 relevance versus prejudicial effect. And that's all we
24 can ask the Court to do.

25 MR. GOWDY: Your Honor, those are, actually, three

1 separate arguments. And towards the end, the argument was
2 that it's cumulative. They have so much that Demaris
3 Huff's murder is cumulative. Demaris Huff's murder is the
4 closest in time to the Rhonda Ward murder. It is the best
5 evidence of what his character was at the time of Rhonda
6 Ward's murder.

7 And as the Court pointed out, in the Holmes case,
8 this isn't an eyewitness that saw it. This isn't what we
9 had in the Freddie Owens case, which was just a
10 confession. This is one in several quadrillion. A naked
11 body stripped of its clothes, strangled to death in a park
12 close to where he was living, his DNA found in her anus to
13 the tune of being one in ten something quadrillion or
14 however many quadrillion to the exclusion of everybody
15 else.

16 The rule -- because I've got the word underlined,
17 unfair prejudice. What is unfair about the jury having
18 the criminal act that he was alleged to have committed
19 closest to the time that he killed Rhonda Ward? What
20 would be unfair would be to consider what he did in 1991,
21 not what he did in 2002, months away from when he did this
22 to Rhonda Ward. This isn't about whether it helps the
23 State or hurts the State. The jury has the right to know
24 the full flee of this man's life. And he happened to
25 crown it off with two murders. And I think the jury ought

1 to hear that.

2 THE COURT: Can the Defense give me any reason why a
3 jury -- why the admission of this evidence would suggest a
4 decision by the jury on an improper basis?

5 And that's the State v. Owens. They admitted his
6 statement and said that while clearly a prejudicial
7 statement does not suggest a decision on an improper
8 basis, it is so to me -- I mean, it's just in line with
9 the Owens case.

10 MR. BROUGH: Your Honor, I guess the distinction the
11 Defense would draw is that in the Owens case, the
12 additional murder that was brought into evidence was a
13 murder of another individual that occurred in jail. The
14 public did not have a chance to hear about it. There was
15 no feeding frenzy in the media as there is in this case,
16 Your Honor. And the jurors had no knowledge of what had
17 occurred in jail in the Owens case. Here, in this case,
18 clearly, some jurors have knowledge of the Huff case. It
19 received extensive pre-trial publicity. And for those
20 reasons, I believe it is distinguishable from the Owens
21 case.

22 THE COURT: Well, let me ask you this, if you pursue
23 that line of reasoning, all four or how many ever -- or
24 all the jurors said they could follow the law and try the
25 case on the law and evidence presented in this courtroom.

1 And I have emphasized that in all my charges to them. The
2 fact that they would have heard about it, to whatever
3 extent, seems to me that it might be unfair to not present
4 evidence in this proceeding to allow a response from the
5 Defense. I'm thinking theoretically. I know y'all don't
6 want to go there, but that's the fallacy in that argument.

7 Yes, sir, Mr. Gowdy.

8 MR. GOWDY: Your Honor, I understand fully how
9 knowledge of the Huff case could infect a Ward
10 deliberating jury in the guilt phase. And that's what I
11 thought all the voir dire questions were about. How do we
12 keep this knowledge of a prior murder from making them so
13 full of passion that they would convict him for Rhonda
14 Ward's murder because they thought he did another one? I
15 do not understand in the sentencing phase how knowledge
16 that he may have killed another woman is going to -- the
17 impact is much greater in the guilt phase. All four of
18 them said they could put it out of their mind and sat as
19 qualified jurors and they reached a decision. The
20 argument is much better to keep it out from a guilt phase
21 impact than a sentencing phase impact.

22 THE COURT: Well, we kept it out of the guilt phase.

23 MR. GOWDY: Right. And -- I mean, that was the
24 concern, that it not influence the guilt phase. We're
25 past that stage.

1 THE COURT: Well, their argument is that the fact
2 that some of them may have heard about it and that they
3 are now being told that what you've heard about that that
4 you weren't to consider then is now evidence for you to
5 consider with respect to his character. And they're
6 afraid that -- this is, I'm presuming, and if I'm
7 misstating their argument, I'll let them correct it. But
8 they're saying that the fact that they knew about, now,
9 they're hearing about it and told they could consider it
10 with respect to his character may push them over the brink
11 of their ability to reason without passion, prejudice, or
12 bias is what their argument is.

13 MR. GOWDY: Your Honor, I think back to the case in
14 Greenville, I can scarcely imagine a murder committed
15 during the 24-hour cooling off period after a jury has
16 already adjudicated him guilty of murder, he goes back to
17 a prison and kills somebody who, with all due respect to
18 the Defense, was only in there on driving charges. I
19 don't think it's more okay to kill a prisoner than it is a
20 citizen. He was in on driving charges. And the Supreme
21 Court said that is permissible. It didn't give them
22 enough time to consider it, but I can scarcely think of
23 anything more closely to unfairly prejudicial than a
24 murder committed during the trial. And the Supreme Court
25 said that is fair game for character. This happened years

1 ago and months before Rhonda Ward.

2 MR. BOGGS: I guess we're missing one thing, too, in
3 the Owens case. There was a statement in that case,
4 wasn't there?

5 THE COURT: Well --

6 MR. BOGGS: There's no evidence here. There's one
7 piece of evidence that's got to be challenged. And the
8 Judge -- and it's almost a situation when you asked the
9 question a minute ago about could the Defense give you any
10 indication that the jury could not be fair or not use --
11 not have an overflow, I think, is what you're basically
12 saying.

13 THE COURT: Make their decision on an improper basis.

14 MR. BOGGS: That's right. And I don't know that you
15 could do that without polling them and saying, now, this
16 Demaris Huff is coming in -- if you can get around 403,
17 which I think the Court realizes is the crux of it. If it
18 gets around that, it would almost require the Court to ask
19 each individual juror out of the presence of the others,
20 this is what's coming in, now, specifically, do you know
21 about it?

22 THE COURT: I don't think that that's necessary, I
23 mean, to voir dire them separately with respect to this.

24 Now, what do you intend -- how do you intend to --
25 what evidence do you intend to introduce should I allow it

1 in, the Huff matter?

2 MR. GOWDY: Your Honor, would you allow me to have
3 Mr. Anthony address the Court?

4 THE COURT: Sure.

5 MR. ANTHONY: There would be evidence that she left
6 her house that morning a little before 7:00 and -- it
7 would be evidence from her husband that she was missed
8 approximately 9:00 that morning. There was someone who
9 lives in the Duncan Park area who started hunting for her
10 after her husband asked him if he had seen her. Her body
11 was found around 1:00. It was taken for an autopsy. Dr.
12 Wren would testify that --

13 THE COURT: He arrived at the scene at 3:45?

14 MR. ANTHONY: That's right. He arrived at the scene
15 and made an evaluation of how long the body had been dead.

16 THE COURT: What is that evaluation?

17 MR. ANTHONY: He evaluated that the body had been
18 dead, at least, eight hours is what is in his report, Your
19 Honor.

20 Then there was a rape kit done at the autopsy. There
21 were rectal swabs taken from Ms. Huff. After Ms. Ward was
22 -- after Ms. Ward was killed and Mr. Evins was developed
23 as a suspect in the Ward case, his DNA was entered into
24 the CODIS system. There was a hit for the DNA that was
25 found in Ms. Ward's [sic] rectum. So there was a search

1 warrant done and his blood was taken. There was another
2 DNA comparison done at SLED between Mr. Evins' blood and
3 the DNA from the semen that was found in
4 Ms. Huff's rectum, and that was a match. And that will
5 essentially be the proffer the State would make.

6 MR. BOGGS: Are you going to introduce any pictures,
7 John, or attempt to?

8 MR. ANTHONY: Yes, sir. We would attempt to
9 introduce pictures to the --

10 MR. BOGGS: Well, why don't you show them to the
11 Judge, because I think he needs to know everything you're
12 trying to --

13 MR. ANTHONY: I don't have them down here with me,
14 but I'd be more than happy to show you.

15 What we're intending to do, though, there was a
16 picture of her that she was covered up with a sheet by an
17 EMS worker. And I intended to introduce pictures,
18 basically, just allowing the jury to understand where her
19 body was found because it was found in a wooded area of
20 the park. And the only pictures of her body that I
21 intended to introduce are all pictures where the body is
22 covered up by a sheet. The jury will be able to tell that
23 it's her body because there's a sheet with a pair of legs
24 sticking out from under it. But other than that, that's
25 all I intend --

1 THE COURT: Why is that probative in this matter?

2 MR. ANTHONY: Well, it just allows the jury to
3 understand where it was found and understand --

4 THE COURT: Is the specific location in the woods in
5 Duncan Park? Is that right?

6 MR. ANTHONY: Yes, sir.

7 THE COURT: Why is that probative in this sentencing
8 matter? How is that probative of this man's character?

9 MR. ANTHONY: It is only probative insofar as it
10 allows the jury to understand what happened to her and
11 where the -- where it occurred and where her body is
12 found. Obviously, if the Court doesn't want to allow the
13 pictures in, you know, we would not put the pictures in.

14 THE COURT: All right. Well, I have thought long and
15 hard about this and, unfortunately, no one had anything
16 new to tell me that helped me. I think the state of the
17 law is that it's admissible evidence, relevant evidence.
18 It is highly prejudicial. I can't see or think of, and no
19 one suggested to me, how it would cause this jury to make
20 a decision on an improper basis, so I'm going to allow the
21 introduction of it.

22 I'm going to limit how much they can put in. And
23 that's the same with all of this stuff. This is to go to
24 Mr. Evins character. It's got nothing to do with the
25 victims of those crimes. It's got -- and what I'm trying

1 to tell you is, the evidence you introduce should not
2 inflame the jury with respect to that old defense. Their
3 passion, their prejudice shouldn't be aroused based on the
4 evidence introduced to prove his misconduct in a past
5 incident so that it overwhelms their judgment in this
6 matter.

7 Does that make sense?

8 MR. GOWDY: Yes, sir.

9 THE COURT: I don't want inflammatory stuff coming
10 in. You can say, hey, this is what he's done. He did
11 it -- the jury finds that he did it, you can prove his
12 conduct. But I don't want you -- I don't want a bunch of
13 flowery stuff intended to raise the passion of the jury
14 with respect to those prior crimes. We're here to prove
15 his character and that's it.

16 MR. BOGGS: Well, Your Honor, on Huff, now, it hasn't
17 been proven he's done it --

18 THE COURT: Oh, I understand.

19 MR. BOGGS: -- so he can't say he's charged with it
20 and this is the evidence we have; is that correct?

21 THE COURT: Yes. They can put up the evidence
22 they've got.

23 MR. BOGGS: But they can't say he did it.

24 THE COURT: Well, he's going -- well --

25 MR. BOGGS: They can say this is the evidence we have

1 showing he did it.

2 THE COURT: Yes. I guess that's an accurate --

3 MR. GOWDY: I think there's a little difference
4 between saying he did it and he was convicted of it. I
5 mean, Your Honor, that puts me in the position of not
6 being able to comment on what any of the witnesses said.
7 I mean, Kim Dowden is going to say that he sexually
8 assaulted her. I certainly can't say he was convicted of
9 it, but does that mean I've just got to ignore --

10 THE COURT: You can get up and argue to the jury that
11 this is what the evidence showed.

12 MR. GOWDY: Yes, sir.

13 THE COURT: And that's technically what anybody can
14 do in their arguments. This is what the evidence showed.

15 MR. BOGGS: There's a big difference, too, because
16 that's the victim in the crime. And I realize Mr. Gowdy
17 is going to say we don't have a victim, but there's no
18 other evidence when Ms. Dowden says he did this that she
19 giving direct testimony right now to say that he did kill
20 Ms. Ward [sic] when that hasn't been adjudicated. I think
21 they can say he's been charged with it and this is the
22 evidence we have -- not Ms. Ward, excuse me, Ms. Huff, and
23 this is the evidence. I think he ought to be limited to
24 that.

25 THE COURT: All he can do is talk about the evidence,

1 yes. I mean, you can't argue something that's not in
2 evidence. So he can get up and go, you heard the
3 testimony of this witness who said he did this to her and
4 that goes to his character. That's, basically, what he
5 can do. I haven't limited anybody in their -- you know, I
6 like to let lawyers try their cases, so.

7 And again, I want to compliment both sets of lawyers
8 on an outstanding job. And you've done it with
9 professionalism and passion and it's been a real pleasure
10 to be involved in this trial. And I don't think anybody
11 is going to go over the line. I just have faith in the
12 attorneys in this case.

13 MR. GOWDY: Your Honor, my only fear, I just want to
14 bring it to the Court's attention. I mean, I talked to
15 Ms. Clark from West Virginia yesterday. It is hard to
16 talk about a sexual assault without showing some emotion
17 describing what happened to her. I cannot keep her --

18 THE COURT: I understand. I will speak to her. I
19 will limit that. If it becomes -- if she gets out of
20 control, I'm going to remove the jury from the courtroom
21 and we may terminate her testimony.

22 MR. GOWDY: Yes, sir. I don't think she will, but on
23 the other hand, I don't want her getting up and testifying
24 about a rape with such detached reasoning that --

25 THE COURT: I know you cannot guarantee the conduct

1 of anybody. All you can do is explain the situation to
2 them and I'll be happy to do that as well.

3 MR. GOWDY: Yes, sir. We're not going to ask any of
4 our witnesses, what impact did his sexual assault have on
5 you? But while she's describing --

6 THE COURT: Well, a picture is worth a thousand
7 words. So that's why we've got -- we don't want
8 Mr. Evins -- the decision with respect to his life made
9 because someone loses control in another case.

10 MR. GOWDY: Yes, sir.

11 THE COURT: It's character evidence of Mr. Evins.
12 And, as I said, a picture is worth a thousand words. And
13 if she can't handle it -- and I wouldn't blame the State,
14 but I might limit what they can allow.

15 MR. GOWDY: Yes, sir.

16 THE COURT: Okay. This is not her day in Court.
17 This is Mr. Evins' day in Court and that's what we've got
18 to protect. And I want to make sure we follow the law and
19 the record is, you know, clear on that.

20 Now, I have another matter before we go forward.
21 Mr. Phillip Sanders has some viral infection. He can
22 barely stand up. He's dizzy and has been nauseated since
23 3:00 this morning. He was sick yesterday. He does not
24 think he can go forward. I can get Agent Hendricks over
25 here to testify to that.

1 MR. BOGGS: Which one was the first alternate? I
2 don't remember.

3 THE COURT: Linda Means is the first alternate.
4 She's the black lady.

5 MR. BOGGS: Well, I mean, if he's sick, he can't
6 carry on.

7 THE COURT: All right. I don't know which one
8 Mr. Phillip Sanders is.

9 MR. BARNETTE: He's got the beard and keeps his arms
10 crossed.

11 MS. QUIMBY: He usually sits next to Ms. Frawley.

12 THE COURT: Oh, he's the big, younger, kind of
13 heavysset guy?

14 MS. QUIMBY: Yes, sir.

15 THE COURT: All right.

16 MR. GOWDY: I don't know.

17 THE COURT: We'll just have to deal with it. I'll
18 talk with Agent Hendricks. If he's unable to go forward,
19 I don't know what else to do. I think that's why we have
20 alternates.

21 MR. BOGGS: If he's sick, we don't want him, because
22 we don't want him to be more concerned about that.

23 THE COURT: Right.

24 MR. BOGGS: And we've got two alternates.

25 THE COURT: Is there anything else we need to talk

1 about?

2 MS. QUIMBY: Yes, sir. I wasn't sure earlier, I
3 understand the Court has made it's ruling about Ms. Huff.
4 I wasn't sure earlier whether we were still done. I do
5 have several articles that I would like the Court to
6 review at some point. Hollie was going to mark them after
7 this and I'll be happy to have that done.

8 THE COURT: Is this where the change of venue
9 motion -- that's where I was going to allow -- is that
10 what they're for?

11 MS. QUIMBY: Yes, sir. It was for the change of
12 venue and also to be considered -- we were under the
13 impression they were also to be considered in the Huff
14 matter.

15 THE COURT: I'll take a look at it. And if I change
16 my mind, I'll --

17 MS. QUIMBY: Okay. One additional matter, Your
18 Honor. We would move that the Solicitor be precluded from
19 referring to the Defendant as a serial killer, murderer,
20 rapist, or serial rapist during the sentencing phase in
21 such derogatory terms. He should be the Defendant or
22 Mr. Evins.

23 THE COURT: Well, that can cut both ways.
24 What's your position?

25 MR. GOWDY: I didn't think thus far I had referred to

1 him as any of that.

2 MR. BOGGS: Yes, sir. He most certainly did in
3 Greenville in front of Your Honor.

4 THE COURT: Well, that was not in front of the jury.
5 That's an entirely separate matter.

6 But was that your intent?

7 MR. GOWDY: No, sir. It is not my intent.

8 However, he does stand convicted of murder and rape.
9 So I think it is accurate to say he is a convicted
10 murderer and say it is accurate to say he is a convicted
11 rapist. And to suggest otherwise is just disingenuous.
12 That's what he is.

13 MR. BOGGS: We didn't say anything about that. We
14 said serial --

15 THE COURT: Serial murder is what --

16 MR. GOWDY: I referred to him as a garden variety
17 serial killer one time in Greenville outside the presence
18 of anybody that's not in this courtroom right now and
19 haven't repeated it since.

20 MS. QUIMBY: I understand that. And I was not
21 alleging that it had been referred to since then.

22 THE COURT: You're just trying to limit what he can
23 say. Well, he's going to have to watch -- I don't know
24 how many cases have been overturned when an overzealous
25 prosecutor has overstated their case to the jury and

1 inflamed them. I think Mr. Gowdy has read all of those
2 cases and is well versed in that and he knows the risks he
3 runs. And I presume as an officer of the Court that he
4 will behave professionally.

5 MS. QUIMBY: Yes, sir.

6 THE COURT: So I cannot comment -- I mean, I'm not
7 going to limit -- I think that's an anticipatory
8 objection. See what he does. I'm not going to handcuff
9 somebody before they -- unless they deserve it.

10 MS. QUIMBY: Yes, sir.

11 THE COURT: All right.

12 MR. BARNETTE: Just two other matters real quick,
13 Your Honor. Obviously, we make a motion to take all the
14 evidence from the guilt phase and put it in the sentencing
15 phase.

16 THE COURT: All right. Any objection?

17 MR. BOGGS: We object to it, but I think they can do
18 it.

19 THE COURT: All right. And that, of course -- I'm
20 going to grant that motion subject to this objection and
21 subject to any previous objections entered to any evidence
22 of the Defense. So they're not waiving any exception
23 they've got.

24 MR. BARNETTE: Yes, sir. And then Exhibit Nos. 106
25 and 107, I showed those to Ms. Quimby, those are weather

1 forecasts on November 22nd, 1986, and March 5th, 1995. We
2 just ask the Court to introduce those. Those are the same
3 type of reports as in the first trial.

4 THE COURT: All right. Anything else?

5 (There was no response.)

6 THE COURT: We've got about an hour before the jury
7 is coming back. Would you all want me to get Agent
8 Hendricks over here to get sworn testimony as to the
9 condition of Mr. Sanders?

10 MR. BOGGS: No, sir.

11 MS. QUIMBY: No, sir, not from the Defense.

12 THE COURT: If he's real sick, we're just going to
13 have to cut him loose.

14 Do you all want any testimony? The State?

15 MR. GOWDY: No. I trust Robbie and I trust the
16 juror. If the juror is unable to go on, I just -- I know
17 he's got a lot invested in the case and I'm sure it will
18 be disappointing to him to have to leave.

19 THE COURT: Thanks very much.

20 We'll be adjourned.

21 (WHEREUPON, a break was taken.)

22 (WHEREUPON, State's Exhibit Nos. 69 and 117 were
23 marked for identification only.)

24 THE COURT: Mr. Brough, I understand there's some
25 matter you want to discuss?

1 MR. BROUGH: Yes, sir. May we approach briefly?

2 THE COURT: Okay.

3 (WHEREUPON, a bench conference was held with the
4 attorneys.)

5 MR. BROUGH: Your Honor, we just want -- the Defense
6 doesn't know how you want to handle it, but we just want
7 to make sure we renew our objections on each one of the
8 witnesses they're going to call about the prior cases we
9 discussed character evidence.

10 THE COURT: Okay.

11 MR. BROUGH: And we don't necessarily want to have to
12 make that objection in front of the jury each time they
13 call a witness. So we just wondered if you could put some
14 kind of blanket renewal on it.

15 THE COURT: I will do that for you. I understand
16 that was -- I understand your objection. You've left it
17 to the Court's discretion on all convicted matters.

18 MR. BROUGH: Yes.

19 THE COURT: With the non-convicted matters -- I
20 understand your objection to the introduction of the
21 evidence concerning Kimberly Dowden, Grover Berry, and
22 Annice Statin with respect to the unconvicted matters.

23 MS. QUIMBY: Yes, sir.

24 THE COURT: I had ruled on that. I'm not going to
25 let you -- I ruled that you could not put in the hearsay

1 jail conduct.

2 MS. QUIMBY: You didn't rule yet.

3 MR. BARNETTE: You didn't rule. But in the Holmes
4 case, there is a thing about talking about corrections
5 that they let them in in the Holmes case.

6 THE COURT: Get the Holmes case.

7 MS. QUIMBY: Our objection goes primarily to calling
8 them convictions rather than administrative disciplinary.

9 MR. BARNETTE: That's the Holmes case, Your Honor.
10 It was heard a couple weeks ago. That was the one about
11 third party guilt.

12 THE COURT: Right. Well, clearly, under Holmes,
13 these records are admissible and it's an exception to the
14 hearsay rule.

15 MR. BROUGH: All right.

16 THE COURT: So I think that you object to them being
17 characterized as --

18 MR. BROUGH: Criminal convictions.

19 THE COURT: Well, they're not. They are disciplinary
20 infractions.

21 MR. BROUGH: Correct.

22 MS. QUIMBY: And we would just ask that they be --

23 THE COURT: Well, again, that's an anticipatory
24 objection. The State is not going to characterize them as
25 criminal convictions, but as disciplinary -- as internal

1 disciplinary convictions. They won't mischaracterize that.

2 MS. QUIMBY: I understand.

3 MR. BROUGH: The one that we hadn't renewed on was
4 Huff, and I wanted to make sure that we do that.

5 THE COURT: I understand. Clearly, I understand the
6 objections. And I won't require you to stand up and make
7 contemporaneous objections, but I think you need to
8 probably renew them at the end of the trial.

9 MR. BROUGH: That's fair.

10 THE COURT: Now --

11 MR. BARNETTE: One other thing, Your Honor, on the
12 juror situation.

13 THE COURT: I'm going to call Agent Billy Looper and
14 ask him to come in and we're going to put some evidence on
15 the record. He asked me to delay the case to see if he
16 could recover. He wanted to serve and remain on the case.
17 We're going to put it on the record.

18 (WHEREUPON, the bench conference was concluded.)

19 THE COURT: We're back on the record.

20 Please swear the witness.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right.

23 WHEREUPON,

24 WILLIAM LOOPER,

25 after first having been duly sworn, testified as follows:

1 THE COURT: Agent Looper, you can stand right there,
2 if you like.

3 State your name and position, please, sir.

4 AGENT LOOPER: My name is William Looper. I'm a
5 special agent with SLED.

6 THE COURT: And what is the subject matter of your
7 duties in this case?

8 AGENT LOOPER: Myself and some other agents were
9 sworn by this Court to take custody, control, and care of
10 the jurors involved in this case for sequestration.

11 THE COURT: And it's come to my attention that one of
12 our jurors, Mr. Phillip Sanders, Juror No. 320, has become
13 ill; is that correct?

14 AGENT LOOPER: Yes, sir, he has.

15 THE COURT: Would you describe to me the nature of
16 his illness, please?

17 AGENT LOOPER: After our evening meal last night, he
18 started feeling badly and went to bed. This morning, we
19 woke up to find out he'd been up all night very sick to
20 his stomach. He's been, basically, throwing up all night
21 long. He's extremely dizzy and unsteady on his feet. And
22 we're seeking medical attention for him at this time
23 through his family. He had asked about maybe delaying the
24 Court proceedings until tomorrow. He didn't want to be
25 released as a juror. He took his service very seriously.

1 THE COURT: Okay. Any other issues?

2 MR. GOWDY: The State is ready to proceed, Your
3 Honor.

4 MS. QUIMBY: The Defense is ready.

5 THE COURT: Okay. Let's bring the jury in.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:11 p.m.)

8 INTRODUCTORY REMARKS

9 THE COURT: Madam Forelady, ladies and gentlemen of
10 the jury, welcome back to the courtroom.

11 We're all sorry to hear that one of your members has
12 become ill and unable to continue in the trial. And as a
13 result, I am going to ask that our first alternate, Ms.
14 Linda Means, now become a member of the jury panel.

15 Again, I caution the media that there are to be no
16 pictures of the -- any of the jurors or any mention of any
17 of their names in the press.

18 Now, ladies and gentlemen of the jury, as you're
19 aware, Mr. Fredrick Antonio Evins was convicted on
20 November 15th of this year for the offense of murder and
21 the offenses of criminal sexual conduct in the first
22 degree, kidnapping, and grand larceny. Therefore, it
23 becomes necessary for us to hold this additional
24 proceeding which will determine the punishment that the
25 Court is to impose upon the Defendant.

1 But due to the fact of how ill he is, we just wanted to
2 make the Court aware of it.

3 THE COURT: And I have made the determination that
4 I'm not going to suspend the proceedings to determine --
5 or to see whether or not he's going to get well.

6 And before I rule on the record, is there any
7 questions that either Defense or the State would like to
8 ask of Agent Looper?

9 MR. GOWDY: Not from the State, Your Honor.

10 MS. QUIMBY: None from the Defense.

11 THE COURT: All right. Well, thank you very much,
12 Agent Looper.

13 And I am going to excuse Mr. Sanders from service.
14 And I know that we have given him a copy of the
15 instructions, posttrial instructions, with respect to
16 discussing the case.

17 AGENT LOOPER: Yes, sir.

18 THE COURT: Thank you very much.

19 AGENT LOOPER: Yes, sir.

20 THE COURT: All right. Ladies and gentlemen, that
21 now moves us to the first alternate, who's Juror No. 246,
22 Ms. Linda Means.

23 Any questions or concerns about that?

24 MR. GOWDY: Not from the State, Your Honor.

25 MS. QUIMBY: None from the Defense.

1 I will tell you that Section 16-3-20 of the South
2 Carolina Code of Laws, as amended, provides, in part, a
3 person who is convicted of murder must be punished by
4 death or by imprisonment for life. That section also
5 provides, in part, upon conviction of a Defendant of
6 murder, the Court shall conduct a separate sentencing
7 proceeding to determine whether the Defendant should be
8 sentenced to death or life imprisonment.

9 So our purpose in conducting the proceeding in which
10 we are now engaged is to determine whether Fredrick
11 Antonio Evins should be sentenced to death or to life
12 imprisonment.

13 Now, with respect to your particular role in this
14 proceeding, you will be asked to determine, first, whether
15 the State has proved an aggravating circumstance beyond a
16 reasonable doubt. Now, this determination must be
17 unanimous. If you do not find that the State has proven
18 an aggravating circumstance, you will inform the Court and
19 your job will be complete. This is so because a finding
20 of an aggravating circumstance unanimously and beyond a
21 reasonable doubt is necessary before you can even consider
22 death as a possible punishment or before you can consider
23 life imprisonment as a possible punishment.

24 If you do find the existence of an aggravating
25 circumstance beyond a reasonable doubt, you will then

1 determine whether the Court should sentence the Defendant
2 to death or life imprisonment. And at this time, please,
3 consider two important points. First, once a jury has
4 found the existence of an aggravating circumstance, life
5 imprisonment means until the death of the offender. In
6 other words, no such person sentenced to life imprisonment
7 is eligible for parole. Secondly, the applicable statute
8 speaks in terms of a jury recommendation of the sentence.
9 Please understand the Court will follow your
10 recommendation and your verdict will be the sentence
11 imposed. If you find the presence of an aggravating
12 circumstance, you will determine the sentence of either
13 life imprisonment without parole or the death penalty.

14 If you find under the law that life imprisonment is
15 the appropriate sentence and you unanimously recommend a
16 sentence of life imprisonment, the Court will sentence the
17 Defendant to life imprisonment. On the other hand, if you
18 find under the law that the death penalty is the
19 appropriate sentence and you unanimously recommend a
20 sentence of death, the Court will sentence the Defendant
21 to death. I repeat, your verdict will be followed. Your
22 verdict will be the Court's sentence.

23 Now, during this sentencing proceeding, the State and
24 the Defendant will have an opportunity to introduce
25 additional evidence, which the law permits in a sentencing

1 proceeding. And both sides will have an opportunity to
2 present arguments for and against the death penalty.

3 Now, I want to tell you that in this particular part
4 of the proceeding, the State may also present evidence of
5 other crimes, bad acts, or rule infractions. These
6 generally are referred to as character evidence. Now,
7 please, listen carefully to this. It is important that
8 you understand this, these other crimes, bad acts, or rule
9 infractions may not be used to prove a statutory
10 aggravating circumstance. I repeat to you, these other
11 crimes or bad acts or rule infractions may not be used to
12 prove a statutory aggravating circumstance.

13 I would tell you that you may consider these other
14 crimes or other bad acts or rule infractions as evidence
15 of the Defendant's character and characteristics as they
16 may bear logical relevance to the crime. This other
17 evidence, should it be presented, may be considered along
18 with all of the other evidence and you may give it
19 whatever weight you deem proper under the circumstance of
20 this case.

21 Now, I would tell you that after the last argument
22 has been made to you concerning the punishment that should
23 be imposed upon the Defendant, I will give you certain
24 instructions and you will then retire to determine, first,
25 whether the State has proven an aggravating circumstance

1 beyond a reasonable doubt. And if you find that, that an
2 aggravating circumstance has been proved beyond a
3 reasonable doubt, you will then determine whether a death
4 sentence or a life sentence without parole should be
5 imposed. These are the issues presented to you in this
6 second phase of the trial. You will decide should the
7 Defendant be sentenced to life imprisonment without parole
8 or sentenced to death.

9 At this time, I will turn the matter over to the
10 attorneys for their opening statements to you.

11 MR. BARNETTE: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 OPENING STATEMENT

14 MR. BARNETTE: Madam Forelady, ladies and gentlemen
15 of the jury, like Judge Miller says, there's three things
16 that you consider in this case. One, you may hear victim
17 impact testimony from people that knew Rhonda Ward. And
18 they'll be telling you about her and about her family and
19 the impact it's had on her family and her children.

20 The second thing you'll hear about is the
21 circumstances surrounding the death of Rhonda Ward.
22 You've already heard about that, but we're going to give
23 you more on that, also. And the third thing you'll be
24 hearing about is the character of Fredrick Evins. We
25 talked about character. You've already heard this

1 evidence, also. Going back to his statement and he writes
2 in there, I'm sorry that things happened like this because
3 of drugs. I'm truly sorry for the things I've done. I
4 pray that you'll forgive me. I'm not this type of person
5 that would commit this type of crime. Other people with
6 me pressured me with those types of thoughts.

7 Mr. Anthony in his opening told you about George
8 Jones and about his road to self-destruction. We do have
9 a road to destruction by Fredrick Evins. We've only told
10 you about two days of that. We're going to tell you about
11 a time that will span for almost 20 years. We're going to
12 take you all the way back to the beginning and we're going
13 to tell you the rest of the story.

14 We're going to take you back to November 22nd, 1986,
15 when Fredrick Evins knew a lady by the name of Candy Hill.
16 Ms. Hill came from Simpsonville to a party. And she went
17 outside the trailer where she was attending the party and
18 she ran into Fredrick Evins. Fredrick Evins took her by
19 gun point, took her out in the woods, and raped her.

20 He went down that road of destruction on January
21 24th, 1991, with Kimberly Dowden, her last name is Carter
22 now. She's in her trailer in a trailer park in Greer,
23 South Carolina. She's in her bedroom. She got up to open
24 the bedroom door and who was standing there but Fredrick
25 Evins. And he attacked her. And you'll hear about that.

1 Keep going down that road, May 2nd, 1991, Geneva
2 Greene is at an apartment in Greer, South Carolina. She's
3 in her car trying to get something out of it. She gets
4 out and she runs into Fredrick Evins. He puts a fist
5 against her face.

6 Then November 28, 1991, Grover Berry is sitting on
7 his stairs at a trailer watching the sunset and is
8 brutally attacked with a box cutter, his neck and face cut
9 by Fredrick Evins.

10 Keep going down the road, March 5th, 1995, Annice
11 Statin. She's with some of her cousins. The cousins know
12 Fredrick Evins. He's left alone in a car with her and he
13 takes her down Reidville Road, forces her into the woods,
14 and rapes her.

15 March 26, 2001, keep going down that road. Kizzy
16 Smith, who he's living with now, tells him that she wants
17 him to leave. I don't want you to be here anymore. He
18 stabs her in front of her son.

19 September 14th, 2002, in Duncan Park, a lady named
20 Demaris Huff is jogging when she runs into Fredrick Evins
21 on that fateful morning.

22 You've heard about the next stop on this road of
23 destruction, Rhonda Ward, February 13th, 2003, you know
24 about that.

25 What the Judge has told you is aggravating

1 circumstances have to be proven by the State. We feel
2 like there's ample evidence from the Rhonda Ward case that
3 you've heard. First, we've submitted five aggravators,
4 armed robbery, kidnapping, robbery, larceny, and criminal
5 sexual conduct. We just have to prove one of these
6 aggravators for the death penalty to be imposed. We feel
7 like there's ample evidence of that.

8 Like I said, this road of destruction is one that
9 rolls for 20 years. We're going to present you the
10 evidence and ask you to consider it. And at the end of
11 all the evidence being presented, Mr. Gowdy will get up
12 and he'll be telling you how to end this road of
13 destruction of Fredrick Evins.

14 Thank y'all very much.

15 MS. QUIMBY: May it please the Court, Your Honor?

16 THE COURT: Yes, ma'am.

17 MS. QUIMBY: Ladies and gentlemen, we are here
18 because we believe that taking Mr. Evins' life -- we
19 believe that taking his freedom, rather than his life, is
20 the more appropriate thing to do here. We are here to
21 give you information, just information, information about
22 Fredrick, information about his life, information about
23 where he comes from and how he grew up. It's just
24 information. It's not meant to excuse or explain away
25 anything. It's just information about his life.

1 We need you to make a fully informed decision. It's
2 a big decision. You'll be instructed again at the end of
3 this part of the trial that you'll have to decide between
4 taking his life or taking his freedom. Death or life in
5 prison without any possibility of parole until his natural
6 death. We believe the information we'll provide to you
7 will lead you to believe that his natural life is
8 appropriate and sufficient punishment.

9 Thank you.

10 THE COURT: You may proceed.

11 MR. GOWDY: The State calls Bill Southerland.

12 THE CLERK: Place your left hand on the Bible and
13 raise your right hand.

14 WHEREUPON,

15 WILLIAM F. SOUTHERLAND, JR.,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Have a seat, please.

18 FURTHER DIRECT EXAMINATION

19 BY MR. GOWDY:

20 Q Good afternoon, Mr. Southerland.

21 A Good afternoon.

22 Q You testified previously that you were the boss, if
23 you will, or supervisor of Rhonda?

24 A Yes, sir.

25 Q I want you to go into more detail about that. I want

1 you to tell the jury when you and Rhonda first met.

2 A I started with R.L. Jordan in September of 2001, and
3 Rhonda was a cashier for me. I was the co-manager. She
4 did an outstanding job for me and was very dependable,
5 very trustworthy. We could always count on her to do a
6 good job. We let her train new employees. You know, we
7 had a good working relationship.

8 Q Was she a conscientious employee, Mr. Southerland?

9 A Yes. She cared deeply about her job. She wanted to
10 do well.

11 Q You testified earlier about her punctuality and her
12 habit of never leaving work, can you explain that a little
13 more? How dedicated was she to her job?

14 A Well, in the convenience store business, it's not
15 unusual to have employees who don't show up on time or
16 call off at the last minute when something goes wrong.
17 Rhonda wasn't one of those employees. She was a dedicated
18 employee and a good employee that you could depend on to
19 be there when she was supposed to be. And she didn't have
20 to leave early. She was always there when she was
21 supposed to be and cared about her job and doing good for
22 the company.

23 Q Did you have occasion to promote her, Mr. Southerland?

24 A Yes. I was promoted to area supervisor in July of
25 2002, and East Henry Street needed an assistant manager

1 sometime in August of 2002, and we promoted Rhonda Ward to
2 that position at that time.

3 Q Why did you promote her?

4 A She was the best candidate available and we thought
5 she'd do an outstanding job, which she did.

6 Q At some point, were you promoted again or did you
7 have occasion for your path to cross Rhonda's another
8 time?

9 A Yes. In December of 2002, she had been an assistant
10 manager for about four months. I had an opening for a
11 store manager at a cigarette store on Drayton Road and
12 offered her that position, and she accepted it.

13 Q How long had she been the store manager for
14 Cigarette's 4 Less before her death?

15 A Approximately six weeks. She got there in late
16 December, just after Christmas.

17 Q How was she doing as a store manager?

18 A Outstanding. We had discussed a couple times after
19 she spent maybe a year or so there and her kids got a
20 little older, she would be ready to step up and run a
21 bigger Hot Spot convenience store.

22 Q So she had a future within R.L. Jordan?

23 A Absolutely.

24 MR. GOWDY: Mr. Southerland, please answer any
25 questions the Defense may have for you.

1 FURTHER CROSS-EXAMINATION

2 BY MS. QUIMBY:

3 Q Hey, Mr. Southerland. You testified at the last
4 phase of this trial that Ms. Ward was generally on time
5 and she generally always came to work -- well, she always
6 came to work, she never missed a day; correct?

7 A That I can remember.

8 MS. QUIMBY: Thank you.

9 THE WITNESS: Thank you.

10 MR. GOWDY: Nothing on redirect.

11 We'd ask that Mr. Southerland be excused.

12 THE COURT: You can stand down, sir. And you're
13 released from subpoena.

14 MR. GOWDY: May it please the Court, Your Honor?

15 The State calls Rebecca Lathan.

16 THE CLERK: Raise your right hand and place your left
17 on the Bible.

18 WHEREUPON,

19 REBECCA LATHAN,

20 after first having been duly sworn, testified as follows:

21 THE CLERK: Have a seat, please.

22 DIRECT EXAMINATION

23 BY MR. GOWDY:

24 Q Good afternoon, ma'am.

25 A Good afternoon.

1 Q How are you?

2 A Fine.

3 Q I'm going to get you to speak up in a good loud,
4 strong voice where the last lady and gentleman can hear
5 you. Okay.

6 A Yes.

7 Q Tell them who you are and tell them where you work.

8 A My name is Rebecca Lathan, and I'm a manager for Hot
9 Spot.

10 Q Did you know Rhonda Ward?

11 A Yes, I did.

12 Q How did you know her?

13 A I had met her earlier in 1999 as a supervisor of a
14 day care center, her kids were there. And later on, I
15 went to Hot Spot and we met on East Henry Street, the Hot
16 Spot there.

17 Q What kind of relationship did you and Rhonda have?

18 A Like a sister relationship.

19 Q Do you have children?

20 A Yes, I do.

21 Q How do the ages of your children match up with the
22 ages of Rhonda's?

23 A The same ages. She has two daughters and I have two
24 daughter, and they're all the same age.

25 Q Was she a good mom?

1 A Yes, she was.

2 Q Tell the jury what kind of mom and what kind of
3 person Rhonda Ward was.

4 A Rhonda's motivation in life was her kids. She worked
5 a lot, but she worked for her kids. Because most of her
6 family was not here, they were out of state. And she and
7 I kind of clicked on that part. She was never late for
8 work. She would work over if Bill needed her to. And she
9 was hoping to have a better life for her kids.

10 Q You told me that you didn't like alarm clocks.

11 A No, I don't.

12 Q Who was your alarm clock?

13 A Rhonda was. She called me every morning at 6:30,
14 every single day for four years. And when she died, I
15 lost everything, you know. When you expect that phone
16 call at 6:30 and it's no longer there, you just feel like
17 you're lost.

18 Q Did she call you at 6:30 on the morning of February
19 the 13th?

20 A Yes, she did.

21 Q We know about her job at Cigarette's 4 Less. Can you
22 tell the jury whether she had any part-time work in an
23 effort to make ends meet?

24 A Yes. She also worked, I think, it was Jackson Hewitt
25 as a tax preparer for the tax season. She had ambitions

1 of later on being an accountant. You know, she wanted
2 more in her life than, you know, being a manager. She
3 wanted to go back to school and be an accountant.

4 Q When you would work your shift, did Rhonda ever come
5 and sit with you?

6 A Yes. At one time, I was transferred to the Cowpens
7 location and I would have to work 4:00 to 12:00 sometimes.
8 And her and her kids would come up there and sit with me
9 sometimes. Because it would be late at night and I always
10 worked by myself and she was worried about me, about
11 something happening to me.

12 Q Did your family spend time with her family? Did
13 y'all eat meals together?

14 A Yeah. During the week, she would bring me dinners
15 and on the weekends, I would cook for her and her kids at
16 my house.

17 Q Rhonda didn't like to cook?

18 A No. She did not like to cook.

19 Q I want to show you State's Exhibit No. 117, and ask
20 you whether or not you can recognize that?

21 A Yes, I can.

22 MR. GOWDY: Your Honor, we would move State's Exhibit
23 No. 117 into evidence, and ask permission to display it to
24 the jury.

25 MS. QUIMBY: No objection, Your Honor.

1 THE COURT: All right. No objection. Permission
2 granted.

3 (WHEREUPON, State's Exhibit No. 117 was admitted into
4 evidence.)

5 BY MR. GOWDY:

6 Q Tell the jury what they're looking at.

7 A That's a picture of Rhonda with Alex, Kailynn, and
8 James, her three kids.

9 Q Two girls and a boy?

10 A Yes, sir.

11 Q What was the youngest girl's name?

12 A Kailynn.

13 Q Do you still see her children?

14 A Yes, I do.

15 Q How come? How do you still see them?

16 A I call their grandmother and we make arrangements for
17 me to see them or they come to my house occasionally.

18 Q How is the little one doing?

19 A A lot of times, Kailynn, she says she talks to her
20 mom. Kailynn sings songs with her mom. She'll be talking
21 and you'll ask her who she's talking to and she's talking
22 to her mom. And this has been ever since Rhonda has died.
23 Kailynn still talks to her mom and she still sings songs
24 with her mom.

25 MR. GOWDY: Please answer any questions the Defense

1 attorney may have for you.

2 MS. QUIMBY: No questions.

3 Thank you.

4 THE COURT: All right. Thank you, ma'am.

5 You may stand down.

6 MR. ANTHONY: The State calls Geneva Greene.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right.

9 WHEREUPON,

10 GENEVA GREENE,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: Please have a seat.

13 DIRECT EXAMINATION

14 BY MR. ANTHONY:

15 Q Would you state your name, please?

16 A My name is Geneva Greene.

17 Q And, Ms. Greene, where do you live?

18 A I live in Landrum.

19 Q And back in May of 1991, where did you work?

20 A I worked at Computer Dynamics.

21 Q And where was Computer Dynamics located at that time?

22 A It was in Greer, across the street from the Greer
23 police station.

24 Q Okay. Where is it located now?

25 A It's on Pelham Road in Greenville, South Carolina.

1 Q I want to take you back to May 2nd of 1991. What
2 time did you leave work that afternoon?

3 A It was approximately 5:10 to 5:15.

4 Q Okay. And what happened as you left work to go out
5 in the parking lot? What happened?

6 A I went to the car and I unlocked my door and put my
7 purse and everything in the seat. And I turned around to
8 close the door and there was a black male standing in the
9 door.

10 Q Okay. And what did the man do when you turned around
11 and he was standing there in your door?

12 A He asked me to give him all my money.

13 Q Did he do anything before that?

14 A He had his hand up beside my face with his fist.

15 Q And what did you say to him?

16 A He said he wanted all my money, and I told him that I
17 only had about \$5.

18 Q Okay. What did you do -- after he told you that and
19 you said you only had \$5, what did he do?

20 A He said that I was going to have to come up with
21 something else, that he had to have some money.

22 Q So what did he want you to do at that point?

23 A He asked me if I had a checking account.

24 Q Okay. Did you do anything before he asked you about
25 the check to show him that you didn't have any more money

1 than that?

2 A I emptied out the contents of my purse in the
3 passenger seat.

4 Q And once you did that, what did he say?

5 A That's when he said that I was going to have to come
6 up with something more, he need needed more than \$5.

7 Q What else did he say?

8 A He said that I needed to -- he asked me if I had a
9 checking account, and I said, yes.

10 Q What did he tell you to do when you told him you had
11 a checking account?

12 A He told me to write him a check.

13 Q Okay. So how did you respond when he told you to
14 write him a check?

15 A I asked him how much he wanted it for, and he told me
16 \$100.

17 Q And did you ask him anything else about the check?

18 A I asked him what his name was.

19 Q And what did he tell you?

20 A He said his name was Fredrick Evins.

21 Q And how much did he want the check made out for?

22 A \$100.

23 Q So what did you do when he told you this?

24 A I wrote the check out and handed it to him.

25 Q What happened after you handed him the check?

1 A He took the check and he told me not -- to stay in
2 the car and not to get out or call the police or tell
3 anyone or he would have his friends come back and get me.

4 Q So what did you do after he told you that?

5 A I stayed in the car probably about five minutes or
6 so, and I looked to make sure that he wasn't around
7 anywhere. And I ran in the building and told my employer
8 and they called the police.

9 MR. ANTHONY: Thank you.

10 That's all on direct.

11 CROSS-EXAMINATION

12 BY MR. BROUGH:

13 Q How are you, Ms. Greene?

14 A Fine. How are you?

15 Q I just want to ask you a couple questions about this.
16 He, actually, told you his name?

17 A Yes, he did. I was very shocked.

18 Q Okay. And you wrote him out a check, you said, for
19 the sum of \$100?

20 A Yes, I did.

21 Q And did you report that check stolen?

22 A I went to the bank the next day to stop payment on
23 the check.

24 Q Stop payment on the check?

25 A Yes.

1 Q Okay. Do you know if that bank ever made payment on
2 that check?

3 A I don't think he had cashed it at that point.

4 Q Okay. And he told you his name?

5 A Yes, he did.

6 MR. BROUGH: All right. Thank you.

7 No further questions.

8 THE COURT: Any redirect?

9 MR. ANTHONY: No, no redirect.

10 THE COURT: All right. Thank you, Ms. Greene.

11 You may stand down.

12 Thank you very much, ma'am.

13 THE COURT: Put your left hand on the Bible and raise
14 your right hand.

15 WHEREUPON,

16 CHARLENA TINSLEY,

17 after first having been duly sworn, testified as follows:

18 THE COURT: Thank you, ma'am.

19 FURTHER DIRECT EXAMINATION

20 BY MR. BARNETTE:

21 Q Ms. Tinsley, I know you work with the Clerk of
22 Court's Office. I think the jury has seen you before
23 testify in the guilt phase. I'd like to show you State's
24 Exhibit No. 112. Could you tell the jury what that is?

25 A This is an indictment.

1 Q And what's the charge for?

2 A The charge is armed robbery.

3 Q Is it common law robbery, strong armed robbery?

4 A Okay. There is strong armed.

5 Q And what -- who is the person the indictment was on?

6 A Fredrick Antonio Evins.

7 Q And what's the indictment number, ma'am?

8 A It's 1991-GS-23-7086.

9 Q And, if you could, is this a certified conviction?

10 A It is.

11 MR. BARNETTE: Your Honor, I'd like to enter it into
12 evidence at this time.

13 MR. BROUGH: No objection.

14 THE COURT: All right. Without objection.

15 Can I look at that for a second?

16 MR. BARNETTE: Yes, sir.

17 (WHEREUPON, State's Exhibit No. 112 was admitted into
18 evidence.)

19 BY MR. BARNETTE:

20 Q Could you stand down for a second, ma'am?

21 A Sure.

22 Q This indictment is for strong armed robbery; is that
23 correct, ma'am?

24 A Yes. That's correct.

25 Q And, if you could, read count one in there, just the

1 armed robbery count.

2 A "That Fredrick Evins did in Greenville County on or
3 about May 2nd, 1991, feloniously take from the person or
4 presence of Geneva Greene by means of force or
5 intimidation goods or monies of Geneva Greene. Such goods
6 and monies being described as follows: Money in a check
7 in the amount of \$100."

8 Q And, if you could, read that name up there, ma'am.

9 A The Defendant?

10 Q Yes, ma'am.

11 A "Fredrick Antonio Evins."

12 Q And could you read this line and this line?

13 A "Now comes the above-named defendant who is" -- I
14 can't make that out.

15 Q Right there.

16 A "Who in open court pleads guilty to the within
17 indictment strong armed robbery."

18 Q And was this signed by Mr. Evins?

19 A Signed by Fredrick Evins.

20 Q And does it appear he was given an eight-year jail
21 sentence for that?

22 A That's correct.

23 MR. BARNETTE: Thank you, ma'am.

24 We'd like to excuse the witness subject to recall at
25 a later time.

1 THE COURT: All right. Are there any questions?

2 MR. BROUGH: No questions.

3 THE COURT: All right.

4 MR. BARNETTE: Your Honor, the State would like to
5 call Jerry Knighton.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand.

8 WHEREUPON,

9 CHARLES JERRY KNIGHTON,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Have a seat, please.

13 DIRECT EXAMINATION

14 BY MR. BARNETTE:

15 Q If you would, sir, please state your full name for
16 the record.

17 A My full name is Charles Jerry Knighton. I go by
18 Jerry Knighton.

19 Q Where do you work at, sir?

20 A Currently, I'm employed with the Spartanburg County
21 Detention facility. Prior to this, I worked for the
22 Spartanburg County Sheriff's Department for over 24 years.

23 Q What did you do mostly at the sheriff's department
24 for over those 24 years?

25 A The majority of my career, I was a criminal

1 investigator or detective.

2 Q What kind of cases did you work?

3 A I worked just about every aspect of law enforcement
4 while I was there, I mean, from violent crimes to
5 burglaries.

6 Q I'd like to take you back to November 22nd, 1986, was
7 you working as a detective at that time?

8 A Yes, sir, I was.

9 Q And did you receive a call concerning a rape
10 concerning Candy Hill?

11 A Yes, sir, I did. I was dispatched to assist Officer
12 Paris at the Fast Fare in reference to a criminal sexual
13 conduct call.

14 Q Can you tell the jury what happened when you arrived
15 there, sir?

16 A When I arrived at the -- the call come in at 8:02. I
17 arrived -- I didn't live very far from there. I arrived
18 at 8:06. Officer Paris was still interviewing the victim.
19 We had a pretty good description and he had just walked
20 off on foot. So I left when I got a description of him.
21 It was a black male with a blue and red ski jacket with
22 brown interior, faded blue jeans, and tennis shoes. So I
23 started riding the immediate area since he left on foot.

24 I went up to Morris Grill off of Old Spartanburg
25 Highway, which is just up the road from the Fast Fare.

1 And I met a couple of gentlemen up there and they come
2 back down to the scene. And we were given a name at the
3 scene of Freddy Evins, which we later found out was
4 Fredrick Antonio Evins.

5 And when I talked to these individuals -- I knew him.
6 They brought back to my -- through our conversation, I
7 realized I knew him. I knew where he lived. So we put
8 the victim in my car and we proceeded down to the house,
9 myself and Officer Paris and Officer Brian Millwood.

10 Q And when you're talking about the house, where was
11 the house located?

12 A The house was located on -- I can't think right now.

13 Q Was it located near Cedar?

14 A It was Cedar Street. It was Cedar Street off of -- I
15 can't think of that road either right now. But anyway, it
16 was on Cedar Street in Wellford.

17 Q Wellford was where it was located?

18 A Right. It was across from the Rock Bottom Club or
19 right at the Rock Bottom Club.

20 Q And the victim was Candy Hill?

21 A The victim was Candy Hill. She was identified as
22 Candy Hill at the scene.

23 Q When you found out where Fredrick Evins lived, who
24 did he live with? Do you know?

25 A He lived with his mother at that location.

1 Q When y'all went to the house, if you would, tell the
2 jury what happened.

3 A When we went to the house, we left the victim in my
4 car with the engine running. Myself and the other two
5 officers approached the house. And I went to the rear of
6 the house. Officer Paris, I believe he went right to the
7 corner of the front where he could watch one house side
8 and the front. And Officer Millwood, he went to the side.

9 When I got to the back of the house, Mr. Evins tried
10 to exit out the rear door on me. We were told -- as part
11 of the -- at the incident where the report was taken that
12 he was in possession of a firearm. He kept sticking his
13 hand behind his back, so I drew a weapon on him and he
14 went back in the house. He slammed the door and started
15 barricading the back door.

16 Then he goes back down the house and he tried to come
17 out several windows, but we were always there. And,
18 finally, his mother come up the road. And, like I say, I
19 knew them. And she talked him into coming out and he come
20 out and gave himself up. He was Mirandized, at that time,
21 before we even -- didn't even ask his name. I Mirandized
22 him via a card I kept in my pocket.

23 Q So you gave him his rights at that point?

24 A Yes, sir.

25 Q Then what happened next, sir?

1 A Well, I went out to the car where the victim was,
2 because the total time -- like I say, at that time, when
3 we got him, it was 8:20. The call came in at 8:02, I
4 arrived at --

5 Q So we're talking about 8:02 in the morning?

6 A Right, 8:02 a.m.

7 Q How was the weather?

8 A It was very cold. I had to warm my car up. As I
9 remember, later on, when I found the actual scene where
10 the rape occurred, the ground was even frozen, if memory
11 serves me right.

12 Q But going back, did you seize Fredrick Evins?

13 A Oh, yes. He was taken into custody and arrested
14 right there. Because I went to the car and she positively
15 identified him as the person that committed the sexual
16 assault on her.

17 Q Did he make any comments or anything to you?

18 A Yeah. After I Mirandized him, I just come out and
19 asked him if he had sexually assaulted her and he said,
20 yes, he did.

21 Q So what happened afterwards, sir?

22 A He was placed in Mr. Paris' car and transported to
23 the Spartanburg County Sheriff's Department. The victim
24 was taken back to the Fast Fare and she was -- by one of
25 our sergeants. She was transported to Spartanburg

1 Regional Medical Center so we could -- we had a rape
2 protocol or a rape kit we do, and she was transported to
3 the hospital for that.

4 Q And was Mr. Evins taken and was he given his rights
5 again in writing?

6 A Yes, he was. He was transported to the Spartanburg
7 County Sheriff's Office. I followed him down and he was
8 given his rights a second time in writing and he signed
9 the waiver.

10 Q Let me show you what's been marked as State's Exhibit
11 No. 81. Is that the waiver of rights that he signed?

12 A Yes, sir, it is.

13 MR. BARNETTE: Your Honor, I'd like to enter this in
14 evidence at this time.

15 MR. BROUGH: No objection.

16 THE COURT: All right. Without objection.

17 (WHEREUPON, State's Exhibit No. 81 was admitted into
18 evidence.)

19 BY MR. BARNETTE:

20 Q If you would, sir, please, come on down for a second.
21 Well, I'll tell you what, you just stay there and I'll let
22 you read it from there.

23 Okay. Did you give him these five rights, sir, right
24 here?

25 A Yes, I did.

1 Q And did you read them to him?

2 A Yes, sir, I did.

3 Q And did he understand them?

4 A Yes, sir. He told me he understood them.

5 Q Okay. And along with you, was Jimmy Paris also with
6 you, one of the detectives?

7 A Yes, sir. He's the one that transported him down.

8 Q And once he was read his rights and everything, did
9 he sign at this point right here?

10 A Yes, sir, he did.

11 Q And did you tell him what this investigation was
12 about?

13 A Yes, sir, I did. It's written right on there, in
14 reference to criminal sexual conduct.

15 Q And after that, did he also sign that he indicated he
16 understood what that was about?

17 A Yes, sir, he did.

18 Q Was that also witnessed by Detective Paris?

19 A Officer Paris, yes, sir.

20 Q Afterwards, did he give y'all another statement?

21 A Yes, sir, he did.

22 Q Let me show you what's been marked as State's Exhibit
23 No. 82. Is that the statement you took from Fredrick
24 Evins?

25 A Yes, it is.

1 MR. BARNETTE: Your Honor, I'd like to move State's
2 Exhibit No. 82 into evidence at this time.

3 MR. BROUGH: No objection.

4 THE COURT: Thank you, sir.

5 (WHEREUPON, State's Exhibit No. 82 was admitted into
6 evidence.)

7 MR. BARNETTE: I believe you have a copy there, Your
8 Honor. I would like to publish this to the jury and let
9 Officer Knighton read it from the stand, if that's okay.

10 THE COURT: Okay.

11 BY MR. BARNETTE:

12 Q At the top of the statement, you filled out the
13 information and everything; is that right?

14 A Yes, sir, I did.

15 Q And did you take down what he told you in your
16 interview?

17 A Yes, sir. I took it down verbatim.

18 Q Did he change his story from what it was at the
19 scene?

20 A Yes, sir, he did.

21 Q If you would, go ahead and read the statement
22 starting with the top line. And I'll try to help the jury
23 follow along with you.

24 A All right, sir. It says, "On 11/22/86, during the
25 morning hours just before the sun came up, I was at a

1 party at Brenda Reed's in Wellford. I met a girl at the
2 party. I think her name was Jackie, but I'm not sure. We
3 talked awhile. She asked me if I wanted to do some
4 cocaine. I said, okay, and we went outside. The girl was
5 a dark-skinned, black female about 20, 21 years old. I
6 remember she had a white coat, but that is all I remember
7 about her."

8 "We went outside behind the car. We did some coke
9 and she rubbed on my chest. I asked her who her old man
10 was and she said she didn't have one. I rubbed on her tit
11 and she pulled one side of her bra -- of her shirt and bra
12 up and I rubbed her tit. She broke loose and we leaned up
13 beside a car and started kissing. We then we went to the
14 ground. We pulled off our clothes and I had sex on the
15 ground beside the cars. It was cold. I was shaking from
16 the cold. We made love for 10 or 15 minutes. We got up
17 and we went back inside the trailer and I left."

18 "I left her sitting in the trailer and I went home.
19 I stayed there until the police came. I don't -- I didn't
20 leave there at any time after I left the girl and I came
21 home until the police came."

22 And that's the end of the statement. It says, "I
23 received a copy of this statement," signed Mr. Fred Evins.

24 Q So you gave him a copy of the statement?

25 A Yes, sir.

1 Q And you witnessed this entry there?

2 A Yes, sir.

3 Q Did you give him a chance to read over the statement
4 and let him make any changes he wanted to?

5 A Oh, yes, sir.

6 Q Afterwards, did you go to the crime scene?

7 A Yes, sir. He was -- at that point in time, he was
8 charged -- well, he had already been charged. I had
9 already arrested him. But he was transferred to the
10 jailhouse by Paris. And the victim had come back into the
11 office from having the rape kit done. And we hadn't,
12 actually, found the scene, because she was picked up at
13 the Fast Fare. So I took her back to that area and we
14 located the crime scene.

15 Q What did you find at the crime scene?

16 A At the crime scene, it was a little dirt road off a
17 fenced road at Star Tex, which is in walking distance of
18 his house. It was a dirt road and a little ways out
19 there, we found clothes on the ground. We found her bra,
20 I think, and we found her panties. We found a sweater.
21 And we found a pair of men's underwear.

22 Q And later on when Mr. Evins was booked in the jail,
23 what did y'all discover?

24 A We discovered he didn't have no underwear on.

25 Q And also, the clothing he was wearing, did that match

1 the description y'all were given?

2 A Yes, to a T. He had on -- well, he had at his house,
3 a blue and red ski jacket with brown inside, which was
4 described to us. He was wearing faded blue jeans and he
5 had blue tennis shoes on. And all of those were seized
6 from the jail as evidence.

7 Q And was he arrested for criminal sexual conduct?

8 A Yes, he was.

9 MR. BARNETTE: One moment, Your Honor.

10 THE COURT: All right.

11 MR. BARNETTE: Please answer any questions Mr. Brough
12 may have for you.

13 CROSS-EXAMINATION

14 BY MR. BROUGH:

15 Q Mr. Knighton, how are you doing?

16 A Just fine, sir.

17 Q I just want to ask you one quick question. You said
18 that Ms. Hill was found -- the Fast Fare is where she
19 reported the incident?

20 A Yes, sir.

21 Q So it wasn't -- it was there that she was found by
22 Officer Paris?

23 A Yes, sir. That's where she called in from.

24 Q That's where she called in from.

25 A Yes.

1 MR. BROUGH: Thank you very much.

2 MR. BARNETTE: Your Honor, we'd ask that this witness
3 be excused.

4 THE COURT: Any objection?

5 MR. BROUGH: No objection.

6 THE COURT: Thank you, sir.

7 You're excused and released from subpoena.

8 MR. BARNETTE: Your Honor, I'd like to call Officer
9 Paris to the stand.

10 THE CLERK: Place your left hand on the Bible and
11 raise your right.

12 WHEREUPON,

13 JAMES PARIS,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Please have a seat.

16 DIRECT EXAMINATION

17 BY MR. BARNETTE:

18 Q If you would, sir, please state your full name for
19 the record.

20 A James Paris.

21 Q Where do you work at, sir?

22 A Spartanburg County Sheriff's Office.

23 Q How long have you been there, sir?

24 A Over 23 years.

25 Q What's your position there, sir?

1 A Master deputy of uniform patrol.

2 Q Were you working back on the morning of November 22,
3 1986?

4 A Yes, I was.

5 Q And did you receive a call about a rape victim being
6 at the Fast Fare?

7 A Yes, sir, I did.

8 Q When you arrived, what did you find, sir?

9 A I met with the victim at the Fast Fare, Ms. Candy
10 Hill.

11 Q When you met her, about what time did you get there?

12 A It was shortly -- the call, actually, came in at 8:02
13 and approximately six to eight minutes later.

14 Q How was the weather that morning?

15 A To the best of my memory, it was very cold that
16 morning.

17 Q And when you arrived there, did you receive the
18 information about what had happened to her?

19 A Yes, I did.

20 Q Okay. And based off that information, did you
21 call detective -- or was a detective called to the
22 scene?

23 A Yes, he was.

24 Q And was Detective Knighton called to the scene?

25 A Yes, sir.

1 Q When he got there, did y'all find out who this
2 individual was?

3 A Yes, sir, we did.

4 Q And who was that individual, sir?

5 A Fredrick Antonio Evins.

6 Q And did y'all transport the victim, Candy Hill, up to
7 the house where he was?

8 A Yes, sir, Investigator Knighton transported her.

9 Q When y'all arrived there, did y'all try to talk to
10 Mr. Evins at the house?

11 A Yes, we did.

12 Q And then what happened?

13 A At that point, when we arrived, we tried to get the
14 suspect to come outside. He attempted to run out a door.
15 And once he saw our presence, he then ran back in the
16 house and started raising windows trying to jump out the
17 window. And each time he would see an officer, he ran
18 back in the house and hid inside.

19 Q Okay. During this time, did his mother later drive
20 up?

21 A Yes, sir, she did.

22 Q And what happened then, sir?

23 A She went inside and convinced the suspect to come
24 outside and talk with us.

25 Q And later on, did he come out?

1 A Yes, he did.

2 Q And was Mr. Evins taken to be ID'd by Ms. Hill?

3 A Yes, sir.

4 Q And did she ID him?

5 A Yes, sir.

6 Q As the person that raped her?

7 A Yes, she did.

8 Q After that, was Mr. Evins taken to the Sheriff's
9 Department? Did he give a statement?

10 A Yes, sir, he did.

11 Q And let me show you what's been marked as State's
12 Exhibit No. 81. Was he given his rights?

13 A Yes, sir, he was.

14 Q And was you a witness to those rights being given to
15 him?

16 A Yes, sir.

17 Q And did he understand those rights?

18 A Yes, sir.

19 Q And did he sign saying he understood them?

20 A Yes, sir, he did.

21 Q And what this incident was about?

22 A Yes, sir, he did.

23 Q And what was this incident about?

24 A Criminal sexual conduct.

25 Q And later on, did he give a written statement, which

1 Detective Knighton wrote out for him?

2 A Yes, sir. That's the statement he gave.

3 Q And did he give that statement freely and
4 voluntarily?

5 A Yes, sir.

6 Q Was he promised anything for it?

7 A No, sir.

8 Q Was he threatened in any way?

9 A No, sir.

10 Q And after he had given his statement, did he sign his
11 statement?

12 A Yes, sir, he did.

13 Q And was he given a copy of the statement?

14 A Yes, sir.

15 Q And did y'all witness it, you and Detective Knighton?

16 A Yes, sir. I witnessed it and also Investigator
17 Knighton later on.

18 Q Later on, was Mr. Evins transported to the
19 Spartanburg County jail?

20 A Yes, sir, he was. I transported him to the county
21 jail.

22 Q When you booked him in, what did you find out?

23 A At that point, I was advised by Investigator Knighton
24 that he wanted the suspect's clothing for evidence. I
25 instructed the jail that I needed the clothing. And once

1 they removed -- had him remove his clothing and dressed
2 him in jail attire, it was discovered that he was not
3 wearing any underwear.

4 Q There was no underwear on him?

5 A No, sir, no underwear at all.

6 MR. BARNETTE: Please answer any questions Mr. Brough
7 may have for you.

8 CROSS-EXAMINATION

9 BY MR. BROUGH:

10 Q I just have a couple quick questions for you,
11 Officer. When you responded initially, where did the call
12 come from?

13 A It came from the Fast Fare at Wellford.

14 Q From the Fast Fare?

15 A Yes, sir.

16 MR. BROUGH: Thank you.

17 No further questions.

18 MR. BARNETTE: No further questions of this witness.

19 Your Honor, we'd ask that he be excused with the
20 right to recall him at a later time.

21 THE COURT: All right. Thank you, Officer.

22 You may stand down.

23 MR. BARNETTE: Your Honor, I call Charlena Tinsley to
24 the stand.

25 THE COURT: You're still under oath.

FURTHER DIRECT EXAMINATION

1
2 BY MR. BARNETTE:

3 Q Ms. Tinsley, if you would, take a look at State's
4 Exhibit No. 110. Is that a certified indictment, ma'am?

5 A Yes, it is.

6 Q And is that from the Clerk's Office here in
7 Spartanburg County?

8 A It is.

9 MR. BARNETTE: Your Honor, I'd enter State's Exhibit
10 No. 110 into evidence at this time.

11 THE COURT: Any objection?

12 MR. BROUGH: No objection.

13 (WHEREUPON, State's Exhibit No. 110 was admitted into
14 evidence.)

15 BY MR. BARNETTE:

16 Q If you would, ma'am, please tell the jury what he
17 pled to on this indictment?

18 A He pled to criminal sexual conduct second degree.

19 Q And when was that, ma'am?

20 A 5-1-87.

21 Q And it has indictment number 87-GS-42-620?

22 A That's correct.

23 Q And, if you will, ma'am, please read the inside of
24 the indictment. You may want to get up. And when I'm
25 talking about the inside, if you would, just read this

1 part for the jury.

2 A "That Fredrick Antonio Evins did in Spartanburg
3 County on or about the 22nd day of November, 1986,
4 willfully and unlawfully commit first degree criminal
5 sexual conduct against Candy Denise Hill, she being the
6 victim of kidnapping and violation of sections 16-3-651
7 and 16-3-652 of the code of laws of South Carolina 1976."

8 Q And on this side of the indictment, this is where he
9 pled to criminal sexual conduct second degree?

10 A That's correct.

11 Q And this is where he was sentenced; is that correct?

12 A Right.

13 MR. BARNETTE: Thank you, ma'am.

14 Please answer any questions Mr. Brough may have for
15 you.

16 MR. BROUGH: No questions.

17 THE COURT: Thank you, Ms. Tinsley.

18 MR. BARNETTE: Your Honor, may we approach the bench
19 for a second?

20 THE COURT: All right.

21 (WHEREUPON, a bench conference was held with the
22 attorneys.)

23 MR. BARNETTE: Candy Hill is five minutes away.

24 That's the victim in this case. If we could take a short
25 break until she gets here. They just told me. She was

1 supposed to be here an hour ago.

2 THE COURT: All right.

3 MR. BOGGS: That last document he put up said "CSC
4 first," and he pled to a second.

5 MR. BARNETTE: And I did put that in.

6 MR. BOGGS: Yeah. But you put it up there on the
7 indictment that he's charged with a first. That's the
8 same thing we've been arguing about. He can put up what
9 the man pled to, but to put up information that he was
10 charged with --

11 Isn't that what you were just talking about?

12 THE COURT: I'll tell them.

13 MR. BOGGS: This one may slide by, but I don't want
14 them to do that again.

15 MR. BARNETTE: I showed you all the indictments
16 beforehand. I gave you a copy of them.

17 MR. BOGGS: But don't put one up that says a first if
18 it's a second that he pled to.

19 MR. BARNETTE: He's got a --

20 THE COURT: Okay. I'll give a curative instruction.

21 (WHEREUPON, the bench conference was concluded.)

22 THE COURT: All right. Ladies and gentlemen, we're
23 going to take a short break in just a second. But before
24 we do that, I want to make something clear to you with
25 respect to these indictments. When you are considering

1 them, and you may consider these documents, State's
2 Exhibit No. 112 says -- you might read on there that it's
3 an indictment for armed robbery -- well, that has been
4 scratched out and it is strong armed robbery. It is not
5 armed robbery. So I'm instructing you not to consider
6 that. You're to consider only the indictment for which he
7 was convicted, and that is for strong armed robbery.

8 State's Exhibit No. 110 is an indictment, which
9 states -- and you'll see it. It will be back there. It
10 says criminal sexual conduct in the first degree. That is
11 not what he was convicted of. I am instructing you now
12 not to consider that. You're to consider only the
13 indictment for which he was convicted, and that is
14 criminal sexual conduct in the second degree. Okay.

15 And right now, we'll take a five- or ten-minute
16 break.

17 Thank you very much.

18 We'll be back with you shortly.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 3:12 p.m.)

21 THE COURT: Do you think you can get your witness
22 here in five or ten minutes?

23 MR. GOWDY: She's here. I'm sorry. She just got
24 here.

25 THE COURT: We'll take a break and come back.

1 (WHEREUPON, a break was taken.)

2 THE COURT: I've been informed by the attorneys
3 involved in this case that the next witness is the victim
4 of a criminal sexual conduct charge. And I am instructing
5 the press not to use her name in the press. And I would
6 ask you not to photograph her as well.

7 Ms. Hill, are you okay?

8 MS. CANDY HILL: (Ms. Hill nodded.)

9 THE COURT: Ms. Hill, my name is Ned Miller. I'm the
10 Judge in this case. And -- come on up and let me talk to
11 you for a second. I promise you I don't bite.

12 Okay. I just want to tell you that I appreciate you
13 coming forward subject -- I know you're under subpoena.
14 And I know that this is a very difficult situation that
15 you find yourself in.

16 Am I right about that?

17 MS. CANDY HILL: Yes, sir.

18 THE COURT: All right. Well, what I want to speak to
19 you about is that -- and what I'm going to ask you to do
20 is to try and put aside your personal emotional pain that
21 you're suffering, which I know is very difficult. And the
22 reason I ask you to do that is so that the jury -- so that
23 you will just be as objective about your description of
24 what happened as you possibly can be. Okay.

25 MS. CANDY HILL: Yes, sir.

1 THE COURT: And if you get to the point where you
2 think that you're -- you need to stop, that you're not
3 going to be able to control your emotions in some way, I
4 would like you just to turn to me and signal to me and I
5 will make arrangements and give you time to gather
6 yourself. Okay.

7 MS. CANDY HILL: Yes, sir.

8 THE COURT: And the reason I ask you to do that is
9 because Mr. Evins is on trial for a different offense.
10 And the jury is entitled to know the testimony that you're
11 going to present. But what I'm concerned about and what I
12 don't want to happen is for Mr. Evins to be punished in
13 this trial that is today for what he did to you.

14 Okay. Is that pretty clear?

15 MS. CANDY HILL: Yes, sir.

16 THE COURT: Does that make sense?

17 MS. CANDY HILL: Yes, sir. He's already been
18 sentenced for that.

19 THE COURT: That's right. And so while the jury is
20 entitled to know this is a characteristic of Mr. Evins, we
21 don't want them to feel like they have to punish him for
22 what happened to you.

23 MS. CANDY HILL: Yes, sir.

24 THE COURT: Okay. I know you're going to do great.
25 Again, if you have trouble, you just turn to me and

1 we'll take care of it and we'll get everything under
2 control.

3 MS. CANDY HILL: All right, sir.

4 THE COURT: Thank you.

5 Are we ready to call the jury in?

6 MR. GOWDY: Yes, sir, Your Honor.

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

8 (WHEREUPON, the jury came into open court at
9 approximately 3:29 p.m.)

10 THE COURT: Ladies and gentlemen, welcome back.

11 Mr. Barnette.

12 MR. BARNETTE: Thank you, Your Honor.

13 May it please the Court?

14 I'd like to call Candy Hill to the stand.

15 THE COURT: Ma'am, come on around and be sworn.

16 THE CLERK: Please raise your right hand and place
17 your left hand on the Bible.

18 WHEREUPON,

19 CANDY DENISE HILL,

20 after first having been duly sworn, testified as follows:

21 THE CLERK: Have a seat right there.

22 DIRECT EXAMINATION

23 BY MR. BARNETTE:

24 Q Ms. Hill, if you would, give me your full name for
25 the record, please.

- 1 A Candy Denise Hill.
- 2 Q And, Ms. Hill, what town do you live in now?
- 3 A Fountain Inn, South Carolina.
- 4 Q And how long have you lived there, ma'am?
- 5 A For the past 12 years.
- 6 Q And let me take you back to November 22nd of 1986.
- 7 Could you tell the jury who you was with that night and
- 8 where was you living at that time?
- 9 A I was living in Boxwood in Simpsonville. And my aunt
- 10 stayed in Cashville. And I went out with Elaine Rogers.
- 11 Q Who's Elaine Roger?
- 12 A A friend girl of mine.
- 13 Q And she lived in Cashville and that's in Spartanburg
- 14 County?
- 15 A Yes, sir.
- 16 Q And you came over to visit her and -- how old were
- 17 you, ma'am?
- 18 A 18.
- 19 Q And you came over to visit her. Why did you come to
- 20 visit her?
- 21 A I just had turned 18, my birthday was October 11th.
- 22 So at that point in time, you could buy alcohol, so we
- 23 went out to party.
- 24 Q And where did y'all go? Did you go with her or some
- 25 other folks?

1 A Me and her left together.

2 Q And where did y'all go, ma'am?

3 A First, we went to Mike's Grill. And then we went to
4 the Rock Bottom, and then we went to a trailer. I can't
5 remember what part of town it was, but it was down in
6 Woodruff or --

7 Q Could it be Wellford?

8 A Wellford, somewhere down there. It wasn't too far
9 from that other place.

10 Q Were you real familiar with this area?

11 A No.

12 Q And you were from Simpsonville, so you hadn't been in
13 that area that much?

14 A Huh-uh.

15 Q When you went to the trailer, who was with you when
16 you went to the trailer?

17 A Me and Elaine.

18 Q And was it in the early morning hours?

19 A Yes, sir.

20 Q When you got to the trailer, please tell the jury
21 what happened.

22 A We went inside the trailer and we was laughing,
23 drinking, you know. I went outside to get some cigarettes
24 out of the car. At this point in time, that's when I seen
25 Mr. Evins with -- he asked me did I do drugs, and I told

1 him, no. He asked me did I drink beer, I told him, yes.

2 And he said, well, come here. And he put a gun --

3 Q Where did he put the gun at, ma'am?

4 A (There was no response.)

5 THE COURT: Would you like a cup of water, Ms. Hill?

6 THE WITNESS: (Witness nodded.)

7 THE COURT: All right. We'll just take a second.

8 THE WITNESS: In my back.

9 BY MR. BARNETTE:

10 Q What did he tell you to do, ma'am?

11 A We walked.

12 Q And where did y'all walk to, ma'am?

13 A A field.

14 Q Did he walk a distance from where y'all were?

15 A (There was no response.)

16 Q Take your time, ma'am.

17 Are you ready?

18 A (Witness nodded.)

19 Q When you went out to the field, how far away was it
20 from the trailer?

21 A I couldn't see the lights at the trailer anymore, so
22 I guess it was about -- I estimate -- I don't know.

23 Q Well, let me ask you this. Once you got out in the
24 field, what did he tell you to do or what happened?

25 A He told me to take my coat off. He snatched my

1 sweater loose. He snatched my bra loose. He told me to
2 take off my pants.

3 Q Did you take your pants off?

4 A Yes.

5 Q Did he still have a gun on you?

6 A Yes.

7 Q What happened next?

8 A He told me to lay down.

9 Q Did he make you lay down?

10 A He had a gun. I laid down on my own.

11 Q What happened then, ma'am?

12 A He raped me.

13 Q And can you tell the jury what he did to you during
14 that rape?

15 A He -- we had -- he penetrated me. He --

16 THE WITNESS: I can't do this.

17 THE COURT: All right. Just hang on, Ms. Hill.

18 Madam Forelady, and, ladies and gentlemen, let's take
19 a little bit of a break. I ask y'all to retire to your
20 jury room for a minute, please.

21 Thank you.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 3:37 p.m.)

24 THE COURT: Ms. Hill, would you like to take a minute
25 and compose yourself? Do you need to be excused for just

1 a minute?

2 MR. BARNETTE: Yes, sir. Can she go -- and nobody
3 will talk to her about the case or anything.

4 THE COURT: Let me tell you, the rules of law require
5 you not to talk to anybody about your testimony. And,
6 please, take your time.

7 Is there anyone with her? Do you have a victim
8 advocate here?

9 MR. GOWDY: We do, Your Honor.

10 (Pause.)

11 THE COURT: Is she with the Victim Advocate's Office?

12 MR. GOWDY: I don't know that lady. She's with Safe
13 Home Rape Crisis, Your Honor.

14 THE COURT: All right.

15 MR. GOWDY: I know I can't talk to her about her
16 testimony, but can I talk to her about her composure?

17 I mean, I don't care about what she's going to say.
18 But the times I have talked with Candy in the past, she
19 has been okay. She can -- I mean, I'm not saying she'll
20 do better with me than Mr. Barnette, but she may not be --

21 THE COURT: Do you mean you want to switch?

22 MR. GOWDY: Well, I don't know.

23 THE COURT: All right. Do you object?

24 MR. GOWDY: They brought her in to talk to me one
25 other time and she got through it, so.

1 MR. BROUGH: We would just -- with all due respect to
2 Ms. Hill, I don't know that she's going to be able -- I
3 know that she's already testified that he did rape her. I
4 don't know that she's going to be able to get through
5 this.

6 THE COURT: What else are you going to try to elicit?

7 MR. GOWDY: I think he'd like to get a little detail
8 in terms of the character of Mr. Evins during the rape.
9 Some rapes are more aggravated than others, which is
10 pretty pertinent in this case. You know, they're going to
11 cross-examine her on why she walked back to Fast Fare.
12 I'd like to be the first one to get her to explain why she
13 walked back to Fast Fare.

14 THE COURT: Well, I mean, you certainly have -- I'm
15 not going to limit your examination, as long as she can
16 get through it.

17 MR. GOWDY: I don't want a lot of detail. I don't
18 think the jury wants a lot of detail. I think they get
19 the idea of what happened to the woman. So, at this
20 point, I just want her to get through it.

21 THE COURT: Do you all object to switching horses if
22 she thinks she's more comfortable --

23 MR. BROUGH: If she thinks she's more comfortable
24 with Mr. Gowdy, I don't think that we really have an
25 objection to that. I just -- my concern is whether or not

1 she can get through it.

2 THE COURT: That's my concern as well. But we're
3 going to give her another shot at it.

4 (WHEREUPON, a break was taken.)

5 THE COURT: All right. Ms. Hill, are you ready for
6 me to bring the jury back?

7 THE WITNESS: Yes, sir.

8 (WHEREUPON, the jury came into open court at
9 approximately 3:44 p.m.)

10 THE COURT: Madam Forelady, and, ladies and gentlemen
11 of the jury, I want to thank you for your patience in this
12 regard. And I want to also tell you that we are -- as you
13 are well aware, this is a very serious matter where
14 emotions quite often run high. I want to tell you that
15 your job, ladies and gentlemen, is to listen. You're the
16 sole and exclusive judges of the facts in this case. And
17 as such, under your oath, you're required to consider all
18 of the evidence. And I want you to remember that you
19 should consider it calmly, with measured reason, without
20 passion, prejudice, bias or emotion.

21 Mr. Barnette.

22 MR. BARNETTE: Thank you, Your Honor.

23 BY MR. BARNETTE:

24 Q Candy, let me take you back to the field. You had
25 been there for him to rape you the first time?

1 A Uh-huh.

2 Q Then what happened?

3 A Then he told me to get up and put my clothes on, and
4 then he told me to take my clothes back off.

5 Q Then what happened?

6 A He raped me again.

7 Q Did he force you to do anything before he raped you
8 again as far as sexually?

9 A He tried to, but I told him I wouldn't.

10 Q Tried to do what, ma'am?

11 A To make me have oral sex with him.

12 Q And what did he do when you didn't do that?

13 A Well, I was -- before that happened, I was -- he was
14 raping me, and I was praying. And he told me to shut up,
15 and I wouldn't. And he started -- he grabbed me by my
16 hair and started beating my head against the ground. And
17 he fired the gun off and he said the next one won't be in
18 the air.

19 Q After the second time, what happened?

20 A After he raped me the second time?

21 Q Yes -- or how was the temperature during this time?

22 A It was cold. It was so cold that I couldn't even put
23 my shoes on. My toes, I had got frostbitten. My hands
24 were frostbitten. My clothes were frostbitten.

25 Q So after the second time, what happened?

1 A Well, he told me that he loved me and walked me to
2 the store and left me there. And it just so happened, a
3 lady in the store knew him.

4 Q What did he tell you when he left you at the store?

5 A He didn't tell me really nothing. He said he loved
6 me.

7 Q Had you ever met him before this?

8 A No. I had never seen him, never met him, didn't know
9 anything about him.

10 Q Okay. So once you were left there, did you tell the
11 clerk?

12 A She called the police and told them I had just been
13 raped.

14 Q And did the police come?

15 A Uh-huh

16 Q And later on, was you taken to a house nearby?

17 A Yes.

18 Q And did you see the man that raped you?

19 A Yes.

20 Q Did you ID him?

21 A Yes.

22 Q Do you see the man in the courtroom today that did
23 this to you, ma'am?

24 A Yes.

25 Q Would you point at him, please, ma'am?

1 THE WITNESS: You ruined my life.

2 MR. BARNETTE: Hold up, ma'am.

3 MR. BROUGH: Your Honor, may we approach?

4 THE COURT: Hang on. Not right now.

5 MR. BARNETTE: Your Honor, just for the record, I'd
6 like to say she has identified the Defendant.

7 THE COURT: All right. Thank you.

8 MR. BARNETTE: Ms. Hill, thank you very much.

9 Please answer any questions Mr. Brough may have for
10 you.

11 THE COURT: Do y'all need to approach?

12 MR. BROUGH: Yes, Your Honor.

13 (WHEREUPON, a bench conference was held with the
14 attorneys.)

15 MR. BROUGH: Well, Your Honor, we would ask for a
16 curative instruction, at least, regarding, "You ruined my
17 life." We believe that would be victim impact evidence.
18 And, clearly, she is not the victim in this case, although
19 she is in a past case, but it would be improper for that
20 to come in. It's not character evidence. It is specific
21 as to how it effected her.

22 THE COURT: All right.

23 MR. BARNETTE: Your Honor, you understand she just
24 made a reaction.

25 THE COURT: I understand.

1 MR. BROUGH: Thank you, Your Honor.

2 (WHEREUPON, the bench conference was concluded.)

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, we just want to, again, emphasize to you that in
5 situations like this, emotions run very high. And I think
6 all of us are aware of that.

7 I'm going to instruct you not to consider Ms. Hill's
8 last comment, which was directed to Mr. Evins. That is
9 not evidence. And I instruct you not to consider it
10 whatsoever.

11 All right. Thank you very much.

12 And, Ms. Hill, I would ask you to please only address
13 the person who is asking you questions.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 MR. BROUGH: May it please the Court?

17 CROSS-EXAMINATION

18 BY MR. BROUGH:

19 Q Ms. Hill, I'm not going to ask you a lot of
20 questions. I just want to ask two. Okay.

21 A (Witness nodded.)

22 Q At some point after the second time, did Mr. Evins
23 throw the gun down and ask you to kill him?

24 A Yes.

25 Q And my next question is this, at the Fast Fare --

1 THE COURT REPORTER: I can't hear.

2 THE COURT: Mr. Brough, please speak up.

3 MR. BROUGH: Yes, sir.

4 BY MR. BROUGH:

5 Q At the Fast Fare, while you were there, was Mr. Evins
6 playing pinball for a while?

7 A Yes.

8 Q Okay. And you, actually, wrote a note on a job
9 application to the clerk there; is that right, indicating
10 that you were being held against your will?

11 A Yes.

12 Q While he was playing pinball?

13 A Yes.

14 MR. BROUGH: Thank you very much, ma'am.

15 No further questions.

16 THE COURT: All right. Anything further?

17 MR. BARNETTE: Nothing further for this witness, Your
18 Honor.

19 We'd ask that she be excused.

20 THE COURT: Thank you, Ms. Hill.

21 You're excused and we appreciate you coming in.

22 MR. GOWDY: Your Honor, the State would call Ms. Kim
23 Carter.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 KIMBERLY DAWN VANCE CARTER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Have a seat, please.

5 DIRECT EXAMINATION

6 BY MR. GOWDY:

7 Q Good afternoon, ma'am.

8 A Good afternoon.

9 Q Introduce yourself to the jury and tell them your
10 name and tell them what state you live in now.

11 A My name is Kimberly Dawn Vance Carter, and I live in
12 the State of West Virginia.

13 Q Ms. Carter, I want to go back to 1991. Did you live
14 in South Carolina in 1991?

15 A Yes, sir, I did.

16 Q Specifically, in January of 1991, where did you live?

17 A I lived in a trailer park in Greer.

18 Q Who did you live with?

19 A My former husband, Mitchell Dowden.

20 Q Were you working back then?

21 A Yes, sir, I was.

22 Q Where were you working?

23 A I was working at Ryan's Steak House in Greer.

24 Q What did you do at Ryan's Steak House?

25 A I worked the salad bar.

1 Q Can you describe the area where you and your former
2 husband lived? Was it a neighborhood, subdivision,
3 trailer park?

4 A It was a trailer park.

5 Q Okay. There were other trailer in there, not just
6 yours?

7 A No, sir. There was other trailers there.

8 Q I want to ask you about an incident that took place
9 in January of 1991. Can you tell the jury -- well,
10 describe the inside of the trailer you were living in at
11 that point.

12 A When you come through my front door and come into the
13 living room, off to the right was my kitchen. I had a
14 wrought iron railing to divide my living room and kitchen.
15 There was a hallway. Immediately to the left was a spare
16 bedroom. On down the hallway was the bathroom. The
17 explain end of the trailer was the master bedroom.

18 Q All right. This incident that happened in January of
19 1991, what time of the day or night did it happen?

20 A It was between 7:00 and 8:00 in the evening.

21 Q Where was your husband?

22 A He had gone to the store.

23 Q Tell the jury what happened.

24 A I was in my bedroom. I was getting some clothes. I
25 was getting ready to go to work. I had to be at work by

1 9:00 that night. I opened my bedroom door and Fred was
2 standing there at my bedroom door.

3 Q When you say "Fred," had you ever seen this man
4 before?

5 A Yes, sir, I had.

6 Q How did you know him?

7 A He was an acquaintance with my husband.

8 Q Did you know anything about his family? Was he
9 married?

10 A I was told he was married. I knew his wife.

11 Q You saw somebody you knew as Fred. Keep going.

12 A When I opened the door, I asked him what he was doing
13 there, and he said he wanted to talk to me. I asked him
14 to go in the living room. And he wanted to know where
15 Mitch, my former husband, was at. And I told him he had
16 gone to the store. And he said that he really liked me
17 and that he wanted to talk to me.

18 At that time, I started to go to try to make my way
19 around him to get to the living room to my front door. He
20 grabbed my hair and the back of my shirt and slung me up
21 against the wall in the hallway. He had me pinned to the
22 wall and he was groping me and fondling me. And he ripped
23 open the front of my blouse. And I asked him, I said,
24 Fred, why are you doing this? Bertha is my friend. And
25 he made a comment that he didn't care, that he was still

1 going to "F" me.

2 Q Ms. Carter, I can appreciate the difficulty of using
3 that word, but I want you to tell the jury exactly what
4 Fred said to you.

5 A He said, I don't care. I'm going to fuck you.

6 Q All right. What happened after that?

7 A I started screaming again. I started fighting. At
8 one time, he grabbed my face and tried to kiss me. I was
9 screaming and trying to fight him off. He pushed me into
10 my living room. It was either on the couch or in a chair
11 and he sat across me and he told me to quit screaming.
12 And I kept screaming. And he said, Kim, I've got a knife,
13 if you scream anymore, I'm going to cut you. And he
14 reached around his back. I'm not real clear on how I got
15 up out of the chair, but I did. He knocked me down in my
16 living room floor and he had his knee rested on my
17 shoulders. And I told him, don't hurt me any more and
18 I'll go to the bedroom.

19 And he lifted me up off of the floor and he slung me
20 back into the railing. I think I kicked at him or I
21 kicked him and I made it to my front door. I ran outside
22 to my neighbors. And, at that time, my husband pulled in
23 the driveway. I told my husband what he had tried to do
24 to me. And then him and my husband began to fight. And
25 by this time, my neighbors had come out and put a cover --

1 a blanket around me.

2 Q I want you to tell the jury what injuries you
3 suffered, Ms. Carter.

4 A I had bruises on my face, bruises on my arms, both
5 arms, bruises on my breasts, and bruises on my legs.

6 Q Ms. Carter, I want to ask you, when you finally
7 managed to get out of your house, what kind of clothes did
8 you have on?

9 A I had on a pair of jeans and a torn shirt.

10 Q Who tore it?

11 A Fred.

12 Q Do you see Fred in the courtroom today, Ms. Carter?

13 A Yes, I do.

14 Q I want you to point him out to the jury.

15 A The gentleman with the gray -- the black gentleman
16 sitting at the table with the moustache and goatee.

17 MR. GOWDY: Your Honor, I'd ask the record to reflect
18 that she's identified the Defendant, Fredrick Evins.

19 BY MR. GOWDY:

20 Q Ms. Carter, have you since left South Carolina?

21 A Yes, sir, I have.

22 MR. GOWDY: Please answer any questions the Defense
23 attorney has for you.

24 MR. BROUGH: No questions.

25 THE COURT: Ms. Carter, thank you very much.

1 You may step down.

2 MR. GOWDY: Your Honor, the State would call
3 Mr. Larry Nimmons.

4 THE CLERK: Place your left hand on the Bible and
5 raise your right hand.

6 WHEREUPON,

7 LARRY NIMMONS, JR.,
8 after first having been duly sworn, testified as follows:

9 THE CLERK: Have a seat there, please.

10 DIRECT EXAMINATION

11 BY MR. GOWDY:

12 Q Good afternoon, sir.

13 A Good afternoon.

14 Q Could I ask you to introduce yourself to the jury and
15 tell them what county you live in?

16 A My name is Larry Nimmons, Jr., and I live in Pickens
17 County at the current time.

18 Q In January of 1991, did you live in Spartanburg
19 County?

20 A Yes, sir.

21 Q Whereabouts?

22 A Springs Trailer Park in Greer, South Carolina.

23 Q Did an incident happen in January of 1991, at the
24 trailer park, Mr. Nimmons, where a neighbor came running
25 into your trailer?

1 A Yes, sir.

2 Q I want you to tell the jury about that.

3 A Approximately 7:30, I had come into my mother's
4 trailer. I was living with her at the time. And I
5 proceeded to go in and go to bed pretty early, about 7:30.
6 And as I was taking off my clothes and as I was laying in
7 the bed, I heard a scream. And I jumped out of bed and I
8 ran to the back door to look out. And I could see two
9 figures across the grass way, the trailer was right behind
10 us, struggling in the driveway. I could not go out. I
11 was not fully dressed.

12 So I ran back into the bedroom and put my pants on as
13 fast as I could and went to the back door without a shirt
14 on. And as I was opening the back door, there was a lady
15 running up the steps. And she was screaming, help me,
16 he's trying to rape me. And when I did get the door
17 opened, my mother tried to go out first, and I grabbed her
18 and shoved her back into the trailer. And the lady ran in
19 and I ran out. And as I ran out, I could see that some of
20 her clothes were torn up top. And as I ran down the
21 steps, I do believe that I went one way and the person
22 went the other way. But I believe that the person was --
23 had an encounter with the lady's husband afterwards.

24 MR. GOWDY: Thank you, Mr. Nimmons.

25 Please answer any questions the Defense attorney has

1 for you.

2 MR. BROUGH: No questions.

3 THE COURT: All right. Thank you, sir.

4 You may stand down.

5 Thank you very much.

6 MR. GOWDY: Your Honor, I'd ask that this witness be
7 excused.

8 MR. BROUGH: That would be fine.

9 THE COURT: You're released from your subpoena.

10 MR. BARNETTE: Your Honor, the State would like to
11 call Kizzy Smith.

12 THE CLERK: Place your left hand on the Bible and
13 raise your right hand.

14 WHEREUPON,

15 KIZZY ANN SMITH,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat.

18 DIRECT EXAMINATION

19 BY MR. BARNETTE:

20 Q Ms. Smith, if you would, give your full name for the
21 record, please.

22 A Kizzy Ann Smith.

23 Q And do you live here in Spartanburg?

24 A Yes.

25 Q Let me take you back to March 26, 2001. On that

- 1 date, was Fredrick Evins living with you?
- 2 A Yes.
- 3 Q And was your son also living with you?
- 4 A Yes.
- 5 Q And what is his name?
- 6 A Tyquae Smith.
- 7 Q And how old was he at the time?
- 8 A Ten.
- 9 Q And where were y'all living at, ma'am?
- 10 A Camp Croft Apartments.
- 11 Q On that day, did y'all get in an argument?
- 12 A Yes.
- 13 Q And what was the argument about, Ms. Smith?
- 14 A Because he didn't pick me up from work.
- 15 Q And where had he been?
- 16 A Out smoking crack.
- 17 Q When he came home, did you ask him to do something?
- 18 A Yes.
- 19 Q What did you ask him to do, ma'am?
- 20 A Get his stuff and leave.
- 21 Q When you told him that, what happened?
- 22 A He got upset.
- 23 Q And what did he do?
- 24 A He went in the kitchen and grabbed a knife.
- 25 Q And what kind of knife was it, ma'am?

1 A A kitchen knife.

2 Q What kind of handle did it have on it?

3 A A black handle.

4 Q And when he got the knife, what did you do?

5 A I ran in the room and shut the door.

6 Q And what happened then?

7 A He pushed the door in and came in and stabbed me with
8 the knife in my arm.

9 Q How was he holding the knife, ma'am?

10 A Like this.

11 Q And where did he stab you at?

12 A In my left arm.

13 Q And where was Tyquae during this time?

14 A In his room.

15 Q What happened when he heard y'all -- heard the
16 commotion?

17 A He got up and called the police.

18 Q Let me show you what's been marked as State's Exhibit
19 Nos. 83 and 83-A. Do those pictures fairly represent the
20 stab wound you had?

21 A Yes.

22 MR. BARNETTE: Your Honor I'd like to move these into
23 evidence at this time.

24 MR. BROUGH: May we approach, Your Honor?

25 THE COURT: Yes.

1 (WHEREUPON, a bench conference was held with the
2 attorneys.)

3 MR. BROUGH: We oppose any kind of pictures coming in
4 as additional character evidence that would only serve to
5 inflame the jury.

6 THE COURT: How does that go to his character?

7 MR. BARNETTE: I was just showing that it did happen.

8 THE COURT: You're getting enough in. I'm not going
9 to allow those in.

10 MR. BROUGH: Thank you, Your Honor.

11 (WHEREUPON, the bench conference was concluded.)

12 BY MR. BARNETTE:

13 Q After he stabbed you, what did he do?

14 A He told me and Tyquae to get our clothes on and drove
15 us to the emergency room.

16 Q Why was he doing that?

17 A He said so I wouldn't bleed to death.

18 Q So when you got to the hospital, what happened?

19 A He went in and signed the book, put my name on the
20 book, and he left.

21 Q So he left you?

22 A Yes.

23 Q And was Tyquae there?

24 A Yes.

25 Q And whose car did he take?

1 A It was my car.

2 Q Let me take you to February 16th, 2002. Where was
3 you living at that time, ma'am?

4 A On South Church Street.

5 Q And did you have somebody visiting you there?

6 A Yes.

7 Q And was that another gentleman?

8 A Yes.

9 Q Was Fredrick Evins living with you at that time?

10 A No.

11 Q And did he come to that residence?

12 A Yes.

13 Q What happened?

14 A He got upset because my friend was there, and he went
15 to the kitchen and grabbed a knife.

16 Q What happened then?

17 A He told me to make my friend leave. And he got upset
18 and acted like he was going to cut me with the knife. And
19 my son called the police.

20 Q How was he holding the knife that day?

21 A Like this.

22 Q Did the police come?

23 A Yes.

24 Q And was Fred arrested?

25 A Yes.

1 Q The next day, did he call?

2 A Yes.

3 Q And what did he say to you when he called you?

4 A That he was going to kill me and he was going to jack
5 off on my son's face and that he had caught AIDS --

6 MR. BROUGH: Your Honor, may we approach?

7 THE COURT: Hang on -- well, come on.

8 (WHEREUPON, a bench conference was held with the
9 attorneys.)

10 MR. BROUGH: I think they're getting to the point
11 where they're inflaming the jury, Your Honor.

12 THE COURT: This is his character and his testimony,
13 it's what he said. If you want to cross, you can
14 cross.

15 MR. BARNETTE: Thank you, Your Honor.

16 THE COURT: Okay.

17 (WHEREUPON, the bench conference was concluded.)

18 BY MR. BARNETTE:

19 Q If you would, Kizzy, what did he say again?

20 A He said that he caught AIDS while he was doing time
21 before and he gave them to me. And he was going to kill
22 me when he got out. And he said he was going to jack off
23 on my son's face.

24 Q And did you call the police to report that?

25 A Yes.

1 MR. BARNETTE: Thank you, Kizzy.

2 Please answer any questions Mr. Brough would have for
3 you.

4 MR. BROUGH: If I may have one minute, Your Honor.

5 THE COURT: All right.

6 (Pause.)

7 MR. BROUGH: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BROUGH:

11 Q Ms. Smith, did you live with Mr. Evins for a period
12 of time?

13 A Yes.

14 Q When you refer to your friend, was that a boyfriend
15 that was there?

16 A No, a friend guy.

17 Q I'm sorry. What was that?

18 A A friend guy.

19 Q A friend guy. All right. Do you --

20 MR. BROUGH: One minute, Your Honor.

21 (Pause.)

22 MR. BROUGH: No further questions.

23 THE COURT: All right.

24 MR. BARNETTE: I'd like to ask that this witness be
25 excused.

1 THE COURT: You're released from subpoena.

2 You may step down.

3 MR. GOWDY: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. GOWDY: The State would call Mr. Terry Smith.

6 THE CLERK: If you would, place your left hand on the
7 Bible and raise your right.

8 WHEREUPON,

9 TERRY SMITH,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you

12 Have a seat, please.

13 DIRECT EXAMINATION

14 BY MR. GOWDY:

15 Q Good afternoon, sir. Can I get you to introduce
16 yourself to the jury, and tell them your name and where
17 you work.

18 A My name is Terry Smith. I work for Southern
19 Refrigerated Transport out of Arkansas as a truck driver.

20 Q Are you a long distance truck driver, Mr. Smith?

21 A Yes, sir.

22 Q How long have you been doing that?

23 A Four years this time, seven years previous.

24 Q I want to go back with you to 1991, in particular,
25 November of 1991. Were you living in Spartanburg County?

1 A Yes, sir.

2 Q Whereabouts?

3 A A little trailer park in Duncan, South Carolina.

4 Q Did you know a man named Grover Berry?

5 A Yes, sir, I did.

6 Q How did you know him?

7 A He was a neighbor that lived the next trailer over
8 from me.

9 Q Was there an incident involving Grover Berry where
10 you had to involve yourself?

11 A Yes. We were having like a dinner at my house, a
12 family get-together. And I heard loud voices outside,
13 cursing and stuff like that. And I went outside to see
14 what was going on, a lot of people did. And Fred had
15 Grover in his back door beating him, I thought. Then I
16 heard something rattling. He had a razor knife in his
17 hand. I recognized the sound of the blades in the handle,
18 extra blades you carry in them like you cut sheet rock
19 with. He was beating Grover while he was cutting and
20 stabbing him in the head. He cut his throat, his face,
21 his shoulder, his arm. And I felt obligated to try to
22 stop it because Grover couldn't get on his feet. And the
23 man was killing him, so -- or he would have shortly.

24 Q So what did you do?

25 A I'm not sure. I went over there hollering. I

1 intended to get control of the knife to stop the attack.
2 That's what happened, but I'm not sure how it came about.
3 I did end up with the knife. Grover ran away -- I mean,
4 Fred ran away.

5 Q When you say you wound up with the knife, did you
6 wind up giving the knife to law enforcement?

7 A Yes, sir. I gave it to the police officers that came
8 out.

9 Q Now, you used the name "Fred," did you know the
10 person attacking Mr. Berry?

11 A I knew a young man by the name of Fred. Just -- he
12 lived in the trailer park. I knew him just barely by
13 sight. He hadn't lived there long.

14 Q Can you describe him? Was he a white man, black man?

15 A A young black man. I met him a couple of times. He
16 was just an average guy.

17 Q How about Mr. Berry, what age gentleman was
18 Mr. Berry?

19 A He was a little older than me at the time. I guess
20 maybe in his 40's or something.

21 Q Did Mr. Berry have any distinct characteristics? Was
22 he kind of hard to follow?

23 A I had trouble understanding him. It's like maybe a
24 speech impediment. I thought he was from another country.

25 Q He's hard to follow sometimes?

1 A Sometimes. If he gets excited, he talks faster and
2 he's hard to understand.

3 Q Did you see Mr. Berry do anything to threaten him?
4 Was there any provocation that you're aware of?

5 A Not that I'm aware of. But I was not -- I was in the
6 house at the time that it started, I guess, in my house.

7 Q By the time you got out there, who was on top?

8 A Fred was on top. Like I say, he was wailing
9 [phonetic] on Grover. But I didn't know he had a knife
10 until I heard it rattle, and that really scared me. I
11 didn't want to go there, but somebody had to do something.

12 MR. GOWDY: Thank you, Mr. Smith.

13 Please answer any questions that the Defense attorney
14 has for you.

15 MR. BROUGH: No questions.

16 THE COURT: All right. Thank you, sir.

17 You can stand down.

18 Release him from subpoena?

19 MR. GOWDY: Yes, sir.

20 If the Court doesn't mind, would the Court allow me
21 to briefly approach the bench?

22 THE COURT: All right.

23 (WHEREUPON, a bench conference was held with the
24 attorneys.)

25 MR. GOWDY: We're going through these witnesses a lot

1 faster than I thought. My next one is about five minutes
2 away, Grover Berry. I just didn't think we would get to
3 him today. I thought they'd cross the rape victims. He's
4 coming.

5 THE COURT: So you need to take another break?

6 MR. GOWDY: I'm sorry. But I just didn't want to
7 have Mr. Berry up in my office for five hours. They
8 haven't asked five questions on cross-examination. I
9 couldn't predict it.

10 MR. BROUGH: That's fine.

11 MR. GOWDY: I'm sorry. He's coming.

12 (WHEREUPON, the bench conference was concluded.)

13 THE COURT: Ladies and gentlemen, now would be a good
14 time to take about a 10-minute break. So if you'll retire
15 to your jury room to take a break. Please don't discuss
16 the case.

17 Thank you very much.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 4:19 p.m.)

20 THE COURT: Anything else?

21 MR. BARNETTE: I just wanted to make sure the door
22 was closed, Judge. I noticed we had the objection about
23 the pictures, State's Exhibit Nos. 83 and 83-A. I
24 noticed -- and the reason I didn't fight that, while it is
25 a conviction for CDV, there's no question about it, those

1 convictions are going to come in through the Clerk's
2 Office. There will be a robbery victim where a CSC was
3 dismissed on and there is pictures on that. And I think
4 that goes to the character of the person. And I've asked
5 to introduce those, Your Honor -- concerning those
6 because, obviously -- I don't know if they'll be
7 questioned about the CDV or the kidnapping indictments,
8 but, obviously, I believe those pictures would show that.

9 THE COURT: Well, let's -- I'm glad you alerted me to
10 it. And I think that's just something we'll have --
11 that's a bridge we'll have to cross when we get to it. I
12 did not allow those pictures in, and I think it's on the
13 record, but, if not, out of an abundance of caution. I
14 don't think it really goes to the Defendant's character.
15 I didn't want to allow them in in case it might
16 inflame the jury's passion and overcome their reason or
17 will.

18 All right. Thank you.

19 We'll take about five or ten minutes.

20 MR. BOGGS: Just one thing. This caught the
21 Solicitor off guard, I know, but as one of the witnesses
22 was walking out, they hugged him. And I think that caught
23 him off guard. But if he'd tell them thank you and
24 that -- limit it to that.

25 And I know you didn't do it.

1 MR. GOWDY: I try not to hug witnesses, Judge, but, I
2 mean, obviously, Candy Hill was very emotional. You've
3 got a double-edged sword. You either hug them back or you
4 look like a bad guy if you don't acknowledge them.

5 THE COURT: Well, let's just warn them beforehand
6 hands off.

7 (WHEREUPON, a break was taken.)

8 THE COURT: We have the witness problem solved?

9 MR. GOWDY: Yes, sir, Your Honor.

10 I would just -- to alert the Court, Mr. Berry does
11 have an unusual speech pattern. I can understand him a
12 good bit of the time. His wife is always there with us to
13 fill in the gaps I have missed. I just wanted to ask the
14 Court to be patient with me. I'm not going to lead him,
15 but there's some difficulty there.

16 THE COURT: Thank you for making us aware of that.
17 Let's get the jury.

18 Let's make sure we are able to take down his
19 testimony. Is he competent?

20 MR. GOWDY: Yes, sir.

21 (WHEREUPON, the jury came into open court at
22 approximately 4:39 p.m.)

23 THE COURT: Welcome back.

24 MR. GOWDY: Your Honor, the State would call
25 Mr. Grover Berry.

1 THE CLERK: Place your left hand on the Bible and
2 raise your right hand.

3 WHEREUPON,

4 GROVER BERRY,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Have a seat, please.

7 DIRECT EXAMINATION

8 BY MR. GOWDY:

9 Q Good afternoon, Mr. Berry.

10 A Good afternoon.

11 Q I hear slow, so I'm going to get you to talk slow for
12 me. Okay.

13 A All right.

14 Q Tell the jury what your name is.

15 A Grover Berry.

16 Q What age gentleman are you, Mr. Berry?

17 A 55 now.

18 Q Where do you work, Mr. Berry?

19 A I've been down at Sally Foster.

20 Q Salley Foster?

21 A Uh-huh.

22 Q How long you been there?

23 A Well, I've been there on the 10th for seven years.

24 Q You've been there on the 10th for seven years?

25 A Yeah.

- 1 Q Are you married, Mr. Berry?
- 2 A Yeah.
- 3 Q How long have you been married?
- 4 A About 40 years.
- 5 Q About 40 years. I want to go back with you -- you
- 6 live in Spartanburg County now?
- 7 A Yeah.
- 8 Q I want to go back with you to November of 1991.
- 9 Okay. 13 years ago, November of 1991.
- 10 A Yes, sir.
- 11 Q Where were you living?
- 12 A Crescent Circle in Duncan.
- 13 Q Crescent Circle in Duncan?
- 14 A Yes, sir.
- 15 Q Is that a -- what kind of neighborhood is that?
- 16 A That's a trailer court.
- 17 Q Trailer court?
- 18 A Yes, sir.
- 19 Q Are the trailers close to one another?
- 20 A Close to one another.
- 21 Q Was there a day when somebody cut you, Mr. Berry?
- 22 A Yes.
- 23 Q What were you doing before you got cut, Mr. Berry?
- 24 A I think I was in there cooking Thanksgiving dinner.
- 25 Q Cooking Thanksgiving dinner. And what happened?

1 Tell the jury what happened.

2 A The only thing I -- when I come out the door -- when
3 I come out the door, I heard a noise out there. But the
4 noise that come from the top of the hill is where it come
5 from. But see, I didn't know [sic] what on that hill.

6 Q You weren't part of the noise, in other words? You
7 weren't the one making the noise?

8 A No, sir. I wasn't making a noise. And so -- and I
9 seen this guy coming down through there, you know, from
10 that place there.

11 Q When you say, "this guy," did you know who it was?

12 A Oh, yeah. I called him Fred is what I called him.

13 Q You called him Fredrick?

14 A I called him Fred.

15 Q Fred?

16 A Uh-huh.

17 Q Okay. Did you know him? Had you ever seen him
18 before?

19 A Yeah, I had seen him. I had seen him.

20 Q All right. I want you to tell the jury what happened
21 when you walked outside your trailer, Mr. Berry?

22 A When I got outside and I seen him out there making a
23 noise out there, I just asked him what's going on. That's
24 all I said.

25 Q You just asked him what's going on?

1 A What's going on. Then, I guess, he got mad. He got
2 mad and starting cutting. That's all I know. After he
3 started cutting, he cut me around here. When he cut me
4 around there, he cut me in the end of the ear. And then
5 after that there, I went back to the house and called the
6 police.

7 Q You went inside and called the police. Mr. Berry, is
8 the only thing you said to Fred, what's happening, what's
9 going on?

10 A That's all. That's all I said.

11 Q Had you done anything to make him mad?

12 A Not that I knows of.

13 Q Did somebody come to your rescue or aid or help you?
14 Did somebody help get him off of you?

15 A I think it was some more guys out in the yard, but I
16 can't place their names. They come out there before I
17 could --

18 Q I know it's hard to remember names, isn't it?

19 A Yeah. It's hard to remember names.

20 Q Can you remember where you got cut?

21 A Remember where I got cut?

22 Q Can you remember where you got cut, where on your
23 body?

24 A Right here. Right down through there and right
25 across there on the ear.

1 MR. GOWDY: Thank you, Mr. Berry.

2 Please answer any questions the Defense attorney has
3 for you. Okay.

4 MR. BROUGH: May it please the Court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. BROUGH:

8 Q I just want to ask you a couple of questions,
9 Mr. Grover [sic].

10 A Why I didn't call the police.

11 Q I'm sorry?

12 A I answered the question.

13 Q Okay. I said I was going to ask you a couple
14 questions. I haven't asked you any yet. You said you
15 were busy making Thanksgiving dinner?

16 A Yes, sir.

17 Q And then, at some point, you left the trailer? You
18 left making Thanksgiving dinner and you went
19 outside?

20 A I went outside the trailer.

21 Q Okay. Did you ask Mr. Evins or his cousin to take
22 you to the liquor store?

23 A No.

24 Q You don't remember that at all?

25 A No.

1 Q All right. Do you remember throwing a brick through
2 Mr. Evins's girlfriend's car?

3 A No. That's not possible.

4 Q Not possible?

5 A No.

6 Q Isn't that why you went back inside and got a butcher
7 knife?

8 A No, no. I had no knife at all, no knife at all.

9 MR. BROUGH: All right. Thank you.

10 No further questions.

11 MR. GOWDY: Nothing on redirect, Your Honor.

12 THE COURT: Can we release him from subpoena?

13 MR. GOWDY: Please, Your Honor.

14 MR. BROUGH: That would be fine, Your Honor.

15 THE COURT: Mr. Berry, you can step down and you're
16 free to go.

17 THE WITNESS: Thank you, sir.

18 MR. BARNETTE: Your Honor, I'd like to call
19 Investigator Doug Smith to the stand, please.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand.

22 WHEREUPON,

23 DOUG SMITH,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Have a seat.

DIRECT EXAMINATION

1
2 BY MR. BARNETTE:

3 Q If you would, sir, please give your full name for the
4 record, please.

5 A It's Doug Smith.

6 Q And where do you work at, sir?

7 A Spartanburg County Sheriff's Office.

8 Q And how long have you been there, sir?

9 A 15 years.

10 Q And what is your present position there?

11 A I'm a sergeant in investigations.

12 Q Back in March of 1995, where was you working at, sir?

13 A I was working with the Sheriff's Office in
14 investigations.

15 Q And was you called about an incident that occurred on
16 Frye Road or near Frye Road?

17 A Yes, sir.

18 Q And did that event involve Fredrick Evins?

19 A Yes, it did.

20 Q And who was the victim?

21 A It was Annice Statin.

22 Q If you would, tell the jury about the call you got
23 and how you responded to it?

24 A I received a call that a lady had been found on the
25 side of Frye Road and she was nude and injured and they

1 had taken her to the hospital. So I responded to the
2 hospital, and she was being treated at the time. I talked
3 with the officers on the scene and found out the
4 approximate area that she had been located or found and
5 then I returned to that location.

6 Q When you said she was nude, no clothes?

7 A Yes, sir.

8 Q And did you -- in talking to her and everything, did
9 you take information from her?

10 A Yes, I did.

11 Q And did you see her, too?

12 A Yes, I did.

13 Q Okay. If you would, please look at these pictures,
14 State's Exhibit Nos. 91, 92, 93, 94, 95, 96, 97, 98 -- or
15 87, 88, 89, and 90. Please look at those and see if those
16 fairly represent the way Ms. Statin looked?

17 A That's pretty much the way I remembered her. There
18 was, basically, not a place on her body that was not
19 bruised or scratched.

20 MR. BROUGH: Objection, Your Honor.

21 May we approach?

22 THE COURT: All right.

23 (WHEREUPON, a bench conference was held with the
24 attorneys.)

25 MR. BROUGH: Your Honor, the pictures are not in

1 evidence. These are the pictures that I believe
2 Mr. Barnette alerted the Court to beforehand. The Defense
3 objects to the introduction of any of these pictures,
4 specifically, one, since they have absolutely no further
5 effect other than to inflame the jury. Given the
6 pictures, I believe the Court should look at the pictures,
7 too. They are somewhat inflammatory. Additionally, the
8 pictures go to her condition from charges that were
9 ultimately dismissed by the Prosecution. And we'd object
10 on that -- on those grounds following that theory.

11 THE COURT: Which case is this?

12 MR. BROUGH: This is the Statin case.

13 MR. BARNETTE: This is the one that's the robbery
14 case, Your Honor. And this is the one they brought up
15 where the CSC and kidnapping was dismissed. Obviously, I
16 know this is about a character situation, but we want to
17 show --

18 THE COURT: How do these show character?

19 MR. BARNETTE: They show that, obviously, she was
20 confined. The injuries are the way she will testify.

21 MR. BROUGH: And she can testify to them, but this is
22 nothing other than to inflame the jury.

23 MR. BARNETTE: Can he describe her condition as part
24 of his investigation?

25 THE COURT: Yes.

1 MR. BARNETTE: One other thing, there's some crime
2 scene photos that I'll be entering into evidence, just to
3 alert the Court.

4 THE COURT: On the same case?

5 MR. BARNETTE: Yes, sir.

6 THE COURT: What do they show?

7 MR. BARNETTE: They show the area where they found
8 her bra.

9 MR. BROUGH: I would object to those. She can
10 testify what happened and anything like that according to
11 the Court's previous ruling, however, we'd object to the
12 photographs being shown.

13 THE COURT: Why do you need the photographs?

14 MR. BARNETTE: Just -- they go to the kidnapping. If
15 they're going to say that the CSC was dismissed -- it's
16 part of his character.

17 MR. BROUGH: I don't know that if --

18 THE COURT: If it comes up, you know the door is
19 opened. I'll let you do it, but, you know --

20 MR. BARNETTE: I understand.

21 THE COURT: -- to do that --

22 MR. BARNETTE: Yes, sir. I understand that.

23 (WHEREUPON, the bench conference was concluded.)

24 BY MR. BARNETTE:

25 Q Investigator Smith, if you would, just describe what

1 her condition was when you went and saw her?

2 A When I saw her at the hospital?

3 Q Yes, sir.

4 A She had scratches on her arms, her back, and her
5 legs. Her toes were cut up. They had bandages on them,
6 but I even remember blood coming through it. She -- both
7 of her eyes were just blood red and bruised around them.
8 Her neck just looked -- I mean, it was just -- she was
9 fairly light-skinned, but her neck was just black and blue
10 and you could tell -- basically, that's it.

11 Q Later on, did you go and try to find the scene where
12 this occurred?

13 A Yes, I did.

14 Q And where was that scene at?

15 A It was off of Frye Road. I went back to where an
16 officer had been waiting at the location where she had
17 been picked up. And we started walking the side of the
18 road to try to find a possible crime scene.

19 Q And did you find that scene?

20 A Yes. We found a place off the side of the road. It
21 was a path that had recently been made. This was a real
22 cold morning. It had been sleeting and freezing rain just
23 a small amount, but the ground was muddy. So there was an
24 apparent path that looked like, possibly, something had
25 been dragged down it.

1 Q And did you find anything at the end of that?

2 A We followed the path for probably a couple hundred of
3 yards or maybe further than that down into the woods.
4 There was limbs broke along the way. The ground was tore
5 up in places on the way there. And once we got there,
6 there was an area that was -- is probably half as far from
7 me to you and there was, actually, an imprint of a body on
8 the ground.

9 Q Did you find any clothing there?

10 A We found a black bra laying near that.

11 Q And through your investigation, did you determine who
12 was the person that did this?

13 A Yes, I did.

14 Q And who was that?

15 A I signed warrants on Fredrick Evins.

16 Q And how did you come to that conclusion?

17 A Through the investigation, I developed him as the
18 suspect, obtained a photo lineup, and presented it to the
19 victim. And without hesitation, she picked him out as the
20 person that had done that to her.

21 Q And later on, did you go serve the warrants on
22 Fredrick Evins?

23 A I did.

24 Q And in talking to him, did you give him his rights?

25 A I did.

1 Q Let me show you what's been marked as State's Exhibit
2 No. 84. Was that the rights form that was given to
3 Mr. Evins?

4 A Yes, it was.

5 Q And who was with you when you gave those rights to
6 him?

7 A Deputy Traxler.

8 Q And did you read his rights to him?

9 A I did.

10 Q Did he understand those rights?

11 A I asked him to sign twice and he signed in both
12 places.

13 Q Did you promise him anything?

14 A No, I did not.

15 Q Did you threaten him in any way?

16 A No.

17 Q Did he give you this information freely and
18 voluntarily?

19 A Yes.

20 Q And did you tell him what this was concerning?

21 A Yes, I did. It's just wrote right here on the form
22 that it's in reference to a criminal sexual conduct.

23 Q And did he sign both of those areas?

24 A Yes, he did.

25 Q And did you and Officer Traxler witness it?

1 A Right. And I notarized it.

2 MR. BARNETTE: Your Honor, I'd like to enter State's
3 Exhibit No. 84 into evidence at this time.

4 MR. BROUGH: No objection.

5 THE COURT: No objection.

6 MR. BROUGH: Well, subject to previous objection.

7 THE COURT: Right. I understand.

8 (WHEREUPON, State's Exhibit No. 84 was admitted into
9 evidence.)

10 BY MR. BARNETTE:

11 Q Do you have a copy of this?

12 A I don't have a copy, no.

13 Q If you would, just step down.

14 A (The witness complied.)

15 Q I'm publishing State's Exhibit No. 84 to the jury.
16 Did you fill out the top information, sir?

17 A Yes, I did. That's my handwriting.

18 Q And you were the one that gave him his rights; is
19 that right?

20 A Yes.

21 Q Once he was given his rights, did he sign that he
22 understood them?

23 A Yes, he did.

24 Q And then after that, did you talk to him about the
25 crime that he was being looked at or charged with?

- 1 A I did.
- 2 Q And did he understand that?
- 3 A Yes.
- 4 Q And did he sign that?
- 5 A He signed it a second time.
- 6 Q Please have a seat.
- 7 A (The witness complied.)
- 8 Q Let me show you what has been marked as State's
9 Exhibit No. 85. What is that, sir?
- 10 A This is a statement that was obtained from Mr. Evins.
- 11 Q Okay. And in that statement, did Officer Traxler
12 write down everything he said?
- 13 A He did.
- 14 Q Was you present for the interview?
- 15 A I was present for the entire interview.
- 16 Q And did he write down verbatim what he said?
- 17 A He did.
- 18 Q Did he sign that after he gave his statement?
- 19 A He did.
- 20 Q Was he given the opportunity to make any changes or
21 any adjustments that he needed to make in it, or any
22 corrections?
- 23 A Yeah. There was no corrections made.
- 24 Q And did he sign the bottom of both pages?
- 25 A Yes, he did.

1 Q Were they witnessed by you and Officer Traxler?

2 A Right.

3 MR. BARNETTE: Your Honor, I'd like to move State's
4 Exhibit No. 85 into evidence at this time.

5 THE COURT: Any objections -- subject to the
6 previous?

7 MR. BROUGH: Yes, Your Honor.

8 THE COURT: Okay.

9 (WHEREUPON, State's Exhibit No. 85 was admitted into
10 evidence.)

11 MR. BARNETTE: Your Honor, may I publish Exhibit 85
12 to the jury?

13 THE COURT: Yes, sir.

14 MR. BARNETTE: Your Honor, I'm going to give
15 Detective Smith a copy of this so he can read while the
16 jury is reading off theirs, if that's all right.

17 THE COURT: Okay.

18 BY MR. BARNETTE:

19 Q If you would, Detective Smith, go ahead and read the
20 statement, please.

21 A This is the statement of Fredrick Evins, age 27,
22 3/8/95. The address is 108 Rosewood Acres, Wellford,
23 South Carolina, phone number 949-1437.

24 And it says, "Had been out all night, me, her, Mary,
25 and another girl. That morning, they went to the bank to

1 get some more money. Then they left and went to try to
2 find some more drugs. We went to Highland. That's when
3 we found some boys on the hill and bought about seven
4 rocks of crack cocaine, about \$160 worth. Then the two
5 girls, Mary and the other girl, stayed there. Me and
6 what's her name left. That's when we went up there, down
7 Reidville Road and we went on up the back road in
8 Wellford. I don't know where it was. After we got there,
9 she wanted to have sex with me. We were sitting there
10 drinking a beer talking about Spartanburg. Then we got
11 out of the car and walked down into the woods. She then
12 started sucking on my dick. That didn't last long. She
13 sucked for a ten-cent piece of crack. She started acting
14 crazy, talking about her feet, her toe. She started
15 flipping out on me and calling me names. She tried to
16 scratch me, pulling on my shirt. She wasn't mad. She
17 wanted some more crack."

18 Q That was signed by him and witnessed by you and
19 Officer Traxler?

20 A Right. And then continued to Page 2.

21 Q If you would, please continue reading.

22 A Okay. Again, this is the statement of Fredrick
23 Antonio Evins.

24 "That was about it. I left. She said, I want you to
25 take me back home. I said, I won't take you back home.

1 She had her clothes on when I left. Don't worry about the
2 coat, I took her coat home. I was in my girl's car, a
3 blue '84 Honda Civic four-door. I went home to where my
4 girl was at, Wellford 129. That was it. I stayed there
5 until later that day and went to Spartan Terrace with my
6 girl Saturday night around daylight, 5:00 to 7:30, for a
7 good little while." And that's the end of the statement.

8 Q And that was also signed by him?

9 A Yes, it was.

10 Q And was witnessed by you and Officer Traxler?

11 A Yes, it was.

12 Q And was he given a copy of this, too?

13 A He was.

14 Q Let me ask you a question about the coat. When he
15 was arrested, what was he found in possession of?

16 A The black leather coat that she had reported taken.

17 Q So it was her coat that was taken?

18 A Yes.

19 Q And did she later ID that that was her coat?

20 A Yes, she did.

21 Q And how was the weather that morning when y'all got
22 the call on March 5th, 1995?

23 A It was right about freezing, because it had been
24 sleeting and some freezing rain the whole morning.

25 Q Let me show you what's been marked as State's Exhibit

1 No. 86. Is that a form where he swore he told you the
2 truth and nothing but the truth?

3 A Yes, it is.

4 Q And did you notarize it after he signed it?

5 A I did.

6 Q And did you swear him to that?

7 A I did.

8 MR. BARNETTE: Your Honor, I'd like to move State's
9 Exhibit No. 86 into evidence at this time.

10 MR. BROUGH: Again, Your Honor --

11 THE COURT: Subject to the previous objection.

12 (WHEREUPON, State's Exhibit No. 86 was admitted into
13 evidence.)

14 MR. BARNETTE: Your Honor, I'd like to publish this
15 to the jury at this time.

16 THE COURT: Certainly.

17 BY MR. BARNETTE:

18 Q Again, if you could read that for me.

19 A "I swear that the statement that I have just given is
20 the truth, the whole truth and nothing but the truth, so
21 help me God." And it's signed by Mr. Evins, Fredrick
22 Evins.

23 MR. BARNETTE: Please answer any questions they may
24 have for you, sir.

25 Thank you.

1 MR. BROUGH: No questions.

2 THE COURT: All right. Thank you, Mr. Smith.

3 You can step down.

4 MR. BARNETTE: The State would like to call Annice
5 Statin, Your Honor.

6 THE COURT: All right.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand.

9 WHEREUPON,

10 ANNICE SPENCER STATIN,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: Have a seat right there, please.

13 DIRECT EXAMINATION

14 BY MR. BARNETTE:

15 Q Ms. Statin, would you give me your full name for the
16 record, please?

17 A It's Annice Spencer Statin.

18 Q And, Ms. Statin, do you live here in Spartanburg now?

19 A Yes, I do.

20 Q And let me take you back to March 5th, 1995 -- or
21 March 4th, 1995. Who was you with that day or who had you
22 went to visit?

23 A I was on my porch and I got together with my cousin,
24 Victoria Holbrook, and her friends.

25 Q Where was you living at the time?

1 A 463 Burnett Street here in Spartanburg.

2 Q Okay. And you said Ms. Holbrook and some friends
3 stopped by?

4 A Yes, sir.

5 Q And what happened once they stopped by?

6 A They hollered to me and said, hey, cousin, what you
7 doing? And I was sitting on my porch because my kids --
8 children was playing, so I was just sitting on the porch.
9 And they asked me what I was doing. And I said, just
10 sitting here. And we just started having a conversation.

11 Q And your children was there?

12 A My children was there, yes, sir.

13 Q And how old was your children then?

14 A I have -- my oldest one, at the time, he was ten.
15 And I have twins, they were six.

16 Q And whose kids were they playing with?

17 A My next door neighbors, they're the Mills.

18 Q So the Mills family?

19 A The Mills family, yes.

20 Q And did they go on and play with the Mills kids and
21 stay with the Mills family later when you left?

22 A Yes. Since they were just playing -- and they played
23 regularly, like I said, because the mother is always
24 there, I decided to let them go on and play. And I
25 decided to ride off with my cousin at the time.

1 Q With your cousin. Did you later go with her?

2 A I went with my cousin proceeding to go buy some
3 cigarettes. That's really the only reason I really left.

4 Q So how many of you were together?

5 A It was two in the front seat and two in the back that
6 was with me. There was four people in all.

7 Q And who was driving?

8 A The gentleman, Mr. Evins.

9 Q Okay. Did he come pick y'all up? Is that what
10 happened?

11 A Evidently, they had been riding around, so he was
12 driving and my cousin was in the front seat as a passenger
13 and there was a female in the back seat.

14 Q Had you met Mr. Evins before this?

15 A No, sir.

16 Q Who did he know in the car? Do you remember?

17 A He knew my cousin, Victoria. They seemed to be
18 acquaintances.

19 Q And where did y'all go in the car?

20 A We -- since I lived on Burnett Street, we proceeded
21 to an apartment complex, Fair Forrest Creek Apartments
22 they are named now, but they was Highland Homes. And we
23 proceeded there.

24 Q Is that near the Beacon?

25 A That's near the Beacon, yes, off of Reidville Road,

1 yes.

2 Q What happened when they came up to the apartment
3 complex?

4 A Victoria and the lady got out and he got out. They
5 went upstairs to the top. It's like two stories. They
6 went upstairs. And the lady stayed in there. He came
7 back out. We had already been conversating [sic] about
8 getting cigarettes. So they stopped there first, I guess
9 they had something else in mind at the time. But they
10 talked. And he came back out and got in the car, which I
11 was behind the driver at the time. I never moved out of
12 the back seat, but I stayed there. There's a store down
13 the street from the Beacon. I was thinking he was going
14 to get in and say, well, I'm going to get cigarettes. And
15 that's what I was in the car for, to go get cigarettes.

16 Q So what happened then?

17 A Victoria and them didn't come out the apartment -- or
18 the lady. I really didn't know the lady. But Victoria
19 didn't come out. And since he was like an acquaintance to
20 Victoria, I stayed where I was at in the seat and we was
21 going to go to the store to get cigarettes. And he said,
22 well, I'm going to go get some cigarette, too.

23 So we went on up and we came out down by the Beacon
24 and went to the left up Reidville Road. It's a Little
25 Cricket right up on the hill. It used to be Village

1 Apartments right there. I was thinking that we was going
2 to go right there to the Little Cricket and come back up
3 the street and get Victoria and them. We never did get to
4 the Little Cricket. He just kept driving.

5 Q And what happened next, ma'am?

6 A As he kept driving, he kept saying, I've got to go up
7 here and pick up some money. And I was like, I already
8 have my money for my cigarettes, why don't you stop right
9 here? He wouldn't stop. So he kept going up. And I
10 said, well, how far you got to go? He kept saying, right
11 here, right here. So I hushed for a minute. Like when we
12 stopped at lights and stuff, I was thinking about just
13 going and getting out of this car. Because, really, we
14 done passed Little Cricket, the Fast Fare up on Reidville
15 Road and 295 and still ain't got here. Where are you
16 picking up? Where are you going? The store is -- he went
17 on past -- got on up to the Bi-Lo -- the intersection of
18 highway -- I think that's I-26 or whatever. I'm not sure
19 of the interstates and all. It's East Blackstock --
20 Blackstock Road. We passed Blackstock Road and I was
21 thinking then he's going to the BP. We done passed like
22 three or four stores. He never did stop at a store.

23 And he said, well, I'm going to a friend's house. I
24 asked him where the friend stay at. He said, well, right
25 up here, right up here. He kept pointing, right up here.

1 I'm still in the back seat. So I really didn't have too
2 much access of getting out. But he just kept driving.

3 And I remember, we got up by a Denny's. And when we
4 got by Denny's, I said, we almost up in Roebuck, you know,
5 different little stop. Well, when we got on up there, he
6 said, just right down here, just right down here. And I
7 remember passing the place where we young people knew it
8 as a place called Tiger Park. People used to hang out,
9 young people, you know, when you in high school, and
10 they'd party and stuff. That's a summer place. I
11 remember passing there. I'm thinking that he's going to
12 go to Tiger Park, but he didn't. And he went down this
13 little hill with a bridge. And he said he was going down
14 there. When he turned, he stopped on the side of the
15 road. So when -- no houses, no nothing.

16 Q When he stopped, what happened?

17 A When he stopped, he got out of the car and he went
18 around to the back of the car. I thought that he maybe
19 had to urinate, because we was like in a wooded area and
20 there wasn't no houses there.

21 Q Okay. There wasn't any houses there?

22 A There wasn't any houses there. And then he was in
23 the trunk and I was thinking that he was getting stuff out
24 of the trunk. He come back around -- he slammed the trunk
25 down and he came back around and he snatched me -- he

1 opened the door and he snatched me out of the back seat of
2 his car by the back of my head. And he said, get the fuck
3 out of my car. He made me get out of his car. And he was
4 dragging me. And he dragged me -- I remember he got me
5 around and he dragged me. And there was like a little
6 gully, you know, like a little ditch, and he dragged me
7 across there. I could tell it was an old -- like a junk
8 pile or a landfill or something. I was just scared
9 then.

10 But I still turned to, you know, focusing, you
11 know -- he was trying to make me drink something he had.
12 It was a beer or something. It was an alcoholic beverage.
13 And he dragged me. He was forcefully carrying me across
14 there. And it was, like I said, a landfill. And I cut
15 my -- he pulled me out of my shoes. He was forcing me and
16 I stumbled out of my shoes. And I remember cutting my
17 foot, my right toe. I tried to get him to stop and --
18 it's my foot, man. And he didn't want to stop. And he
19 kept saying, bitch, come on here, come on here, come on.
20 Just kept on just pushing and forcing me. My foot was
21 bleeding real bad. Then he got me -- I remember the
22 wooded -- like I said, it was like somebody had been
23 throwing old furniture, old trash and stuff out
24 there.

25 And he got me down. He pushed me down to my knees,

1 snatching my clothes and stuff, trying to get me to give
2 him oral sex. That's the first thing I remember. He was
3 trying to make me give him oral sex. He kept saying, suck
4 me, you know, suck me. He just kept on. And I told
5 him -- I tried to plead with him, you don't have to do
6 this, you know. And then he forced me on down. Then he
7 pulled off my clothes and like he was going to have
8 intercourse, trying to penetrate me. Then he was like
9 back and forth. He had me up, had me down. He just
10 didn't know which way he wanted to go.

11 Then I remember him trying to make me have oral sex
12 with him and it was like, I wanted to bite him. I wanted
13 to bite him, just bite him, maybe he'd let me go. Then I
14 remember him grabbing my neck. Completely just -- I was
15 like a horse. I remember something tied around my neck.
16 And I remember it felt like -- just real -- so tight that
17 everything was just going dark and I was just gone. I
18 don't know how long.

19 Q So you was totally blacked out?

20 A (Witness nodded.)

21 Q When you woke up, what happened?

22 A I remember laying and like looking, seeing like is he
23 still over me, seeing is it still happening. And he
24 wasn't there. And before I completely moved, I really
25 looked through my head-and looked, you know, just to look

1 and see if he was around me. He wasn't around me.

2 And at first, my body just wouldn't respond to
3 getting up. I couldn't get up. There wasn't no way. It
4 was just like I had to wait. I was like, come on, come
5 on, Annice, you can get up, begging myself to get up. And
6 when I finally got up, I just got up. I was staggering.
7 I was real weak. I was just hurting. My body was just
8 aching just like you've been hurt so bad, you just don't
9 feel it.

10 I heard -- I got myself quite and I heard water,
11 heard like tires, you know, splashing on the road. I
12 heard it ssshhh, you know. My instinct was to follow that
13 sound, keep following that sound. Because I didn't know
14 where I was at. I didn't know where I was at. I just
15 kept listening for it and it kind of directed me, because
16 the more I hear -- the more I walked, the more the sound
17 of the water got stronger to me. And as it got stronger,
18 I just kept on walking. And I didn't see no clothes. I
19 looked and didn't see no clothes, no nothing. I wanted
20 something to cover, because I finally realized that I was
21 naked. And when I first woke up, it was gone. I could
22 just feel it, the cold. And I just kept walking. And I
23 walked and walked, I think -- in my mind, I'd say maybe
24 like 20 minutes. And I got to where I could hear the car
25 closer, the water. I could hear a little rain.

1 And I got -- I remember stepping back to a gully.
2 And when I stepped back to a gully, I heard a car come
3 closer. And it was -- I don't know the people today, but
4 they was -- I couldn't even -- all I could say is, help
5 me. And I guess because I had been out so long and I
6 just -- I passed out. I laid there and I remember
7 somebody put a cover on me until they got me to the
8 hospital. And that's what I remember.

9 Q Ms. Statin, did he take your coat, too, with all your
10 other clothes?

11 A Yeah. I had a black leather coat. I remember when
12 they got me to the hospital some detectives, they asked me
13 did I have anything on me. I had -- I remember having a
14 little cap, a little dress hat, a fashionable hat. And I
15 don't remember all of my clothes on me, what I had, but I
16 remember the black leather jacket, because it was my
17 common law husband's jacket. I remember that jacket so
18 blunt because, you know, when I was sitting on the porch
19 that day, I just grabbed a jacket and put it on. I took a
20 black leather jacket.

21 Q And was that the leather jacket they later found at
22 Mr. Evins' house?

23 A That's what they say they found.

24 Q And was -- at the scene, were you wearing a black
25 bra?

1 A I had a black bra. It was like a nylon, silk black
2 material, yes, with a little lacing.

3 Q Was that the bra they found at the crime scene?

4 A Yes, sir.

5 Q If you could, describe to the jury, Ms. Statin, what
6 injures did you have?

7 A My neck, my eyes, my body was completely just -- I'm
8 ashamed today to show my body, because I've still got
9 marks and scratches and stuff from it. And the most
10 totally just -- mental, real mental and physical
11 block --

12 Q Hold up for one second, ma'am, if you would. The --

13 A My neck was the worstest [sic], my neck and my eyes.

14 Q How was your eyes?

15 A My eyes were probably redder than this gentleman's
16 thing. But they were so red, it messed with my vision.
17 They were blood shot really.

18 Q And how was your neck, ma'am? Can you describe your
19 neck for the jury?

20 A Just like a big giant hickey all the way around, all
21 the way from here to both sides, real bruised, blood clot.

22 Q How was the rest of your body, ma'am?

23 A It look like I had been beat completely from my chest
24 down. I had scrapes all over me, mostly, from being
25 dragged through the bushes, my legs, my foot, my back, my

1 buttocks, my front, all my chest, my whole body.

2 MR. BARNETTE: Ms. Statin, thank you very much.

3 Please answer any questions Mr. Brough may have for
4 you.

5 THE COURT: All right. Cross-examination?

6 MR. BROUGH: No questions of this witness, Your
7 Honor.

8 THE COURT: All right. Thank you, Ms. Statin.

9 You may step down.

10 Let me talk to the lawyers for just a second, please.

11 (WHEREUPON, a bench conference was held with the
12 attorneys.)

13 THE COURT: What else have you got?

14 MR. GOWDY: Huff.

15 THE COURT: That's all that's left?

16 MR. GOWDY: Well, we've got Jimmy Sligh from the
17 Department of Corrections coming in in the morning. We've
18 got Randy Bogan to put in the crime scene photographs,
19 which I wanted to do last, on the Rhonda Ward crime scene
20 of her body. But really, we -- again, it's my fault. I
21 didn't think we'd go this fast.

22 THE COURT: Any motions?

23 MR. GOWDY: We've got about 30 minutes of legal stuff
24 and that kind of stuff. They've just told me they're
25 going to raise the issue of mental retardation.

1 THE COURT: Chris, how much do you have?

2 MR. BROUGH: Well, we've got the testimony of the
3 doctors. We're going to need some time to meet with
4 Fredrick again, potentially, about an hour. And we also
5 have a couple of witnesses.

6 THE COURT: Three or four witnesses?

7 MR. BROUGH: Yeah.

8 THE COURT: How much time are you talking about?

9 MR. BROUGH: I mean, we could -- depending on how
10 long this Huff case takes, there's the potential we could
11 be finished tomorrow.

12 THE COURT: Can you argue to the jurors tomorrow?

13 MR. GOWDY: I'm ready whenever you are.

14 (WHEREUPON, the bench conference was concluded.)

15 THE COURT: All right. Madam Forelady, and, ladies
16 and gentlemen of the jury, we have reached a point which
17 is a good time for us to break for the evening. It's
18 about 5:30. So we will adjourn and resume again tomorrow
19 morning at 9:30. And y'all take care of yourselves
20 tonight and we hope no one else gets ill.

21 Please don't discuss the case.

22 Thank you.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 5:23 p.m.)

25 THE COURT: All right. Mr. Gowdy.

1 MR. GOWDY: Your Honor, may it please the Court?

2 This afternoon, the Defense attorneys were good
3 enough to mention to me that one of their witnesses, I
4 think, is going to testify that this Defendant is mentally
5 retarded, which, of course, would be a bar to the
6 application of the death penalty. And if that is true, I
7 just wanted the Court to know, we don't have the first
8 piece of paper from any expert to indicate that.

9 So, correspondingly, I'm not prepared to meet that.
10 And, at some point, I think it's pretty clear that the
11 State's expert is going to have an opportunity to examine
12 this Defendant. Because if we don't, then the jury is
13 just stuck with whatever their expert says. And I've got
14 Pam Crawford. And if their expert has to examine Mr.
15 Evins, I think it would be appropriate for both the
16 experts to do it at the same time.

17 MS. QUIMBY: Mr. Gowdy and I had already discussed
18 that, and that's fine with the Defense. Dr. Martin is --
19 will be coming up from Columbia. I think that he --
20 judging just by the tempo, the speed that the second phase
21 is going, I think that he needs to be here first thing
22 Thursday morning. He would --

23 THE COURT: Oh, no. I think he needs to be up here
24 tomorrow.

25 MS. QUIMBY: Well, Your Honor, we have other

1 witnesses that we can fill in tomorrow with. I can have
2 him here if the Court instructs me to have him here
3 tomorrow. But he would like to have just a few minutes --
4 just a little bit with Mr. Evins.

5 THE COURT: I think the State has an opportunity to
6 do that.

7 MS. QUIMBY: Absolutely.

8 THE COURT: And y'all have agreed you're going to do
9 it at the same time; is that right?

10 MR. GOWDY: It suits me. They're two psychiatrists.
11 I don't know if they know each professionally or no. But
12 in the past our doctor has met -- I mean, if he wants to
13 discuss the case or something like that, I mean, that's a
14 separate matter. I just -- you know, it puts the State in
15 kind of an awkward position to be able to meet a defense
16 of mental retardation when we don't have a report. We
17 haven't seen the Weschler. We haven't seen the Sanford
18 Bonet. We haven't seen the MMIP. We haven't seen
19 anything.

20 MS. QUIMBY: And, Your Honor, as I explained to
21 Mr. Gowdy earlier, the doctor who performed those tests
22 has consulted with the psychiatrist who will be coming up
23 here to testify, Dr. Martin. I can have him fax me or
24 I can provide the Solicitor with anything that Dr. Brawley
25 has given me, and it would just be a listing of

1 numbers.

2 THE COURT: Well, when did you find out there was an
3 issue about the mental retardation?

4 MS. QUIMBY: Your Honor, I talked with Dr. Martin
5 today. He had just received the numbers from Dr. Brawley
6 about -- and, again, what I had told Mr. Gowdy is not that
7 there is definitely mental retardation. It's that there
8 is a low intellectual functioning that hits the
9 borderline. And I wanted to let him know that so that his
10 expert would have time to talk with Mr. Evins and do any
11 interview that that doctor needs to do.

12 THE COURT: All right. Yes, sir, Mr. Gowdy.

13 MR. GOWDY: I would just point out, one is a
14 mitigator and one is an absolutely bar, so that is a --
15 Ms. Quimby is right, she told me today. And she has
16 always been very, very forthright and upfront with me and
17 I don't find any fault whatsoever with her. But one is an
18 absolute bar to the application of the death penalty, and
19 one is a mitigator. I can handle a mitigator. I can't
20 handle the testimony of a psychiatrist that he is mentally
21 retarded and me be expected to meet --

22 THE COURT: I'm not -- you'll absolutely have an
23 opportunity to have your expert, if that's the issue.

24 Is that -- I mean, you tell me borderline. What does
25 that mean?

1 MS. QUIMBY: His IQ falls -- 70 is right around the
2 cut off. His IQ falls just a couple points below that,
3 which, as I discussed with Mr. Gowdy, reasonable doctors
4 can differ, because it also takes situational and
5 environmental factors into account.

6 So just having an IQ a little below the cut off does
7 not necessarily make or preclude a finding of mental
8 retardation. As I know it right now, it does -- as I'm
9 aware of right this minute, I do not know that it rises to
10 the level of mental retardation. That is one reason that
11 Dr. Martin wanted to speak with him again, whether it's
12 tomorrow or Thursday, just to go over his notes, to speak
13 to Mr. Evins again, and then --

14 THE COURT: Well, what do you have left to put up?

15 MR. GOWDY: Your Honor, we have an SCDC records
16 custodian, Jimmy Sligh. We have somebody from Spartanburg
17 County Detention Center. We have six or seven or eight,
18 perhaps -- some may have some length to them, most will
19 not. We have the Demaris Huff witnesses on that incident.
20 We have Mr. Whitener, who was the gentleman Ms. Statin
21 just testified to that, actually, stopped in the road and
22 got her. I would expect that to be pretty quick. We may
23 have to call Madam Clerk to put in a couple more
24 convictions. We have Randy Bogan. I suspect -- if the
25 Court starts at 9:30, I suspect that we will be through

1 either by lunch or shortly after lunch.

2 THE COURT: You better have the doctor up here
3 tomorrow.

4 MS. QUIMBY: Okay.

5 MR. GOWDY: My theory, Your Honor, is that at some
6 point, either our Supreme Court or the United States
7 Supreme Court is going to set a bright line that says if
8 your IQ is below 70 -- I mean, there's legislation that's
9 been introduced right now that if your IQ is below, that's
10 a per se bar to the application of the death penalty. And
11 if this record -- if the only testimony in this record are
12 tests that the Defense attorneys did --

13 THE COURT: Well, we'll get you an opportunity to
14 have your expert examine him.

15 MR. GOWDY: And administer tests, if needed?

16 THE COURT: Yeah. How long does that take?

17 MR. GOWDY: I don't know. I've never done it.

18 THE COURT: A couple of hours, anyway, doesn't it?

19 MS. QUIMBY: It's my understanding from Dr. Brawley's
20 examinations, it took her no more than a couple of hours,
21 and that was with a complete interview as well. So -- and
22 if she wants -- if Mr. Gowdy -- if the Solicitor's expert
23 wants to consult with Dr. Martin, we have no objection to
24 that.

25 THE COURT: Well, how are we going to get the two

1 doctors together.

2 MR. GOWDY: Dr. Crawford can be here, Your Honor --
3 Deputy Solicitor Willingham informs me that Dr. Crawford
4 can be here. I'm sure she is going to want to see the
5 tests -- since Dr. Brawley is a neuropsychologist and
6 Dr. Crawford and Dr. Wilson are psychiatrists,
7 psychiatrists rely on the tests done by
8 neuropsychologists. And I'm sure Dr. Crawford's first
9 question to me is going to be, give me the data, give me
10 the tests that were administered to Mr. Evins. And right
11 now, I can't give them to her.

12 MS. QUIMBY: I can provide that to him this
13 afternoon, Your Honor, with what -- the limited
14 amount that I have from Dr. Martin that I just got
15 today.

16 THE COURT: All right. Well, I would think we're
17 going to need the psychiatrists up here tomorrow
18 afternoon, tomorrow around lunch. That way, if we -- if
19 it appears we can finish the State's case before lunch,
20 then they can interview him during the lunch hour.

21 MS. QUIMBY: Yes, sir.

22 THE COURT: Is that agreeable?

23 MR. GOWDY: Yes, sir.

24 THE COURT: All right.

25 MS. QUIMBY: Thank you, sir.

1 THE COURT: Anything else before we adjourn?

2 MR. GOWDY: No, sir.

3 THE COURT: Would it do any good to start at 9:00, as
4 opposed to 9:30?

5 MR. BOGGS: Judge, I think if the jury is up and
6 they've eaten by then, I think 9:00 is fine, if it doesn't
7 bother anybody else.

8 THE COURT: How would that be?

9 MR. GOWDY: It doesn't bother me.

10 THE COURT: I'll tell Agent Hendricks that we'll
11 start at 9:00 tomorrow morning.

12 Yes, ma'am.

13 MS. QUIMBY: Your Honor, just for scheduling with the
14 other witnesses that I have, with having the two doctors
15 here by lunch -- or before lunch, I guess -- I know
16 there's no actual way to plan, but should I have my other
17 fact witnesses here tomorrow or --

18 THE COURT: Well, you've heard the schedule, and I
19 think you need to be prepared to go forward.

20 MS. QUIMBY: Yes, sir.

21 THE COURT: We can finish the -- you know, I don't
22 want to keep the jury sequestered any longer than we have
23 to.

24 MS. QUIMBY: Yes, sir.

25 THE COURT: They don't make their living doing this.

1 MS. QUIMBY: Yes, sir.

2 Thank you.

3 THE COURT: I'd be ready to go.

4 MS. QUIMBY: Yes, sir.

5 THE COURT: Tomorrow at 9:00.

6 (WHEREUPON, the proceedings were concluded at
7 approximately 5:34 p.m., to be reconvened on
8 Wednesday, November 17, 2004.)

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1 maybe talking ahead of time.

2 THE COURT: Maybe they can do that before we break
3 and take care of any issues. I'm just trying to be as
4 efficient as possible with this thing.

5 MR. GOWDY: Yes, sir.

6 MS. QUIMBY: Yes, sir.

7 And Dr. Martin would like to have just a few minutes
8 with Mr. Evins, but just them, just to go over his notes.

9 THE COURT: Okay.

10 MS. QUIMBY: But I think we can all do that quickly.

11 THE COURT: Anything else before we bring the jury
12 in?

13 MR. GOWDY: No, sir, not from the State.

14 MS. QUIMBY: Not from the Defense.

15 MR. ANTHONY: Your Honor, I have one matter. We're
16 going to start the Huff proffer, I believe, after our
17 first witness this morning. And there was a search
18 warrant that allowed the public safety to take Mr. Evins'
19 blood when it was sent to SLED for DNA comparison with the
20 DNA found on Ms. Huff. And if -- I don't know if
21 there's -- if the Defense wants to challenge the warrant,
22 if they do, I have the detective who took the warrant here
23 and, you know, I'd be happy to make a proffer to that
24 outside the presence of the jury, if they want to hear
25 that. I just want to put that on the record.

1 MS. QUIMBY: Your Honor, if it's possible, we would
2 not object to it coming in for the limited purpose of this
3 case, while reserving the right to challenge any of the
4 legality of it when the actual case is called to trial.

5 THE COURT: Sure. With respect to any of this Huff
6 stuff, I can't think that you all would be waiving any
7 rights that you would have at subsequent trial.

8 MS. QUIMBY: Yes, sir.

9 THE COURT: If that issue comes up, make sure that
10 you raise it. All of this, of course, all the Huff
11 testimony, all the non-convicted -- well, I guess it
12 was -- I don't know if it was all the non-convicted, but
13 all the charged and non-convicted conduct was objected to;
14 is that right?

15 MS. QUIMBY: Yes, sir.

16 MR. BROUGH: That's correct.

17 THE COURT: And I did not require you to make
18 contemporaneous objections. I think you're covered on the
19 record with that. Okay.

20 MR. ANTHONY: Yes, sir.

21 MS. QUIMBY: Thank you, sir.

22 (WHEREUPON, State's Exhibit No. 127 was marked for
23 identification only.)

24 (WHEREUPON, the jury came into open court at
25 approximately 9:17 a.m.)

1 THE COURT: Madam Forelady, and, ladies and gentlemen
2 of the jury, welcome back. And I hope y'all had a
3 pleasant evening. I'm glad to see 13 smiling faces up
4 here today. And I guess -- as you're aware, I've asked
5 the SLED agents to check on Mr. Sanders, and we'll let you
6 know how he's doing.

7 Thank you very much.

8 MR. BARNETTE: The State calls Benjamin Whitner.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 BENJAMIN WARREN WHITNER,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you

15 Have a seat, please.

16 DIRECT EXAMINATION

17 BY MR. BARNETTE:

18 Q If you would, sir, please give us your full name.

19 A Benjamin Warren Whitner.

20 Q Where do you live at, Mr. Whitner?

21 A I'm self-employed, heating and air conditioning.

22 Q And where do you live at, sir?

23 A 649 Whitner Court, Spartanburg.

24 Q And how long have you lived in Spartanburg, sir?

25 A My entire life.

1 Q Back on March 5th -- the morning of March 5th, 1995,
2 where was you living at that time?

3 A Well, we were going to church that morning. And
4 about a half a mile from home, my youngest daughter said,
5 There's a naked lady. And I thought she was kidding. And
6 I said, Are you kidding, you know? My mother was with us
7 and she said, No, she's -- I saw her, too.

8 So I started to turn around and my neighbor pulled up
9 beside me in his car. They were heading to church. And
10 he said, Did you see that naked lady? And I said, No, but
11 I'm going back because, you know, something bad has had to
12 have happened.

13 So I turned around and went back. And she was
14 running down the road and sort of covered her private
15 areas up, you know. And just as I got to her, she
16 collapsed on the side of the road. So I told my wife and
17 them to go and dial 911. I got out and put my overcoat
18 over her. And when they left, a few minutes later, my
19 neighbor came back and he was sort of upset. And he
20 handed me a trash bag and said, I don't know what you can
21 do with it, but it might help some. So I wrapped that,
22 actually, around the lower part of her legs and her
23 feet because it was real drizzly and about 40 degrees or
24 so.

25 And then my wife came back later and brought a

1 blanket. I covered her up with the blanket and helped get
2 her in the back seat of my car. And nobody really ever
3 came. They went to the wrong -- it was called Frye Road
4 then, and I understand they all went to Frye Road over in
5 Fair Forrest.

6 So I said, let's just take her on up to Mary Black.
7 So about a mile back the other way, we run into a police
8 officer and I flashed my lights. And it happened to be
9 Jimmy Paris, the -- and I knew him personally. So I
10 flagged him down and I told him, I said, I'm going to take
11 her up to Mary Black Urgent Care. And that's where we
12 took her to until they transported her to the Regional in
13 my car.

14 Q When she collapsed and everything, was she coherent?

15 A Not much. She was so cold. She was just shivering
16 and about all she could say was, I'm cold, I'm cold.

17 Q Did she say anything -- or what happened after that?

18 A Once I got her in my car -- and that's been a long
19 time, I didn't remember the name, but I gave the name at
20 that time to Jimmy Paris. But she did say that so and so,
21 which -- whoever it was at the time, she said raped me.
22 So I told that to Jimmy when I met with him.

23 MR. BROUGH: Your Honor, we're going to object to
24 that last statement as hearsay.

25 THE COURT: All right. I will sustain that objection

1 and instruct the jury to disregard it.

2 Thank you.

3 MR. BARNETTE: Thank you, sir.

4 Please answer any questions Mr. Brough or Ms. Quimby
5 may have.

6 MR. BROUGH: No questions for this witness.

7 THE COURT: All right. Thank you, sir.

8 You may step down.

9 Can we release him?

10 MR. BARNETTE: Yes, sir.

11 THE COURT: You're excused and released from your
12 subpoena.

13 MR. GOWDY: May it please the Court?

14 The State would call James Huff.

15 THE CLERK: Place your left hand on the Bible and
16 raise your right hand.

17 WHEREUPON,

18 JAMES HUFF,

19 after first having been duly sworn, testified as follows:

20 THE CLERK: Have a seat here, please.

21 DIRECT EXAMINATION

22 BY MR. GOWDY:

23 Q Good morning, Mr. Huff.

24 A Good morning.

25 Q I want you to speak up as best you can in a good

1 strong voice where the last gentleman and lady in the jury
2 box can hear you. Okay.

3 A Yes.

4 Q Tell them your name and where you live.

5 A James Huff, 335 North Park Drive in Spartanburg in
6 the Duncan Park area.

7 Q Mr. Huff, what was your relation to the late Demaris
8 Huff?

9 A She was my wife for 31 years.

10 Q I want to go back to September the 14th of 2002,
11 Mr. Huff, did your wife have a habit or custom of
12 beginning her days with a morning walk?

13 A Absolutely.

14 Q What time would she typically leave the home?

15 A It would depend on the day of the week. This was a
16 weekend. Normally, she would leave in the 6:30 to 7:00
17 range, just depending on when she woke up. I think she
18 left this day sometime between a quarter till and
19 7:00.

20 Q And what time would she typically return?

21 A Again, it would vary with how long she was walking.
22 I would say usually in the 8:00 to 8:30 range, just again
23 depending.

24 Q When she would go walking, would she ever take
25 anything with her, take something to listen to?

1 A Yes. She would listen to music or books on tape.
2 And I believe she was listening to a book on tape that
3 Saturday.

4 Q At some point, Mr. Huff, did you become alarmed that
5 she had not returned by the time that she typically
6 returned?

7 A Yes.

8 Q And did you and other neighbors begin the process of
9 looking for your wife?

10 A Yes, we did.

11 MR. GOWDY: Mr. Huff, please answer any questions the
12 Defense may have for you.

13 MS. QUIMBY: Just a moment, Your Honor.

14 (Pause.)

15 MS. QUIMBY: Thank you, Your Honor.

16 No questions for Mr. Huff.

17 THE COURT: All right. Thank you, Mr. Huff.

18 You may stand down.

19 MR. GOWDY: Your Honor, we would ask that Mr. Huff be
20 excused.

21 THE COURT: Thank you.

22 And you are released from your subpoena.

23 MR. ANTHONY: The next witness would be Mr. Discher.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right.

1 WHEREUPON,

2 LOUIS DISCHER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Have a seat please, sir.

6 DIRECT EXAMINATION

7 BY MR. ANTHONY:

8 Q Would you state your name, please?

9 A Louis Discher.

10 Q And, Mr. Discher, where do you live?

11 A 252 West Park Drive.

12 Q In what town?

13 A Spartanburg.

14 Q And what part of Spartanburg is that?

15 A It's an area called Duncan Park.

16 Q I want to take you back to September 14th of 2002, in
17 the late morning or the early afternoon of that day. What
18 were you doing?

19 A My wife and I had been baby-siting her grandson, and
20 we were getting ready to take him out to Imagination
21 Station. We were in the driveway and had put him in the
22 car when I noticed two men walking around the lake. We
23 have quite a view of the lake there.

24 Q And what -- when you saw the two men, what did one or
25 both of them do?

1 A Well, one of them continued walking along, but the
2 other came up our driveway.

3 Q And did he ask you anything?

4 A Yes. He said, Have you seen my wife?

5 MS. QUIMBY: Objection, Your Honor.

6 MR. ANTHONY: It's a question, not an assertion.

7 THE COURT: Now, Mr. Discher, just don't repeat what
8 someone else said.

9 Thank you.

10 BY MR. ANTHONY:

11 Q Did you know the man that came up to you?

12 A No, I did not.

13 Q Okay. Who did you learn that he was?

14 A James Huff.

15 Q Okay. And who was Mr. Huff looking for?

16 A He was looking for his wife.

17 Q Okay. And did you -- at the time, did you know
18 Ms. Huff, his wife?

19 A I knew her to see her, but I didn't know her name.

20 Q Okay. And how was it -- without saying what anybody
21 told you, specifically, how was it that you came to
22 realize that you knew her to see her?

23 A Well, as James was leaving, my wife recognized the
24 name and she told me what she looked like. And I had seen
25 her many times walking around the lake.

1 Q And once you realized that you had seen her walking
2 around the lake, what did you decide to do?

3 A It was when my wife asked James what his name was as
4 he was leaving, because he hadn't told us. And it took
5 him about 20 seconds to answer. And up at that point, I
6 think he was holding it in pretty well. And then I could
7 tell that something was really bothering him. And I told
8 her to go ahead and go on and I'd take a look down at the
9 park.

10 Q And so what did you do at that point?

11 A Well, I was familiar with the trail that she had
12 walked on. There was really only one trail. So I
13 followed it looking everywhere. And when I got to the
14 point of the -- there's a small bridge that crosses the
15 creek there right below her house. It was then that
16 something caught my eye, several things, actually.

17 Q You said, "right below her house," did you know where
18 she lived after you realized who she was?

19 A Yeah. She lives all the way on the other side of the
20 lake from us.

21 Q And how long did it take you -- the trail -- well,
22 first of all, the trail you walked, where did it go in
23 relation to the lake and the rest of the park?

24 A It just follows the lake around. And then when it
25 gets to the end of the lake, it continues and goes over a

1 little creek. And then if you take it all the way, it
2 goes almost all the way out -- almost all the way out to
3 Union.

4 Q And how long would you approximate it took you to get
5 from your house to the bridge?

6 A Not more than 10 or 15 minutes.

7 Q And you said you got to the bridge and some things
8 caught your attention. What were those things?

9 A Well, the first thing is there was a lot of dog
10 tracks. It had been raining the day before and all that
11 night. And when I looked down, there was a large-sized
12 beer can lying there. It was fairly fresh and didn't look
13 like it had been washed down. And then, what really
14 disturbed me was some footprints.

15 Q Once you saw the footprints, what did you do?

16 A Well, they looked like they were headed down to the
17 creek, so I followed them. They didn't go very far, but I
18 continued, I went around one small turn there and
19 something caught my eye. It turned out to be trash, but
20 that kept me going. I went around another turn or two and
21 that's when I saw the body.

22 Q Okay. And where was the body in relation to where
23 you were and where the creek was?

24 A I was on the right side of the creek and the body was
25 on the left side about 30 feet further along.

1 Q About 30 feet from you?

2 A Yeah.

3 Q And what were you able to tell about the body from
4 what you saw?

5 A The body was completely nude, except for socks. And
6 it was lying with hands and feet together at an angle of
7 about 10 degrees, head down sort of towards me.

8 Q Okay. And what did you do after you saw the body?

9 A Well, I waited there about 20 seconds to see if I
10 could tell if she was breathing. There was no motion at
11 all.

12 So, at that point, I turned around, retraced my steps
13 and ran up the slope, the little pathway, to her house. I
14 knocked on the front door and there were a couple of
15 elderly women there that answered the door. They weren't
16 able to open the door, so I told them to call 911. And,
17 at that point, one of the women came out the back and we
18 walked down the road a bit and went off the road where we
19 could, actually, see the body from about 10 feet off the
20 road.

21 Q And did any emergency response people come?

22 A Yes. They were the first to show up about five
23 minutes later or less.

24 Q And what did you do when the EMS people arrived?

25 A I directed them straight down that slope.

1 Q And then did you also talk to the police about what
2 you had seen that day?

3 A I did a short interview in the car and then later, an
4 hour or so later, at the station.

5 MR. ANTHONY: If I could have one moment.

6 (Pause.)

7 MR. ANTHONY: Thank you.

8 That's everything on direct.

9 MS. QUIMBY: No questions.

10 THE COURT: All right. Thank you, sir.

11 You may step down.

12 MR. ANTHONY: The next witness would be Mr. Ravan.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right.

15 WHEREUPON,

16 DAVID WAYNE RAVAN,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Have a seat, please.

20 DIRECT EXAMINATION

21 BY MR. ANTHONY:

22 Q Would you state your name, please?

23 A David Wayne Ravan.

24 Q And, Mr. Ravan, how are you employed?

25 A I'm employed with Spartanburg EMS.

1 Q How long have you worked there?

2 A Almost four years now.

3 Q And what's your position with EMS?

4 A I am a senior medic and a lead medic on the unit.

5 Q Now, I want to take you back to September 14th of
6 2002. What were you doing at that time?

7 A I was working with Spartanburg EMS.

8 Q And did you receive a call out to North Park Drive in
9 Duncan Park?

10 A Yes, I did.

11 Q And at approximately what time did you receive that
12 call?

13 A Around 1:00.

14 Q Okay. How many people were you working with at that
15 time?

16 A Myself, a paramedic student, and my partner.

17 Q And what was your role on the truck?

18 A I was the lead medic on that truck.

19 Q And where were you when you received the call?

20 A I was at headquarters, which is located on Union
21 Street.

22 Q And what did you do once you got the call?

23 A We went en route. We traveled down Union Street, and
24 made a right onto Duncan Park Drive, and then a left just
25 immediately off of Union Street.

1 Q And when you got into Duncan Park, what happened?

2 A We traveled about a mile, I think, on the road that
3 we had turned onto and then we were flagged down by
4 several people in the roadway.

5 Q And once you got flagged down by these people, what
6 did they point out to you?

7 A They directed us to the right-hand side of the
8 roadway down a hill.

9 Q And when you looked down the hill, what did you see?

10 A We saw what appeared to be a body of some -- or a
11 female.

12 Q Okay. And what did you observe about the body from
13 the road?

14 A We couldn't really observe very much. We started
15 making our way down to the -- down by the patient's side.

16 Q And how were you trying to get to her at this time?

17 A We, basically, went straight down the hill to the
18 patient's side.

19 Q And as you were heading down there, what happened?

20 A I noticed that it was probably not going to be a
21 viable patient. So I stopped my crew from coming on down
22 the hill and asked them to return back to the top of the
23 roadside.

24 Q Okay. And what did you do after you sent your crew
25 back up to the roadside?

1 A I went down to the patient's side. I noticed that
2 there was no obvious signs of life. I just made a mental
3 picture of what I had seen -- what I saw and notified the
4 Coroner's Office via radio.

5 Q The person lying there at the bottom of the hill,
6 what observations did you make about her?

7 A She appeared to be a 45 to 50-year-old female. She
8 was unclothed. The only thing that she did have on as far
9 as clothes was a pair of socks and a watch. She had a --
10 what appeared to be a small rope or string around her
11 neck. She was synotic or discolored, bluish color from
12 the neck up and pale from the trunk and lower extremities.

13 Q Did you touch the body at that time?

14 A No, I did not.

15 Q Okay. And why was that?

16 A The patient had obvious signs of death. There was no
17 need in checking for a pulse or anything.

18 Q Did you notice anything about her body when you went
19 down there and looked at it?

20 A Her feet were laying towards the roadside and her
21 head was laying back towards the wood area, other than
22 being unclothed and the string and everything around her
23 neck.

24 Q Did you notice anything around the body?

25 A There were footprints on her right side, which would

1 have been -- if you were facing from the roadway, would
2 have been on the left side.

3 Q And what did you do once you went down there and made
4 the observations of the body?

5 A I turned around and went back up to the roadway.

6 Q And when you got back up to the roadway, what
7 happened then?

8 A I was met by several people, the people who flagged
9 us down. And I think one of them was her spouse. He
10 asked if there was anything that -- what was going on, and
11 I advised him that she was deceased. And I asked if there
12 was another way for the police officers to get down there,
13 because the way that we went down was very treacherous.

14 Q And what -- as far as the husband, what did you
15 advise in relation to him?

16 A Well, once he showed us where the trail was that led
17 down, I asked my paramedics just to take him into his
18 house and remain there with him.

19 Q And then what happened after that?

20 A A police officer arrived on the scene and I advised
21 him of the situation and, basically, turned it over to
22 him.

23 Q Okay. And what was the next thing that you did?

24 A Lieutenant Gilbert arrived on the scene. The
25 gentleman that I met at the top of the road asked if we

1 were going to cover her. And when the Lieutenant got
2 there, I made that aware to him and we went -- he and I
3 went down and covered the patient with a sheet.

4 Q How did you get to the body at this point?

5 A We went down the trail that we were advised of. We
6 crossed over a bridge and traveled on the right-hand side
7 of a creek on a sandbar. When we crossed over, there was
8 some footprints coming out of that area. We stayed away
9 from those and crossed back over the creek to the
10 patient's left side.

11 Q And once you got to the body, what did you do?

12 A We covered her and then returned back to the roadway
13 the same direction we went in.

14 Q So when you went to the body and when you left the
15 body, you were approaching from the opposite side of the
16 creek that you were on?

17 A Correct.

18 Q And after you got through covering the body and got
19 back on the roadway, did anyone else go down into the area
20 where the body was?

21 A Not that I know of until the scene was turned over to
22 the Coroner's Office.

23 Q And did you speak to the police about this incident?

24 A Yes, I did.

25 Q Okay. And after you had been there, covered up the

1 body, talked to the police, what did you do then?

2 A We cleared the scene and went and made ourselves
3 available for other calls and returned to our
4 station.

5 Q And did you ever go back out there that afternoon?

6 A Yes. We were called back, I think, around 4:00 to
7 transport the body.

8 Q Okay. And what did you do? Where did you take the
9 body?

10 A Well, we transported the body to Spartanburg Regional
11 Memorial.

12 MR. ANTHONY: All right. Thank you.

13 That's everything on direct.

14 MS. QUIMBY: No questions.

15 Thank you.

16 THE COURT: All right. Thank you, sir.

17 You may be excused.

18 MR. ANTHONY: The next witness would be Officer
19 Talanges.

20 THE CLERK: Raise your right hand and place your left
21 hand on the Bible.

22 WHEREUPON,

23 ROBERT CHARLES TALANGES,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Have a seat, please.

DIRECT EXAMINATION

1
2 BY MR. ANTHONY:

3 Q Would you state your name, please?

4 A Robert Charles Talanges.

5 Q And, Mr. Talanges, how are you employed?

6 A I'm employed with the Spartanburg Public Safety
7 Department.

8 Q And what is your position there?

9 A At present time, I work in the investigations
10 division.

11 Q What particular branch of the investigations?

12 A We do the crime scene investigations.

13 Q How long have you worked for the Public Safety
14 Department?

15 A Approximately 14 years.

16 Q And how long have you been doing crime scene
17 investigations?

18 A Approximately seven years now.

19 Q And what do you do in regards to processing crime
20 scenes? What does your job involve?

21 A Basically, photographing of the scene, documentation,
22 collection of evidence, preservation of evidence, and
23 sketches.

24 Q And on September 14th of 2002, did you receive a call
25 out to Duncan Park?

- 1 A Yes, I did.
- 2 Q And is that in the City of Spartanburg?
- 3 A Yes, it is.
- 4 Q And is it in Spartanburg County?
- 5 A Yes, it is.
- 6 Q And when did you get to Duncan Park?
- 7 A Approximately, I think, 2:00 p.m., around 2:00 p.m.,
8 I believe.
- 9 Q And when you got there, what did you do?
- 10 A Upon arrival, I, basically, exited the vehicle. And
11 I seen investigators standing at the edge of the roadway.
12 So I went over to where their location was and I talked
13 with them for a minute.
- 14 Q All right. And did you make any observations from
15 the top of the roadway as to what had happened?
- 16 A Well, basically, from the top of the roadway, they
17 were showing me where the victim was lying.
- 18 Q And was there anybody down there with the body at
19 that time?
- 20 A Not at that time. The area was secured with the
21 crime scene tape and -- basically, had the area secured.
- 22 Q Now, at the time you were working on the crime scene,
23 what was the weather like?
- 24 A Probably the worst type of weather you could have for
25 a crime scene, dreary, rainy day, heavy showers.

1 Q And how did you begin your investigation of the crime
2 scene in this case?

3 A From the roadway area, what I proceeded to do was
4 photograph looking down upon where the victim was lying at
5 the base of the hill area.

6 Q Okay. And after you took those photographs from the
7 top of the roadway, what did you do then?

8 A Myself and a couple other investigators, we went down
9 a path area located about -- I think it's 329, the
10 residence number. There's a path that led to a walking
11 trail down into the park. We went there and we went over
12 to the bridge area -- basically, a bridge area at the --
13 where the paths are.

14 Q All right. And when you got -- what observations or
15 investigation did you make around the bridge area at the
16 creek?

17 A Basically, we were looking for shoe tracks or anybody
18 coming and going through the area.

19 Q And did you find anything along those lines?

20 A Yes, we did.

21 Q What did you find?

22 A Searching the area -- let me rephrase it. We checked
23 a park bench area that's located on the path. We searched
24 that area first. Then we proceeded to check for shoe
25 tracks in the stream area or area leading towards the

1 victim.

2 Q What did you find while doing those things?

3 A At the park bench area, we found a plastic -- like a
4 hair clip laying on the ground and also found a couple --
5 it looked like to me those false finger nails.

6 Q Were you ever able to connect those things to this
7 incident in any way?

8 A No, we were not.

9 Q And what did you do you regards to that evidence that
10 you found?

11 A That evidence was, basically, put in storage until
12 further possible testing could be done.

13 Q And what was the next thing you did?

14 A We searched the area for shoe tracks possibly leading
15 to where the victim was.

16 Q And what did you find?

17 A We found shoe tracks on the right side of the creek.
18 There's a small stream that runs through there. But on
19 the right, we had located shoe tracks.

20 Q And what did you do in regards to those?

21 A Basically, determined that it was -- the shoe tracks
22 that were located belonged to the EMS personnel.

23 Q And what was the next thing you did?

24 A We continued to search, and we located other shoe
25 tracks further down the creek bed area near a tree. There

1 was two shoe tracks located over there.

2 Q And where were those foot -- shoe tracks in relation
3 to each other?

4 A Approximately three feet apart. One appeared to be
5 pointing towards where the victim was and one was pointing
6 in the opposite direction, away from the victim.

7 Q And what did you do to try and memorialize what you
8 had seen there?

9 A The conditions, like I said, was extremely wet
10 outside. I marked them with orange marking flags because
11 right at that time, we were trying to preserve and mark
12 any evidence we could find. So I marked them with orange
13 marking flags.

14 Q And the prints, was there any kind of sole impression
15 that was left by the prints?

16 A One of the shoe tracks was flooded and the other
17 looked like a smooth-type track, but no distinct pattern
18 to it.

19 Q So once you found the shoe prints, what happened
20 then?

21 A Well, the pathologist arrived, Dr. Wren is his name.
22 He arrived at the location. I stayed at the location
23 where the shoe tracks were while Dr. Wren and the
24 coroner's investigator and Investigator Hogsed came down
25 to where the victim was at.

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1 Q And while they were looking at the body, was anything
2 else going on as far as investigating the crime scene?

3 A Well, I was stationed at the location of the shoe
4 tracks. We called in a K-9 unit to see if we could do any
5 type of tracking from the county.

6 Q And what -- after Dr. Wren and the coroner's
7 investigator looked at the body, what happened next?

8 A Well, a search of the area was done by the
9 Spartanburg County K-9 unit, but they didn't use the dog.
10 They did a physical search of the area looking for any
11 type of evidence.

12 Q And then what happened after that? What did you do
13 after Dr. Wren finished looking at the body?

14 A I went back to the bridge area, back to where
15 Investigator Hogsden was. We went back to the location
16 and started photographing where evidence was located.

17 Q And what kind of evidence did you find?

18 A There was this grassy area, which we had taken the
19 path to get to where the victim was. I'm on the side of
20 the hill. There was -- some leaves had been, I guess,
21 moved around and we located a headphone and -- stereo-type
22 headphone and also the plug-in unit. They were separated.

23 Q And could you make any observations about the area
24 where the headphones were?

25 A There looked to be some type of scuffle had taken

1 place there.

2 Q What makes you think that?

3 A Well, the leaves had been moved and you could,
4 actually, see the dirt or the ground area. You could,
5 actually, see the dirt versus everywhere else was covered
6 by leaves. This area here, the leaves had been pushed
7 away and you could see the dirt.

8 Q All right. Now, after you made the observation of
9 that area where the headphones were, what was the next
10 thing you did?

11 A We went over to -- myself and Investigator Hogsden
12 and Coroner Investigator Brad Wall went over to where the
13 victim was lying.

14 Q And what did you do in regards to the victim at that
15 time?

16 A We -- basically, we removed the sheet and started
17 doing photo documentation of her.

18 Q Okay. And what did you observe about the body at
19 that time?

20 A When we removed the sheet, the victim was nude,
21 except for wearing a pair of socks. She had a watch on
22 and also a ring.

23 Q And what observations did you make about the socks
24 that were on her feet?

25 A The socks were clean, except for the ankle area.

1 They were, I guess, pristine clean condition all except
2 for the ankle area, which had dirt around it. And that
3 was it.

4 Q And what did you do after you photographed the body?

5 A Investigator Brad Wall from the Coroner's Office, he
6 had rolled the victim over -- well, we started marking the
7 location of her, because we were trying to look for trace
8 evidence on her. After not locating any, we marked her
9 feet, her hands, and her head area so we could try to
10 recreate the scene if we needed to for measurement
11 purposes. We were trying to get the victim out of there
12 as quickly as possible.

13 Q And after the victim -- well, was the victim
14 subsequently moved?

15 A Yes. She was moved by Investigator Wall. We wanted
16 to see her back side to make sure that we photographed it
17 and showed injuries, if there were any located.

18 Q Did you notice any injuries on the victim's back?

19 A She had cuts on her back side.

20 Q So after you had taken pictures of the victim and
21 made the observations of her, what happened next?

22 A We had the victim removed by the EMS personnel.

23 Q And once the victim's body was removed, what did you
24 do then?

25 A After we assisted -- assisted by -- we were standing

1 there being present at all times while she was removed
2 from the scene. We went back and we started -- we took
3 photographs of the area and, basically, remarked where the
4 flags were so they wouldn't get trampled over by the
5 removal process.

6 Q And did you search for evidence in the area where she
7 was?

8 A Yes, we did.

9 Q Did you find any?

10 A No, we didn't.

11 Q And what did you do after they moved her body out?
12 After her body was removed, what was the next thing you
13 did to investigate the crime scene?

14 A Basically, we rephotographed and we started to search
15 the area for any of her personal items, clothing, shoes,
16 anything that would be tied to the victim.

17 Q And were you able to find anything?

18 A No, we were not.

19 Q All right. Did you see any other impressions or
20 anything as you were making this search?

21 A Yeah. Around the body, we found a -- there was a
22 shoe print to the left side of the victim's body. It was
23 underneath her, so we didn't see it until she was moved.

24 Q And were there any other markings that you saw?

25 A None.

1 Q All right. What did you do after you continued to
2 search for evidence? And as the day drew to a close, what
3 did you do then?

4 A We tried to secure the scene the best we could, and
5 we called in for some tarps. We were trying to keep the
6 area from getting flooded, basically, and keep it as dry
7 as possible so we could work it. And, unfortunately, it
8 did not work.

9 Q Okay. And what time did you stop working that night?

10 A We -- I think we left the scene right around 21:30
11 hours, I think.

12 Q What is that?

13 A 9:30 at night.

14 Q Okay. So what was the next thing you did on this
15 case?

16 A I attended the autopsy of the victim.

17 Q And when was that?

18 A That was the following day about 8:00 in the morning.

19 Q And what was the first thing you wanted to do as far
20 as gaining evidence at the autopsy?

21 A Since she was in -- the victim was in a body bag.
22 What I wanted to do was try to fume the body to see if we
23 could get any type of latent prints off of her.

24 Q Were you able to do that?

25 A Due to her wetness, the body -- actually, the bag and

1 the body -- her body was extremely still soaking wet. So
2 we were unable to do any type of fuming for prints on her.

3 Q Okay. And what was the next thing that happened at
4 the autopsy?

5 A Well, Dr. Wren performed what's called a CSC,
6 criminal sexual conduct. Basically, it's a CSC kit is
7 what it is, which is performed on any victim involved in
8 that type of crime.

9 Q And what else did you do?

10 A I took photographs, documented the condition of her,
11 and collected the kit as well as other evidence.

12 Q All right. And did you -- in the process of viewing
13 the autopsy, did you observe any injuries to the victim?

14 A Yes, I did.

15 Q And what injuries did you observe?

16 A Her head, both left side and right side, were beaten.
17 When they -- when Dr. Wren was, actually, checking the
18 eyes, both eyes were bloody, just blood red inside.

19 Q And you said the CSC kit Dr. Wren took was turned
20 over to you?

21 A That's correct.

22 Q I'm handing you what's been marked for identification
23 as State's Exhibit No. 127. I'm going to hand you the
24 envelope that is in the bag that is State's Exhibit No.
25 127, and ask you to take a look at that, please. And you

1 can examine the contents, if you like, as well.

2 A I would have nothing to do with -- basically, when
3 this evidence here is collected by the pathologist, it's
4 placed in this bag and sealed. And all I collect is --

5 Q Well, I'm not -- let me just ask you, first of all,
6 do you know what that is?

7 A Yeah. This is a -- it says "Serology Section
8 Evidence Distribution" on the envelope. Basically, this
9 is for swabbing.

10 Q Okay. And when would that envelope have been -- when
11 would the items have been placed in that envelope?

12 A After the kit was completed by the pathologist.

13 Q At Ms. Huff's autopsy?

14 A That is correct.

15 Q And when the kit is completed by the pathologist,
16 what does he do with that envelope?

17 A This envelope is sealed and is placed into a --
18 basically, a box that it came in.

19 Q And is that what happened at Ms. Huff's autopsy --

20 A Yes, sir.

21 Q -- with that item you just looked at?

22 A Yes, it did.

23 Q And did you collect any other evidence at the
24 autopsy?

25 A I collected a black, thin wire, which went to the

1 headphones, I collected that also from the autopsy.

2 Q Okay. So after you finished at the autopsy, what was
3 the next thing you did?

4 A After collection of the kit and clothing, I returned
5 to city hall and checked everything in and secured it to
6 the evidence refrigerator.

7 Q All right. And then after you put the items you
8 collected at the autopsy into evidence, what did you do
9 next?

10 A I went back to the incident location. We had our
11 command post stationed there for several days, but we
12 returned to the location.

13 Q And what did you do there?

14 A The weather was, actually, still raining. We
15 proceeded to mark or measure distances from, I think, 335.
16 There's some stairs on the roadway to the trail area in
17 the front of 329. We took measurements.

18 Q What had happened to the crime scene from the day --
19 from the 14th when you worked it until the next day when
20 you came back to it?

21 A The area where the victim was lying, that whole area
22 flooded. It was about three, five, maybe six inches of
23 water. It just flooded. The area where we located the
24 headphones and those evidence items, we removed --
25 basically, removed the tarps. We tried -- that area was a

1 little bit dryer due to -- it was more like an embankment
2 or slight hill.

3 Q And were you able to find any other evidence that
4 day?

5 A No, we did not.

6 Q And did you continue to search the area where
7 Ms. Huff was found?

8 A We searched the area.

9 Q How many days did you spend out there trying to
10 collect other evidence?

11 A I know we were there for maybe three days. I know
12 the 14th, 15th, 16th, and 17th. And after that, we also
13 searched the area for any other evidence or -- any
14 clothing or anything that belonged to her. We searched
15 that park several times.

16 Q And the whole time that you were out there looking
17 for evidence, did you ever find any physical evidence at
18 the crime scene that could be connected to any particular
19 person?

20 A None.

21 Q Did you determine the distance from the Hanover Place
22 Apartments to the location where Ms. Huff's body was
23 found?

24 A Yeah. We took an estimate. The shortest route we
25 found by vehicle was approximately a little more than a

1 half a mile.

2 (WHEREUPON, State's Exhibit Nos. 128, 129, and 130
3 were marked for identification only.)

4 BY MR. ANTHONY:

5 Q I'm showing you what's been marked as State's Exhibit
6 Nos. 128, 129, and 130 for ID only, could you tell the
7 jury what those are?

8 A These are computer sketches of the area that I had
9 drawn up.

10 Q What did you use to do those sketches?

11 A Well, I had rough sketches of the area. And,
12 basically, these are the computer sketches of what I had
13 drawn from the location.

14 Q And do those diagrams accurately reflect the
15 measurements of the crime scene, and the location, and the
16 evidence found at the crime scene?

17 A Yes, they do.

18 MR. ANTHONY: We move State's Exhibit Nos. 128
19 through 130 into evidence.

20 MS. QUIMBY: We have no objection, Your Honor.

21 THE COURT: Well, subject to the previous objection?

22 MS. QUIMBY: Yes, sir.

23 (WHEREUPON, State's Exhibit Nos. 128, 129, and 130
24 were admitted into evidence.)

25 MS. QUIMBY: Your Honor, may we approach?

1 THE COURT: All right.

2 (WHEREUPON, a bench conference was held with the
3 attorneys.)

4 MS. QUIMBY: Your Honor, the State is going to try to
5 put in the pictures. Now, we think -- we object on the
6 basis that they would be irrelevant -- that they're
7 irrelevant to character. The body has already been
8 described. The scene has already been described. We
9 don't think that they're going to accomplish anything
10 else, but inflame the jury.

11 THE COURT: Why are these different from any other
12 photographs that I have not let in?

13 MR. ANTHONY: These photos just let the jury see the
14 context of where this happened.

15 THE COURT: Well, it doesn't go to his character, so
16 I'm not going to let them in. You can proffer them.

17 MR. ANTHONY: All right. Well, I've had them marked
18 so -- that's fine.

19 Ms. QUIMBY: Thank you, sir.

20 (WHEREUPON, the bench conference was concluded.)

21 MR. ANTHONY: Your Honor, at this time, I'd ask to
22 show the diagrams to the jury, publish them to the jury.

23 THE COURT: All right.

24 BY MR. ANTHONY:

25 Q Officer Talanges, you can go ahead and step down.

1 Take this.

2 I want to show you, first of all, State's Exhibit
3 No. 128. Could you just give the jury an overview of that
4 diagram and tell them what they're looking at?

5 A Basically, this is Duncan Park Drive. Up here is 329
6 and 335, the victim's residence. When I arrived at the
7 scene, we were standing at right about this wooded area or
8 ledge area here overlooking the victim, myself and other
9 investigators. I proceeded to take photographs looking
10 down upon this area. It's a heavily wooded area.
11 Basically, it's hard to see the victim from this area
12 unless you have the right angle. We -- the investigators
13 took this trail here in front of 329 and came down here
14 and we proceeded to search -- there is a park bench up in
15 about this area here. We searched this area here, which
16 the plastic hair clip and fingernails were located. Then
17 we started searching the creek area.

18 Q Is the creek that line you're just --

19 A Between here and here.

20 Q Okay.

21 A There were trees as you're going out of the creek.
22 It's not -- maybe six, eight feet wide in some areas and
23 narrower in others. We started searching. We found shoe
24 tracks, the EMS ones, on the right side, which is the
25 lower area, the northern side. And on the other side, we

1 found those two shoe tracks which were marked, the shoe
2 tracks in the creek area. There was one headed --
3 appeared to be going towards the body and one was pointed
4 toward and one away from the body.

5 A search was done in this area here and this area
6 here and also surrounding areas, by not only us and the
7 K-9 unit from the county, myself, Hogsden and Brad Wall,
8 we went over to this area. That's where we started
9 photographing. This is kind of a trail, a grassy area, a
10 marshy area that we were walking through. And to the
11 left, No. 1 and No. 2, they're pointing to the headphone
12 set and also the plug unit and the leaves that some type
13 of skirmish had taken place here. The leaves were,
14 actually, pushed over. We could see the dirt ground.

15 We went over to where the victim was. There are
16 trees and limbs and stuff, basically, preventing you from
17 getting close to her. So you had to, actually, either
18 crawl under or crawl over the unit of the trees. We
19 started to remove the sheet and that's when we started
20 taking photographs of her. We photographed, basically,
21 all -- basically, all the way around her. We took
22 photographs and searched for trace evidence on her. We
23 rolled her over, that's where we located the cut to the
24 back. And the only thing she had on her was watch, ring,
25 and she had socks, and a black cord wrapped around her

1 neck.

2 Q Okay. Now, let me ask you this, if you're on that
3 trail that you have on that drawing --

4 A This one?

5 Q Yes. That one right there, the one that leads over
6 the bridge.

7 A Yes.

8 Q Which area is more visible, the area where the
9 headphones were found or the area where the body was
10 found?

11 A More visible would be the area where the headphones
12 and the plug unit were found, which would be where No. 1
13 and No. 2 are, this location here.

14 Q And I'm going to show you now State's Exhibit No.
15 129. And you don't have to go into as much detail because
16 it's, basically, the same thing. But could you tell the
17 jury what that is and what the markings on that diagram
18 show?

19 A Basically, we triangulated and took measurements is
20 what is shown. The arrow pointing up towards the top of
21 the hill and the roadway is on top of here. And from the
22 first area that we had located the evidence to
23 approximately where she was at, it was approximately 30
24 feet away. And we triangulated from -- I believe there
25 was a tree that we triangulated from to where the victim

1 was. The reason why we triangulate is so we can go back
2 and if we need to, recreate the scene and put her in
3 approximately the same location.

4 Q And if you would, what is this right here? Does that
5 indicate anything?

6 A Yeah. This appeared to be a slide or a skid mark,
7 because it's a slight hill area there where someone had
8 slid down. And it was just a scrape mark there.

9 Q I'm going to show you State's Exhibit No. 130. And
10 once again, if you could, very briefly tell the jury what
11 that is and what the markings mean.

12 A This is the area where the headphone and the plug-in
13 unit were located. It would be the first area. I broke
14 it up into two areas. This is area No. 1 and the victim
15 was in area No. 2. But this would be the first area.

16 MR. ANTHONY: All right. Thank you very much.

17 You can have a seat.

18 May we approach?

19 THE COURT: Yes.

20 (WHEREUPON, a bench conference was held with the
21 attorneys.)

22 MR. ANTHONY: I was intending to put the headphones
23 in that were recovered that day. But I figured I would
24 ask you before I marked it and showed it, because I was
25 suspecting she might object to that, too.

1 MS. QUIMBY: We object for the same reasons. We
2 don't think it's relevant and they've already been
3 described.

4 THE COURT: I don't know that it is appropriate for
5 his character. You can proffer.

6 MR. ANTHONY: Okay. I'll have them marked.

7 Thank you.

8 MS. QUIMBY: Thank you.

9 MR. ANTHONY: I just didn't want to waste time.

10 THE COURT: All right.

11 (WHEREUPON, the bench conference was concluded.)

12 MR. ANTHONY: Thank you.

13 That's everything on direct.

14 MS. QUIMBY: No questions.

15 Thank you.

16 THE COURT: All right. Thank you.

17 You may be excused.

18 MR. ANTHONY: The next witness would be Dr. Wren.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 WHEREUPON,

22 JOHN DAVID WREN, M.D,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 Have a seat.

DIRECT EXAMINATION

1
2 BY MR. ANTHONY:

3 Q Would you state your name, please?

4 A John David Wren.

5 Q And, Dr. Wren, how are you employed?

6 A I'm a pathologist with Spartanburg Pathology
7 Associates in Spartanburg.

8 Q And how long have you been employed with Spartanburg
9 Pathology Associates?

10 A I started October the 18th, 1982.

11 MR. ANTHONY: Your Honor, Dr. Wren testified in the
12 guilt phase and all the evidence from the guilt phase has
13 been incorporated in this phase. So we would ask that he
14 be qualified as an expert in the field of forensic
15 pathology based on his prior testimony.

16 THE COURT: I don't believe there was an objection
17 before.

18 Do y'all --

19 MR. BOGGS: There was --

20 MS. QUIMBY: Subject --

21 THE COURT: Oh, subject to any previous objection
22 that was entered in the trial.

23 MS. QUIMBY: Thank you.

24 BY MR. ANTHONY:

25 Q Dr. Wren, I want to take to you September 14th of

1 2002. Were you called out to North Park Drive in
2 Spartanburg that day?

3 A Yes, I was.

4 Q And why were you called out there?

5 A I was called by the Coroner's Office to come and
6 investigate a scene.

7 Q And what did you find at the scene that the Coroner's
8 Office called you to?

9 A I found a female lying on a sandbar. It was down a
10 gully off the street there.

11 Q What condition was the body of the female in?

12 A She was -- as I recall, she was lying on her back.
13 She was covered up. She was nude, except for rings and a
14 watch and socks.

15 Q And was there anything about her body -- anything
16 else on her body?

17 A Anything what?

18 Q Was there anything else on her body aside from her
19 socks?

20 A Oh, she had a cord wrapped around her neck. It
21 looked like an electrical cord.

22 Q And what observations did you make about her body --
23 or what did you try to determine when you went out there
24 to the crime scene?

25 A It was, basically, to see if I could add any findings

1 to what had already been seen there and to help try to
2 determine the time of death.

3 Q And what observations did you make of Ms. Huff's body
4 in regards to determining the time of death?

5 A Well, when I got there, which was at about 3:45 p.m.,
6 it had been raining. It was pretty cool. It started to
7 clear up, but it had been raining almost all day. And at
8 that time, I found pronounced rigor mortis and some liver
9 mortis. There was no appreciable body heat, which wasn't
10 surprising. And I thought that she had been dead, at that
11 time, probably six to eight hours. It could have been
12 longer. It's not a precise measurement of time of death,
13 contrary to what everybody believes.

14 Q Okay. And how did you come to that conclusion?

15 A Based on the fact that it takes rigor mortis --
16 unless there's extreme heat or exertion, it takes rigor
17 mortis about four hours to set in. It takes about 12
18 hours to become fully fixed. And about 24 hours later, it
19 will start to disappear and not reappear. And liver
20 mortis is about the same time frame. It can be speeded up
21 if there's, like I said, a lot of exertion at the time.
22 When a person dies, if there's a lot of lactic acid built
23 up in the system, it can start as early as 30 to 45
24 minutes.

25 Q And after going to the crime scene and making that

1 observation, when was the next time you had anything to do
2 with the situation involving Ms. Huff?

3 A Well, since it was so late in the afternoon and the
4 body had not been moved, by the time I got ready to leave,
5 which I think was around 5:00 or so, we decided to wait
6 until the next morning to start an autopsy. Because there
7 was no one available to help with the autopsy at that time
8 of the day. We usually stop about -- unless the body is
9 in the morgue, we stop about 2:00 accepting new bodies.
10 So I started the next morning at 8:45 a.m.

11 Q And where did you perform the autopsy?

12 A Spartanburg Regional Medical Center autopsy room.

13 Q And when you observed Ms. Huff, how much did she
14 weigh?

15 A Well, once again, I think I testified previously, we
16 didn't have scales at that time. She was 67 inches long
17 and weight, I estimated, 115 pounds.

18 Q And when you examined her, did you observe any
19 external injuries?

20 A Yes. She had multiple abrasions and contusions and a
21 few lacerations, one of which, at least, appeared to be
22 postmortem to her head, extremities in upper body -- upper
23 extremities in body.

24 Q And did you notice anything about her eyes during the
25 examination?

1 A She had scleral hemorrhage bilaterally, which is
2 hemorrhage into the white of the eyes, rather extreme on
3 the left side. She had some contusions about her face and
4 neck and some abrasions.

5 Q All right. The hemorrhaging that she was
6 experiencing in her eye, what would that be indicative of?
7 What would cause that?

8 A Well, it can be from blows. It can be from skull
9 fractures. It can, often times, not to possibly the
10 extent seen in this case, but if a person is strangled or
11 smothered, if they're older than five or six years old,
12 they usually, from the struggling and struggling for
13 breath and the extreme pressure that they put on trying to
14 breathe that reflects into the head, they'll get petechial
15 hemorrhages in the eyes.

16 Now, there was so much scleral hemorrhage that I
17 could not tell for sure if there was any petechial
18 hemorrhage. But there was, nevertheless, hemorrhage in
19 the whites of the eyes.

20 Q And after you made these observations of Ms. Huff
21 externally, did you make any observations of her
22 internally?

23 A Yes. She had hemorrhage -- on internal exam, she had
24 some hemorrhage in the deep musculature of the anterior
25 left shoulder. It did not reflect on external exam, which

1 is not surprising, sometimes it doesn't show. That's the
2 reason we do a complete autopsy. And she had hemorrhage
3 around one side of her highward bone, which is the bone
4 just above the larynx that is often fractured when someone
5 does manual strangulation or, at least, pressure in that
6 area. And that bone was fractured. In that area of
7 hemorrhage, which was on the left -- I think it was the
8 lateral highward bone, I didn't say which side.

9 Q And other than making the observations of Ms. Huff's
10 injuries, did you do any evidence collection at the
11 autopsy?

12 A Yes. In this case, since -- the circumstances
13 surrounding death, we did a full rape kit on this one,
14 too.

15 Q And what do you do when you do a rape kit?

16 A Once again, we take head hair from front, back,
17 sides, and top. We take -- we check for any evidence of
18 semen on anything that fluoresces under UV light. And we
19 will take swabs of that area. We do rectal, oral, and
20 vaginal swabs on females, oral and rectal on males. We do
21 scrapings of the fingernails and take blood. And the
22 swabs that we do of the body orifices, we also again swab
23 those onto microscopic slides to look for spermatozoa.
24 And we package all that up and send it to SLED.

25 Q And do you take slides yourself?

1 A Sometimes I take them in duplicate. In this case, I
2 did.

3 Q Okay. And what observations did you make about the
4 slides you took?

5 A The slides I took, I did look for spermatozoa. I did
6 not see any on my slides. But that can probably be
7 explained by the fact that I do the best slide to send to
8 SLED and smear most of the fluid onto the first one. And
9 the second one just didn't probably have any -- well,
10 didn't have any recognizable ones on it. In retrospect,
11 you might say there was a couple there, but I did not
12 report any.

13 Q But your best slide you took would have gone to the
14 State Law Enforcement Division?

15 A That's correct.

16 Q You have in front of you what's been marked for
17 identification as State's Exhibit No. 127. I'm showing
18 you an envelope in this exhibit. Would you take a look at
19 that and examine the contents and see if you recognize it,
20 please?

21 A These are all consistent with those that we collect.
22 I, actually, did not fill out the front sheet here. It's
23 not my handwriting and I do not recognize this one. I
24 don't know what this is. But the other is that which I
25 signed for.

1 Q Dr. Wren, that is signed by you as you collected the
2 items?

3 A No, I didn't sign them. I did collect them, though.

4 Q You did collect them?

5 A Yeah.

6 Q And then once you've collected the items, where did
7 you put each one of those individual items you have there?

8 A I put these into the appropriate -- or requested
9 envelopes. And the microscopic slides are, actually, put
10 in here. I package them up and then give them to a
11 representative of the police who take them.

12 Q And did you do that in the case of Ms. Huff?

13 A Yes, I did.

14 Q You gave the -- you gave this package to an officer
15 with the Public Safety Department?

16 A Yes.

17 MR. ANTHONY: If I could have one moment.

18 BY MR. ANTHONY:

19 Q Dr. Wren, do you have an opinion -- based on the
20 autopsy you did of Ms. Huff, do you have an opinion as to
21 the cause of her death?

22 A I assigned the cause of her death as respiratory
23 insufficiency secondary to manual and/or ligature
24 strangulation.

25 Q What is ligature strangulation?

1 A Since she had this cord about her neck, there was a
2 possibility, although no definite proof, that it was also
3 used. There were no obvious pattern injuries from that
4 cord. Sometimes, depending on how much force is placed,
5 that will cause an abrasion or a groove if it's been
6 pulled tight enough and left there long enough to,
7 actually, make an indentation or abrasion.

8 She did have an abrasion there in her neck region
9 that was a little bit wider than the cord. The cord was
10 only again 25/100th's of an inch wide, whereas the
11 abrasion of the neck was about half that large. It was
12 40/100th's of an inch. It was possible that it was from
13 that cord, but not definite proof that it was.

14 MR. ANTHONY: Thank you.

15 That's all on direct.

16 MS. QUIMBY: No questions.

17 Thank you, Dr. Wren.

18 THE COURT: All right. Thank you, sir.

19 You may be excused.

20 Madam Forelady, and, ladies and gentlemen of the
21 jury, we've been going close to an hour and a half, so I
22 think now would be a good time to take a morning
23 break.

24 So y'all retire to the jury room, don't discuss the
25 case, and we'll see you back in about 15 minutes.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 10:30 a.m.)

3 THE COURT: All right. See you back in 15 minutes.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Do you want the armed robbery aggravated?

6 MR. GOWDY: Your Honor, I think there's evidence from
7 which the jury could find that aggravator to have been
8 met. I think his own testimony was he took her clothes.
9 And to the extent that the issue would be whether or not
10 she was dead or alive, I think there's a line of cases
11 that proposition that it doesn't matter whether the
12 robbery was accomplished prior to her passing or after her
13 passing, so. There's jewelry that was taken. There's
14 clothing that was taken. And I think it was all a
15 continuous act associated with the murder.

16 MS. QUIMBY: Your Honor, we would object. We don't
17 believe there's been any evidence of that. They have
18 evidence of the grand larceny. They have evidence that he
19 was armed. I just don't think that's in evidence.

20 THE COURT: You've got larceny while armed. I'm
21 charging that. I'm giving them that.

22 How much is enough, Mr. Gowdy?

23 MR. GOWDY: I wish I knew, Judge. I mean, my explain
24 theory is we said five in our opening and now we're down
25 to four. And I don't want a jury speculating that the

1 Judge himself --

2 THE COURT: I'll instruct them that they're not to
3 speculate. I'll think about it.

4 MR. GOWDY: I mean, I think the larceny could --

5 THE COURT: They only have to find one.

6 MR. GOWDY: Yes, sir. I'll leave it to the Court's
7 discretion.

8 MR. BROUGH: Your Honor, we have an additional matter
9 that we'd like to take up with the Court regarding the
10 testimony regarding Ms. Huff and, specifically, some of
11 Dr. Wren's testimony. Your Honor, we would move to
12 suppress the DNA evidence. Dr. Wren testified when he
13 opened the envelope that he couldn't identify all the
14 contents of that envelope and that he didn't sign for that
15 envelope.

16 Your Honor, it's a functional item and is the only
17 piece of evidence that could possibly tie Mr. Evins to the
18 Huff case, Your Honor. And we would move to exclude any
19 mention of the DNA with this DNA expert and all of that
20 evidence, Your Honor. We don't believe they've proven
21 their chain of custody.

22 MR. ANTHONY: Your Honor, he testified he collected
23 everything that was in the exhibit, except for one
24 envelope. And the SLED witness can explain that -- the
25 envelope he said he didn't know what it was is an envelope

1 that is inserted into the suspect kit after SLED completes
2 its examination. But he said that he collected everything
3 that was in there and he signed it over to the city police
4 officer.

5 THE COURT: So the only thing he couldn't identify,
6 you're going to tie up in your chain; is that right?

7 MR. ANTHONY: Yes, sir.

8 THE COURT: And it has not been admitted, at this
9 time, has it, the evidence?

10 MR. ANTHONY: No, sir, it hasn't been.

11 THE COURT: We'll see where they go with the chain.
12 It's premature.

13 MR. BROUGH: He didn't say he signed for it, Your
14 Honor, as I recall.

15 THE COURT: Can you find that on the tape?

16 THE COURT REPORTER: Yes, sir.

17 MR. GOWDY: In terms of he said he collected
18 everything that he said one thing that SLED is going to
19 explain.

20 MR. BOGGS: Is there a sign-up sheet in there.

21 MR. GOWDY: My recollection was he identified it, but
22 didn't identify everything in the envelope.

23 MR. BOGGS: He testified that wasn't his writing.
24 That's what he testified to, that wasn't his writing.

25 MR. ANTHONY: But he testified he collected it. He

1 said that he collected everything that was in there.

2 THE COURT: And the explanation for this one envelope
3 is?

4 MR. ANTHONY: Well, the one envelope is an envelope
5 that is created that the DNA unit puts this into the
6 envelope and sends it back to the city police.

7 THE COURT: Well, that's not what Mr. Boggs was just
8 referring to. He said there was another envelope in here
9 that --

10 MR. BOGGS: All those white envelopes, he said that's
11 not his writing on those.

12 MR. ANTHONY: I think -- I mean, I'm not -- my
13 understanding was he was saying that that wasn't his
14 writing, but he had collected the items and put them in
15 the envelopes.

16 MR. BOGGS: But, actually, somebody else had
17 possession of them.

18 MR. GOWDY: Or maybe somebody else filled out the
19 envelope and he stuck it in the envelope.

20 MR. BOGGS: Well, we don't know that.

21 MR. ANTHONY: We could certainly recall him, if the
22 Court wants to.

23 THE COURT: Well, let's get it clear. Let's get it
24 clear.

25 Is that the -- do we need to relisten to the

1 testimony of Dr. Wren --

2 MR. BOGGS: No.

3 THE COURT: -- or is that --

4 MR. BOGGS: No.

5 THE COURT: Okay.

6 MR. BOGGS: It's a matter of him saying a clerical
7 thing, which he didn't say. He says, I've got my little
8 assistant sitting here writing this out.

9 THE COURT: You're absolutely correct.

10 MR. BOGGS: But if the evidence is around and
11 somebody else starts picking it up and starts labeling it,
12 that puts another person in the chain.

13 THE COURT: All right. Well, we'll find out. We
14 don't want to leave that to --

15 MR. BOGGS: Thank you.

16 THE COURT: -- conjecture.

17 MR. ANTHONY: Well, does the Court want us to replay
18 the tape or do you want me to just recall Dr. Wren?

19 THE COURT: I thought you were going to get Dr. Wren.

20 MR. GOWDY: We are, Your Honor.

21 MR. ANTHONY: We are, Your Honor.

22 THE COURT: It's not in evidence at this point. So
23 we'll just have to -- if you want to go forward with
24 another witness, if you can. I mean --

25 MR. ANTHONY: We have three witnesses that we can

1 call before we would ask to admit it, so we can go ahead
2 and do that.

3 THE COURT: Okay.

4 MR. ANTHONY: Also, Your Honor, just for the record,
5 there were two exhibits that I approached the bench about
6 during -- while the testimony was being presented and told
7 the Court that we were seeking to admit them and the Court
8 did not allow us to, one was the headset and the plug that
9 was found near the victim's body. I've asked that that be
10 made State's Exhibit No. 132. And then also, the State
11 intended to introduce the cord that was found around the
12 victim's neck, which I have asked to be made State's
13 Exhibit No. 133.

14 THE COURT: All right. I'm not allowing those into
15 evidence because they don't go to Mr. Evins' character.

16 MR. ANTHONY: At this time, the State -- well, we're
17 ready to call some more witnesses.

18 THE COURT: Okay.

19 MR. ANTHONY: We may -- hopefully, Dr. Wren will be
20 here by the time we get through with the three we have.
21 If not, I'll have to request a recess.

22 MR. BOGGS: Is one of them the SLED guys?

23 MR. ANTHONY: No.

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

25 I know all the attorneys will be pleased to know that

1 Mr. Sanders' fever has subsided, but he is not out of the
2 bed yet.

3 MR. GOWDY: Thank you, Judge.

4 (WHEREUPON, the jury came into open court at
5 approximately 11:09 a.m.)

6 THE COURT: Ladies and gentlemen, welcome back.

7 MR. ANTHONY: The State would call John Bell to the
8 stand.

9 THE COURT: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 JOHN BELL,

13 after first having been duly sworn, testified as follows:

14 THE COURT: All right. Thank you.

15 Please be seated and state your name.

16 THE WITNESS: My name is John Bell.

17 DIRECT EXAMINATION

18 BY MR. ANTHONY:

19 Q Mr. Bell, how are you employed?

20 A I'm employed as a registered nurse for Spartanburg
21 Regional Emergency Center.

22 Q And how long have you worked at Spartanburg Regional?

23 A I've been employed at the hospital for ten years.

24 Q Okay. And where do you work at Spartanburg Regional?
25 What part are you in?

1 A I work in the emergency center.

2 Q Okay. How long have you worked there?

3 A For just over three years.

4 Q And was that your job back in March of 2003?

5 A Yes, sir.

6 Q I'm showing you what's been marked for identification
7 as State's Exhibit No. 126. I'm going to show you two
8 envelopes and I'd ask if you could tell me what those are,
9 please?

10 A This is the South Carolina Law Enforcement Division's
11 Suspect Evidence Collection Kit.

12 Q What goes into those envelopes?

13 A This is a kit that we have from the State that we use
14 for collecting evidence from suspects. Basically,
15 everything -- this envelope is unsealed when we get it.
16 It contains several smaller envelopes and an instruction
17 sheet. It's a very simple thing to collect. It has a
18 step-by-step guide that says step one, do this, step two,
19 do that. We collect the evidence.

20 There is multiple layers of sealing inside of this.
21 The evidence is placed inside the envelopes. Each of the
22 envelopes is sealed and we initial. All of this is then
23 placed inside of this larger envelope. Again, we mark the
24 suspect's name, the date it was collected, the time it was
25 collected. And then there's a chain of custody where I

1 sign that I collected this and then turn it over to the
2 police officers that are there with the suspect.

3 Q And is that a regular part of your job to do these
4 suspect kits?

5 A It's not infrequent.

6 Q Okay. And does part of taking the suspect kit
7 involve drawing blood?

8 A Yes, sir.

9 Q And how do you go about doing that?

10 A We collect blood just like we would with any patient.
11 There's a certain color tube that we always collect for
12 these, it's a purple-topped tube. We use a needle,
13 usually, just into the elbow, the easiest, quickest
14 collection point, clean the skin, collect the blood, and
15 put a bandage over it. And then like any blood drawn in a
16 hospital setting, we would mark it so that we know whose
17 blood it is.

18 Q Okay. And then when you draw the blood for the
19 suspect kit, what do you do with it?

20 A For the suspect kit, again, there's a specific
21 envelope. I think it's later in the process, step four or
22 five. There's a specific envelope here that we place the
23 blood in. Again, I mark the time that it was collected,
24 my name is signed on there, along with the suspect's name.
25 And then, again, this is sealed up into these other

1 envelopes.

2 Q Okay. And you can just keep that out.

3 A Okay.

4 Q Looking at this smaller envelope as part of State's
5 Exhibit No. 126, what does it indicate -- what interaction
6 does it indicate you had with Mr. Evins?

7 A It indicated that at five minutes until 9:00 p.m. on
8 the 21st of March in 2003, I collected a purple-topped
9 tube from Mr. Fredrick Antonio Evins.

10 Q Okay. And what did you do with the blood that you
11 collected? Just tell me what steps you would take in
12 collecting the blood to seal it and secure it.

13 A Okay. Again, this is sealed inside this bag and
14 sealed inside this envelope. And then at the completion
15 of the kit, everything is sealed inside of this larger
16 envelope, which is immediately given to the police officer
17 indicated here. And it would be registered into evidence.

18 Q So the blood and the saliva go into this bag here; is
19 that correct?

20 A Which is sealed with my initials.

21 Q And that's your initials on the seal?

22 A Right.

23 Q And then what do you do with the envelope the blood
24 goes in?

25 A Then this goes inside of here. Again, it's sealed

1 with this evidence tape and my initials -- or, actually, I
2 think there's another seal underneath there. But, anyway,
3 my initials are clearly evident.

4 Q And then after you seal it up, what did you do with
5 it -- or what did you do with this bag?

6 A This is -- at six minutes after 9:00, I signed this
7 over to, I believe, this is David Hawkins, the signature,
8 and then he carries on from there. So this would -- you
9 know, this would -- it would be unable to be tampered with
10 until such time as the last person on here broke the seal.

11 Q Okay. But when you handed it over to Officer Hogsed,
12 it was sealed up?

13 A Yes. It would be multi-sealed, yes.

14 MR. ANTHONY: Thank you.

15 That's all of my questions.

16 MR. BROUGH: No questions, Your Honor.

17 THE COURT: All right. Thank you, sir.

18 You may step down. And you are excused.

19 MR. ANTHONY: The State would call David Hogsed.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right hand.

22 WHEREUPON,

23 DAVID HOGSED,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

DIRECT EXAMINATION

1
2 BY MR. ANTHONY:

3 Q Would you state your name, please?

4 A David Hogsed.

5 Q And, Mr. Hogsed, how are you employed?

6 A I'm an officer with the Spartanburg Public Safety
7 Department.

8 Q And how long have you worked there?

9 A 15 years.

10 Q And what's your position there?

11 A I'm currently assigned to the forensic division.

12 Q And how long have you worked there?

13 A Four years.

14 Q On March 21st of 2003, did you have contact with
15 Fredrick Evins?

16 A Yes, sir, I did.

17 Q And what did you -- where did you take Mr. Evins?

18 A To the emergency room at Spartanburg Regional Medical
19 Center.

20 Q And why did you take him there?

21 A We had a search warrant to be executed to obtain
22 samples for a Suspect Evidence Collection Kit.

23 Q And who did you meet at the emergency room to help
24 you out with that?

25 A John Bell, a registered nurse there.

1 Q And what did you ask Mr. Bell to do?

2 A To collect samples for the suspect evidence kit.

3 Q What was done in regard to collecting a blood sample
4 from Mr. Evins?

5 A Once Mr. Bell collects all the samples, he puts it
6 into an outer envelope, the explain envelope, he seals it,
7 and it is signed over to me by him.

8 Q I'm showing you State's Exhibit -- or what's been
9 marked for identification as State's Exhibit No. 126. I'd
10 ask if you would look at that and see if you recognize it?

11 A Yes.

12 Q Okay. What is that?

13 A This is the Suspect Evidence Collection Kit that was
14 signed over to me by Mr. Bell.

15 Q And is that your signature on the kit?

16 A Yes, it is.

17 Q And who does it indicate you received it from?

18 A J. Bell, RN, for registered nurse. And then it says,
19 "To," and I signed there.

20 Q When you received the kit, what condition was it in?

21 A It's, actually, sealed -- closed and sealed with this
22 evidence tape.

23 Q And then what did you do with the kit once you
24 received it from Mr. Bell?

25 A It was taken back to city hall and placed in an

1 evidence refrigerator there. And the evidence
2 refrigerator is then locked.

3 MR. ANTHONY: Thank you.

4 That's everything.

5 THE COURT: All right. Any cross-examination?

6 MS. QUIMBY: No questions.

7 Thank you.

8 THE COURT: All right. Thank you, sir.

9 You may be excused.

10 MR. ANTHONY: The State would recall Dr. Wren.

11 THE COURT: All right. Doctor, you're still under
12 oath.

13 Thank you.

14 THE WITNESS: Okay.

15 FURTHER DIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q Dr. Wren, I just want to ask you a few more questions
18 about the collection of the evidence from Mrs. Huff at the
19 autopsy. I believe when you looked through these items,
20 you testified that something in the items you had not
21 signed. Could you just let us -- explain that to us?

22 A I said I have not seen this as far as I know. I
23 don't know what it is. It hasn't been opened -- well,
24 it's sealed and it doesn't feel like it's been opened. I
25 don't know what that is.

1 Q Okay. Was there anything else in there that you had
2 not signed?

3 A I said I have not signed any of them. But they have
4 been filled out with my name, which I usually do because
5 my hands are usually bloody or dirty. So I get someone
6 else to fill them out and put the name and the date.

7 Q Okay. And after they're filled out, what do you do
8 in regards to the envelopes?

9 A I, actually, put the sample in the envelope and seal
10 them myself. And if anybody wants to check, they can
11 check the saliva on the envelope.

12 Q Okay. And did you do that in regards to Ms. Huff's
13 autopsy?

14 A Yes. I always do that.

15 MR. ANTHONY: All right. Thank you.

16 That's all on direct -- or all on the recall.

17 MS. QUIMBY: No questions.

18 THE COURT: All right. Thank you very much, Doctor.

19 MR. ANTHONY: We call Officer Reeves.

20 THE CLERK: Place your left hand on the Bible and
21 raise your right.

22 WHEREUPON,

23 GEORGE DAVID REEVES,

24 After first having been duly sworn, testified as follows:

25 THE CLERK: Be seated, please.

DIRECT EXAMINATION

1
2 BY MR. ANTHONY:

3 Q Would you state your name, please?

4 A My name is George David Reeves.

5 Q Mr. Reeves, how are you employed?

6 A I'm employed with the Spartanburg Public Safety
7 Department.

8 Q And what's your position there?

9 A I am the property and evidence technician.

10 Q How long have you worked there?

11 A Just over four years.

12 Q I want to show you, first of all, the item you have
13 right in front of you, State's Exhibit No. 127. I'd ask
14 if you have ever seen that item before?

15 A Yes, sir, I have.

16 Q And when did you see that?

17 A I seen this when I went to SLED. It was pulled out
18 of the sexual conduct kit. And, at that time, this is
19 placed into this bag. It is sealed --

20 Q When you say -- let me just back you up. When did
21 you take that to SLED?

22 A I took it to SLED on December 27th of 2002.

23 Q And what -- in regards to this material in this white
24 envelope, when you go to SLED, what happens to that
25 material -- what happens to this white envelope that's in

1 the bag?

2 A It is sealed. It is taken out of a box and is
3 immediately placed into this bag and it is then
4 heat-sealed.

5 Q All right.

6 A At that time, I have to initial, which this is my
7 initials and date it. And I also put my name and date on
8 it.

9 Q And then what do you do with the bag?

10 A Once this has all happened, I then place it into a
11 refrigerator at SLED.

12 Q And when you took this white envelope down there,
13 what condition -- how did you transport it down there?
14 What kind of container was it in?

15 A It was in a sexual conduct box, which is sealed by
16 the investigator.

17 Q And the box was sealed when you transported it?

18 A Yes, sir.

19 Q Okay. And then after that, it was placed in this bag
20 at SLED; is that correct?

21 A Yes, sir. That's correct.

22 Q And the bag was sealed?

23 A Yes, sir.

24 Q Okay. Now, I'm going to show you State's Exhibit No.
25 126 for identification. I'd ask you if you've ever seen

1 this item before?

2 A Yes, sir, I have.

3 Q Okay. And when did you -- what did you do in regards
4 to that item?

5 A When I receive this item, I must sign for it. It's
6 put into a controlled area. It's called the drop box.
7 I'm the only one that has the key. And that's where it
8 was in this case. I then pull it out of the drop box and
9 I sign, which is what I've done right here, that it came
10 from the drop box, which is a controlled area, to me on
11 3-24-03 at 9:00 in the morning. It is sealed, so I have
12 no way of knowing what's inside.

13 Q Okay. When you pulled it out of the drop box, was it
14 sealed?

15 A Yes, sir.

16 Q And what did you do with that item?

17 A I then took it to SLED. I took it to SLED on
18 3-25-03.

19 Q Okay. And when you took it to SLED, what happened
20 with it when it was taken to SLED?

21 A When they -- when it goes to SLED, SLED then puts it
22 into the envelope, seals it --

23 Q When you say, "the envelope," do you mean the plastic
24 bag or what are you referring to?

25 A The whole contents, everything inside of it, all gets

1 placed into this heat-sealed bag. I then initial it right
2 on the heat seal and date it. I also place my name down
3 here. At that time, I then place it into a refrigerator
4 so that it can be analyzed by SLED.

5 Q When you placed it into the refrigerator at SLED, was
6 it sealed at that time?

7 A Yes, sir.

8 Q With your initials on it?

9 A Yes, sir.

10 MR. ANTHONY: All right. Thank you.

11 That's everything on direct for Mr. Reeves.

12 CROSS-EXAMINATION

13 BY MR. BROUGH:

14 Q Officer Reeves, just a couple of questions regarding
15 State's Exhibit No. 127, can you tell me who you received
16 that from?

17 A I don't have the box in front of me to say who I
18 received this from. It's put into a drop box, but the box
19 this rape kit is put into has a signature on the back.
20 And then, again, I must sign it when I get it out of the
21 drop box. I do not know where the box is, over here
22 somewhere.

23 Q Okay. And was it sealed when you got it?

24 A Oh, yes, sir.

25 MR. BROUGH: Thank you.

1 MR. ANTHONY: I would like to have this marked,
2 please.

3 (WHEREUPON, State's Exhibit No. 135 was marked for
4 identification only.)

5 REDIRECT EXAMINATION

6 BY MR. ANTHONY:

7 Q I'm showing you what's been marked as State's Exhibit
8 No. 135. Can you tell me what that is?

9 A This is the criminal sexual conduct kit that I
10 received this item and other items in. When I receive it,
11 it is sealed so it cannot be opened. And I show that I
12 signed for it on 9/16/02 from Robert Talanges.

13 Q And does the chain indicate where Investigator
14 Talanges received it from?

15 A He received it from Dr. Wren.

16 MR. ANTHONY: We move State's Exhibit No. 135 into
17 evidence.

18 MR. BOGGS: Your Honor, we have no objection subject
19 to any legal argument that may be made concerning the
20 search warrant at some point. For the purposes of this
21 hearing, we have no objection.

22 THE COURT: All right.

23 (WHEREUPON, State's Exhibit No. 135 was admitted into
24 evidence.)

25 MR. ANTHONY: Thank you.

1 That's all.

2 THE COURT: Well, any questions y'all want to ask?

3 MR. ANTHONY: On redirect?

4 THE COURT: Any questions you want to ask on recross?

5 MR. BROUGH: No, Your Honor.

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

7 You're excused.

8 MR. ANTHONY: The State would call Kenneth Bogan.

9 THE CLERK: Place your left hand on the Bible and
10 raise your right hand.

11 WHEREUPON,

12 KENNETH BOGAN,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 Have a seat here, please.

16 DIRECT EXAMINATION

17 BY MR. ANTHONY:

18 Q Would you state your name, please?

19 A My name is Kenneth Bogan.

20 Q How are you employed?

21 A By the South Carolina Law Enforcement Division in the
22 forensic DNA analysis section.

23 Q And what is your position there?

24 A I am a forensic DNA analyst. I also do forensic
25 serology.

1 Q And how long have you worked in that capacity with
2 SLED?

3 A It's been almost 21 years.

4 Q And what are your responsibilities being a DNA
5 analyst for SLED?

6 A I receive evidence from law enforcement agencies
7 throughout the State of South Carolina. I examine that
8 evidence for the presence of body fluids. I do body fluid
9 identification. In other words, I identify whether a
10 blood stain is, actually, human blood or if a semen stain
11 is present. I then perform DNA profiling on it. I
12 extract DNA from stains and compare those DNA profiles to
13 known blood standards.

14 Q And what is your education and training in the field
15 of DNA identification and forensic serology?

16 A I have a Bachelor of Science Degree from the
17 University of Central Florida. I received that degree in
18 1978. My degree is in medical technology. Medical
19 technology is the field of clinical laboratory science. I
20 dealt for six years with analysis of body fluids for
21 diagnostic purposes.

22 After six years of doing that, I was employed by the
23 South Carolina Law Enforcement Division as a forensic
24 serologist. That was in 1984. I received training in
25 basic forensic serology from other qualified experts at

1 the South Carolina Law Enforcement Division. I also
2 attended the Federal Bureau of Investigation's school of
3 basic forensic serology. I worked as a forensic
4 serologist for approximately eight years and began
5 training as a DNA analyst. I attended the Federal Bureau
6 of Investigation's DNA typing methods school. I also
7 attended an advanced training course with the FBI and have
8 received numerous training from different companies,
9 private vendors in DNA analysis methods.

10 MR. ANTHONY: Your Honor, at this time --

11 BY MR. ANTHONY:

12 Q Well, let me ask you this, have you been qualified to
13 testify before as an expert in the field of forensic
14 serology?

15 A Yes.

16 Q Approximately how many times?

17 A In excess of 100 times.

18 Q And have you been qualified to testify as an expert
19 in the field of DNA identification?

20 A Yes, I have.

21 Q And approximately how many times?

22 A Around 50.

23 MR. ANTHONY: Your Honor, at this time, we'd tender
24 Mr. Bogan as an expert in the field of DNA identification
25 and forensic serology.

1 MS. QUIMBY: No objection, Your Honor.

2 THE COURT: All right.

3 BY MR. ANTHONY:

4 Q I'm going to show you what's been marked in evidence
5 as State's Exhibit No. 127, and I'd ask you just to take a
6 look at that and tell me if you've ever seen that before?

7 A Yeah. State's Exhibit No. 127 is a heat-sealed
8 pouch. It has my case number on it and it also has my
9 initials on the front.

10 Q And when did you receive it?

11 A It was delivered to SLED on September the 27th of
12 2002, and I received it that same day.

13 Q And what condition was that bag in when you received
14 it?

15 A The bag has been opened. But when I received it, it
16 was sealed. It's been resealed a couple of times since I
17 received it. But when I got it, it had been sealed one
18 time by the person that delivered it to SLED. So it was
19 in a sealed condition when I received it.

20 Q Okay. And as to the envelope in this exhibit, were
21 there any items that were in this envelope that -- are any
22 items in this envelope now that were not there when you
23 received it back in September of 2002?

24 A This is an envelope that I added to this package.

25 Q Okay. And what is -- if you would, just briefly

1 explain, what is that brown envelope?

2 A Okay. The larger envelope is what we call a sexual
3 assault evidence collection kit, which contains collection
4 material. Within that kit is a container for the
5 collection of blood. It comes in a test tube and it's a
6 liquid sample. When I receive it, I dry it down. In
7 other words, I take the liquid blood and pour it on a
8 piece of sterile cloth. And I later transfer that cloth
9 to an envelope here and take the label off the tube of
10 blood -- that was on the tube and tape it to the outside.
11 So this envelope contains the dried sample blood from
12 Demaris Huff.

13 MR. ANTHONY: Your Honor, at this time, the State
14 would move State's Exhibit No. 127 in evidence.

15 MS. QUIMBY: No objection, Your Honor.

16 THE COURT: All right. Without objection.

17 (WHEREUPON, State's Exhibit No. 127 was admitted into
18 evidence.)

19 BY MR. ANTHONY:

20 Q Would you just tell the jury what you did with the
21 items in that envelope, the kit that was taken from
22 Ms. Huff, when you received it at SLED?

23 A Okay. I did do an inventory on the samples. The kit
24 comes with various envelopes that may or may not be
25 collected. The items that were submitted for my analysis

1 was, as I mentioned, a blood sample from Demaris Huff. I
2 performed DNA analysis on that and developed a profile for
3 comparison purposes.

4 There was a saliva sample, which was in the kit, that
5 I did not examine. There were smears. Those are
6 microscopic smears that were taken from several areas, the
7 vaginal area, the oral area, and the rectal area. I did a
8 biological stain on those. A smear is a glass slide that
9 I stain and look at under a microscope. I examined those
10 under the microscope and identified spermatozoa on the
11 rectal smear. I did not find any spermatozoa on the
12 vaginal or oral smear.

13 There were vaginal swabs in which I examined for the
14 presence of semen. My results were negative. No semen
15 was found on the vaginal swabs. There were oral swabs. I
16 performed an analysis for the presence of semen. There
17 was no semen identified. The results were negative there.
18 There were rectal swabs. I performed an analysis for the
19 presence of semen. Semen was identified on the rectal
20 swabs. And I subsequently did DNA analysis on those
21 swabs.

22 Q Let me ask you, as far as the process you go through
23 to try and determine if there was semen on the swab taken
24 from Ms. Huff's rectum, could you briefly explain to the
25 jury what you go through to make that determination?

1 A To determine if there's semen on the swabs?

2 Q Yes, sir.

3 A What I do is I take a portion of that swab -- the
4 swab is a Q-tip. It's usually a wooden-tip application
5 and has a cotton end on it. I snip off a portion of that
6 and extract it. In other words, I put it in a liquid.
7 It's sort of like putting a bag of tea in -- a tea bag and
8 a cup of coffee in a cup to extract the tea out.

9 So I take that cutting and I put it into some buffer,
10 basically, and extract it. And I take that liquid then
11 and test it for the presence of a protein that's found in
12 semen. That protein is called P30. It's -- the test now
13 is almost like a pregnancy test. I, basically, drop it
14 into a very small opening on a test kit and a positive
15 band -- as the fluid moves through, it will create a
16 positive test band. There's also a control strip to let
17 me know the test is working properly.

18 Q Okay. And after you determined that there was semen
19 on the swab, what was the next step you took in working on
20 this case?

21 A The next step was to extract the semen. I take
22 another cutting from those swabs and extract the material
23 there and develop a DNA profile from the material that was
24 on that swab.

25 Q And were you able to do that?

1 A Yes.

2 Q And now I'll show you what's been marked for
3 identification as State's Exhibit No. 126, and I'll ask
4 you if you have ever seen this item before?

5 A State's Exhibit No. 126 is the heat-sealed pouch. It
6 has a label on it with my case number and my initials.
7 And it contained a Suspect Evidence Collection Kit from
8 Fredrick Evins.

9 Q Okay. And when did you receive that?

10 A It was delivered to the South Carolina Law
11 Enforcement Division forensic laboratory on March 25th of
12 2003.

13 Q Okay. And when you received it, was the bag unopened
14 and sealed?

15 A That's correct.

16 MR. ANTHONY: Your Honor, we move State's Exhibit
17 No. 126 into evidence.

18 MR. BOGGS: No objection, Your Honor.

19 THE COURT: All right. Without objection.

20 (WHEREUPON, State's Exhibit No. 126 was admitted into
21 evidence.)

22 BY MR. ANTHONY:

23 Q Now, once you received State's Exhibit No. 126, this
24 blood, what did you do with regards to trying to make a
25 comparison between State's Exhibit No. 126 and the DNA

1 profile you extracted from the swab in Ms. Huff's rectum?

2 A I had already previously performed DNA analysis on
3 the blood standard from Demaris Huff. And I had developed
4 the profile from the first blood standard. I had
5 previously developed a DNA semen that was found on the
6 rectal swab. And then months later, I received this
7 sample. I extracted DNA from it and developed a DNA
8 profile from this sample. I compared it to the DNA
9 profile from the semen stain and determined that it was a
10 match.

11 Q So you found that the blood in State's Exhibit
12 No. 126 matched the semen on the rectal swab from State's
13 Exhibit No. 127?

14 A That's correct.

15 Q And what would be the probability of someone else
16 having the same DNA profile as the profile you developed
17 from those two exhibits?

18 A The probability of selecting someone at random from
19 the population having the same DNA that I found from the
20 semen is about one in ten quadrillion.

21 Q And can you give the jury some idea of what -- how --
22 what kind of probability that is?

23 A It -- probably, the best way to do that, if you
24 assume that the world's population is about five billion
25 people, the rarity of finding that profile would be about

1 200 million times the world's population -- excuse me, let
2 me correct that, two million times the world's population.

3 Q And the number -- or this exhibit that you have,
4 State's Exhibit No. 126, this blood, whose blood was that
5 identified as being?

6 A It came from Fredrick Evins.

7 Q Okay. And the semen that you located on that rectal
8 swab, whose rectal swab was that?

9 A It was collected from Demaris Huff.

10 Q Okay. And so what you -- the connection you made was
11 the blood of Fredrick Evins matched the semen on Demaris
12 Huff's rectal swab?

13 A That's correct.

14 MR. ANTHONY: Thank you.

15 That's all on direct.

16 MS. QUIMBY: One moment, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. QUIMBY:

19 Q Hi, Agent Bogan.

20 A Hi.

21 Q I'm sorry. I didn't want to interrupt you.

22 A Oh, no problem.

23 Q The DNA, in general, that is still subject to human
24 error somewhere down the line; correct? Somewhere before
25 or after or at any time, it's still subject to human

1 error, isn't it?

2 A I'm not sure exactly what you're asking me. You
3 asked if DNA is subject to error?

4 Q Is the testing of -- the collecting and testing of
5 DNA still subject to some human error at some point in the
6 process?

7 A It's possible, yes.

8 MS. QUIMBY: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. ANTHONY:

11 Q In the testing of this particular piece of DNA and
12 this particular blood, were there any errors made, to your
13 knowledge?

14 A No.

15 MR. ANTHONY: That's all on redirect.

16 RE CROSS-EXAMINATION

17 BY MS. QUIMBY:

18 Q To your knowledge, though; correct?

19 A That's correct.

20 THE COURT: Thank you, sir.

21 You may step down.

22 And can we excuse this witness?

23 MR. ANTHONY: Yes, sir.

24 MS. QUIMBY: Yes, sir.

25 THE COURT: You're released from subpoena.

1 Thank you, sir.

2 MR. BARNETTE: The State would call Officer Adkins
3 next, Your Honor.

4 THE CLERK: Place your left hand on the Bible and
5 raise your right.

6 WHEREUPON,

7 SHAUN PATRICK ADKINS,
8 after first having been duly sworn, testified as follows:

9 THE CLERK: Have a seat, please.

10 DIRECT EXAMINATION

11 BY MR. BARNETTE:

12 Q Officer Adkins, if you would, give us your full name,
13 please.

14 A Shaun Patrick Adkins.

15 Q And where do you work at, sir?

16 A The Spartanburg County Detention Facility.

17 Q What do you do there, sir?

18 A I'm a detention officer.

19 Q How long have you been there?

20 A About a year and four months.

21 Q Let me take you back to February 10th of 2004, was
22 you working that day?

23 A Yes, sir.

24 Q Did you have occasion to meet Fredrick Evins that day?

25 A Yes, sir, I did.

1 Q If you would, tell the jury what you were doing and
2 what happened during that time?

3 A Basically, what had happened that night, I was
4 passing out medications when Corporal Lexodine and his
5 floor crew, the cleaning crew, came into the pod to strip
6 the floors. And when I arrived at Mr. Evins' door to pass
7 out his medication for the evening, upon opening his door,
8 he made a verbal threat to Corporal Lexodine to me stating
9 that, you know, it's a good thing that --

10 Q Do you need to refer to your report to refresh your
11 memory?

12 A Yes. Mr. Evins said, "Good thing Lexodine over there
13 didn't open my door or I would have busted him right in
14 his Goddamn mouth. I want to fuck that mother fucker up."

15 Q What actions was he taking at the time he was saying
16 that?

17 A He had a very aggressive manner and demeanor to him.
18 At that time, I was blocking his path so he couldn't get
19 out of his door. And I had already given him his
20 medication, handed it to him in the little cup that it
21 comes in. And I immediately shut the door so he wouldn't
22 rush out over to Corporal Lexodine.

23 Q Had you seen that kind of behavior exhibited before?

24 A Out of Mr. Evins, no, I hadn't.

25 Q What did it appear to be like to you?

1 A His total demeanor changed. You know, beforehand,
2 dealing with Mr. Evins, you know, he was pretty
3 soft-spoken and we had built up a pretty decent rapport,
4 he and I, you know, officer and inmate. But that evening,
5 his total demeanor, it was a total change. I had never
6 seen this type of demeanor out of him. And I felt, you
7 know, as an officer, that he was going to act upon that
8 threat that he made to Corporal Lexodine if I wasn't in
9 the way between him and the door and didn't shut the door.

10 Q And how did it appear to you -- that change, how did
11 it appear to you?

12 A As far as?

13 Q The way he changed in attitude at that time.

14 A Scary. I -- you know, I just knew, you know, in my
15 gut that he was going to act out that threat if I wasn't
16 there.

17 MS. QUIMBY: Your Honor --

18 THE COURT: Yes.

19 MS. QUIMBY: Speculation, Your Honor.

20 THE COURT: I'm going to sustain that objection.

21 MR. BARNETTE: Yes, sir.

22 BY MR. BARNETTE:

23 Q Once this happened, who did you report it to, sir?

24 A I immediately -- you know, I informed Corporal
25 Lexodine of the comment he made just to -- because he was

1 there in the pod as well with the other inmates cleaning
2 the floor, as a courtesy to him. I immediately went up to
3 the desk and informed my sergeant, Sergeant Dunn, of the
4 incident and began writing a report.

5 MR. BARNETTE: Thank you.

6 If you would, answer any questions Ms. Quimby or
7 Mr. Brough may have.

8 CROSS-EXAMINATION

9 BY MS. QUIMBY:

10 Q Hi, Mr. Adkins.

11 A Yes, ma'am.

12 Q During this episode, did Mr. Evins try to push you
13 out of the way or rush you or anything?

14 A He didn't try or attempt to push me out of the way,
15 but he -- it -- his demeanor and his body movement
16 suggested that he was trying to edge around me. He kept
17 looking over my shoulder at Corporal Lexodine, you know,
18 sort of like looking for a way around me, maybe, out of
19 the door, which is why I stood right there and didn't move
20 from in front of him. And then when he said -- you know,
21 made his comment, I shut the door.

22 Q But he didn't rush at you?

23 A Oh, no. He didn't rush at me, but he just -- his
24 demeanor, like I said, appeared to be attempting to edge
25 around me, maybe to get out of the door at Corporal

1 Lexodine.

2 Q Okay. You testified that this was not typical
3 behavior of Mr. Evins; correct?

4 A That is correct.

5 Q Do you see that type of behavior frequently at the
6 jail?

7 A As far as out of other inmates?

8 Q Yes, sir.

9 A Occasionally, I do.

10 Q So it happens at the jail?

11 A Yes, ma'am.

12 MS. QUIMBY: Thank you.

13 Nothing else.

14 MR. BARNETTE: Just one question, Your Honor, quick
15 follow-up.

16 REDIRECT EXAMINATION

17 BY MR. BARNETTE:

18 Q That change, what did it remind you of?

19 A It was a night and day difference, sort of like
20 Dr. Jekyll and Mr. Hyde. It was, he's this way with me
21 and then, all of a sudden, it was his demeanor and
22 attitude just snapped. It wasn't the inmate -- I had
23 normally dealt with Mr. Evins on a daily basis. It was
24 like dealing with a totally different person.

25 MR. BARNETTE: Thank you, sir.

1 MS. QUIMBY: Nothing further.

2 THE COURT: All right. You can step down.

3 Nothing further, sir.

4 MR. BARNETTE: Your Honor, I'd like to call Corporal
5 Foster to the stand.

6 THE COURT: All right.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right hand.

9 WHEREUPON,

10 BRIDGETT FOSTER TAYLOR,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: Thank you.

13 Have a seat.

14 DIRECT EXAMINATION

15 BY MR. BARNETTE:

16 Q If you will, ma'am, please state your full name for
17 the record.

18 A Bridgett Foster Taylor.

19 Q And where do you work at, ma'am?

20 A The Spartanburg County Detention Facility.

21 Q What's your position there?

22 A Disciplinary officer.

23 Q How long have you been there, ma'am?

24 A 20 years.

25 Q Let me show you what's been marked as State's Exhibit

1 No. 104 and State's Exhibit No. 134, are you familiar with
2 those, ma'am?

3 A Yes.

4 Q And what are those, ma'am?

5 A Those are disciplinary hearing notices. This one is
6 a disciplinary hearing notice, and this one is a
7 disciplinary hearing record.

8 Q And are those both on Mr. Evins in this case?

9 A Yes.

10 Q Fredrick Evins?

11 A Yes.

12 Q And was there action taken on both of those?

13 A Yes.

14 Q And are you aware of the actions and are you in
15 control of these records?

16 A Yes.

17 MR. BARNETTE: Your Honor, I'd like to enter State's
18 Exhibit Nos. 104 and 134 at this time.

19 MS. QUIMBY: No objection, Your Honor.

20 THE COURT: All right. Without objection.

21 (WHEREUPON, State's Exhibit Nos. 104 and 134 were
22 admitted into evidence.)

23 BY MR. BARNETTE:

24 Q Can you tell me what the first is, State's Exhibit
25 No. 134? What was he disciplined for, ma'am?

1 A The incident was fighting.

2 Q And who was he fighting with, another inmate?

3 A Yes.

4 Q Was he given a disciplinary action for that?

5 A Yes.

6 Q And what year was that, ma'am?

7 A This was in 1995.

8 Q Let me show you what's been marked as State's Exhibit
9 No. 104, was that another disciplinary action?

10 A Yes.

11 Q And what was that action for?

12 A Threatening an officer, disturbing the pod, and
13 disrespect to an officer.

14 Q And was he disciplined for that also?

15 A Yes.

16 Q And did he admit to that one?

17 A Yes.

18 Q And did he sign the bottom admitting to it?

19 A Yes.

20 MR. BARNETTE: Thank you, ma'am.

21 Please answer any questions they may have.

22 Your Honor, may I publish these to the jury? I'm
23 just going to hand them around.

24 THE COURT: Yes.

25 Any cross?

1 MS. QUIMBY: Yes, sir, briefly.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MS. QUIMBY:

5 Q How are you?

6 A Fine.

7 Q Regarding the fighting incident that you mentioned,
8 another inmate was doing most of the action; correct, not
9 Mr. Evins?

10 A I don't recall.

11 Q Would your report help you refresh your memory?

12 A Yes.

13 Q Okay. Did that help?

14 A Yes.

15 Q Okay. Wasn't another inmate doing most of the action
16 in this incident?

17 A It appears that the inmate was toward the end of the
18 report -- toward the end of the incident.

19 Q Well, Mr. Evins is the one who tried to explain what
20 happened and then he was jumped; correct?

21 A The other inmate attempted to lunge at him, according
22 to the report, after it was -- they were separated.

23 Q After they were separated and after Mr. Evins was
24 trying to explain the situation?

25 A Yes.

1 MS. QUIMBY: Thank you.

2 MR. BARNETTE: I have no further questions of this
3 witness, Your Honor.

4 We'd ask that she be excused.

5 THE COURT: Yes, ma'am. You're excused.

6 MR. GOWDY: Your Honor, the State would call
7 Mr. Jimmy Sligh.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right hand.

10 WHEREUPON,

11 JIMMY SLIGH,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Have a seat, please.

14 DIRECT EXAMINATION

15 BY MR. GOWDY:

16 Q Good afternoon, Mr. Sligh.

17 A Good afternoon.

18 Q Can you introduce yourself to the jury and tell them
19 where you work and how long you've been there?

20 A My name is Jimmy Sligh. I'm the division director of
21 classification of inmate records for the South Carolina
22 Department of Corrections. I've been in this position for
23 three years and I've been with the Department of
24 Corrections for 23 years.

25 Q Can you give the jury a sense, generally, of how

1 inmates are classified within the Department of
2 Corrections?

3 A There's a process any time an inmate is committed to
4 our system. There's an initial process where we look at a
5 wide variety of factors, including the nature of the
6 crime, the length of the sentence, past criminal history,
7 escape history, factors like that, and then we make a
8 decision based on criteria that we've got set fourth.

9 Q With respect to inmates that may be serving life
10 without possibility of parole sentences, are there various
11 classifications even within that prisoner population?

12 A No, sir. Under our current classification, anyone
13 receiving that sentence would remain at maximum security
14 for their entire period of incarceration.

15 Q Can you give the jury a sense of what maximum
16 security is like in terms of potential contact with
17 guards, other inmates, prison officials?

18 A Generally, you're talking about a prison population
19 of anywhere from 1,100 to 1,500 inmates or either double
20 or triple cell, which means they'd have one or two cell
21 mates. Generally, 250 to 300 inmates in a building,
22 roughly, half that number on each wing of the building.
23 They're under controlled movement and are allowed to come
24 out of their cells virtually all day to either go to work,
25 to go to school, to go to the cafeteria, or canteen, any

1 of the privileges they might have on the yard. So they're
2 pretty much interacting with other inmates and employees
3 all day.

4 Q Do inmates serving life without possibility of parole
5 sentences have access to visitors?

6 A Yes, sir.

7 Q What kind of access to visitors do they have?

8 A We have a central visitation room in all of these
9 institutions. Visitation takes place on Friday, Saturday,
10 and Sunday, generally, for four hours a session. The
11 inmate, basically, turns in a visitation list of approved
12 visitors. And it's what we consider to be contact
13 visitation, which means there's no barriers between the
14 visitors and the inmate.

15 Q Let me ask you about that. You say, "contact," does
16 that mean you can hug somebody, you can shake their hands,
17 you can --

18 A Yes, sir.

19 Q Even for prisoners serving life without possibility
20 of parole?

21 A Yes, sir.

22 Q Mr. Sligh, are you also, generally, considered to be
23 the records custodian for the South Carolina Department of
24 Corrections?

25 A Yes. That's one of the areas of responsibility in my

1 division, yes, sir.

2 Q Let me show you what's been marked as State's Exhibit
3 No. 105, and ask you whether that is a record generally
4 kept in the ordinary business of the South Carolina
5 Department of Corrections?

6 A Yes, sir.

7 Q And do you make an effort to keep accurate records?

8 A Yes, sir.

9 Q Who is that record in connection with?

10 A A Fredrick Evins.

11 Q Let me ask you, Mr. Sligh, while I'm showing this
12 exhibit to the Defense attorneys, do you have a record of
13 a Fredrick Antonio Evins having previously been a prisoner
14 of the South Carolina Department of Corrections?

15 A Yes, sir.

16 Q Can you tell the jury how many times?

17 A Twice. At least, twice, maybe three times. There
18 was a period back in the mid '80's with some archive
19 records where it appears that he served under a youthful
20 offender sentence and an adult straight time sentence
21 under the same number. And I was unable to determine
22 whether that was all in one commitment or two separate
23 commitments. And then, there's another commitment from
24 the mid '90's up until the beginning of 2000.

25 Q So taking the most conservative possible view of it,

1 two times previous, he's been in the South Carolina
2 Department of Corrections?

3 A Yes, sir.

4 MR. GOWDY: Your Honor, we would move State's Exhibit
5 No. 105 into evidence.

6 MS. QUIMBY: No objection.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 105 was admitted into
9 evidence.)

10 BY MR. GOWDY:

11 Q Do you have a disciplinary code set up within the
12 Department of Corrections -- obviously, you do have a code
13 of conduct that the prisoners are supposed to abide by;
14 correct?

15 A Correct.

16 Q And do you have different crimes, for lack of a
17 better word, or code violations? Are they categorized in
18 a certain way?

19 A Yes, sir.

20 Q Do you have a record of Mr. Evins receiving what
21 would be considered a major disciplinary infraction while
22 in the Department of Corrections?

23 A Yes, sir.

24 Q Can you tell the jury what that was?

25 A It was for threatening conduct.

1 Q Threatening conduct. Would that be towards a
2 prisoner or a prison guard or either one?

3 A Towards an employee.

4 Q Towards an employee of the prison itself?

5 A Yes, sir.

6 Q And when did that conduct take place?

7 A It appears on November the 6th of 1996.

8 MR. GOWDY: Your Honor, permission to publish the
9 exhibit to the jury?

10 THE COURT: Yes, sir.

11 MR. GOWDY: Mr. Sligh, thank you for coming.

12 Please answer any questions the Defense attorney has
13 for you.

14 CROSS-EXAMINATION

15 MS. QUIMBY:

16 Q Hi, Mr. Sligh. How are you?

17 A I'm fine.

18 Q You described some visitation that persons serving
19 life without the possibility of parole would have, and you
20 stated that it would be contact visits for a few hours at
21 a time; correct?

22 A Correct.

23 Q During those contact visits, are the visitors
24 searched prior to coming in?

25 A Yes, they are.

1 Q And they have to fill out a form; correct, before
2 they can come and visit?

3 A Basically, an application that is screened and
4 approved prior to them being -- authorized to be placed on
5 the visiting list, yes.

6 Q So you do a background check on anyone coming?

7 A Yes, ma'am.

8 Q And are the inmates searched by the Department of
9 Corrections employees prior to going into the contact
10 visitation?

11 A Both coming in and going out.

12 Q Are there employees of the Department of Corrections
13 in the visitation room during contact visits?

14 A Yes, ma'am.

15 Q And are these -- is this a large common area?

16 A Yes, ma'am.

17 Q Or a small --

18 A No. It's a large common area.

19 Q Okay. So about how many inmates and visitor groups
20 would you have room for on any given day?

21 A Most of those rooms are rated for a capacity of 500.

22 Q Okay. And about how many correctional employees are
23 in there at that time?

24 A Probably four or five.

25 Q And you apparently think that that's a sufficient

1 number of correctional employees to supervise this
2 visitation?

3 A Yes, ma'am.

4 MS. QUIMBY: Thank you.

5 THE COURT: Anything else?

6 MR. GOWDY: Nothing on redirect.

7 I ask that Mr. Sligh be dismissed.

8 THE COURT: Thank you, Mr. Sligh.

9 You're dismissed.

10 MR. BARNETTE: I'd like to call Charlena Tinsley back
11 to the stand.

12 THE COURT: You're still under oath.

13 FURTHER DIRECT EXAMINATION

14 BY MR. BARNETTE:

15 Q Ms. Tinsley, I wanted to bring you up again. There's
16 some more indictments I wanted you to look at, and
17 warrants and so forth.

18 Let me show you State's Exhibit No. 109. Is that
19 a certified indictment for opposing and resisting
20 arrest?

21 A Yes, it is.

22 Q And that's on Fredrick Evins?

23 A Yes.

24 Q What's the indictment number, ma'am?

25 A 86-GS-42 --

1 MR. BOGGS: Your Honor, are those already admitted
2 into evidence or are you simply identifying them?

3 MR. BARNETTE: No. They have not been entered in
4 yet. I want to enter two other ones.

5 MR. BOGGS: If you'll just ask if she can identify it
6 before she testifies to it.

7 MR. BARNETTE: Okay. We'll do it that way.

8 BY MR. BARNETTE:

9 Q Let me show you State's Exhibit No. 108, is that a
10 certified indictment on Fredrick Evins?

11 A Yes, it is.

12 Q Let me show you State's Exhibit No. 111, is that a
13 probation revocation on Fredrick Evins that was done in
14 circuit court?

15 A That's correct.

16 Q Let me show you State's Exhibit No. 113, is that also
17 a certified indictment on Fredrick Evins?

18 A Yes, it is.

19 Q Let me show you Warrant No. G460484, is that a
20 certified warrant on Fredrick Evins certified by the
21 Magistrate Court?

22 A Yes, it is.

23 Q Let me show you State's Exhibit No. 131, is this a
24 certified driving -- I mean, ticket conviction from the
25 Spartanburg County Magistrate Court?

1 A That's correct.

2 Q Let me show you State's Exhibit No. 115, is that a
3 certified record from the highway department concerning
4 convictions?

5 A Yes, it is.

6 Q And State's Exhibit No. 116, is that also a certified
7 conviction from the highway department?

8 A Yes, it is.

9 MR. BARNETTE: Your Honor, I'd like to move these
10 into evidence at this time.

11 MS. QUIMBY: Your Honor, may we approach?

12 THE COURT: All right.

13 (WHEREUPON, a bench conference was held with the
14 attorneys.)

15 MS. QUIMBY: I just wanted to make sure --

16 THE COURT REPORTER: Speak up.

17 MS. QUIMBY: I just wanted to make sure for the
18 record -- let me put them back in order. Most of these,
19 we have no objection to, the ones that are convictions,
20 we --

21 MR. BARNETTE: Candy Hill and the others have been
22 entered.

23 MS. QUIMBY: I'm sorry. I thought these were all of
24 the convictions. And I just -- I wanted to make sure our
25 objection to the Candy Hill one was preserved.

1 THE COURT: Well, what exhibit number do you need to
2 put on the record?

3 MS. QUIMBY: It's not in this group.

4 THE COURT: So you don't have objections?

5 MR. BARNETTE: They've already made an objection and
6 you've given a curative instruction.

7 THE COURT: It's already in.

8 MS. QUIMBY: Okay. Thank you.

9 (WHEREUPON, the bench conference was concluded.)

10 MR. BARNETTE: Your Honor, I'm moving these into
11 evidence at this time.

12 THE COURT: Yes, sir, without objection.

13 (WHEREUPON, State's Exhibit Nos. 108, 109, 111, 113,
14 114, 115, and 116 were admitted into evidence.)

15 BY MR. BARNETTE:

16 Q State's Exhibit No. 108, if you would, tell the jury
17 what that is real quickly, ma'am, what the indictment is?

18 A The indictment is for failing to stop for motor
19 vehicle and signal by officer?

20 Q And what's the indictment again on that, please?

21 A 86-GS-42-1361.

22 Q And when was that pled in court?

23 A 5-5-86.

24 Q Let me show you what's been marked as State's Exhibit
25 No. 109, is that also on Fredrick Evins, ma'am?

1 A That's correct.

2 Q And what was that conviction for, ma'am?

3 A This was for opposing or resisting process.

4 Q And when did he plead and what did he plead to?

5 A It was 5-5-86, and he pled to resisting arrest.

6 Q The next one, ma'am, would you give us the indictment
7 number, and is that also on Mr. Evins?

8 A The indictment number is 95-GS-42-2144. It is on
9 Fredrick Antonio Evins.

10 Q And what was the charge he pled to, ma'am?

11 A He pled to common law robbery.

12 Q Let me show you what's been marked as State's Exhibit
13 No. 111, is that a probation revocation?

14 A Yes, it is.

15 Q And on which charge was that probation revocation on?

16 A Criminal sexual conduct second degree.

17 Q How much time was revoked on the probation?

18 A 15 years suspended to three years.

19 Q And how much was revoked on it?

20 A Three years.

21 Q Down right above the Judge's signature, could you
22 read that line above that? How much time was revoked on
23 that?

24 A The revocation order is satisfied on the service of
25 one year and credit for time served.

1 Q Let me show you this certified warrant from the
2 Magistrate Court, G460484, which is State's Exhibit
3 No. 114. What is that charge for, ma'am?

4 A CDV first or second offense.

5 Q And, if you could, read what the offense was for?

6 A This body here?

7 Q Yes, ma'am.

8 A The Defendant did intentionally cause harm to Kizzy
9 Smith, a former household member, by cutting her left
10 forearm with a knife causing the victim to fear for her
11 safety.

12 Q And I'm showing you State's Exhibit No. 131, what was
13 that conviction for, ma'am?

14 A CDV second.

15 Q And when did that conviction occur, ma'am -- or what
16 was the incident day, I should ask?

17 A I can't quite read it. Is that 2-16-82?

18 Q Right here. Is that February 16th --

19 A It looks like 2-16-02.

20 Q Yes, ma'am.

21 A Yeah, 2-16-02.

22 Q Let me show you what's been marked as State's Exhibit
23 No. 115, what was that offense for?

24 A Driving under suspension third.

25 Q And when was the incident date?

1 A 2-27-03.

2 Q And let me show you State's Exhibit 116, what was
3 that offense for, ma'am?

4 A Petit larceny.

5 Q And what was the incident date on that?

6 A 2-27-03.

7 MR. BARNETTE: Your Honor, with your permission, I'd
8 like to publish these to the jury.

9 THE COURT: All right.

10 (WHEREUPON, State's Exhibit No. 131 was admitted into
11 evidence.)

12 MR. BARNETTE: If you would, please answer any
13 questions Ms. Quimby may have for you.

14 CROSS-EXAMINATION

15 BY MS. QUIMBY:

16 Q Hey, Ms. Tinsley.

17 A Hi.

18 Q I'll ask you one question, if you don't mind.

19 A Okay.

20 Q Ms. Tinsley, I'm handing you what you previously
21 identified as an order of revocation of probation?

22 A Uh-huh.

23 Q Can you please flip that over and tell me what the
24 second page is?

25 A An order of continuance?

1 Q Yes, ma'am. When is it dated?

2 A May 26, 1989.

3 Q May 26, 1989. So that would be two months prior to
4 the revocation; correct?

5 A The revocation is dated August 7th, 1989.

6 Q Two or three months difference?

7 A Yes. That's right.

8 Q And that -- when the probation was continued, that
9 was for the same underlying charge as the revocation;
10 correct?

11 A The underlying charge is criminal sexual conduct
12 second degree.

13 MS. QUIMBY: Thank you.

14 Nothing further.

15 MR. BARNETTE: Just one question to follow-up, Your
16 Honor.

17 REDIRECT EXAMINATION

18 BY MR. BARNETTE:

19 Q So there was a probation revocation on the criminal
20 sexual conduct second degree on May 26th, and the Judge
21 continued to -- let him continue on probation; is that
22 right?

23 A Yes.

24 Q But later on, there was another revocation that was
25 brought for additional conditions that he violated and he

1 was revoked for one year on August 7th?

2 A That was a revocation of one year, yes.

3 MR. BARNETTE: Thank you.

4 MS. QUIMBY: Nothing further.

5 THE COURT: All right. Thank you.

6 You can step down, but I will not excuse you.

7 MR. GOWDY: May it please the Court?

8 The State would call Ms. Faith Goodwin.

9 THE CLERK: Raise your right hand and place your left
10 hand on the Bible.

11 WHEREUPON,

12 FAITH GOODWIN,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Have a seat, please.

15 DIRECT EXAMINATION

16 BY MR. GOWDY:

17 Q Good afternoon, Ms. Goodwin.

18 A Good afternoon.

19 Q Would you introduce yourself to the jury and tell
20 them what relation you were to Rhonda?

21 A My name is Faith Goodwin. I am -- was Rhonda
22 Goodwin's mother-in-law.

23 Q Now, at the time of Rhonda's death, is it fair to say
24 that she and your son were not still a couple?

25 A No. They were separated. However, they were

1 married.

2 Q Did you maintain a good relationship with Rhonda?

3 A Yes.

4 Q How would you describe your relationship with her?

5 A Well, I was Rhonda's friend, her mother, her sister.

6 I was just there for her all the way around, strong

7 family.

8 Q There's been previous testimony about Rhonda's three
9 children. After her death in February of 2003, who took
10 responsibility for those children?

11 A I did.

12 Q Who are they with now, Ms. Goodwin?

13 A They're with me.

14 Q I want you to give the jury a sense of how Rhonda's
15 children were in the days and weeks after her death and
16 how they are now.

17 A Well, when all of this happened, the children, they
18 pretty much asked questions as to what was going on with
19 their mom. And I had to explain to them that their mom
20 was missing and that I was going to do everything that I
21 possibly could do to find her. And that's what I did.
22 They would ask me when she was coming home and I could not
23 give them a definite answer about that. And -- I'm sorry.

24 And once Rhonda was found, the children pretty much
25 understood what had happened. And I had to explain to the

1 smallest one, who is now eight, she was six when all this
2 happened, that her mom was with God and that she was with
3 her Grandma -- with her Grandma Lil, my grandmother, and
4 that she would always look over her, that she would never
5 have to worry about a mom because she was happy.

6 Now, before all this took place, Rhonda and her kids
7 had a very close relationship. And she would bring them
8 to the house and they would stay over. And a lot of
9 times, Rhonda would call just to see how the kids were
10 doing, period. Sometimes she would call two or three
11 times a day just to check on the kids.

12 And since all of this has happened and the kids have
13 been with me, the smallest one a lot, I hear her singing
14 in her room. And I will ask her, you know, who she's
15 singing to. And she will tell me she's singing a song
16 with her mom. So there's really nothing that I can say
17 about that except for okay. And I will hear her a lot
18 talking and she's talking like she's carrying on a
19 two-person conversation. And I will ask who she's talking
20 to and she'll say, I'm talking to my mom. And I finally
21 had to tell her that she needed to let her mom know that
22 she was okay and it was time for her to go to God.

23 And last night, she come into my room and asked me if
24 she could sleep with me. And I asked her why, and she
25 said because she needed to be near someone. So it has had

1 a profound impact on the children, especially the youngest
2 one.

3 The oldest one has started acting out, you know,
4 certain behaviors, but he's getting over that. The middle
5 one, I find a lot just sits and stares. And when I ask
6 her, you know, what's going on, she will just tell me
7 she's thinking about her mom a lot.

8 So this is the impact that all of this has had on the
9 children. And I'm there having to bring them back and to
10 make sure that they're okay. It's been really hard for
11 us.

12 MR. GOWDY: Thank you, Ms. Goodwin.

13 Please answer any questions the Defense has.

14 MS. QUIMBY: I have no questions.

15 Thank you.

16 THE COURT: All right. Thank you, Ms. Goodwin.

17 You may step down.

18 MR. GOWDY: Your Honor, the State would call Randy
19 Bogan.

20 MS. QUIMBY: May Defense approach?

21 (WHEREUPON, a bench conference was held with the
22 attorneys.)

23 MS. QUIMBY: We just wanted to look again at the --
24 he's been called to introduce the pictures. And we wanted
25 to make sure that our objection was on the record to all

1 of the pictures coming in.

2 THE COURT: Okay.

3 MS. QUIMBY: We didn't want to have to make --

4 THE COURT: They haven't offered them yet. It's
5 anticipatory.

6 MR. BOGGS: They told us that's why they're going to
7 call him.

8 MR. GOWDY: This is our last witness. We're going to
9 put out how Fredrick Evins left her.

10 MR. BOGGS: You need to look at the pictures.

11 THE COURT: I saw them yesterday. And over your
12 objection -- well, let me look at them again.

13 MR. BARNETTE: Your Honor, for the record --

14 MS. QUIMBY: We want to put the objection on the
15 record so we don't have to stand up with it.

16 THE COURT: A couple of them are repetitive.

17 MR. GOWDY: They're -- if they're duplicates --

18 THE COURT: Well, you look at them.

19 What's the significance of having that in there?

20 MR. BARNETTE: They are markers showing the position.

21 THE COURT: Well, okay.

22 I am not allowing State's Exhibit No. 79 in.

23 MR. GOWDY: I am withdrawing State's Exhibit Nos. 73,
24 78, and 79.

25 THE COURT: Those are withdrawn by the State.

1 MR. GOWDY: They're duplicative.

2 THE COURT: Do you want to put them in the record as
3 a Court's Exhibit?

4 MR. GOWDY: We would be intending to submit State's
5 Exhibit Nos. 71, 72, 74, 75, 76, 77, and 80.

6 MR. BOGGS: We object to simply this as being over --
7 there's no reason to put that in other than to inflame the
8 jury.

9 MR. GOWDY: That's how he left her.

10 MR. BOGGS: It's the same body connotation in here.

11 MR. GOWDY: You can't see the fact that a woman died
12 with feces on her because of what he did.

13 MR. BOGGS: I object to that one, and the only reason
14 would be to inflame the jury.

15 THE COURT: You're generally objecting to all of
16 them?

17 MR. BOGGS: Yes, because of the same purpose. If
18 it's an odd location, it's okay. I mean, I know they can
19 put how the body was found. That's the same reason for
20 this, State's Exhibit No. 71.

21 THE COURT: Well, the State agrees that she's --

22 MR. GOWDY: But you can also see the stab wound on
23 the back of the arm.

24 THE COURT: Oh, okay.

25 Well, over the Defense's objection, I'm going to let

1 it in.

2 MR. GOWDY: Thank you, Your Honor.

3 (WHEREUPON, the bench conference was concluded.)

4 MR. BARNETTE: Your Honor, the State would call Randy
5 Bogan to the stand.

6 THE COURT: You're still under oath, Officer Bogan.

7 MR. BARNETTE: And, Your Honor, at this time, too,
8 through Officer Bogan, I'd like to move State Exhibit 107
9 and 106 into evidence. It's the temperature or weather on
10 the days of March 5th, 1995, as well as November 22nd,
11 1986.

12 MS. QUIMBY: No objection.

13 THE COURT: All right. Without objection.

14 (WHEREUPON, State's Exhibit Nos. 106 and 107 were
15 admitted into evidence.)

16 FURTHER DIRECT EXAMINATION

17 BY MR. BARNETTE:

18 Q Let me show you what's been marked as State's Exhibit
19 No. 106, Officer Bogan. Is that the weather for November
20 22nd, 1986?

21 A Yes, it is.

22 Q And, if you will, come on up here and we'll put that
23 up on the overhead. November 22nd, 1986, about 6:51, what
24 was the temperature, sir?

25 A It's showing 31.

1 Q And at 7:50 in the morning, what was the temperature,
2 sir?

3 A It's showing 31 as well.

4 Q Is that 31 degrees Fahrenheit?

5 A That's correct.

6 Q State's Exhibit No. 107, which is the weather from
7 March 5th, 1995, showing the time at approximately 6:50
8 a.m., what was the temperature at that time?

9 A 39 degrees.

10 Q Thank you, sir. If you would, have a seat.

11 And at the crime scene -- I know you've already
12 testified to this, did you take photographs at the crime
13 scene, sir?

14 A Yes, I did.

15 Q Let me let you look at State's Exhibit Nos. 77, 76,
16 75, 74, 72, 71, and 70, and see if those were taken at the
17 crime scene at Gano Road?

18 A Yes, sir. These photographs were taken at Gano Road.

19 Q And do those fairly represent Rhonda Ward and her
20 body at the crime scene area at Gano Road?

21 A Yes, sir.

22 Q Let me show you what's marked as State's Exhibit No.
23 80, was that the picture of the black handle of a knife
24 that was taken at Walker Road?

25 A Yes, sir.

1 Q Does that fairly represent the way you saw it that
2 day?

3 A Yes, sir, it does.

4 MR. BARNETTE: Your Honor, I'd like to move all of
5 these into evidence.

6 THE COURT: Subject to the previously discussed
7 objections..

8 (WHEREUPON, State's Exhibit Nos. 70, 72, 74, 75, 76,
9 77, and 80 were admitted into evidence.)

10 MR. BARNETTE: I'd like to publish them to the jury
11 right now, Your Honor.

12 THE COURT: Okay.

13 BY MR. BARNETTE:

14 Q I'm showing you State's Exhibit No. 80. Is that the
15 black-handled knife found at Walker Road?

16 A Yes, sir, it is.

17 Q And can you show where the ring was found, please,
18 sir.

19 A Yes, sir. You can barely see it in all this, but
20 there's the ring. There's the knife.

21 Q Okay. I'm showing you State's Exhibit No. 71, can
22 you tell us what this is a picture of, sir?

23 A That's the body of Rhonda Ward as we found it on Gano
24 Road. She was laying face down, as I stated a few days
25 ago. She was nude and had defecated on herself.

1 Q Okay. Let me show you what's been marked as State's
2 Exhibit No. 72, can you describe what this picture is,
3 sir?

4 A Yes, sir. That's just another angle of Rhonda Ward's
5 body from just a different view.

6 Q And can you just tell us what that is, sir?

7 A That's going to be the Star of David, the necklace
8 piece that was found at her body.

9 Q Let me show you what's been marked as State's Exhibit
10 No. 74, what is this a picture of, sir?

11 A Whenever we turned Ms. Ward's body over, that's going
12 to be a cut on the left side of her body, upper part of
13 her body.

14 Q Okay. And this is the area below the breast area and
15 that's her neck area up in there?

16 A That's correct.

17 Q And that's the way it was when you examined her once
18 she was turned over at Gano Road?

19 A Yes, sir.

20 Q Let me show you what's been marked as State's Exhibit
21 No. 77, is this the back of her left arm?

22 A Yes, sir, it is. Whenever we walked up to her and
23 she was still face down on her left, it's a close-up of
24 her shoulder. It's still on her arm. There is also
25 another -- it looked like a stab wound.

1 Q Okay. Was this a stab wound here?

2 A Yes, sir.

3 Q Was that on the back of her left arm?

4 A Yes, sir.

5 Q This on the top of her shoulder, is this another stab
6 wound?

7 A Yes, sir.

8 Q Let me show you State's Exhibit No. 75, what is this?

9 A Those are cuts and superficial stab wounds on the
10 bottom part of the arm.

11 Q And what does it appear that she's grabbed here?

12 A It looks like hair.

13 Q Or is that grass?

14 A It could be grass. It could be grass and maybe -- it
15 could be a little bit of her hair as well that's in there.

16 Q Let me show you what's been marked as State's Exhibit
17 No. 76?

18 A Those are the stab puncture marks that are on the
19 other side of her arm.

20 Q And what kind of wounds are they, sir?

21 A They're defense wounds, that's what I would call
22 them, because somebody holding up their arm, like so, to
23 prevent from being stabbed and they're getting cut here.

24 Q Let me show you State's Exhibit No. 70?

25 A That's just another angle of Rhonda Ward as we found

1 her on Gano Road laying face down.

2 Q And what had she done to herself?

3 A She had defecated on herself, and you can see that in
4 the photograph.

5 MR. GOWDY: Thank you, sir.

6 Please answer any questions the Defense may have for
7 you.

8 MS. QUIMBY: No questions, Your Honor.

9 THE COURT: All right. Officer, you may stand down.

10 MR. GOWDY: Your Honor, the State rests in the
11 sentencing phase.

12 THE COURT: All right. Madam Forelady, and, ladies
13 and gentlemen of the jury, this is one of those times
14 where we will have some legal matters to discuss. It's 20
15 until 1:00. I understand your lunch should be here around
16 1:00. To be perfectly honest, it's doubtful that we'll
17 come back, so if y'all just want to stretch and I think
18 we'll just take our lunch break. And we are -- there's
19 some matters we have to attend to. We generally try to
20 start back around 2:00, but it might be later than that.
21 We'll get you back just as quickly as we can.

22 Thank you very much.

23 Don't discuss the case.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 12:40 p.m.)

MOTIONS

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THE COURT: All right. Any motions?

MS. QUIMBY: Just one moment, Your Honor.

THE COURT: All right.

MS. QUIMBY: Your Honor, at this time, we would move for a directed verdict. The State has the burden of proof in this phase as well beyond a reasonable doubt of the aggravators. We would move for a directed verdict on those aggravators.

And I'm not sure if the Court has yet ruled on whether the robbery is to be submitted, but we would ask for a directed verdict on all of the asserted aggravators. We would also renew any previous motions or objections that were determined adversely to the Defense.

THE COURT: All right. Thank you.

MS. QUIMBY: Thank you.

THE COURT: Yes, sir, Mr. Gowdy.

MR. GOWDY: Your Honor, the only thing I would say very briefly, the line of cases that I had an opportunity to review, since there is nothing inconsistent with the State having aggravators for the larceny and robbery, with robbery being -- an element of the robbery being from the person of someone else, the State's position is there's evidence that he took a car. And taking the facts even in the light most favorable to the Defense at this stage,

1 took the car and the pocketbook from the car, that's
2 larceny. But when you take the clothes and the jewelry
3 from the person, that's robbery. So I don't think the two
4 are duplicative. I don't think they're inconsistent. In
5 the line of cases that I have seen, it says that there's
6 nothing wrong with the State alleging both.

7 THE COURT: All right. I'll take a look at it over
8 lunch. I'm going to deny the directed verdict as to four
9 of those aggravators. And I'll take a look at the armed
10 robbery over lunch.

11 Now, tell me where we are with the doctors.

12 MS. QUIMBY: Your Honor, it's my understanding that
13 Dr. Martin and Dr. Crawford are either currently speaking
14 or have already spoken and consulted with each other.
15 Dr. Martin would like a few moments to talk with
16 Mr. Evins. And then I think that Dr. Martin needs to
17 consult with me as well.

18 THE COURT: Dr. Martin is your --

19 MS. QUIMBY: Dr. Martin is our psychiatrist.

20 THE COURT: Okay.

21 MS. QUIMBY: And there may be some need for
22 Dr. Crawford to talk to Mr. Evins as well.

23 THE COURT: And how long of a period do you need?

24 MS. QUIMBY: One moment, Your Honor.

25 (Pause.)

1 MS. QUIMBY: Your Honor, before I answer that
2 question, Mr. Willingham has told me that after the
3 doctors consulted --

4 May I answer that question in just a moment?

5 THE COURT: Yes. How long do you -- go talk to them.
6 We'll be at ease. I'll remain in the courtroom until you
7 get back.

8 MS. QUIMBY: Thank you.

9 THE COURT: All right. We'll be at ease.

10 (WHEREUPON, a break was taken.)

11 THE COURT: What's the position?

12 MS. QUIMBY: I think that everyone involved will
13 probably just need an hour.

14 THE COURT: All right. We'll try to be back at
15 about -- he's got to have an opportunity to eat. We'll
16 try for 2:30 is what we'll shoot for.

17 MS. QUIMBY: Yes, sir.

18 (WHEREUPON, Court's Exhibit Nos. 14, 15, 16, 17, 18,
19 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and
20 31 were marked for identification and admitted into
21 evidence.)

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Yes, sir.

24 MR. GOWDY: Your Honor, Mr. Boggs and I have
25 discussed a housekeeping matter. Given -- the Court knows

1 where the three of us have been for the past nine days and
2 given Dr. Crawford -- when she came to town, I asked
3 Donnie Willingham to prepare her direct. He has not been
4 previously involved with the case, but given -- I'm not
5 going to say late notice, but given our inability to
6 prepare, he has done so.

7 And I asked Mr. Boggs if he had an objection to
8 Deputy Solicitor Willingham handling the direct
9 examination of Pam Crawford if we call her, and I think he
10 indicated that he did not. But I wanted to alert the
11 Court and ask the Court if it had a concern about it.

12 THE COURT: Have you all got any objection to that?

13 MR. BOGGS: No. I think that's reasonable.

14 THE COURT: Where is your client?

15 MS. QUIMBY: Your Honor, he is in a small conference
16 room talking with Dr. Martin. I think they're finishing
17 up. If the Court will allow a few more minutes.

18 THE COURT: How about Mr. Willingham, is that all
19 right with Mr. Willingham? Or do you have a choice in the
20 matter?

21 MR. GOWDY: He's got a choice.

22 MR. BOGGS: He was announced as deputy solicitor, not
23 the solicitor, so he doesn't have a choice.

24 MS. QUIMBY: Your Honor, I apologize. But may we
25 approach, Your Honor?

1 THE COURT: All right.

2 (WHEREUPON, a bench conference was held with the
3 attorneys.)

4 MS. QUIMBY: I'm sorry. We're trying to get
5 coordinated with the witnesses and a couple of them have a
6 concern about the cameras being on them during the
7 testimony, one being his 13-year-old daughter. I think
8 the others can deal with it. I think the 13-year-old
9 daughter -- I'm not going to be asking her, but I think
10 she's had some personal problems about people making fun
11 of her. I'm not going to be asking about anybody making
12 fun of her, but I wanted to bring it to your attention if
13 the camera could stay on Fred during the testimony.

14 THE COURT: Do you --

15 MR. GOWDY: I mean, I think the issue is how you --
16 do you ask them not to do it or tell them not to do it?

17 MS. QUIMBY: Maybe it could be a, you know, ask them
18 for courtesy.

19 MR. GOWDY: I mean, I think if you'll ask them to do
20 it, they'll do it.

21 THE COURT: Cameramen, come up here.

22 MS. QUIMBY: This phase will go a lot faster.

23 THE COURT: Yes. I'm sure glad.

24 Hey. I just -- I wanted to ask a favor of you guys.
25 The Defendant's 13-year-old daughter is going to be

1 testifying and this has caused a lot of grief for her.
2 And would you not put the cameras on her while she's
3 testifying?

4 (All cameramen indicated yes.)

5 (WHEREUPON, the bench conference was concluded.)

6 (Brief recess.)

7 THE COURT: Are we ready?

8 MR. GOWDY: The State is, Your Honor.

9 MS. QUIMBY: Yes, Your Honor.

10 THE COURT: The doctors have had plenty of time to
11 talk?

12 MS. QUIMBY: Yes, sir. That's my understanding.

13 THE COURT: Okay. Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 2:57 p.m.)

16 THE COURT: Madam Forelady, and, ladies and gentlemen
17 of the jury, I hope y'all had a pleasant lunch. And we
18 were able to accomplish a number of things while y'all
19 were out at lunch. I appreciate your patience.

20 At this time, I turn it over to the Defense.

21 MS. QUIMBY: May it please the Court?

22 The Defense would call Thomas Martin, Dr. Thomas
23 Martin.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 THOMAS MARTIN, M.D,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Have a seat.

6 DIRECT EXAMINATION

7 BY MS. QUIMBY:

8 Q Good afternoon, Dr. Martin.

9 A Good afternoon.

10 Q Thank you for being here today.

11 You are a forensic psychiatrist; is that correct?

12 A That is correct.

13 Q Can you please tell the Court your education
14 credentials and experience?

15 A Certainly. I went to the University of Maryland and
16 received a Bachelor of Science in Clinical Psychology. I
17 received a Masters of Science in Biomedical Sciences. I
18 then went on to medical school and received a medical
19 degree and doctorate. I went on to residency in
20 psychiatry and completed that.

21 And then later, I came to South Carolina about five
22 years ago and attended USC in forensic psychiatry, which
23 is psychiatry that deals with mental health and behavior
24 problems relating to the law or criminal acts. I
25 completed that in 2000.

1 I since then have worked for a number of
2 organizations, including the Department of Mental Health
3 for the State. I've worked for the sexual violent
4 predator program in South Carolina. And I've also worked
5 for several children and older adolescent centers who are
6 offenders. A number of them are mentally ill and/or
7 mentally retarded.

8 And currently, I've been in practice for several
9 years, private practice, downtown where I, actually, do
10 regular adult and juvenile psychiatry and psychotherapy.
11 And, as Ms. Quimby described, I'm also a forensic
12 psychiatrist. And I help assess individuals whose mental
13 health or behaviors have gotten them in trouble with the
14 law. And that's the kind of practice I have now.

15 Q Thank you.

16 Have you -- can you tell the Court about any
17 specialized training, experience, or publications or
18 anything that you have done?

19 A Most of the training experience that I've had has
20 been in the field -- or the most recent has been in the
21 field of forensic psychiatry. I attend annual meetings at
22 the American Academy of Psychiatry and the Law.

23 I came up with the literature of latest nuances of
24 what happens with individuals who are in the criminal
25 system and the type of mental health assessments that

1 might be required to better understand and treat them to
2 help protect them as well as others. I also run
3 outpatient groups for people who have been offenders and
4 are in recovery. And also, I keep up with psychotherapy,
5 just general psychotherapy, with individuals who just need
6 treatment for depression and anxiety and so forth.

7 MS. QUIMBY: At this time, Your Honor, I would move
8 to qualify Dr. Martin as an expert in forensic psychiatry.

9 MR. GOWDY: No objection.

10 THE COURT: All right. Without objection.

11 MS. QUIMBY: Thank you.

12 BY MS. QUIMBY:

13 Q Dr. Martin, have you had an opportunity to evaluate
14 or do any sort of evaluation or assessment on the
15 Defendant, Fredrick Evins?

16 A Yes, ma'am, I have.

17 Q And what did that entail? What did that evaluation
18 consist of?

19 A Well, I reviewed numerous records that pertain to the
20 case that you've all been listening to for quite sometime
21 now. That would include medical records. It would
22 include prison records. I've also reviewed school
23 records, interviews of various important people in this
24 case that would include family members, spouse, and
25 friends.

1 And I've also had the opportunity to meet with
2 Mr. Evins on a couple of occasions to help see his
3 perspective and point of view in this case. And I've also
4 reviewed psychological and neuropsychological assessments
5 of Mr. Evins prior to coming today as well.

6 Q And is that typical of what you would do in an
7 evaluation and assessment?

8 A Yes. That's about what we all would do in this type
9 of case.

10 Q From your evaluation and assessment, have you been
11 able to form any opinions about Mr. Evins?

12 A Yes, I have. From a mental health perspective, I
13 examined Mr. Evins' development, social adaptability
14 growing up, how well he did in school or not, and how he
15 made interpersonal relationships. Furthermore, I assessed
16 his use of substances, which was excessive. His home
17 life, if you'd like me to go into any of that --

18 Q Sure.

19 A -- was very, very chaotic from the get-go. His
20 mother was a significant alcoholic even before he was born
21 and drank excessively while pregnant with him. He was
22 exposed to alcohol at a very early age. He, actually, had
23 to help rescue his mom on several occasions and bring her
24 back home because she would be drunk down the street.

25 Q Dr. Martin, you had said that you also -- in addition

1 to just reading prepared reports or prepared records, you
2 also looked at history -- his history as reported by
3 himself and other people; correct?

4 A That's right.

5 Q And that's where you got a lot of this information?

6 A Yes. That's correct.

7 Q When do you think his difficulties started?

8 A Do you mean originally?

9 Q Yes, sir.

10 A I wouldn't be surprised if -- it looked -- as his mom
11 was a severe alcoholic even during the pregnancy with him,
12 drinking excessively is a set up right away for somebody
13 having some sort of thought process or intellectual
14 process dysfunction when born. I had concerns about that
15 from the very beginning. His exposure to alcohol and
16 drugs, even as a young child, was excessive to the point
17 where he, actually, became addicted to alcohol and cocaine
18 by the time he was 16.

19 Q And was this information that you perceived, was it
20 corroborated by the reports of anyone else or are you --
21 the testimony that you've given and that you will give,
22 are these reports that you received from just one person
23 or are they consistent reports?

24 A They're consistent reports with other family members.
25 He had several brothers who have made also the same

1 report. And, of course, Fredrick, himself, also said
2 that -- he says it reluctantly. Part of the dysfunction
3 he has is trying to be protective of his family. He was
4 not a very bright individual. He was trying to protect
5 his mother, even take care of her, like I was explaining,
6 in the face of her being quite dysfunctional as being a
7 parent. And this is corroborated by brothers, for
8 example, as well.

9 Q And I think you mentioned that -- I think you
10 mentioned alcohol use or alcohol exposure at a young age.
11 Could you let the Court know a little bit more about that?

12 A Certainly. I don't think it's news to anyone that if
13 a mother who's pregnant drinks excessive amounts of
14 alcohol that could very easily do a great deal of damage
15 to the unborn child. There's a lot of common knowledge
16 even about that aspect. There's various syndromes that
17 could develop from that. But one thing that's in common
18 with a lot of them is impairments of intellectual ability
19 or the way an individual thinks, the way they adapt to
20 their environment. Even physically, they could have
21 physical abnormalities as well that is apparent.

22 Q Okay. What sort of difficulties, if any, could that
23 have led to in his life?

24 A Well, one that I can tell you, difficulties that he
25 definitely did have and they could have been contributed

1 by this, drinking by his mother, is that he had a very
2 difficult time adapting at home. He could not make
3 friends. Even to this date, developing relationships has
4 been difficult.

5 This is further compounded by difficulties in school.
6 He ran away from school a lot. He thought it was too
7 hard. He could select only a few people that, actually,
8 spent some time with him and gave him the extra help,
9 which he desperately needed. But he wasn't able to
10 advance intellectually or academically because he's just
11 one in a big quest. But this is also -- all this
12 dysfunction in his early life was compounded by the fact
13 that he didn't have a stable home life to begin with. He
14 was essentially independent in elementary school. He
15 didn't know how to do it and he made a whole lot of
16 mistakes, but the best I can tell; he was trying to do the
17 best he could.

18 Q Dr. Martin, don't a lot of children grow up in an
19 unstable home environment?

20 A Yeah. There are a great number of them.

21 Q And do all of those children end up with legal,
22 social, and other developmental problems?

23 A Not all of them become criminals, no. But if you add
24 all the components which Fredrick was exposed to, which
25 meant the wrong crowd, the wrong child rearing

1 experiences, witnessing other people, including himself,
2 being physically abused, it seems to me, he doesn't even
3 know any different. This, actually, became average. In
4 fact, the environment in the neighborhood he lived in,
5 this was average. And so it's -- he was doomed from the
6 beginning in terms of developing interpersonal
7 relationships that would be sound and healthy.

8 Q Have you talked to anyone or reviewed anything to
9 give you an impression of whether he had any stabilizing
10 person or factor in his life?

11 A I found one person that I, actually, read about and
12 talked with, and that was his wife. She offered the most
13 structure and tried to hold him responsible. He did not
14 do well with that, because he would just run away from her
15 as well. By this time, of course, that's too late. He
16 did not know how to maintain a stable relationship by the
17 time he got married or even, bringing up a nice daughter,
18 he did not know how to keep in touch and to bond with her.
19 He essentially hasn't bonded with anybody.

20 It's interesting, because when I first met with
21 Fredrick, the impression I got was, it was a rather
22 pleasant development in his childhood and he was
23 emotionally closest to his mother. He's still very
24 protective of his mother. But his opportunities for
25 exposure to good, healthy relationships were, actually,

1 never there. And there's a lot of other siblings and
2 records that I've read that have supported that.

3 Q Okay. You mentioned school records, have you had an
4 opportunity to review school records of Mr. Evins?

5 A Yes. I've seen some of his school records.

6 Q Are those largely just transcripts, permanent
7 records, things like that?

8 A Yes, a large number of them are. Some are teacher
9 comments about how he was doing overall during elementary
10 school years.

11 Q What are your impressions of Fred's school years from
12 reading those reports?

13 A From reading the reports and I also talked with one
14 of his teachers, who is greatly interested in his
15 situation -- in fact, she's about the only one he can
16 recall that was helpful to him, and that was in fourth
17 grade. A lot of what teachers reported was he had
18 difficulty with reading, focusing, paying attention. He
19 was disruptive and hyperactive. And that created a lot of
20 concern for me because a lot of the juveniles that I work
21 with -- and the ones I work with are on average between
22 the age of 12 and 21. A lot of them have developmental
23 delayed problems or are mildly mentally retarded or have
24 borderline mental functioning. And a lot of them have
25 come to me because they've fallen through the cracks and

1 they never have been fully assessed. What Fredrick seemed
2 to be describing to me sounded a little bit on the surface
3 like he may have had attention deficit hyperactivity
4 disorder, but that was never fully assessed and he was
5 definitely never treated for it.

6 I spoke with one of his teachers and the resources
7 just weren't there to always cover all of these type of
8 assessments and treatment needs that were definitely in
9 Fredrick's case. So I think some of that went to the
10 wayside and he was essentially just passed on. It became
11 so disruptive for him because it was so frustrating that
12 he would never be able to catch on that he would just deal
13 with it by running away. And he's been running away,
14 essentially, from all of his difficulties adapting, I
15 think, most of his life.

16 Q Were those school records informative as to the kind
17 of grades he received, attendance at school, conduct,
18 things like that?

19 A Yes. His conduct was disruptive or bored. He would
20 sleep, not be a part of the class, even if they -- a great
21 deal of time, they couldn't assess him at all because he
22 would never come to school even at a very early age. Some
23 of the teachers reported that they thought that, perhaps,
24 he could if he tried harder to do better in school. But
25 he was placed in resource classes, at least one or two,

1 for his reading. And that may have helped somewhat, but
2 it underrepresented a lot of the help that he needed. He
3 got a lot of F's, C's, and D's in his grades.

4 Q Okay. And did those records give you a sense of --
5 either the records or speaking with the teachers or
6 speaking with Mr. Evins or any of his family members, were
7 you able to get a sense of how long he went to school,
8 what kinds of -- whether he skipped any grades, was held
9 back, anything like that?

10 A Yeah. To the best of my recollection, without
11 looking right now, I believe he left school in the eighth
12 grade. And that may have been as far as he went.

13 Q Do you know if he repeated any grades?

14 A I believe he did. I don't remember off the top of my
15 head which grades those were. But yeah, he stumbled
16 through all grades.

17 Q Would reviewing those school records you reviewed
18 previously help to refresh your memory on that?

19 A Certainly.

20 Q I'm going to hand you this stack of records. Could
21 you just look at those and let me know if you've seen
22 those before and recognize them?

23 A Yes. These look like the ones I saw. What I'm
24 looking at here is --

25 Q Let me interrupt you. I'm sorry.

1 A I'm sorry.

2 Q Are those the school records that you were provided?

3 A Yes.

4 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
5 identification only.)

6 BY MS. QUIMBY:

7 Q Were those records that you relied on in coming to
8 your final -- any ultimate opinion or any assessment in
9 your evaluation of Mr. Evins?

10 A Yes. They impacted my opinion on Mr. Evins.

11 MS. QUIMBY: At this time, I would move to introduce
12 the school records.

13 MR. GOWDY: Your Honor, I think he can rely upon them
14 to give his opinion, but they're not independently
15 admissible. They're hearsay. He can rely upon them, but
16 they're hearsay.

17 THE COURT: Correct.

18 MS. QUIMBY: Okay.

19 BY MS. QUIMBY:

20 Q Okay. I'll ask you some questions about those
21 records you relied on.

22 A Sure.

23 Q You looked at his permanent record. I think that's
24 probably around Page 10 maybe.

25 A Okay.

1 Q Does that refresh your memory?

2 A It's what I've described earlier. His grades from
3 first through fifth grade, it was a steady decline. The
4 highest grade he got was a C. By fourth grade, it was
5 mostly D's and F's. Same through fourth grade. And fifth
6 grade was one C and the rest were F's, just about all of
7 them were F's.

8 Q And did he repeat any grades?

9 A I'm looking for where the report is and I don't see
10 it off the top here.

11 Q That, actually, may be a couple pages -- it may be a
12 couple pages off.

13 A He repeated the first grade and the fourth grade it
14 looks like.

15 Q And that's according to his school records?

16 A Yes.

17 Q Do you know if he was given any tests in school that
18 would have been used to identify any problems he may have
19 had?

20 A Yes. He received the standard hearing test that kids
21 get in early school years, and he was found to have a
22 hearing deficit. He had problems with that. It effected
23 his speech. He had language delays that had been written
24 in his records as well. That placed him in speech therapy
25 for some time, for which he partially participated.

1 Q Okay. What about any standardized testing?

2 A He had received -- are you referring to like
3 intellectual and that sort?

4 Q Yes, sir.

5 A I'm not a psychologist, but I have reviewed with a
6 psychologist some psychological tests that would include
7 IQ tests that were given in the second, third, and fourth
8 grade at different time periods. That's not totally
9 unusual. He rated between about a 67 and 84 during those
10 years. 80 is considered low average intelligence. Below
11 80 down to 70 is borderline intellectual functioning. And
12 below 70 is mild mental retardation. So there was a
13 little bit of a span there, depending on which year it
14 was, between 67 and about 84.

15 Q Well, correct me if I'm wrong, but I think it would
16 be -- 69 would have been probably the lowest from back
17 then; correct?

18 A That is correct, 69.

19 Q And you had mentioned a large number of absences from
20 school?

21 A Yes. That's correct.

22 Q And you had mentioned the very poor grades?

23 A Yes.

24 Q Mostly D's and F's?

25 A That's correct.

1 Q What would you say then could be the cause or how did
2 he keep advancing in school?

3 A Well, one thing I've seen in my practice is that a
4 lot of times, especially when kids are on the borderline
5 in terms of intellectual functioning, there are some
6 standards, depending on the school districts in the state
7 on who gets additional resources. He was on the border,
8 on the edge there, and he did get some resource classes.
9 Some of them he participated in, others he did not. But
10 it's been my experience that when it's not really clear
11 whether or not somebody is necessarily meeting services
12 because they're on the edge of that intellectual ability
13 scale that they will be easily passed on.

14 I talked with one of Fredrick's teachers who
15 corroborated my impression about that and that the
16 resources were not easily available and you had to be
17 glowingly impaired and floridly retarded to get services
18 back then. If you were on the edge, it was very likely
19 that you could be passed on. I'm not pointing any fingers
20 here, it's just very difficult in the system. And I
21 believe he slipped through the system that way.

22 Q And did you have an opportunity to review a reading
23 progress report?

24 A Yes, several of them.

25 Q Can you tell the jury just a little bit about that?

1 A Well, there was some mixed impressions. Some of
2 them -- all of them thought he had difficulties reading.
3 That's chronic. And he'll tell you that today, that he
4 has difficulty reading and comprehending. There was some
5 writing as well, of which, a lot -- several of the
6 teachers thought, perhaps, he wasn't living up to his
7 potential, if he would just try harder. He, himself,
8 believes he was trying as hard as he could and he could
9 not come through with it. Other teachers have said -- and
10 one, in particular I've spoken with, said that he did
11 appear to be trying very hard and he just couldn't do it.
12 So that gave me an indication that there's some doubts
13 there.

14 Q And he just kept being passed from grade to grade,
15 except for the ones --

16 A Except for the ones he failed, yeah.

17 Q You said that you had consulted with a psychologist
18 on this case?

19 A A neuropsychologist.

20 Q A neuropsychologist?

21 A Uh-huh.

22 Q And, to your knowledge, did that neuropsychologist
23 evaluate or have any opportunity to assess Mr. Evins?

24 A Yes. She ran him through a battery of tests in late
25 September of this year.

1 Q Okay. And once those tests had been performed, were
2 you, at some point, notified of the results of those
3 tests?

4 A Yes, I was.

5 Q And is that what you were able to consult with the
6 neuropsychologist about?

7 A Yeah. I talked with her about what some of the --
8 I'm not a neuropsychologist myself or pretend to know what
9 all the in's and out's of the tests are, but I talked with
10 the people that help me assess individuals and what their
11 impressions are and what these tests mean in each
12 individual case.

13 Q Is that normal practice?

14 A That's what we all do.

15 Q The test results from the neuropsychologist
16 evaluations, do they effect your opinion of Mr. Evins?

17 A Sure. I weighed some of the results of what the
18 testing showed, and the impairments showed on my concern
19 for Mr. Fredrick's intellectual and cognitive ability.

20 Q And are those test results something that you relied
21 on in forming your opinion?

22 A Yes, I did.

23 Q As far as those tests go, was he offered a -- or was
24 he given an intellectual quotient, an IQ test?

25 A Yes. He received an IQ test.

1 Q And can you please tell the jury what the results
2 were?

3 A The neuropsychologist assessed Mr. Evins with a full
4 scale IQ of 67. That is in the low -- extremely low
5 range, as by her report to me.

6 Q And what would that mean as far as -- would just that
7 alone give you some sort of indication of functional
8 ability, just that alone?

9 A Well, that made me concerned because that means I
10 need to look into more avenues of his life and what -- you
11 know, how he grew up and how he adapted and developed
12 interpersonal relationships. In other words, IQ alone
13 does not necessarily help me create a diagnosis for an
14 individual. But it made me suspicious that, perhaps,
15 there's more deficits that need to be examined.

16 Q Okay. Is it your opinion that those deficits would
17 have occurred over a period of time? I mean, would those
18 have been things, if you know, that would have been
19 long-term for him?

20 A Yeah. These are not acute deficits. In other words,
21 this is something he's been struggling with -- the
22 deficits I believe you're referring to are intellectual as
23 well as interpersonal, social, emotional coping and that
24 sort of thing. Those are long-term. In his case, he had
25 those type of deficits.

1 Q Okay. Is it your opinion that Mr. Evins processes
2 information the same way that you or I might?

3 A No. I believe, I corroborated this with the
4 neuropsychologist as well, that he's a slow thinker and
5 has difficulty putting into perspective even more complex
6 thoughts, meaning, he's -- with all due respect, he's a
7 little bit simple and immature in some of his intellectual
8 ability.

9 Q What are some of the other tests that you relied on
10 that were done by the neuropsychologist?

11 A There were other types of memory tests, copying
12 figure tests. And I noticed that several of those had
13 shown severe impairments. In my consultation with the
14 neuropsychologist on -- her findings were he has
15 difficulty with what's called verbal memory. And what
16 that simply means is it's hard after 30 minutes for some
17 simple story that he can recall exactly how that story
18 went. And we would understand this if it was like ten
19 years later. But in 30 minutes, he already has a hard
20 time understanding or recalling a simple story. Other
21 tests that she had performed had him copy designs. And he
22 had a great difficulty copying designs and had a great
23 difficulty copying designs from memory, even simple
24 designs.

25 Those -- that indicated to her that -- and to me that

1 he does have organizational problems. He can't think in
2 an organized fashion. He'll not think through a situation
3 before acting upon it. And that would include, you know,
4 what's the right thing I should do, what could be the
5 consequences and that sort of thing. He had difficulty on
6 that as well. There was also some repeating numbers where
7 he had a great difficulty with that and was severely
8 impaired. She described him where he couldn't concentrate
9 or maintain attention. And there was -- and this would be
10 on simple -- what we call serial numbers, where you repeat
11 forward and backwards.

12 Lastly, she did some malingering testing. We all
13 wonder how many people are faking this or try to make
14 themselves look bad. And she found on several tests that
15 he's not faking at all, that he seems to be genuine in his
16 responses.

17 Q Can you help us out us out just a little bit, Doctor?
18 Malingering, can you tell us, please, what that is, what
19 it constitutes and how that might be tested for?

20 A Okay. Malingering is somebody who will on purpose
21 deceive or portray something to get out of usually a
22 negative consequence. I don't want to go to school, so I
23 fake being physically ill. I'm faking it. I know I'm
24 faking it to get out of school. It's that sort of thing.
25 One of the most popular ways to malingering is memory, I'm

1 sorry, I can't remember that.

2 There's various tests that psychologists use to give
3 them great opportunity to really fake in a memory test,
4 but it turns out that most people who are even severely
5 brain damaged can still pass the test. So, in other
6 words, it catches a lot of people who might fake it. He
7 did well on all of those. So it gave no suspicions that
8 he was malingering during that testing.

9 Q So doing well on malingering tests isn't like doing
10 well on a spelling test, because spelling tests mean that
11 you know the material. Doing well on a malingering test
12 means what?

13 A If I understand what you mean by "doing well," in
14 other words, he passed the malingering test, meaning, he
15 wasn't malingering. In other words, he didn't give any
16 indication to the neuropsychologist that he was trying to
17 fake looking bad.

18 Q In your experience and based on the reports that
19 you've reviewed and all the other investigation that
20 you've done, do you have any knowledge of whether people
21 with cognitive and memory problems like Mr. Evins has,
22 could they seem to function normally?

23 A Some of them can. Some of them, at least, if they
24 try hard enough, they can be somewhat able to integrate
25 into society. It's definitely not easy because they're

1 already behind a power curve, but there are some that do.
2 As I said, if they're right on the edge, they are not
3 going to be easily recognized.

4 Q Would they be able to hold -- would somebody with
5 Fred's ability be able to hold a managerial or supervisory
6 position?

7 A Well, once you become a manager or supervisor, that's
8 a little bit advanced. If they did somehow get that job,
9 I wouldn't think it would last not for long if they were
10 intellectually impaired.

11 Q The report that you reviewed from the
12 neuropsychologist, you've mentioned severely impaired
13 standards, you've mentioned the below average and
14 borderline, can you tell me where on a scale those fall as
15 far as what they really mean?

16 A Certainly. With the memory tests, the verbal memory
17 tests, he fell in -- if I recall correctly, he fell in the
18 one percentile. That means 99 out of a hundred people are
19 better than him. And in the severely impaired, which are
20 the only ones I, actually, cited the ones he was below
21 average and borderline, I didn't even bring to your
22 attention. But the ones severely impaired are typically
23 below the three percentile, meaning, 97 to 91 people out
24 of a hundred tested would have been better than him.

25 Now, for IQ, he was assessed at 67. The average IQ,

1 which is 100, and then the range -- and then there's
2 ranges. Below average would be 100 down to about 80,
3 borderline intellectual functioning would be maybe down to
4 about 70. Below 70 would be mental retardation.

5 Q Okay. You had mentioned that some of the ones that
6 were borderline or below average you didn't mention. So
7 there were some tests that were performed that he did okay
8 on?

9 A Yeah.

10 Q What were those primarily testing?

11 A The ones he was average or maybe below average on
12 were testing like what's called motor dexterity. I can go
13 through them all if you want me to.

14 Q If that would help you.

15 A Sure. I don't mind at all. On simple copying of a
16 very simple figure, for example, he would be in what would
17 be considered the below average, thirteenth percentile,
18 meaning, that -- this was 70, 87 percent people are better
19 than him at that. He was below average on motor
20 dexterity, using his left hand. And his right hand, he
21 was, actually, more severely impaired in motor dexterity.
22 In other words, how he can, actually, perform a particular
23 eye-hand-type coordination, he was, actually, severely
24 impaired with that.

25 Some of the others would be what's called a trail

1 making test. He was average on one and borderline on
2 another. And what the trail making test assesses is the
3 executive functions, which essentially means how does
4 somebody put together complex issues and thoughts and how
5 do they process them and understand them, rather than
6 something very simple and concrete, multi-tasks and so
7 forth. And the other ones, he was all severely impaired
8 like I've just described

9 Q And with those destinations of anywhere from severely
10 impaired to below average, low average, borderline
11 average, what did you see the most of? What result did
12 you see more of, if any?

13 A Oh, he was severely impaired. Is that what you're
14 asking?

15 Q Yes, sir.

16 A Yeah. He was more impaired than average.

17 Q And the areas that -- the tests where he scored
18 severely impaired, were those tests generally testing a
19 specific area of his intellectual functioning?

20 A Well, to some extent. For example, the ability to
21 organize, the ability to attend, pay attention and
22 concentrate, the ability to even recall. His memory was
23 also one of the tests I've already described. Yeah, those
24 were all severely impaired.

25 Q And I've asked something similar to this before.

1 There are a lot of children, teenagers, adults who have
2 some memory problems who do not have the legal social
3 environmental problems Mr. Evins has. Would that be safe
4 to say?

5 A Yes. That's correct.

6 Q Would those things -- what kind of things -- what
7 kind of interpretations would someone have to social cues
8 with test scores like these?

9 A Well, this partially helped me with formulating my
10 understanding about how Fredrick Evins grew up and how he
11 existed, and his mental life today. But from what I see
12 here on the testing, as well as understanding from him as
13 well as peers -- or I shouldn't say peers, but more like
14 siblings, is that he had a hard time focusing on a great
15 deal of things, not only in school, he didn't pick up
16 social cues very well and he didn't know how to process
17 interpersonal relationships. What do I do with this?
18 Somebody seems like they like me, do I like them back?
19 How do I handle that? How do I maintain a relationship?

20 But it's -- I mean, the testing shows a little bit of
21 an indication where that could be a problem if you were to
22 extrapolate it. But also I had to take into account his
23 home life, that told me a whole lot, too. I don't know
24 how somebody could grow up in a home life that he had.
25 And that also was factored in and reasoned why --

1 MR. GOWDY: Your Honor, is that a professional
2 opinion or is that his personal opinion? He didn't know
3 how somebody could grow up in a home life like that. I
4 object to that if that's a personal opinion.

5 THE WITNESS: That's a professional opinion.

6 THE COURT: All right. Overruled.

7 BY MS. QUIMBY:

8 Q Let me see if I can redirect some of what you're
9 saying. If I understood you correctly -- and please
10 correct me if I'm wrong. When you say you don't know how
11 someone could grow up in that kind of household
12 environment, I understood what you said to be -- and
13 not -- and the end of the sentence being, and not have
14 some functional problems?

15 A Yes. Because I've seen a lot of families and have
16 worked with their kids who have had similar types of home
17 environments, and it's been devastating to their
18 development.

19 Q So is it possible, in your opinion, that Mr. Evins
20 could misunderstand any sort of social situation? Or
21 what -- if so, what sort of social situations,
22 interpersonal, work, employment, anything might he
23 misunderstand?

24 A He's had a long life of having difficulty
25 understanding and developing interpersonal relationships

1 in general. He has a difficult time developing close
2 friends, bonding with anyone. He's tried, I believe, but
3 he's been very unsuccessful. There isn't testing
4 necessarily that's going to say definitively that that's
5 going to happen for any individual. A lot of it requires
6 collateral information from the way the person grew up,
7 how they behaved in school, how they behaved with friends
8 and how they behaved at home. And that's what I took into
9 account.

10 Q Did you find that his organization of thoughts is --
11 where would you put that on a scale?

12 A Well, he doesn't have an easy time organizing
13 thoughts. I'm not saying that he's psychotic. But he has
14 a hard time prioritizing and has a hard time with complex
15 tasks. And he make a lot of mistakes and then goes back
16 and wonders why did I do this and how come I did this. So
17 he fumbles and doesn't learn necessarily from those
18 mistakes.

19 Q In the documents that you've reviewed in your
20 investigation of the case, did you have occasion to review
21 a report from an incident involving a strong armed
22 robbery?

23 A Yes, I did.

24 Q Do you have any professional opinion relating to
25 Mr. Evins' thought processes based on the testing?

1 A Yeah. It was rather dysfunctional. What he tried to
2 do was -- the strong armed robbery was he went to rob an
3 individual and take their money from their purse. They
4 didn't have any money in their purse, so he wanted them to
5 write a check. So they wrote a check to him, as I recall,
6 and then took the check, which I already thought was very,
7 you know, peculiar there. And then he didn't even cash it
8 for a couple of days. He needed the money at the time,
9 usually, to use for drugs or alcohol. But that is not the
10 typical way of a well thought-out criminal act that's
11 going to take place. That was dysfunctional all over the
12 place.

13 Q Would you say that that might be accounted for by his
14 difficulties with processing and perception?

15 A Yes.

16 Q Okay. What kinds of problems would anyone -- or
17 Mr. Evins, specifically, based on your experience, what
18 kind of problems would they have if they coupled the low
19 intellectual ability and any deficits, couple that with
20 alcohol and drug addiction or dependency or use?

21 A Well, it's not unique to Mr. Evins, but alcohol and
22 drugs are well known to be coping, self-medicating tools
23 for a lot of people, more than just always recreational.
24 He was frequently frustrated in his relationships and his
25 failures throughout his early life and he was exposed to

1 drugs and alcohol since before he was ten years old. And
2 those played a great part by the time he was a middle teen
3 in the abuse of alcohol and, specifically, cocaine. It
4 became more his life after the age of 16, where I found
5 him to be dependent on both alcohol and cocaine.

6 Q Okay. I don't think I've asked you this already, if
7 I have, I'm sorry. Did you get a feel for when his use of
8 alcohol and/or drugs began?

9 A By his -- well, his actual use of alcohol began when
10 he was able to access it in the home, even by the age of
11 six or seven. He wasn't exactly a chronic drinker by that
12 time. But by the time he was 16, alcohol and drugs became
13 a major part of his life. And that's what he definitely
14 strove to maintain a habit, if you will, of that
15 addiction.

16 Q Okay. And part of your credentials that you
17 discussed was that you were -- that you're an addictions
18 counselor?

19 A Yes, I have been.

20 Q That you have been?

21 A I have been in the past, that's correct.

22 Q Do you find that people who have these addictions,
23 these dependencies -- well, would you characterize
24 Mr. Evins as having an addiction or dependency to drugs?

25 A Yes. He has alcohol and cocaine dependency.

1 Q Would you call that huge, chronic, long-term?

2 A It's chronic. It's been going on for years.

3 Q Now, in your experience as an addictions counselor
4 and with your current experiences, people with those
5 addictions, do they tend to serve also as an escape
6 mechanism or -- why can -- I'm sorry. Is the dependence
7 just a physical dependence?

8 A No. There's psychological components as well as
9 physical components. And that's not unusual for both
10 cocaine and alcohol.

11 Q Have you had any opportunity to review any of
12 Mr. Evins' writings, anything that he has written?

13 A Yes, I have.

14 Q And what types of things would those be?

15 A He has written, while incarcerated, medical requests
16 to receive medications, other types of drugs that -- for
17 physical complaints.

18 Q Are they just limited to medical requests or are
19 there some other -- would there be any other writings?

20 A As I recall, I only remember seeing medical requests.

21 Q Well, were they all limited to being on medical
22 request forms or were some of them on other forms or other
23 writings?

24 A Well, he had food requests, if that's what you're
25 referring to. I mean, he made -- I mean, he would change

1 his food request, his tray request while in prison or in
2 jail and made requests for certain types of trays. But
3 most of them were for pains or medications.

4 Q And do you find anything interesting or significant
5 about that?

6 A Well, a couple of things could be drawn from that.
7 One is that he had a whole lot of physical complaints. I
8 know that he hasn't complained about too much of anything
9 else, except for maybe a food tray or aches and pains,
10 bumps and bruises. And requesting medication for this is
11 not unusual for individuals who are incarcerated because
12 it also may help get them out of lock up -- or the cell
13 that they're in. But also he focuses a lot on physical
14 complaints.

15 And the reason why that was a little bit interesting
16 to me is because individuals that I have worked with who
17 have had some of the intellectual limitations that he has
18 as well, there's a lot of focus on physical complaints.
19 There isn't a whole lot of understanding about emotional
20 interactions and so forth, but physical seems to be easy
21 to identify. I hurt here. Like the example I gave you
22 earlier, if I don't want to go to school, you know, the
23 thing I would make up, a rather immature way, my stomach
24 hurts and I don't want to go. And that's not unusual to
25 see in lockup status, that kind of complaint. And if he's

1 somewhat impaired intellectually as well, that's not
2 unbelievable at all.

3 Q Okay. As far as Mr. Evins' ability to demonstrate, I
4 guess -- I don't want to put words in your mouth or change
5 your words or anything. You said he had some difficulties
6 in perception and demonstrating logical thinking. Is that
7 an accurate --

8 A Well, he's demonstrated that, yes.

9 Q Okay. How would that have effected him as a child
10 growing up in the home life that you've described?

11 A Well, it would be difficult to learn how to cope,
12 especially with conflicts. That's just an example. If
13 one can't learn from their mistakes very easily or have
14 anybody to help them do that, then it's going to persist.
15 I saw some evidence of that in Mr. Evins' early life as
16 well.

17 Q And in your investigation, have you identified any
18 family members that were significant influences on him
19 growing up.

20 A Do you mean in a negative way or a positive way?

21 Q Well, in any way, any of the primary influences on
22 his life growing up?

23 A Well, he's -- he was greatly influenced by his
24 mother, who was rather strict and abusive of him. He had
25 two other brothers that he's talked about that he tried to

1 be close with. One, who is quite estranged from the
2 family because he tried to avoid the family, but when
3 Mr. Evins saw that, he did not want to abandon his mother
4 or the home life. I don't personally think he could leave
5 the home life, because he needed some form of structure.
6 But I would say that witnessing the way that other
7 siblings got abused was an influence on his early life.

8 Q When you say, "witnessing how other siblings got
9 abused," what are you referring to, Doctor?

10 A One of the brothers was severely beaten in the
11 presence of Mr. Evins. He talks about that with me and
12 doesn't know exactly what to do with that. And that was
13 done by his mother to where the young man, actually, had
14 to run away. And it was -- he received similar beatings
15 to that same example I am referring to.

16 Q Mr. Evins or --

17 A Mr. Evins, yeah, Fredrick Evins also received similar
18 beatings. And that significantly impacted his ability to
19 develop trust and who do I get close to. And I can still
20 see he's ambivalent about that because he still wants to
21 be protective of his mother and, yet, at the same time, he
22 talks about how difficult it was growing up in her house.

23 Q Okay. And I think you described there was a lot of
24 alcohol in the house. Do you know who it was -- you said
25 that Mr. Evins started at an early age, do you know who

1 else in the house might have been drinking?

2 A Yeah. His mother, he will describe her as an
3 alcoholic. She would take him and maybe a brother or two
4 to what they call "shot houses" down the road where she
5 would get quite inebriated. And when he got to be a
6 little older, I mean, by the age of 10 or 13, he would
7 find himself trying to rescue his mother, like I eluded to
8 earlier, trying to bring her back and get her back in the
9 house, because she was so dysfunctional.

10 Q Do you know if there was a father in the home?

11 A Not consistently at all. There was some -- there's a
12 stepfather in there. And he was allegedly abusive, too,
13 to the brothers.

14 Q Do you know whether he was an actual stepfather,
15 whether he was married to Mr. Evins' mother or whether --

16 A Actually, that has been really confusing. That's
17 another reason why I saw his early life as quite chaotic
18 is because it seemed like nobody knew who was related to
19 who, biologically or married or what have you. I cannot,
20 actually, say I know which one was his actual father.
21 There were several men that passed through the home. So
22 I, actually, don't have an answer for that.

23 Q Do you know what the relationship was like with --
24 and we'll call him his stepfather. Do you know what the
25 stepfather's relationship was with -- was like with Fred's

1 mother, with Fred, with his brothers?

2 A Yeah. Fredrick witnessed one of the stepfathers, if
3 you will, physically abusive to his mother and to his
4 brothers.

5 Q When you have a situation, Dr. Martin, with a person
6 with an IQ such as Fred's, where there's been alcohol,
7 drugs, exposure from an early age leading to addiction and
8 when you have -- when you're exposed to abuse whether
9 physical, emotional, mental, what kind of problems can
10 that cause when you put all that together?

11 A Well, most likely, that kind of lifestyle is going to
12 perpetuate. It's going to continue. It's not surprising
13 to me that this kind of behavior was not easily adapted in
14 the community and that he would get into trouble with the
15 legal system.

16 Q Do you find that common in your line of work -- not
17 you, but with the patients you see?

18 A Yeah. They've had similar developmental lifestyles
19 that have ended in -- typically, like I was telling you, I
20 work with a number of people and a lot of them are violent
21 offenders. And they have very similar childhood
22 developments as Fredrick has had.

23 Q You mentioned a brother, one of the brothers who left
24 at a somewhat early age, do you know if -- do you know if
25 he had any of the same problems developmentally that Fred

1 has had?

2 A The two brothers I've talked with, one, I did not
3 know of having any type of intellectual impairment. But
4 he could not tolerate the home environment and he left at
5 an early age to essentially, perhaps, lead a more healthy
6 life, which I understand he did better at that. Another
7 one, I understand he did have problems with substances and
8 eventually required rehabilitation.

9 Q Okay. But there was the one brother who kept his
10 head down and left the home; is that accurate?

11 A Yes.

12 Q Okay. And he grew up in the same home that Fredrick
13 grew up in; is that correct?

14 A Yes.

15 Q So do you have any opinion on how you can account for
16 two very different endings for two people coming from the
17 same environment?

18 A The brother we're referring to, his name is James.
19 He stayed to himself, meaning, away from the family and,
20 essentially, tried to escape the family. And, to the best
21 of my understanding, he did so successfully and saw how
22 dangerous or dysfunctional this was. And the impression I
23 got was some sort of mixed emotion, because that's my
24 family, but this is a very disruptive environment and I
25 cannot grow up and remain healthy and drug free and

1 alcohol free, which he apparently was able to do. But
2 that was because he escaped the family.

3 Q And I think you testified that, to your knowledge,
4 that brother, James, does not have any of the intellectual
5 deficits or -- I don't want to mischaracterize, but I
6 think you testified that that brother, James, does not
7 have the intellectual problems that Fred has; is that
8 correct?

9 A I don't know of him having any intellectual problems.
10 But I did not get the impression that he had the same kind
11 of school problems and so forth that Fredrick had.

12 Q You didn't perform any tests or view any tests about
13 that brother, did you?

14 A No, I didn't.

15 Q And have you heard that there would be any problems
16 with this --

17 MR. GOWDY: Your Honor, that's a leading question.

18 THE COURT: I sustain it.

19 MS. QUIMBY: I'll withdraw it.

20 BY MS. QUIMBY:

21 Q Do you have any opinion, Dr. Martin, on any
22 diagnosis -- have you diagnosed Mr. Evins with any major
23 mental illness?

24 A I diagnosed Mr. Evins with cocaine and alcohol
25 dependence. I also have what's called a rule out of mild

1 mental retardation that requires further assessment and
2 evaluation. There's a great deal of information that
3 you've heard already that leads me to suspect he has
4 intellectual deficits that created problems for him in
5 early life and school and have contributed to, not caused,
6 but contributed to his dysfunction in his later life. And
7 all of this was compounded further by the chaotic
8 upbringing, as well as substance abuse.

9 Q Okay. You mentioned mild mental retardation, is
10 there a difference between someone being retarded and mild
11 mental retardation? What are the parameters?

12 A Well, mild mental retardation is diagnosed with
13 several parameters, if that's what you're referring to.
14 It relies somewhat on IQ, that's one of the factors, but
15 also, how somebody adapts in their home environment,
16 school environment, and social environment.

17 Q Are there tests available to assess what -- we
18 already know about the IQ. Are there tests available to
19 assess the second part of what you described?

20 A I don't know if it's, actually, called a test, but
21 there are forms of assessment that would include some of
22 the parameters that we've been talking about, his ability
23 to adapt at home, perform in school, what type of
24 limitations were noted by a great number of people within
25 the school system, whether or not he was in a certain type

1 of learning track while in school, also, how he adapted to
2 conflicts when he was younger and so forth. Was there an
3 immature approach? Was there an immature perspective?
4 That sort of thing. It all reflects the adaptability of
5 the individual. Because IQ is only one prong of two, the
6 other being social adaptability that should be examined.

7 Q And can you tell me -- again, I apologize, I'm not
8 sure if I've already asked this. The test that the
9 neuropsychologist gave, did she give a current IQ result
10 for Mr. Evins?

11 A Yes, she did.

12 Q What was that?

13 A That was a 67.

14 Q 67. And I believe you testified that around 70 is
15 borderline?

16 A Borderline intellectual function, yes, ma'am.

17 Q So 67, obviously, is below 70?

18 A Yes.

19 Q When you were describing the assessments that go into
20 where you can adapt as being part of any diagnosis or
21 decision that you might make about whether someone is
22 mentally retarded, can those also be looked at or can
23 those also be assessed by reporting, by looking at
24 records, by talking to the individuals who know about all
25 of those things?

1 A That's where some of the data for those kind of
2 assessments is gathered from. It comes from school
3 records, talking with the teachers, home life, collateral
4 people who have known him when he was a kid, that sort of
5 thing.

6 Q To your knowledge, is there any requirement -- I
7 guess that is the right word. Is there any requirement
8 for any specific type of assessment, any named test of
9 assessment to determine that adaptability to day-to-day
10 life?

11 A Well, it isn't advertised as a certain, you must give
12 this particular type of assessment. Psychologists use
13 various ones to their liking. The America Psychiatric and
14 American Psychological Association, they consider some
15 formal testing to be most helpful, especially in this kind
16 of situation. Because when somebody is on the edge with
17 intellectual function as per the IQ, you have to make a
18 very important decision and you don't want to leave any
19 stone unturned.

20 So they try to standardize some of that approach.
21 And that would include that kind of assessment that
22 includes a lot of the material we've just been discussing.

23 Q Okay. But, again, I think you testified that a lot
24 of those factors don't have to be all included in
25 something called a specific named test or evaluation?

1 A Well, according to the Diagnostics Statistical Manual
2 that we use, it's a book that has criteria of a diagnoses,
3 it's a guideline, it doesn't cite any particular test.
4 But it does want a comprehensive evaluation of various
5 factors besides an IQ to make an intellectual functioning
6 assessment. And that would include areas of
7 communication, the ability to develop interpersonal and
8 social skills, how they take care of themselves,
9 responsibility, how they hold a job, how they perform in
10 school, that sort of thing.

11 And there's some companies that have invented
12 assessment tools and have a name on it that say what are
13 those type of factors -- you know, to what degree do those
14 factors play. And I agree that those factors are all very
15 important. And there's some assessments that are formal
16 like that and they say you must have those.

17 Q Okay. Have you been able to form any opinion about
18 Mr. Evins' communication skills and ability?

19 A Yes, I have.

20 Q What is that?

21 A He has difficulty communicating. He can be
22 articulate at times and then not seem to recall some of
23 the data or information that we're, actually, discussing.
24 I'm not talking about any type of crime-related data, I'm
25 just talking about everyday, how have you been doing

1 today, what were you doing a little while ago?

2 Just like the neuropsychologist found, I found that
3 sometimes he loses track of what was going on and that
4 previous conversation that was just a half hour ago. And
5 other people have told me as well that he had a hard time
6 expressing himself, even as a child. And that impacted
7 his ability or lack of ability to develop interpersonal
8 relationships.

9 Q Okay. Have you had an opportunity to form any
10 opinion about Mr. Evins' interpersonal or social abilities
11 or disabilities?

12 A Yes. He has chronically had a hard time bonding and
13 developing any close relationships. He doesn't understand
14 why people aren't liking him. He doesn't know exactly
15 what he has done wrong. He doesn't pick up social cues.
16 Sometimes he feels like he's got a lot of friends and
17 wonders where they are. It's frustrating for him and that
18 left him dismayed as well as outraged at times. But in
19 terms of establishing and participating in a long-term
20 healthy, not necessarily sexual, but healthy relationship,
21 he's really missed out. He doesn't have the tools to
22 foster that.

23 He was given an opportunity with his wife, who
24 appeared to offer him a great deal of stability, but that
25 may have been too late. She tried to set limits with him,

1 and that was too difficult. He would get frustrated and
2 leave the home. So I -- and that was somebody who was not
3 involved with drugs and -- you know, drugs and wouldn't
4 participate in any type of criminal behavior. And that's
5 the only person outside of the family who I've read about
6 or talked to that seemed to, at least, have had a
7 healthier approach to developing a relationship with
8 Mr. Evins.

9 Q Okay. And you also mentioned the ability to care for
10 one's self, self care. Have you been able to form any
11 opinion about that in regard to Mr. Evins?

12 A Yeah. He's had a very difficult time with that. He
13 didn't take care of himself as a child, and that was
14 reported in the school records. But also, even as a young
15 adult, he would live in a place and not even have the heat
16 or electricity turned on, no furniture. And it was stark.
17 And he didn't even recognize that, perhaps, that's not
18 even strange. And that created some concern to me as
19 well.

20 Q And you also mentioned jobs, employment-related
21 things, have you formed any opinion about his abilities or
22 inabilities in that regard?

23 A Well, when I first talked with Mr. Evins, I got the
24 impression from him that he held high positions in the
25 jobs that he worked. As I grew to know him a little bit

1 more, he did not have this high supervisory position,
2 although it sounded nice. He was often missing work. He
3 would work, be terminated for not showing up and try to
4 come back. He didn't understand why he was terminated at
5 times. His jobs were mainly like maybe a cook or a
6 dishwasher. And so those are a little bit different than
7 somebody who is essentially running a fast-food
8 restaurant.

9 Q Okay. And, lastly, you mentioned school. Have you
10 formed any opinion about Mr. Evins' abilities or
11 inabilities in relation to education?

12 A Well, through most of Mr. Evins' school records, they
13 indicate difficulty. There were a couple times where it
14 was thought that if he tried hard, he could do better.
15 And there were also remarks that he was only in resource
16 classes and not in special education. From talking with
17 teachers, he would not have been eligible for the special
18 education because of some of the scores that he did
19 receive that put him -- he was on the edge, but put him
20 over the edge and, no, you can just have resource classes.
21 But there was also suspicions from that teacher that he
22 had a lot more deficits, and she went the extra mile to
23 try to spend time with him. Most teachers don't have the
24 time to do that. But this teacher has reflected back on
25 that and realized that he was probably one that slipped

1 through the cracks and the system failed.

2 Q Taking all that into consideration, those were the
3 elements or the things you look at or that anyone would
4 look at when assessing for, I think, what you called the
5 second prong, not just IQ, but the ability to do the
6 day-to-day things, is that what you call that?

7 A Yeah. The things we were just discussing fueled some
8 of my concern for the fact that this fellow may function
9 at a lower than reported intellectual level of
10 functioning.

11 Q Would you -- have you formed any opinion about any
12 official diagnosis in that regard?

13 A I cannot put a hard core diagnosis of mental
14 retardation. I think that there's enough suspicion there
15 that it creates a great deal of doubt and concern that he
16 is an average intellectual functioning student as a youth
17 and as an adult. But it was enough to where I was
18 concerned that I felt that should be more closely
19 examined.

20 Q I may not have heard that completely. Did you say
21 that he was an average student and had average
22 intellectual ability?

23 A No. What I'm referring to is that because of what's
24 happened in his early life and the way he's behaved and
25 the way he's responded to his early development, and then

1 also an IQ test suggests that he's right on the edge of
2 intellectual functioning. That creates great concern. I
3 don't think that he is one of those individuals that is an
4 average student.

5 Q Okay. The neuropsychologist who administered several
6 of those tests, did she have any opinion -- because you
7 consulted with her. Did she have any opinion on his -- on
8 any ultimate diagnosis in that regard?

9 A She said that his IQ was extremely low, in the MR,
10 mental retardation, range.

11 Q And that would be something below 70?

12 A That's correct.

13 Q Taking into account that you would also have to have
14 the, I guess, adaptability?

15 A That's correct.

16 Q So while you cannot say absolutely that Mr. Evins is
17 mentally retarded, what I understand you to say is that
18 you have a very strong suspicion that he may fall
19 somewhere between mildly mentally retarded and mentally
20 retarded, am I understanding that correctly?

21 A I have a strong suspicion that he falls into the mild
22 mental retardation range, and I would like more
23 information on that.

24 Q In your experiences in dealing with people who are
25 mentally retarded, people who have low intellectual

1 functioning, people that are mildly mentally retarded,
2 what sort of environments do they thrive in? What sort of
3 environments are good for them? What sort of environments
4 are bad for them?

5 A I work with about 80 juveniles up to the age of 21
6 who are mildly mentally retarded or moderately mentally
7 retarded, around 50, 60, low 60's, down to 50 and a couple
8 of them are 40. The facility I work at is often the last
9 resort facility because they failed previous treatment
10 facilities. And a great deal of them have committed
11 violent crimes. And they have responded well to the
12 residential treatment that we have provided for them.
13 This treatment environment is structured. There's clear
14 rules. They must adhere to the rules. They're reminded
15 of the rules. It's very routine. If they break the
16 rules, they're penalized and see consequences for it.
17 That is unlike previous environments for them, where it's
18 a little bit more open and free, independent living, that
19 sort of thing. It just doesn't work for them. This kind
20 of structure routine best served them and they have become
21 the most stable in that kind of environment.

22 Q Okay. And would that also go -- well, you've also
23 had a good deal of experience in working with people who
24 have the poly or multi-substance abuse problems, what sort
25 of environments do they do well in?

1 A Well, some of the juveniles and young adults that
2 I've had in this program have done well, because we also
3 address those kind of issues, substance abuse,
4 rehabilitation. And they also require the structure. The
5 lower the intellectual function, there's a greater
6 likelihood of resorting to old ways, if they run into any
7 conflict, that would lead to relapse, either bad behavior
8 or using drugs. So a structured environment has been most
9 helpful for them.

10 Q And for people with dependence or addictions, you
11 would recommend, for your patients, at least, residential
12 as opposed to outpatient treatment?

13 A Well, it's a purely --

14 MR. GOWDY: Your Honor, I'm going to object on the
15 basis of relevance.

16 THE COURT: Sustained.

17 BY MS. QUIMBY:

18 Q In your experience with people that have been
19 diagnosed with low intellectual functioning, mild mental
20 retardation or mental retardation, you believe that a
21 structured environment suits them well; correct?

22 A Yes, especially with the ones I've worked with who
23 have been criminals in their lives as well.

24 Q In your opinion, Dr. Martin, do you believe that
25 Mr. Evins fits into one of those categories that would

1 benefit from one type of structural environment over the
2 other?

3 A Yes.

4 Q And that would be the stricter structured
5 environment?

6 A Yes. He cannot be relied upon to monitor his own
7 behavior and to stay off of drugs and to follow the rules.

8 MS. QUIMBY: Just one moment, please.

9 (Pause.)

10 MS. QUIMBY: Dr. Martin, please answer any questions
11 that the State might have.

12 THE WITNESS: Certainly.

13 THE COURT: Ladies and gentlemen, we're going to take
14 a break for a few minutes. We've been going for quite a
15 while, and it would be a good time to stretch your legs.
16 So if you'll retire to the jury room, we'll get back with
17 you in a few minutes.

18 Please don't talk about the case.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 4:22 p.m.)

21 THE COURT: All right. Just a second, Doctor.

22 Doctor, while I've got you, I would like to know if
23 it's your opinion that Fredrick Antonio Evins suffers
24 significantly subaverage general intellectual functioning?

25 THE WITNESS: If you're asking me, sir, if he suffers

1 clearly from mental retardation, even of a mild state, I
2 cannot say definitively, no.

3 THE COURT: Let me re-ask this question and see what
4 your answer is.

5 Do you think that he suffers from a significantly
6 subaverage general intellectual functioning which existed
7 concurrently with deficits and adaptive behavior and
8 manifested during the developmental period?

9 THE WITNESS: Yes, I do.

10 THE COURT: All right. We'll be at ease.

11 Thank you.

12 You can stand down, Doctor.

13 Please don't discuss your testimony.

14 THE WITNESS: I won't.

15 THE COURT: Is there something you want to say?

16 I'll see y'all back in chambers. Come back to
17 chambers, everybody.

18 Doctor, you can stand down.

19 Thank you very much.

20 MR. GOWDY: Your Honor, has he been admonished not to
21 speak to anybody?

22 THE COURT: Yes, he has. He's not going to talk to
23 anybody.

24 (WHEREUPON, a break was taken.)

25 THE WITNESS: Your Honor, may I make a -- may I ask a

1 question for clarification?

2 THE COURT: What's that?

3 THE WITNESS: When you were asking me if the
4 individual was significantly impaired, I don't remember
5 the exact jargon, my response to you is that he is
6 significantly enough impaired that it creates concern and
7 suspicion on my part that there is intellectual
8 inadaptability problems that should be further examined,
9 which reflects my earlier testimony.

10 THE COURT: How long would it take to do that?

11 THE WITNESS: With a psychologist in that field, it
12 could take anywhere from a week to a couple of weeks.

13 THE COURT: It can't be shortened in any way?

14 THE WITNESS: It could be. It depends on the
15 psychologist.

16 THE COURT: We don't even have -- there's not even a
17 psychologist ready to perform the task; is that right?

18 THE WITNESS: Not today, no, sir.

19 THE COURT: All right. Can I -- Dr. Martin, can I
20 ask you to step down for a minute.

21 Does the State have a psychiatrist here?

22 MR. GOWDY: Your Honor, Dr. Pam Crawford.

23 THE COURT: You can come around, Ms. Crawford.

24 Thank you.

25 THE CLERK: Do you want me to swear her?

1 THE COURT: Yes, please.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right.

4 WHEREUPON,

5 PAMELA CRAWFORD, M.D.,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you

8 Have a seat.

9 EXAMINATION

10 BY THE COURT:

11 Q Thank you, Dr. Crawford.

12 I'm not -- this is for my inquiry only and you --
13 you've been in the courtroom and heard Dr. Martin's
14 testimony; is that correct?

15 A That's correct.

16 Q Do you concur in his diagnosis that there needs to be
17 a rule-out of mental retardation?

18 A What I would say is that with the one IQ score we
19 have of 67, that would be enough for me to say a full
20 evaluation about mental retardation, given the
21 circumstances of this case, would be indicated. He and I
22 differ. There have been several others that do not
23 indicate mental retardation. There's been issues of
24 adaptive functioning that would lead one strongly away
25 from mental retardation. However, given that number, I

1 would say that you need to do a full evaluation for mental
2 retardation.

3 Q How long do you estimate that would take?

4 A Well, the first part is we need a psychologist who
5 can do some of the adaptive functioning tests. This is
6 further complicated because it's the assertion of
7 Dr. Martin that he had these deficits in school, but fell
8 through the cracks. If I were to do an evaluation, I
9 would be wanting to explore in detail, why was this guy
10 not in special education? Because you have to establish
11 prior to age 18 that there's evidence of mental
12 retardation. So there would be things such as that, there
13 would be things such as talking to employers, looking at
14 driver's license tests. These are the kind of things that
15 I do as part of an evaluation. Also talking to people who
16 are not involved emotionally in the case, but have
17 witnessed him over the years to see about adaptive
18 functioning.

19 So there would be that as well as, perhaps, trying to
20 get the original test data from his -- he had four IQ
21 tests prior, three of which were not in the range of
22 mental retardation. So there's a good bit of work to be
23 done on that, I would think, in order to have it be
24 complete. But at the very least, you'd need to get a
25 psychologist to do, in my opinion, the testing.

1 Q So you would not be -- or would you be able to
2 definitively say today, based on what you know and what
3 you've done and what you've seen, that Mr. Evins falls
4 significantly -- is he significantly subaverage general
5 intellectual functioning existing concurrently with
6 deficits in adaptive behavior and manifested during the
7 developmental period?

8 A I could not say that.

9 THE COURT: Okay. Any questions that anybody wants
10 to ask this witness on this limited matter of whether or
11 not she's able to make a diagnosis -- a definitive
12 diagnosis?

13 MR. GOWDY: Your Honor, just one question for
14 Dr. Crawford.

15 THE COURT: Yes.

16 EXAMINATION

17 BY MR. GOWDY:

18 Q If there were the psychological tests that you have
19 referenced and if those were before you, how long would
20 you think -- the other information that you would want,
21 how long would it take you to accumulate if you, just say
22 hypothetically, devoted all of your energies to determining
23 this? What's the best case scenario?

24 A I would say a couple of days if I could reach the
25 employers, if I could reach the school people, if I can

1 get collateral sources. Again, it's the availability.
2 But if we worked real hard, I would say it would take a
3 couple days to try and get that information, you know, if
4 I could devote all my time to that, at least, that amount
5 of time. But if everybody was putting an effort into
6 getting people that I could talk to, then that would be
7 something I could do.

8 MR. GOWDY: That's all, Your Honor.

9 MR. BOGGS: Nothing, Your Honor.

10 THE COURT: Thank you, Dr. Crawford.

11 Let me see the lawyers up here for a second.

12 (WHEREUPON, a bench conference was held with the
13 attorneys.)

14 THE COURT: My problem is she needs three days. He
15 needs a week. That's two weeks. This is Thanksgiving and
16 I'm not going to hold the jury over Thanksgiving. I mean,
17 I'm just not.

18 MR. GOWDY: I can't ask you to do that. There are no
19 good options.

20 THE COURT: Well --

21 MR. GOWDY: The concern -- I know that the Judge is
22 probably -- the Court has already thought about this, but
23 if we're talking about a mistrial, I think it needs to be
24 clear what the reason for the mistrial is so nobody comes
25 back and says that the State of South Carolina did

1 something to cause a mistrial and, therefore, are barred
2 from seeking the death penalty. Because that is not, from
3 my prospective, what has caused a mistrial.

4 THE COURT: All right. Well, I think what we need --

5 MR. GOWDY: And I hate it for this jury. They have
6 about a week and a half invested in this case.

7 THE COURT: Do y'all have anything that you can think
8 of?

9 MR. BARNETTE: Judge, there is one other option, you
10 could wait. It's late and you can wait until the morning
11 and think about it overnight.

12 THE COURT: Well, I'm thinking about doing that. I
13 don't think there's any -- I'm going to think about it
14 overnight.

15 MR. BOGGS: I was going to say whatever you do, let's
16 wait until the morning. I think Barry is right about
17 that.

18 THE COURT: All right.

19 MR. BOGGS: I just think I'm not going to -- I know
20 what the Solicitor is saying.

21 THE COURT: It's got to be -- this Bell case is
22 pretty clear.

23 MR. BOGGS: I know.

24 MR. GOWDY: I was concerned before you ever asked the
25 question. When he started saying we would have to do more

1 tests --

2 THE COURT: I know.

3 MR. GOWDY: Yes. It's great for me to ask him on
4 cross, well, why didn't you do it, but that doesn't help.

5 THE COURT: We'll break for the night.

6 (WHEREUPON, the bench conference was concluded.)

7 THE COURT: Let's get the jury back in.

8 (WHEREUPON, the jury came into open court at
9 approximately 4:51 p.m.)

10 THE COURT: Madam Forelady, ladies and gentlemen of
11 the jury, we had an issue that came up which has kind of
12 delayed things. And I'm sorry I had to ask y'all to step
13 out. I appreciate your patience. You've been patient and
14 hardworking throughout the trial of the case. And because
15 it almost 5:00, we're going to break for the evening. So
16 if y'all will just, again, not discuss the case. Head on
17 back, you all relax and have a pleasant evening. And
18 we'll see you back in the morning at 9:00.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 4:52 p.m.)

21 THE COURT: We'll be adjourned until 9:00.

22 (WHEREUPON, the proceedings were concluded at
23 approximately 4:52 p.m., to be reconvened on
24 Thursday, November 18, 2004.)

25

1 continuance. And whether the Court wants to unsequester
2 the jury and send them home or leave them at the Marriott,
3 I'll leave to the Court.

4 But in 48 hours, we will be ready to make a report to
5 the Court. If my psychologist finds him mentally
6 retarded, I'll tell the Court. If she doesn't, then we're
7 able to meet the Defense that arose yesterday afternoon
8 for the first time.

9 THE COURT: All right. I don't think unsequestering
10 the jury is an option. My understanding of the media
11 coverage is that that would not be an option.

12 MR. GOWDY: Yes, sir.

13 THE COURT: I think some of the coverage I've heard
14 about is inflammatory, to say the least.

15 What I'd like to do is take a look at the
16 neuropsychological report that we've got. I haven't seen
17 it.

18 Your experts have had an opportunity to review this
19 report?

20 MR. GOWDY: We saw the report, Your Honor. We have
21 not seen the underlying data. There was testimony
22 yesterday that this Defendant was not malingering. None
23 of the tests that are listed on Dr. Brawley's report goes
24 to the issue of malingering.

25 So we would also like the Defense to waive any

1 privilege and allow our experts to talk to Dr. Brawley.
2 She didn't come yesterday to testify, although their
3 expert relied on her opinion in her report. Our experts
4 are familiar with Dr. Brawley, also, and have a good
5 working relationship with her. They'd like to be able to
6 talk to her as well.

7 MR. BOGGS: I've discussed that issue specifically
8 with Mr. Evins and explained that for them to talk to
9 Dr. Brawley, he'd have to waive the patient/doctor, and he
10 agrees that that's fine with him.

11 THE COURT: This is all you've got?

12 MS. QUIMBY: That was all I was provided, Your Honor,
13 by Dr. Brawley. She let me know about those results over
14 the phone, and then I received that. She has consulted
15 substantively with Dr. Martin about that in great -- in
16 some detail.

17 THE COURT: Dr. Martin, could I ask you to come back
18 around and let me talk to you a little bit?

19 EXAMINATION

20 BY THE COURT

21 Q Doctor, do you have your stuff with you? I want to
22 get a little bit -- make sure what I'm understanding the
23 facts to be.

24 A Yes, sir.

25 Q All right. Well, I'm probably going to want to ask

1 you about other historical data. You said that there were
2 three other previous IQ tests. Is that -- was that your
3 understanding?

4 A Actually, they were school-related administrative IQ
5 tests. They're less comprehensive, but they were done in
6 the early elementary school --

7 Q Were they the Weschler Adult Inventory Scale Test?

8 A No, sir.

9 Q They were done when?

10 A They were done, I believe, in the first, second, and
11 third grade time period.

12 Q Okay.

13 A Second, fourth, and again in the fourth. He repeated
14 the fourth grade and the sixth grade.

15 Q Do you have the years and the results?

16 A I do not have the years. I have his age.

17 Q What was his age?

18 A The first one was in second grade at age 8, a 69. At
19 10 years of age, fourth grade, the first time 84. At 11
20 years old, fourth grade again, second time, 75. And at 13
21 years old, sixth grade, 76.

22 Q So the eight-year-old result was 69?

23 A Yes, sir.

24 Q Then there was a significant -- and these were
25 administered by school personnel and not by -- or you

1 don't know who administered the tests?

2 A No. I do believe it was the school district. But,
3 no, I did not see the actual tests, just the results.

4 Q But they were definitely not the Weschler Adult
5 Inventory?

6 A No, sir. My understanding is they're OLMAT,
7 O-L-M-A-T.

8 Q O-L-M-A-T. And what do you know about that?

9 A From my consultation with Dr. Brawley is that it's a
10 more cursory test. It's not comprehensive and she, to my
11 understanding, did not feel that they're always correlated
12 to what would be found on another Weschler form of the IQ
13 test.

14 Q And my understanding is the Weschler test has a plus
15 or minus grading in there of five points either way; is
16 that right?

17 A Between five and ten. That's my understanding, too,
18 sir.

19 Q But this is not really your area of expertise?

20 A That's correct, sir.

21 Q Do you know whether Dr. Brawley -- what other tests
22 Dr. Brawley administered?

23 A The only tests I am certain of are the ones listed in
24 the same report that you have.

25 Q All right. Now, there's a test known as the Vineland

1 Adaptive Test, is there not?

2 A Yes, there is.

3 Q And do you know what the purpose of that test is?

4 A Yes. The Vineland is used to assess an individual's
5 ability to adapt to their social environment, home
6 environment, or school environment.

7 Q And is that one of the tests that needs to be done?

8 A It's not dictated as such, but that is one that's
9 been done in the past for situations like this. There are
10 others that are similar to that or assessment tools that
11 are similar to that that I've heard of as well.

12 Q Okay. Have you -- you've talked to Dr. Brawley?

13 A Yes, sir.

14 Q And did Dr. Brawley indicate that she had all -- is
15 it a she?

16 A Yes.

17 Q And she had all the information?

18 A No, sir. She did not believe that there was a
19 comprehensive enough social evaluation.

20 THE COURT: Anything y'all want to ask him?

21 MR. GOWDY: With respect to the questions the Court
22 just asked?

23 THE COURT: Well, I know you haven't cross-examined
24 yet, so, yes, I guess with respect to -- I don't know if
25 we've laid it out on the record, but the fact that there

1 is evidence in the record that he would -- I would say his
2 verbal IQ on this recent Weschler test is 66, performance
3 is 75, and full scale is 67. And that as a result of the
4 recent United States Supreme Court case, the Atkins case
5 and also Franklin v. Maynard here in South Carolina, the
6 death penalty is not allowable for a person who is found
7 to be mentally retarded.

8 So we are in a -- I guess the attorneys -- we're in a
9 very unusual situation. And this is -- I don't think
10 there's any -- this is a brand new area of the law. The
11 Maynard case lays out a -- or Franklin v. Maynard lays out
12 a road map for how to handle these problems or these
13 issues. And it has not been followed up to this point.
14 So if you want to ask him some questions about that, then
15 please feel free.

16 EXAMINATION

17 BY MR. GOWDY:

18 Q Dr. Martin, what were the scores for the other IQ
19 tests that he took in grade school?

20 A Those are the ones I just repeated.

21 Q I didn't hear the score. I heard the age and year,
22 but I didn't hear the score.

23 THE COURT: I have -- go ahead.

24 MR. GOWDY: Do you have them, Judge?

25 THE COURT: I have 69 at age eight, 84 at age 10, 75

1 at age 11, and 76 at age 13.

2 BY MR. GOWDY:

3 Q Dr. Martin, would you agree -- or would you advise
4 the Court that there are three components to a finding of
5 mental retardation with an IQ score being one of the three?

6 A I'm not sure if I understand the question.

7 Q Well, the Maynard scale that the Judge just laid
8 out --

9 A Yes, sir.

10 Q You've got -- IQ score is one component of it?

11 A Yes, sir.

12 Q But you can have an IQ score of 67 and not be
13 mentally retarded?

14 A That is correct.

15 Q So you look at adaptive functioning, which I think
16 your testimony yesterday was you're not fully able to
17 speak to that, because you haven't interviewed everybody
18 you want to interview or haven't done all the tests you
19 want to do; is that correct?

20 A I would ask other people to do that kind of
21 assessment, that's correct.

22 Q And I believe the Maynard case also says that the
23 most significant tests are those done during the
24 developmental stage?

25 A Yes.

1 Q Would you agree that tests done earlier in life would
2 be more related to the developmental stage than those
3 done, say, a month ago at age 35 or 36?

4 A That may be true, yes.

5 MR. GOWDY: Well, then I don't think we have enough
6 information to make the decision, Judge.

7 THE COURT: Doctor, you can stand down.

8 Thank you.

9 Do y'all have any questions you want to ask?

10 MR. BOGGS: No, sir.

11 THE COURT: Now, you had the -- what case law were
12 you looking at?

13 MR. GOWDY: What case was I looking at just now, Your
14 Honor?

15 THE COURT: Yes. What were you referring to earlier
16 when you said you had case law?

17 MR. GOWDY: Your Honor, I was referring to case law,
18 Gilliam v. Foster. I was referring to case law on the
19 issue of mistrial versus continuance versus absolute
20 necessity versus what is the remedy when we find
21 ourselves, as the Court said, in an unusual situation such
22 as this. And I was just going --

23 THE COURT: Well, you said -- you made some mention
24 that you would be barred from further prosecution. What's
25 your basis for that?

1 MR. GOWDY: In Gilliam v. Foster, if the Defense does
2 not --

3 THE COURT: What's your cite on that?

4 MR. GOWDY: 75 F3d 881.

5 THE COURT: Where is that case from?

6 MR. GOWDY: That's a Fourth Circuit case, Your Honor,
7 Onbalonky [phonetic] was reviewing a decision by Judge
8 Johnson, a circuit court judge here in South Carolina. He
9 granted a mistrial. The Defense did not ask for it and
10 did not consent to it, but it was conduct that the Defense
11 had done. They had left some pictures where the jury saw
12 them when walking out. Townes Jones, the Solicitor, asked
13 for a mistrial, the Judge granted it.

14 The Fourth Circuit said the mistrial was not an
15 absolute necessity. There were other things that the
16 Judge could have done. So since the Judge granted a
17 mistrial improvidently, the State was barred from
18 re prosecuting that --

19 THE COURT: What's your date on that case?

20 MR. GOWDY: 1996.

21 THE COURT: Did you look at Gill v. The State?

22 MR. GOWDY: Yes, sir. We looked at Gill last night.

23 THE COURT: You don't think that's going to be
24 controlling in this situation?

25 MR. GOWDY: Your Honor, I think if the Defense does

1 not ask for it and does not consent to it, then the
2 analysis is whether or not there was an absolute necessity
3 to grant the mistrial. And the only case that I was able
4 to find where our court said it was an absolute necessity
5 was when the Solicitor died during the course of a capital
6 trial.

7 THE COURT: Well, I mean, the Gill case speaks
8 directly to this issue. So it's not your position that
9 manifest necessity is the standard that would be --

10 MR. GOWDY: Yes, sir. I think the issue becomes one
11 of what is manifest necessity. And we found cases last
12 night where if the Court has an alternative to a mistrial,
13 the Court should opt for that alternative.

14 And there is precedent in this state in a capital
15 trial where a jury came down with the flu -- or a lawyer,
16 rather, came down with the flu and there was a four-day
17 continuance for recovery. That was -- I talked to
18 Solicitor Bailey last night. Someone in my office talked
19 with a law clerk, I believe, with Judge Nicholson where
20 there was a one-day continuance given because of an
21 illness of a lawyer or a juror. I would think a
22 three-week continuance would be one thing, but a two-day
23 continuance for Dr. Crawford and my psychologist to be
24 able to do what they want, I don't know that -- I cannot
25 say for certain that a court would say that was an

1 absolute manifest necessity to mistry this case, rather
2 than leave a jury sequestered for two more days.

3 THE COURT: All right.

4 MR. GOWDY: And my fear is if I'm wrong, then we will
5 be barred from retrial.

6 THE COURT: Well, the guilt in this case has been
7 established, so you're just -- you're talking only about
8 the penalty phase?

9 MR. GOWDY: Yes, sir.

10 THE COURT: Okay. Now, I ask the Defense, the State
11 can be ready in two days --

12 Is this material that can be shared among the various
13 experts?

14 MR. GOWDY: Your Honor, we went last night in the
15 course of two hours and found as many of his living school
16 teachers as we could find. We're delighted to share that
17 with the Defense. We, actually, used the same documents
18 they gave us to find these teachers, so the people are out
19 there. If the Court says do it in 48 hours, I think it
20 can be done. I know we can do it in 48 hours.

21 THE COURT: So you'd want to reconvene court on
22 Saturday?

23 MR. GOWDY: Your Honor, I --

24 THE COURT: We're not going to take --

25 MR. GOWDY: Yes, sir.

1 THE COURT: Well, I mean, I'm not going to wait until
2 Monday.

3 MR. GOWDY: No, sir. But I -- I hate it for the
4 jury, but I don't know what else --

5 THE COURT: Well, I think they'd rather not wait
6 until Monday to reconvene either. I don't think --
7 especially if it's only two days. The risk of
8 contamination of the jury panel is way too high to let
9 them loose. And it's working a terrible hardship on them,
10 but that's the nature of the beast.

11 Now, from the Defense, what do you all have to say?
12 Anything?

13 MR. BOGGS: Well, Your Honor, I certainly understand
14 the dilemma, obviously. And I don't think that the remedy
15 that the Solicitor has offered is really unreasonable.
16 It's very inconvenient. If within that 48 hours, the --
17 all the doctors can have -- make their diagnosis -- or
18 have access to whatever they need and finalize it within
19 the 48 hours. And along those lines, as I've previously
20 stated to the Court, Mr. Evins has waived any privilege
21 and he will so state on the record to free up reports from
22 Brawley or whomever. If it can be done within 48 hours, I
23 think that that's --

24 THE COURT: Mr. Evins, stand for me.

25 Would you please raise your right hand?

1 WHEREUPON,

2 FREDRICK ANTONIO EVINS,

3 after first having been duly sworn, testified as follows:

4 THE COURT: You've heard what your attorney just
5 said.

6 Do you understand what he's talking about?

7 DEFENDANT EVINS: Yes, sir.

8 THE COURT: And is it your desire to give up or to
9 waive any claim of privilege that you have with respect to
10 these medical and psychological documents?

11 DEFENDANT EVINS: (Defendant nodded.)

12 THE COURT: Is that what you want to do?

13 DEFENDANT EVINS: Yes, sir.

14 THE COURT: All right. And it would be essentially
15 sharing information among the experts.

16 Do you understand that?

17 DEFENDANT EVINS: Yes, sir.

18 THE COURT: Has anybody forced you, coerced you,
19 threatened you in any way, or promised you anything to get
20 you to waive those rights?

21 DEFENDANT EVINS: No, sir.

22 THE COURT: You're doing it freely and voluntarily?

23 DEFENDANT EVINS: Yes, sir.

24 THE COURT: Do you have any questions you want to ask
25 about that?

1 DEFENDANT EVINS: No, sir.

2 THE COURT: Okay. Thank you.

3 Anything else we need to present at this time?

4 MR. GOWDY: No, sir, Your Honor.

5 I just think our -- Dr. Crawford and Dr. Ginsberg
6 need to get with Dr. Brawley and Dr. Martin and -- my
7 conference room is available. If all the experts want to
8 use that to interview these people individually, I've
9 got -- we need the Defendant also to administer the test,
10 such as the one the Court mentioned, the Vineland and
11 Adaptive Life Skills tests. Anybody we find -- I've got
12 my investigators that are going out trying to locate
13 teachers and employers and when we find them, they're
14 available to anybody.

15 THE COURT: All right.

16 MR. BOGGS: I have explained to Mr. Evins that both
17 sides will be administering tests, and he understands
18 that.

19 THE COURT: All right. Is there anything else during
20 this 48-hour period that these experts are going to need?

21 MR. GOWDY: Just access to the Defendant is what my
22 experts tell me, Your Honor.

23 THE COURT: All right. Well, we know where he's
24 going to be.

25 MR. GOWDY: Yes, sir. Access to the Defendant and I

1 think we know his family members, maybe addresses for the
2 family members, and the rest of them we can find.

3 THE COURT: All right. Anything that the Defense
4 needs and their experts need?

5 MR. BOGGS: No, sir, just the mutual communication.
6 And I think Dr. Crawford and Dr. Martin have already
7 discussed that.

8 THE COURT: Okay. Well, the jury is coming in at
9 10:00, and I will give them the happy news. So I guess
10 y'all probably need to be here at that time. And we'll
11 reconvene Saturday morning. Is there anything that --
12 anything else we can deal with, any other issues that need
13 to be addressed that you can think of right now?

14 MR. GOWDY: No, sir.

15 THE COURT: All right. Well, I thank the attorneys
16 for their diligent work in coming up with this resolution
17 of a very difficult problem. I don't think -- we'll just
18 see what the results are.

19 MR. GOWDY: Yes, sir.

20 THE COURT: So I guess we will look to conduct a
21 hearing Saturday morning at --

22 If we convene Saturday morning at 9:30, is that going
23 to give enough time?

24 MR. GOWDY: Yes, sir.

25 THE COURT: All right. Well, we'll look to reconvene

1 then Saturday morning. The attorneys are going to
2 stand -- Saturday morning at 9:30. The attorneys are
3 going to stand down until 10:00 when the jury comes, and
4 we will tell them to break.

5 If the experts want to go ahead and get started, let
6 them go.

7 Thank you.

8 (WHEREUPON, a break was taken.)

9 (WHEREUPON, Defendant's Exhibit Nos. 4, 5, 6, and 7
10 were marked for identification only.)

11 THE COURT: Let's huddle.

12 MR. GOWDY: Yes, sir.

13 THE COURT: All right. Now, you want -- they need
14 your client; is that right?

15 MR. BOGGS: I didn't think about that.

16 MR. GOWDY: Ginsberg, the first thing out of his
17 mouth when I went up there and I said, I'm going to be
18 back in court, he said, I've got to have the Defendant.
19 He said, I need to talk to him for 90 minutes. I need to
20 do my test. He said, I can be through in half a day with
21 him, but can't start until I get him.

22 THE COURT: We'll do that.

23 This jury is upset. Okay. They want to work until
24 8:00 at night until we get done. And I just can't wait
25 until I tell them we're not working today.

1 We'll come back tomorrow and put all the witnesses
2 up.

3 How long will that take?

4 MR. BOGGS: A couple of hours.

5 MS. QUIMBY: A couple of hours.

6 THE COURT: And we'll come back Saturday and do the
7 shrinks.

8 How long will that take?

9 MR. BOGGS: Into the morning.

10 THE COURT: Are you going to put up Brawley?

11 MS. QUIMBY: From what Brawley has told me before, it
12 is common practice for her not to come. She didn't
13 come --

14 MR. BOGGS: We'll just put it in based on her
15 reports.

16 MR. GOWDY: I may have a little cross for Dr. Martin
17 and probably Ginsberg and Crawford and -- you know, it
18 won't be much of a case in reply. But if I find a teacher
19 that refutes what they're saying.

20 THE COURT: Okay.

21 MR. GOWDY: I don't know.

22 THE COURT: Well, I'm not going to limit you.
23 They're going to want the case Saturday. They want out of
24 here.

25 MS. QUIMBY: I've already let Barry know that two of

1 the individuals that they're going to want to talk to is a
2 fourth grade teacher and one is a former employer. And
3 they're here and available to them.

4 THE COURT: All right. We'll just come back tomorrow
5 morning at 9:30, I guess.

6 All right. Bring the jury in.

7 (WHEREUPON, the jury came into open court at
8 approximately 10:18 a.m.)

9 THE COURT: Madam Forelady, ladies and gentlemen of
10 the jury, welcome back. Again, I want to thank you for
11 your patience and all your hard work up to this point.
12 And I think it's readily apparent and obvious to everyone
13 and, certainly, you have learned firsthand just how
14 serious and important a case of this nature is. And
15 because of the possible or potential outcome of this case,
16 it is vitally essential that we follow precisely the
17 mandates of the law, that we follow precisely certain
18 procedures which have been laid out, what we call legal
19 precedent. And so that is what we're now engaged in.

20 What this means to you -- I can't really discuss it
21 with you. As I told you before, there will be matters of
22 law that will come up from time to time during the trial
23 that I can't discuss in front of you, and y'all have not
24 been privileged to those discussions and those events.
25 But what you all see is the end result, which is the

1 admissible evidence. And that's where we're headed right
2 now, is to establish admissible evidence for your
3 consideration.

4 Unfortunately, and unusually in this case, the
5 requirement that we get to you all the admissible evidence
6 in this case is going to require us to break for the
7 remainder of the day. And so I am -- I have talked with
8 the SLED agents. We are going to try and make
9 arrangements to make you just as comfortable as we
10 possibly can. I want you to know in your minds and in
11 your hearts -- I don't want you to blame anyone for this.
12 This is, as I told you, what -- our system is what makes
13 our country so great. As much criticism as our judicial
14 system is subject to, when you think about the bottom line
15 and how well our country runs, we do have the best system
16 in the world. It's not without problems and it's not
17 without work and sacrifice on the part of a lot of people
18 that that happens.

19 I am asking you all to make a sacrifice, which I know
20 is not pleasant. I know you want to work and get through
21 this and be done with it. The job at hand is right in
22 front of us. But if we rush through it, we will not do it
23 properly. And with the importance of this case, we want
24 to do it properly.

25 So we'll make arrangements to make you as comfortable

1 as, possible, and the SLED agents will talk with you.
2 I've talked with them about activities and such for you
3 all. And we will, again, make you as comfortable as
4 possible. If you have requests or concerns, please let
5 the agents know. They communicate with me and I'm aware
6 of all that. And we will do everything we possibly can to
7 make your service as comfortable as possible.

8 Now, having said that, y'all can leave the courtroom.
9 And if you're going to blame somebody, blame me. Because
10 it's my responsibility to run the trial and I'll take the
11 fall for that. So, at this time, y'all relax as best you
12 can. Go back there, take your frustration -- I should
13 give you a picture of me and some darts, but I don't think
14 I can do that. But y'all relax and have a good time as
15 best you can. If you have concerns or questions that you
16 want to express, go ahead and tell the agents now. I'll
17 talk to them in just a few minutes. And then we will see
18 you back tomorrow morning at 9:30. And I really, really
19 appreciate your patience and understanding.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 10:22 a.m.)

22 THE COURT: All right. Any exceptions or objections
23 to my comments to the jury?

24 MR. BOGGS: None from the Defense.

25 MR. GOWDY: None from the State, Your Honor.

1 THE COURT: Anything else we can do right now?

2 MR. BOGGS: No, sir.

3 THE COURT: All right. Let's let the experts get to
4 work. We'll be adjourned until 9:30.

5 (WHEREUPON, the proceedings were concluded at
6 approximately 10:23 a.m., to be reconvened on
7 Friday, November 19, 2004.)

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1 Ms. Philbeck, that's not going to be addressed. That's
2 not going to come out. That's not going to be anything
3 that will be in her testimony.

4 THE COURT: Do you want to proffer it before -- I
5 don't think that's appropriate testimony unless she's
6 qualified as an expert.

7 MS. QUIMBY: It's not, Your Honor. I don't think
8 that -- that wouldn't be part of her testimony.

9 THE COURT: Okay. Tell me, what are we going to do
10 this morning? What do y'all see -- we've got lay
11 witnesses?

12 MS. QUIMBY: Yes, sir.

13 MR. GOWDY: I think they're going to go forward. And
14 Dr. Martin is going to be here at 2:00. I would ask the
15 Court at some point before 2:00 to give the parties a
16 sense of what Dr. Martin is going to be able to go back
17 into on direct. He hasn't been crossed yet, as the Court
18 knows. If his diagnosis is not mental retardation or
19 borderline intellectual functioning, I think he can
20 explain why he's changed his mind. But I don't think it's
21 fair to the State that he go back through the whole
22 mitigation testimony.

23 THE COURT: We're not going to go back through his
24 whole testimony.

25 Can we get him here sooner than 2:00?

1 MS. QUIMBY: Your Honor, he rescheduled all of his
2 Wednesday and Thursday people to this morning. He will be
3 leaving at 11:45 from Columbia and will be here probably
4 at 2:00 or --

5 THE COURT: He ought to be here before then.

6 MS. QUIMBY: I can have someone call him.

7 THE COURT: And then what do we have? Is he your
8 last witness?

9 MS. QUIMBY: He would be my last witness.

10 THE COURT: Okay.

11 MR. GOWDY: Dr. Pam Crawford in reply, and then the
12 State is ready to argue and charge, if the Court wants to.

13 THE COURT: I think we may shoot to do that.

14 MS. QUIMBY: I'll have someone call Dr. Martin.

15 THE COURT: If he can get here sooner, great, so much
16 the better.

17 All right. Anything else?

18 MS. QUIMBY: Nothing from the Defense.

19 THE COURT: Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 9:41 a.m.)

22 THE COURT: Welcome back, ladies and gentlemen. I'm
23 sorry we could not provide you with the darts and
24 photograph, but I hope y'all did not have an unpleasant
25 afternoon and evening.

1 At this time, I'll turn it back over to the Defense.

2 MR. BROUGH: The Defense calls Charlena Tinsley to
3 the stand.

4 DIRECT EXAMINATION

5 BY MR. BROUGH:

6 Q Can you please tell us where you work, ma'am?

7 A I work for the Spartanburg County Clerk of Court's
8 Office.

9 Q And what do your duties consist of there?

10 A We deal with new warrants coming in, disposition of
11 warrants, filing of motions, just anything dealing with
12 the criminal, civil, from beginning to end with the
13 paperwork.

14 Q I'm going to show you what's been premarked for
15 identification purposes as Defendant's Exhibit Nos. 4, 5,
16 6, and 7. Can you please take a minute to review those
17 and see if you recognize them?

18 A Yes. This is a printout from our computer.

19 Q And are those printouts kept in the ordinary course
20 of business?

21 A Yes.

22 MR. BROUGH: Your Honor, at this time, I would move
23 Defendant's Exhibit Nos. 4, 5, 6, and 7 into evidence.

24 THE COURT: Any objection?

25 MR. GOWDY: No objection.

1 (WHEREUPON, Defendant's Exhibit Nos. 4, 5, 6, and 7
2 were admitted into evidence.)

3 BY MR. BROUGH:

4 Q Can you look at Defendant's Exhibit No. 4, Ms. Tinsley?
5 What is that a record of?

6 A This is a record on Fredrick Evins. The underlying
7 charge was criminal sexual conduct first degree. And this
8 charge was dismissed on 7-30-1996.

9 Q And when did that -- is there an arrest date
10 regarding that incident?

11 A The arrest date was 3-8-95.

12 Q And could you please tell me what is Defendant's
13 Exhibit No. 5? What does that document pertain to?

14 A Defendant's Exhibit No. 5 is on Fredrick Evins, also.
15 The underlying charge is kidnapping. The arrest date is
16 3-8-95. And this charge was dismissed on 7-30-96.

17 Q And could you please look at Defendant's Exhibit
18 No. 6?

19 A Okay. This one is on Fred Evins. The underlying
20 charge was assault and battery of a high and aggravated
21 nature. The arrest date was 11-28-91. And the
22 disposition was dismissed on 8-27-93.

23 Q And, if you could, please look at Defendant's Exhibit
24 No. 7?

25 A Defendant's Exhibit No. 7 is an old case, 1991, which

1 may not have been on our system, but we have a card file.
2 And this is a copy of the card. The charge on this was
3 assault with intent to commit criminal sexual conduct.
4 And it was dismissed at a preliminary hearing on
5 11-20-91.

6 Q Can you tell us, ma'am, who has the authority to
7 dismiss a charge?

8 A The Solicitor.

9 MR. BROUGH: May I please publish these exhibits to
10 the jury, Your Honor?

11 THE COURT: Yes, sir.

12 MR. BROUGH: No further questions.

13 Thank you.

14 THE COURT: Any cross?

15 MR. GOWDY: Just briefly.

16 CROSS-EXAMINATION

17 BY MR. GOWDY:

18 Q Ms. Tinsley, who was the Solicitor prior to 2001?

19 A Holman Gossett.

20 MR. GOWDY: Thank you.

21 No further questions for Ms. Tinsley.

22 THE COURT: No further questions.

23 You may step down.

24 MR. BROUGH: Your Honor, may I redirect briefly?

25 THE COURT: Sure. I'm sorry.

REDIRECT EXAMINATION

1
2 BY MR. BROUGH:

3 Q Ms. Tinsley, do you know if the current solicitor has
4 the ability to reopen a case?

5 A I'm not familiar with that.

6 MR. BROUGH: Nothing further, Your Honor.

7 THE COURT: Thank you.

8 You may step down.

9 MS. QUIMBY: May it please the Court?

10 Your Honor, the State would call James Evans.

11 THE CLERK: Place your left hand on the Bible and
12 raise your right hand, please.

13 WHEREUPON,

14 JAMES FRANKLIN EVANS,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Have a seat, please.

17 DIRECT EXAMINATION

18 BY MS. QUIMBY:

19 Q Hey, Mr. Evans.

20 A Hi.

21 Q Could you please state your full name for the jury?

22 A James Franklin Evans.

23 Q And are you related to Fredrick Evins?

24 A Yes, I am. I'm his brother.

25 Q Okay. Are you older brother, younger brother?

1 A Older.

2 Q By how many years?

3 A Two years.

4 Q And where do you live?

5 A I live -- do you need an address or do you need the
6 state?

7 Q Well, city, state.

8 A I live in Atlanta, Georgia.

9 Q How long have you lived in Atlanta?

10 A About 15 years.

11 Q What did you do before you moved to Atlanta?

12 A I went to Job Corp.

13 Q And you went to Job Corp from Spartanburg?

14 A That's correct.

15 Q Okay. How old were you when you left home and went
16 to Job Corp?

17 A I think I was about 16, 17, somewhere in there.

18 Q Okay. Do you remember a whole lot about your
19 childhood growing up?

20 A A little bit, yeah.

21 Q Okay. And did you always grow -- did you always live
22 with your brother, Fred?

23 A That's correct.

24 Q And y'all lived in the same house up until you left?

25 A Yes.

1 Q Can you tell me who else lived there, any other
2 brothers?

3 A No.

4 Q Any sisters at all?

5 A No sisters.

6 Q So how many brothers and sisters do you have total?

7 If you don't have any sisters, I guess that's none.

8 A Correct. Just me, Fred, and I have an older brother.

9 Q What's his name?

10 A Willy Lee.

11 Q Is his last name Collins?

12 A Collins, yes.

13 Q And, James, who is your father?

14 A My father's name is James Galloway Fowler.

15 Q James Fowler?

16 A Yes.

17 Q And was your mother married to Mr. Fowler at any
18 point?

19 A No.

20 Q And do you know who Fredrick's father is?

21 A The same guy.

22 Q Mr. Fowler?

23 A Yes.

24 Q And do you know who Willy's father is?

25 A No.

1 Q And I think you said that Willy is how much older
2 than you?

3 A About -- let's see. I'm 38 and he's 46.

4 Q 46?

5 A Correct.

6 Q What can you tell me -- or tell the jury about your
7 most vivid memories of childhood? Are they happy
8 memories, good memories, bad memories?

9 A Well, like in any household, you have happy memories,
10 you also have bad memories, I suppose. I guess some of
11 the happy memories would be the times when me and my
12 brother would get together and play or whatnot at a
13 younger age, before he reached the age of about maybe 11
14 or 12. The unhappy memories, I guess, would be, as you
15 already know, the drinking in the house.

16 Q Well, whether I know or not, the jury needs to know.
17 So can you elaborate a little bit on the drinking in the
18 house, please?

19 A My mom, more or less, would drink on the weekends.
20 It would probably start on a Friday and maybe end on a
21 Sunday.

22 Q Okay. Can you tell me what your mother would drink?

23 A Liquor.

24 Q Okay. And you said it was just on the weekends?

25 A Just on the weekends, yes.

1 Q And do you have any idea how much she would drink?
2 Would she drink just a sip of something or a lot of
3 something?

4 A At times, it could be a lot of something, yes.

5 Q You say, "at times," more often than not or not as
6 much?

7 A I would say more often than not.

8 Q Can you tell the Court about some of the discipline
9 in your house? What was your mother's punishments?

10 A Discipline, okay. Basically, my mother had to be the
11 father and the mother in the family. And, you know,
12 children are going to be children. Whenever you're unruly
13 or maybe if you did something you weren't supposed to do,
14 my mother would spank us with a belt or a switch or
15 something of that nature. But there was never times when
16 she was violent or anything like that.

17 Q There never was?

18 A (Witness shook head.)

19 Q Was there any time that -- did you ever have any
20 adult males in the house?

21 A Yes.

22 Q Can you tell me who that -- or who those people were?

23 A The only adult male we ever had when I was growing up
24 would be a guy by the name of Zimmerman. We called him
25 Bubba Owens.

1 Q And why was he living in the house?

2 A Him and my mom were girlfriend and boyfriend.

3 Q And do you have any idea what the age difference was
4 between Bubba and your mother?

5 A (There was no response.)

6 Q Just generally?

7 A Maybe 10, 12 years, maybe, roughly.

8 Q With him being older or younger?

9 A Him being younger.

10 Q Do you know how old your father was when you were
11 born?

12 A I think my father was in his late 30's, maybe early
13 40's.

14 Q Mr. Fowler?

15 A Yes.

16 Q Okay. Can you tell me about any of the discipline
17 that went on in the house when Bubba Zimmerman Owens was
18 living there?

19 A Bubba never -- he tried to discipline us a couple of
20 times, but we would always rebel against him because we
21 didn't like him.

22 Q What do you mean by rebel against him?

23 A Well, I mean, just like I said, a lot of times him
24 and my mom would have a disagreement or whatnot and as
25 boys of the house -- I mean, we had been with momma for a

1 while without a man being in the house. So, of course,
2 you kind of take on the father role as you grow older. So
3 him coming in was -- we just -- we wasn't happy about it
4 at all.

5 Q Okay. And so how long did Bubba live there with
6 y'all?

7 A The longest, I think, was maybe -- the period that I
8 was there, maybe three years, four years. And I left.
9 And I think after I left, he was still there maybe -- off
10 and on maybe another year.

11 Q Okay. Do you remember whether your mom and he got
12 along very well or whether they -- how did they get along?

13 A They got along fine, except for sometimes on the
14 weekends, you know. When people are under the influence
15 of alcohol, they do have a tendency to lose their temper
16 sometimes and they often fought.

17 Q When you say, "they often fought," can you explain
18 that a little bit?

19 A Disagreements, whatever, little things that happens
20 that alcohol triggers your brain to make you want to fight
21 or get into an argument or whatnot. And that's why they
22 fought.

23 Q Let me get more specific. When you say they fought,
24 did they just fight with words?

25 A No. There were words sometimes and then there were

1 fists. There were also sometimes weapons.

2 Q What do you mean? What kind of weapons?

3 A No guns or anything like that, maybe a knife or
4 something of that nature.

5 Q Okay. And about how many times can you think of that
6 happening?

7 A To my recollection, probably -- well, you figure just
8 about every weekend, they probably drank. So maybe, at
9 least, once, twice during that weekend period.

10 Q Okay. And your brother, Fredrick, was he around
11 during some, most, or all of those times?

12 A Most of it.

13 Q Most of it?

14 A Uh-huh.

15 Q Did you and Fredrick witness any of that?

16 A Yes, we did.

17 Q And did you and/or your brother ever get involved in
18 any of that?

19 A Yes, we did.

20 Q Can you explain in what ways?

21 A Defending our mother.

22 Q What would you do to defend your mother?

23 A We would fight with him.

24 Q When you say, "fight," do you mean with words?

25 A No, with fists.

1 Q About how often do you think that would happen?

2 A Maybe once -- I guess once out of the weekend, I
3 suppose.

4 Q Every weekend?

5 A Well, every other weekend, more or less, yes.

6 Q Okay. Now, how old would you and Fred have been
7 during that period of time?

8 A I guess Fred probably would have been maybe 13, 14,
9 maybe me 15, 16 -- maybe me 14, and maybe Fred about 12.

10 Q Okay. Do you remember whether you or Fred ever
11 started drinking at a young age before you were of age?

12 A Not myself, Fred did.

13 Q Fred did. About how old was he when he started?

14 A Maybe 11, 12.

15 Q And how do you know that?

16 A How do I know that?

17 Q Uh-huh.

18 A Because there would be times that we would kind of
19 meet up at the same place or whatever. There was a
20 certain place that we'd all hang out at -- you know, hung
21 out at with our friends or whatnot, and I would see him
22 drinking.

23 Q Okay. And where was your older brother, Willy,
24 during this time of your growing up?

25 A He stayed with his grandparents, I think. He didn't

1 . come around a whole lot when we were growing up.

2 Q Okay. So you and Fred would have gone to the same
3 schools most years; correct?

4 A To the best of my recollection, yes.

5 Q Do you remember anything about how he did in school?

6 A No, I sure don't.

7 Q Okay. Did -- was there ever any reading done at the
8 house?

9 A On my behalf, but I don't think a whole lot on Fred's
10 benefit.

11 Q Have you ever seen Fred read anything?

12 A No more than maybe a magazine or something. Whether
13 he was reading it, I don't know.

14 Q Okay. Are you and your brother close? Would you
15 describe your relationship as close?

16 A There has always been a distance there because of me
17 being in Atlanta and him being here in South Carolina. We
18 were close before I left. But when I left, I went to
19 trade school. And then from trade school, I moved to
20 Atlanta. And that was in the course of probably two to
21 three years. During that time, I didn't really have a lot
22 of communication at home. I was trying to get situated
23 myself.

24 Q Okay. What were some of your motivations for leaving
25 the house?

1 A I, more or less, just wanted something different than
2 what I saw around me. I saw a lot of destruction. I saw
3 a lot of -- not necessarily at the home, just in general
4 in the neighborhood where we lived at. I saw a lot of
5 people turning to drugs. Just a lot of things that I saw
6 that I, more or less, kept to myself. And my oldest
7 brother told me about Job Corp, and I tried it out. And
8 that's how I wound up in Atlanta.

9 Q And did Fred ever seem to have some of the same
10 ambitions that you did?

11 A No.

12 Q And how do you mean that?

13 A Fred was more of a -- he was more of a -- I guess the
14 word I'm looking for, he was more of a -- he just -- you
15 know, school and stuff just didn't matter to him. He
16 was -- you know, he kind of did his own thing, and that
17 was pretty much it.

18 Q Okay. Do you love your brother?

19 A Most definitely. I always have and I always will.

20 Q Okay. And, James, do you have any basis for asking
21 for -- for wanting mercy?

22 A Me and my brother just recently before all this
23 happened just got a chance to really start communicating
24 again, to kind of have like a second chance at life, to be
25 brothers again. Because there was a long period of time

1 that we were not brothers -- well, we were brothers. I
2 shouldn't say it that way. I should say we were not as
3 close as I wanted to be because of whatever situation he
4 was in and me doing what I do because I have a family, a
5 wife and two kids.

6 And I love my brother a whole lot. I always have and
7 always will. I would just really like to -- I understand
8 my brother has gotten himself in a lot of trouble. But I
9 would still like to be able to write him, send him
10 pictures of my children, you know, so he can see his
11 nieces -- I mean, his nephews as they grow up. I have a
12 three-year-old and a nine-year-old. And he really hasn't
13 had a lot of time to be around them or whatnot, which I
14 know that's not going to be the case now, but pictures
15 mean a lot of words to me. And I would just really like
16 to be able to do that.

17 MS. QUIMBY: Thank you.

18 Please answer any of the State's questions.

19 THE WITNESS: Sure.

20 MR. GOWDY: Very briefly, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. GOWDY:

24 Q Do you want anything to drink, Mr. Evans?

25 A No, sir.

1 Q You live in Atlanta now?

2 A That's correct.

3 Q And you have a family?

4 A That's correct?

5 Q I think you said two children?

6 A That's correct.

7 Q You left when you were 16?

8 A About 16, yes.

9 Q To make a better life for yourself?

10 A Correct.

11 Q And you've done it?

12 A Yes, sir.

13 Q Good job?

14 A Decent job, yes, sir.

15 Q As good as you can have in this kind of economy?

16 A That's true.

17 Q A good father?

18 A I try.

19 Q Good son?

20 A Yes, two.

21 Q Good brother?

22 A Uh-huh.

23 Q You mentioned the neighborhood that you grew up in,
24 Mr. Evans, were there other kids growing up in that
25 neighborhood that had single-parent homes?

1 A Correct.

2 Q There were other kids growing up in that neighborhood
3 where there might have been some abuse from boyfriends or
4 other men living in the house?

5 A It's a possibility, yes.

6 Q Was there alcohol abuse in some of those other homes?

7 A Yes.

8 Q You rose above it?

9 A Yes.

10 Q And you're a success?

11 A Yes..

12 MR. GOWDY: No further questions, Your Honor.

13 MS. QUIMBY: Nothing further.

14 THE COURT: All right. Thank you, Mr. Evans.

15 MS. QUIMBY: The Defense would call Willy Collins,
16 please.

17 THE CLERK: Place your left hand on the Bible and
18 raise your right.

19 WHEREUPON,

20 WILLY LEE COLLINS,

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Have a seat, please.

23 DIRECT EXAMINATION

24 BY MS. QUIMBY:

25 Q Hey, Mr. Collins.

1 A Hi.

2 Q Can you please state your full name for the record,
3 please?

4 A Willy Lee Collins.

5 Q And are you Fred's brother?

6 A Yes, ma'am.

7 Q So that makes you James' brother, too?

8 A Yes, ma'am.

9 Q And you are the older brother?

10 A I am.

11 Q How old are you now?

12 A 46.

13 Q Okay. How many years difference is there between you
14 and your other brothers?

15 A I think 11 and 12. I mean, at the time when I was
16 12, I think, James was born. And I think Fred is only
17 like a year or two different.

18 Q Okay. And what year were you born?

19 A March the 6th, 1958.

20 Q Okay. And who's your mother?

21 A Mary Evans, Mary Madgeline Evans.

22 Q And is Evans her maiden name?

23 A That's her married name.

24 Q Her married name. And then who is Mr. Evans?

25 A Vernell Evans, her husband -- her used to be husband,

1 whatever. I'm not for sure.

2 Q Well, do you know if they're still married?

3 A I don't know. I know they were married. I don't
4 know if they ever got a divorce or not. I only seen him
5 once.

6 Q In your life?

7 A In my life.

8 Q So how long have they been married, do you know?

9 A I don't know.

10 Q Did they get married since you've been around, since
11 you've been alive?

12 A I think they were married after -- sometime after
13 Fred was born or right before he was born, I think. Like
14 I said, it's been so long that I'm not for sure.

15 Q That's okay. And so who is -- can you tell me who
16 your father is?

17 A Willy Lewis Edwards.

18 Q And can you tell me who your brother James' father
19 is?

20 A James Galloway -- Gathoway.

21 Q Gathoway?

22 A I think Gathoway or Galloway.

23 Q And can you tell me who Fredrick's father is?

24 A The same person.

25 Q And since you were several years older than your

1 brothers, do you think you have a pretty good memory of
2 things that they might not be able to remember because
3 they would be too young?

4 A I think so.

5 Q Can you tell me whether James -- I think you said
6 Gathoway?

7 A Uh-huh.

8 Q Can you tell me whether he visited a lot or whether
9 he ever lived there?

10 A He visited a lot. I don't remember him ever living
11 there.

12 Q Do you have any idea how old he might have been?

13 A I think he was older than my mother. How much more
14 older, you know, I would say a few years, five or six
15 years. I don't know. But I know he was considerably
16 older than my mother.

17 Q And where did you live mostly? Did you ever live
18 with your mother?

19 A I lived with my mother and I also lived with my
20 grandparents, my father's parents.

21 Q Okay. When did you live with which one?

22 A I was always back and forth. It wasn't a particular
23 time where I just lived with my mother up to maybe a
24 certain age and then I would live with my grandparents. I
25 was just back and forth.

1 Q Okay. And so did you spend what you would consider
2 to be a good amount of time at your mother's house?

3 A I spent a good amount of time at both houses.

4 Q And what was the -- what was being over at your
5 mother's house like?

6 A Well, I mean, my mother -- you've got to understand,
7 the difference was at my mother's house, I would have free
8 rein. I could do what I wanted to do.

9 Q Why was that?

10 A Because my mother was just lax like that. And she
11 wasn't home a lot of the time, you know. And I was the
12 oldest, so I was able to pretty much do what I wanted to
13 do. She would be gone a lot.

14 Q And where would she go?

15 A I guess out with her friends.

16 Q And how often would that be, do you think?

17 A It was often, you know, three or four times a week,
18 always on the weekends. And then we always had people
19 coming over through, you know, the week and also on the
20 weekend.

21 Q And were these just social friends or were these --
22 what kind of people was she hanging out with?

23 A They was social friends, people that drink.

24 Q People that drank?

25 A They drank, right.

1 Q Did you ever see your mother drink?

2 A Yes.

3 Q About how often, do you remember?

4 A My mother drank often, about every day, whenever she
5 felt like it. Sometimes she wouldn't drink for a day.
6 Most of the time, she drank about every day.

7 Q Do you remember what she was drinking?

8 A Liquor, beer, home brew.

9 Q Home brew?

10 A Wine, yeah.

11 Q Would she make the home brew or would she get it from
12 somewhere else?

13 A Sometimes.

14 Q Did she do most of her drinking away from home or did
15 she do drinking at home?

16 A She did a lot of drinking at home. She did a lot of
17 drinking away from home.

18 Q Okay. When you were younger, what kind of child care
19 arrangements would your mother make when she went out?

20 A Most of the time, I was left there by myself. Even
21 when my baby brother was born, she would leave and I would
22 be there with him.

23 Q Okay. Are you talking about James?

24 A James and Fred.

25 Q James and Fred?

1 A Yes, ma'am.

2 Q Any other brothers or sisters?

3 A I had a baby brother, Jeffrey, that passed away.

4 Q When was that?

5 A I don't remember exactly when he passed away. I
6 think I was probably about -- I guess, about 12, 13,
7 somewhere like that.

8 Q Okay. So Fred and James would have been alive?

9 A Uh-huh.

10 Q Do you know who your baby brother Jeffrey's father
11 was?

12 A No, I don't.

13 Q Do you remember whether there was any discipline in
14 your house as far as spankings or time out's or anything
15 like that?

16 A Yeah. We were whipped. I mean, if we got out of
17 line or did something wrong, my momma would whip us.

18 Q When you say, "momma would whip us," for what kind of
19 things would you get in trouble for?

20 A I don't know. I mean, you never knew. It just
21 depends on if mother was having a bad day or not, had she
22 been drinking or not, you know.

23 Q Why would it depend on that?

24 A Because mother would be angry. She was an angry
25 drinker. I guess if things weren't going right or we was

1 getting on her nerves or whatever, then you'd be punished
2 for it.

3 Q So did you always -- were there times that you didn't
4 think you did anything out of line?

5 A There was times, there was times. I mean, as I got
6 older -- I mean, when you're a child, I guess, you really
7 don't even think about it. If your parents say you did
8 wrong, you did wrong.

9 Q And when you described whippings, can you tell me
10 what you mean by that?

11 A I mean, they was whippings, beatings. I would
12 consider them beatings. I think sometimes she would get
13 carried away. I think it would be because she would be
14 drinking, you know. And I don't know what would be going
15 on with her. She was the parent, I was the child. So
16 when she whipped us, sometimes, she would get
17 heavy-handed.

18 Q You said, "heavy-handed," would it always be with her
19 hand?

20 A Hand, belt, whatever, switches, you know, from trees.
21 She would go out there and get switches from trees.
22 Sometimes it would be whatever she got her hands on.

23 Q Do you think that the whippings happened more when
24 she was drinking or more often when she wasn't drinking?

25 A More when she was drinking. And she drank often, so.

1 Q Were you ever living there with any other adult males
2 living there?

3 A No. I never remember any other adult male living
4 there when I was living there.

5 Q After you left, do you remember an adult male living
6 in the house?

7 A A guy named Zimmerman Owens, he's the only one I
8 remember.

9 Q And did you ever meet Mr. Owens?

10 A I met him.

11 Q And he's the one that goes by Bubba?

12 A Right.

13 Q Do you remember how old he was in relation to you?

14 A I don't know how old he was. I guess he was close to
15 momma's age. I don't know.

16 Q Okay. What kind of guy was he?

17 A I didn't like him.

18 Q Why not?

19 A Because I just felt like that he didn't need to be
20 there. And I felt like he used to fight with my momma and
21 I didn't like him for that.

22 Q Okay. Did he ever -- if you know, did he ever try to
23 discipline you or either of your brothers?

24 A Never me. Because, you know, I wouldn't allow him to
25 do that. And on top of that, I have to say that my mother

1 wouldn't allow him to do it either. I mean, she would
2 protect us from anybody else.

3 Q What about your brothers, do you have any idea? If
4 you know, you can answer.

5 A I don't, because when I moved out of the house is
6 when he came in afterwards, you know, not directly
7 afterwards, but he did come in sometime afterwards. And
8 whatever the relationship was at that time and how it was
9 carried about, I don't know.

10 Q Okay.

11 A I'm sure that if he got his chance, you know, to do
12 anything, he would because, you know, he got angry, also,
13 when he drank.

14 Q Okay. And what would he do when he got angry?

15 A Mostly cuss and raise sand.

16 Q Okay. So it would just be hollering?

17 A Yes, ma'am.

18 Q What kind of relationship do you have with your
19 brothers?

20 A Well, for a period of time when my brothers was
21 young, I spent a whole lot of time with them. Then, as we
22 got older, once I left home, we really didn't get to talk
23 to each other much and didn't get to see each other too
24 often. I think the last time has been about a year and a
25 half ago where it had probably been about four or five

1 years since all three of us was together and we were all
2 three together at my mother's house. But I think the
3 relationship was good. I mean, I love my brother. You
4 know, I love both of them. I loved my baby brother,
5 Jeffrey.

6 Q All right. Well, speaking about Jeffrey, you said
7 that he passed away?

8 A Yes, ma'am.

9 Q Okay. What -- can you tell me what happened to
10 Jeffrey?

11 A The doctor said that it was crib death, but I don't
12 know. I think -- I really think that he froze to death,
13 you know, because I know that it was just -- there was a
14 window knocked out.

15 Q Well, were you -- where was he when he passed away?

16 A He was in his bed.

17 Q In his bed at your mother's house?

18 A Uh-huh.

19 Q Were you there?

20 A Yes, I was.

21 Q Was your mother there?

22 A She wasn't there at the time. She had went out.

23 Q She had gone out?

24 A Uh-huh.

25 Q Who else was there?

1 A Just me and Jeffrey.

2 Q You and Jeffrey?

3 A James and Fred.

4 Q So you were --

5 A They was in another bedroom.

6 Q So you were the baby-sitter?

7 A Right.

8 Q How long had -- did your mother go out for the
9 evening? How long had she been gone?

10 A She had been gone for a while. I don't know what
11 time -- I know what time she left that afternoon. I don't
12 know what time she came back home that night.

13 Q Okay. And why do you -- well, do you know how old
14 Fred would have been at that time?

15 A No. I don't even want to guess because I don't know.
16 Some of the stuff, I mean, I blocked out of my head. Some
17 of the stuff, I just don't remember, it's just been so
18 long. And especially about dates and how old they were.

19 Q Okay. Can you tell me a little bit about anything
20 you know about you or your brothers relationship with your
21 mother?

22 A I think that out of my three brothers, you know, us
23 three, the three that's living, I think that James was the
24 one that got the least amount of, you know, whippings or
25 whatever. And I don't know why that was. I think that

1 after James and I both left -- I left and then James went
2 to Job Corp and Fred was left there with mother.

3 So what happened after that, I think their
4 relationship became stronger because Fred liked drinking
5 and being able to come and go as he wanted to. He liked
6 doing drugs. And he was able to do that at my mother's
7 house. And I feel like that's why the relationship with
8 her and him maybe got closer. Not from a good parent
9 point of view, but just from, you know, getting -- being
10 able to get high together and stuff.

11 Q They would get high together?

12 A I think they would drink together. I don't want to
13 say they did drugs together.

14 Q You said that you think, did you ever see them drink
15 together?

16 A All of us drank together, except for James.

17 Q You would drink with your mother?

18 A Uh-huh.

19 Q How old were you when that started?

20 A I started drinking out -- I started sipping out of
21 the beer -- drinking out of the beer cans and the bottles
22 at probably about 11 years old.

23 Q And you said you had seen James -- or Fred drink --

24 A Me, Fred and mother, all of us had drank together.
25 James, he's never been a drinker.

1 Q Do you have any idea about how old he was or if he
2 was a little kid, middle kid, big kid?

3 A Well, at the time that I can remember back, at that
4 time, they was probably teenagers then.

5 Q And so would there be alcohol in the house or would
6 somebody have to go get it?

7 A There would be alcohol in the house. If alcohol
8 wasn't in the house, we lived on a street where there was
9 four liquor houses. So it wasn't like -- if it was after
10 hours -- if there wasn't anyone to go to the store, you
11 could always go to the liquor house.

12 Q So the liquor house is not a liquor store?

13 A No. It's a liquor house. It's a place where people
14 sell liquor out of their house.

15 Q Legally?

16 A I wouldn't say it was legal. It don't have taxes on
17 it. They don't pay taxes on it, so I figure it's not
18 legal.

19 Q Okay. You said that someone had knocked a window out
20 of your house?

21 A I didn't say if they knocked it out or if it fell out.

22 Q What time of the year would that have been?

23 A It was in the winter time.

24 Q Did anyone try to fix that or how long did it stay
25 broken?

1 A I don't recall how long. I really -- you've got to
2 realize, we were really poor. Mother did, I guess -- I
3 figured she did the best she could with what she had to
4 work with, but the house was -- it never was completed.
5 My grandfather started having the house -- he had the
6 house built, but they never finished the plumbing. So
7 there wasn't -- a bathroom wasn't put in until years and
8 years after his death. This is my grandfather on my
9 mother's side. So the house wasn't in very good shape.
10 And I think one of the window panes fell out. I really
11 don't think anyone knocked it out.

12 Q You said that Fred's father is James Gathoway?

13 A Uh-huh.

14 Q And that would be the same man as James' father?

15 A Yes, ma'am.

16 Q Is that what you believe?

17 A That's what I believe. I mean, I believe that
18 because momma said it was. I had other thoughts about
19 that, but she said that's who the father is, so that's
20 what I believe. I mean, she said that my father was my
21 father, but his mother said that he wasn't, so, you know.

22 Q I'm sorry. Could you explain that?

23 A Yeah.

24 MR. GOWDY: Your Honor, I hate to interrupt, but we
25 are getting into fairly significant hearsay at this point

1 as to who said what in terms of lineage.

2 THE COURT: All right. I'll sustain that objection.

3 BY MS. QUIMBY:

4 Q Willy, have you ever been in trouble?

5 A Yes, I have.

6 Q Can you tell me for what?

7 A Burglary and grand larcenies, DUI's, use of vehicle
8 without owner's consent, failure to stop for a blue light.

9 Q Anything else or --

10 A Mostly -- that's mostly what it's been. There's been
11 some domestic violence charges, but never any convictions.
12 Because, I mean, we never went to court about them. But I
13 have got those charges, I'm sure, on my record.

14 Q Okay. And were there ever times that you and Fred
15 would talk about how things were going as far as
16 whether -- well, James, I don't think was a big
17 troublemaker, was he?

18 A No.

19 Q Okay. And we know that Fred had gotten in his share
20 of troubles. Is that something that y'all felt like you
21 had in common?

22 A I don't think that we had -- well, maybe we had it in
23 common due to the way our lifestyle was, but we never
24 discussed it -- anything of it.

25 Q Willy, do you love your brother?

1 A I love my brother.

2 Q And do you have any basis for hoping in your heart
3 for mercy?

4 A Yes. I mean, I love him. I want my brother to live.
5 I know what he did was wrong, but I just -- in my heart, I
6 feel like a man don't have the right to decide that.

7 Q Well, without getting into any of that, Mr. Collins,
8 you love your brother?

9 A I love my brother. I want him to live.

10 MS. QUIMBY: Please answer any of the State's
11 questions.

12 CROSS-EXAMINATION

13 BY MR. GOWDY:

14 Q Good morning, Mr. Collins.

15 A Good morning, sir.

16 Q Where do you work now?

17 A Right now, I'm in the CSRC program, drug and alcohol.

18 Q You said you love your brother?

19 A Yes, sir.

20 Q If he had asked you for help, you would have helped
21 him, too, wouldn't you?

22 A Yes, sir.

23 Q If he had come to you and said, I need help with a
24 problem, big brother, you would have done it, wouldn't
25 you?

1 A I would do whatever I could for him.

2 MR. GOWDY: No further questions, Your Honor.

3 MS. QUIMBY: Nothing further.

4 THE COURT: All right. Thank you, Mr. Collins.

5 You can stand down.

6 MS. QUIMBY: The Defense would call Mindy Aiken.

7 THE CLERK: Place your left hand on the Bible and
8 raise your right.

9 WHEREUPON,

10 MINDY AIKEN,

11 after first having been duly sworn, testified as follows:

12 THE CLERK: Have a seat, please.

13 DIRECT EXAMINATION

14 BY MS. QUIMBY:

15 Q Hey, Ms. Aiken.

16 A Hey.

17 Q Can you state your full name for the record, please?

18 A Mindy Aiken.

19 Q Mindy Aiken?

20 A Yes, ma'am.

21 Q And where do you live?

22 A Spartanburg, South Carolina.

23 Q Okay. And where do you work currently?

24 A At Disney.

25 Q How long have you worked there?

1 A About four months.

2 Q And how do you know Mr. Evins, Fredrick Evins?

3 A We worked together. He was my employee at Hardee's.

4 Q Okay. So what was your position there?

5 A I was his supervisor.

6 Q And how long did y'all work together?

7 A Roughly, around 10 to 11 months.

8 Q And which location would that have been?

9 A Hardee's on Weaver Road.

10 Q Down near Dave Edwards Toyota?

11 A Yes.

12 Q Was that the first time you had ever met Fred when he
13 came and started working there?

14 A Yes.

15 Q And did you have an opportunity to get to know him?

16 A Yes, ma'am, somewhat.

17 Q Okay. Was that strictly in a work relationship or
18 anything else?

19 A We had become friends.

20 Q Okay. And would you sometimes work the same hours?

21 A Yes, ma'am.

22 Q All right. What were your general impressions of
23 Fred?

24 A He was an outgoing person, mainly, to himself.

25 Q Outgoing, but to himself?

1 A Yeah. Well, he was outgoing, but he wasn't real
2 talkative.

3 Q Okay. Was he a good employee?

4 A Yes.

5 Q What type of things would he do? What type of
6 responsibilities did he have?

7 A He was a back-line cook. He would prep the food and
8 prepare for that evening.

9 Q Okay. And is that something that changes from
10 day-to-day or is that pretty repetitious?

11 A Basically, the same thing.

12 Q Same thing day-to-day?

13 A Uh-huh.

14 Q All right. Did you ever have any opportunity to talk
15 with him about any non-work related things?

16 A Yes, ma'am.

17 Q Okay. And was there ever any time that y'all would
18 go anywhere together or ride anywhere together?

19 A Yes.

20 Q Okay.

21 A Just on a couple of occasions. One incident where I
22 was looking for a tire and he pointed me in the right
23 direction to get a tire and so forth. And I had taken him
24 home a couple times from work.

25 Q Now, was he in the car with you when he pointed out

1 some place to get a tire?

2 A Yes, ma'am.

3 Q And so you found that to be helpful?

4 A Yes, ma'am.

5 Q Okay. Have you maintained any contact -- when is the
6 last time you had had any contact with Mr. Evins?

7 A It's been over a year.

8 Q Okay. And how did -- were you ever -- how did you
9 feel when he was around? Did you ever -- did you feel
10 comfortable around him?

11 A Uh-huh, never uncomfortable.

12 Q Never uncomfortable?

13 A No.

14 Q Were there any times that you -- besides being in the
15 car a couple of times, were there any times that you were
16 by yourself with him?

17 A At work.

18 Q At work?

19 A He waited on me while I -- I was the closing --
20 mostly, I was the closing manager that was on duty. And
21 he would wait until I closed up so I wouldn't be there by
22 myself.

23 Q Okay. And you still never -- you still felt fine
24 with that?

25 A Yes, ma'am.

1 Q And you haven't had a whole lot of contact with him
2 in recent times?

3 A No, ma'am.

4 Q Do you have any -- do you like the guy?

5 A Yes.

6 Q Okay. Do you have any basis for hoping for mercy?

7 A I've prayed that he -- that God have mercy upon him
8 and spares his life.

9 MS. QUIMBY: Please answer any questions from the
10 State.

11 CROSS-EXAMINATION

12 BY MR. GOWDY:

13 Q Good morning, Ms. Aiken.

14 A Good morning.

15 Q How are you?

16 A Fine. How are you?

17 Q Good. Thank you.

18 Do you think Fred knows the difference between right
19 and wrong?

20 A Yes, I do.

21 Q You worked with him for how many months?

22 A Ten to 11 months.

23 Q And he never did one single solitary thing to you;
24 right?

25 A No, sir.

1 Q Were you surprised to hear that he had been convicted
2 of murder and rape?

3 A Yes.

4 Q And kidnapping?

5 A Yes, sir.

6 Q It was out of character for the Fredrick Evins that
7 you knew?

8 A Yes.

9 Q He didn't do that to you?

10 A No, sir, very gentlemanly.

11 Q Pardon me?

12 A Very much a gentleman.

13 Q So he could be a gentleman, if he wanted to be?

14 A Oh, yeah.

15 MR. GOWDY: Thank you.

16 MS. QUIMBY: Nothing further.

17 THE COURT: All right. Thank you, ma'am.
18 You can stand down.

19 MS. QUIMBY: The Defense would call Ms. Debbie
20 Philbeck.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 DEBORAH C. PHILBECK,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Have a seat, please.

3 DIRECT EXAMINATION

4 BY MS. QUIMBY:

5 Q Hey, Ms. Philbeck.

6 A Hello.

7 Q Can you please state your full name for the record?

8 A Deborah C. Philbeck.

9 Q And where do you live, Ms. Philbeck?

10 A I live at 162 Wilkins Boulevard in Inman.

11 Q And what is your occupation?

12 A I'm an elementary school principal in Spartanburg
13 District 6 at Anderson Mill Elementary School.

14 Q How long have you held that position?

15 A Seven years.

16 Q And where were you before that?

17 A I was at Woodruff Middle School for three years.
18 Prior to that, I was at D.R. Hill Middle School for five
19 years. And then I was at Wellford Elementary for 16
20 years.

21 Q So is that about 30 years by my count?

22 A Yes.

23 Q Okay. And how do you know Fredrick Evins?

24 A I was his fourth grade teacher.

25 Q Okay. And, I guess, in 30 years, that's a lot of

1 people to try to remember. Do you remember all of your
2 students?

3 A No. I don't remember all -- well, I don't remember
4 all of them as much as some.

5 Q Is Mr. Evins one of those that you do remember?

6 A Yes. I remember him very vividly.

7 Q Why is that?

8 A Because I felt so sorry for him at the time. And
9 those are the children that tend to stick in your mind, I
10 think.

11 Q And why did he seem that way to you?

12 A Because he -- it was obvious that he didn't have very
13 much support at home. He was sad. He would come to
14 school unkept, and it was just a sad situation.

15 Q Okay. When you say, "unkept," can you be a little
16 bit more specific?

17 A He would come to school with maybe dirty clothes,
18 torn clothes. He wore his little coat all the time. And
19 I remember his coat very vividly.

20 Q You remember a coat?

21 A I remember his little wool white and blue coat,
22 uh-huh.

23 Q Why is that?

24 A Well, at the time, I didn't know it because I was
25 very young in my career. I didn't know at the time, but

1 now I do know because we've had so much staff development
2 and education has changed so much that possibly children
3 that wear their coats all the time --

4 MR. GOWDY: Your Honor --

5 MS. QUIMBY: Your Honor --

6 THE COURT: Proceed. There hasn't been an objection
7 launched.

8 BY MS. QUIMBY:

9 Q Let me kind of redirect us. You said that you just
10 felt -- you said that you felt like he just wasn't getting
11 a lot of attention at home?

12 A Right.

13 Q Okay. And that his clothes were dirty?

14 A Right.

15 Q And torn?

16 A Right.

17 Q Do you remember whether Mr. Evins had any brothers?

18 A He had a brother, James, that I also taught.

19 Q Okay. And was James similar to Fred?

20 A James was higher functioning than Fred.

21 Q Okay. And so did Fred function on the normal fourth
22 grade level?

23 A No, not at all.

24 Q Is reading one of the subjects that you taught?

25 A Yes.

1 Q Okay. And do you remember maybe how far behind he
2 might have been with the other kids -- from the other
3 kids?

4 A Well, I taught him fourth grade. He was, at least,
5 two grade levels below. So functioning, he may be on a
6 second grade level in fourth grade.

7 Q And do you see that from time to time?

8 A Yes.

9 Q I think back then maybe resource classes were
10 available, do you know if Fred was ever in resource
11 classes?

12 A He was in a resource class.

13 Q Okay. Was that during the year that you had him? Do
14 you know?

15 A Yes.

16 Q Okay. And did that take him out of your classroom
17 for a little bit?

18 A He would leave my class to receive special assistance
19 in the resource class.

20 Q Okay. When you noticed that he was kind of falling
21 behind in reading -- well, was it only reading that he was
22 falling behind in?

23 A He was low in everything.

24 Q Okay. And when you noticed that, did you do anything
25 specifically?

1 A We would have -- we had reading groups and math
2 groups. And he was always in the lower group of either
3 reading or math. And I would give him extra attention and
4 extra assistance and meet with him individually.

5 Q So Fredrick was one of the ones you met with
6 individually?

7 A Right.

8 Q Do you feel like he benefited from that or not?

9 A As much as he could, yeah, I think he did. I think
10 he enjoyed receiving the extra attention.

11 Q So you feel like that was possibly lacking elsewhere?

12 A Yes.

13 Q Do you remember whether he was outgoing or withdrawn
14 with other kids?

15 A He was withdrawn inside the school. But once we went
16 out for recess, he was -- he enjoyed recess.

17 Q Okay. Do you -- I know it was a long time ago. Do
18 you remember any specific friends that he had, maybe not
19 the names, but do you remember whether he had a buddy?

20 A I don't recall him having friends.

21 Q Okay. You said that you remember his coat?

22 A Uh-huh.

23 Q Was there anything about the appearance or anything
24 else that might be something that you remember?

25 A I just remember the color and that he wore it all the

1 time, and it was pretty dirty.

2 Q Okay. It's been a number of years since Fred was in
3 the fourth grade, have you had any contact with him since
4 that time?

5 A No, none at all.

6 Q So that would be maybe 21, 20 years ago, close to 25?

7 A Right.

8 Q Do you have any knowledge of how he's done since the
9 fourth grade?

10 A No.

11 Q But you can remember things from when he was a child?

12 A Right.

13 Q Do you have -- is there any basis that you know of
14 that you would hope for mercy?

15 A I would beg for mercy because of his low functioning
16 intellectual ability.

17 MS. QUIMBY: Thank you.

18 Please answer any of the State's questions.

19 CROSS-EXAMINATION

20 BY MR. GOWDY:

21 Q Good morning, Ms. Philbeck.

22 A Good morning.

23 Q You taught him how many years ago?

24 A 25, approximately 25 years ago.

25 Q How many children have you had as either a teacher or

1 principal since then?

2 A I would have no idea, many, many, many, many.

3 Q Several hundred, perhaps, thousands?

4 A Thousands.

5 Q And some of those were poor kids, weren't they?

6 A Right.

7 Q And some of them were low functioning kids?

8 A Right.

9 Q Probably quite a few low functioning kids; right?

10 A True.

11 Q Poor kids?

12 A Poor.

13 Q How many of them have you had that have been
14 convicted of murder, rape, and kidnapping?

15 A Well, I had seen in the newspaper the most wanted
16 list, and I've had children that were on that list.

17 Q Well, can you give me their names? How many have
18 been convicted of murder, rape, and kidnapping?

19 A I don't recall any. I wouldn't know that.

20 Q Just Fredrick Evins?

21 A Right.

22 MR. GOWDY: That's all I have, Your Honor.

23 MS. QUIMBY: Nothing further, Your Honor.

24 THE COURT: All right. Thank you, Ms. Philbeck.

25 You may stand down.

1 MS. QUIMBY: Your Honor, may I have just one moment,
2 please.

3 THE COURT: All right.

4 (Pause.)

5 MS. QUIMBY: The Defense calls Aubrianna Evans.

6 THE CLERK: Place your left hand on the Bible and
7 raise your right hand.

8 WHEREUPON,

9 AUBRIANNA MARQUIS EVANS,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Have a seat there, please.

13 DIRECT EXAMINATION

14 BY MS. QUIMBY:

15 Q Hey.

16 A Hey.

17 Q You need to speak up just a little bit because
18 everybody has to hear you. Okay.

19 A Okay.

20 Q Can you please state your full name?

21 A Aubrianna Marquis Evans.

22 Q Aubrianna Evans?

23 A (Witness nodded.)

24 Q How do you know Fredrick Evins?

25 A He's my dad.

1 Q He's your dad. Have you ever lived with your dad?

2 A Yes.

3 Q For how long do you think?

4 A I would say for about maybe two years.

5 Q Okay. Was that recently or a long time ago?

6 A Like -- it was like recently, like I would say in
7 2000.

8 Q In 2000?

9 A Yes.

10 Q And how old are you now?

11 A 13.

12 Q And what grade are you in?

13 A The eighth.

14 Q At what school?

15 A Greenville Middle Academy.

16 Q Greenville Middle Academy?

17 A Yes.

18 Q Is that a private school or public school?

19 A Public.

20 Q Public school. And do you live with your mother?

21 A Yes, ma'am.

22 Q Okay. Do you have any brothers or sisters?

23 A I have two sisters and two brothers.

24 Q And are they -- are any of them related to Mr. Evins?

25 A They're his stepkids.

1 Q Stepkids. Okay. And who's your mother?

2 A Bertha Evins.

3 Q And do you know if she's married to Mr. Evins?

4 A Yes, ma'am.

5 Q Okay. Do you know how long they've been married?

6 A No.

7 Q Do you think they got married before you were born?

8 A Yes, ma'am.

9 Q Okay. Do you have -- what kind of relationship do
10 you have with your dad? Do you think it's a good one?

11 A Yes, ma'am.

12 Q Okay. Do you ever have any opportunity to speak to
13 him by phone or letter?

14 A Well, he calls and we write each other back and
15 forth. And I went to go visit him.

16 Q And do you love your father?

17 A Yes, ma'am.

18 Q And do you hope in your heart for mercy?

19 A Yes, ma'am.

20 MS. QUIMBY: Please answer any of the State's
21 questions.

22 MR. GOWDY: No questions, Your Honor.

23 THE COURT: All right. Thank you.

24 MS. QUIMBY: Your Honor, at this point, may we
25 approach briefly?

1 THE COURT: All right.

2 (WHEREUPON, a bench conference was held with the
3 attorneys.)

4 MS. QUIMBY: That is all of our lay witnesses, except
5 for the doctor. If the Court will allow me a few minutes
6 to speak with Mr. Evins, he may want to address the jury.
7 I hope not, but.

8 THE COURT: We'll cover that.

9 MR. GOWDY: Is he going to testify?

10 MS. QUIMBY: Well, he had told me that he may want to
11 address the jury. I don't think he wants to testify, but
12 I'm going to double-check because he's been talking to
13 Tam.

14 THE COURT: We'll do that on break. I'll give you
15 some time to talk with him beforehand, all the time he
16 needs.

17 But you're done for now with the exception of that?

18 MS. QUIMBY: Yes, sir.

19 THE COURT: Is the doctor going to be here by 1:00?

20 MS. QUIMBY: He said he had a couple of more patients
21 that were there and he was going to leave as soon as he
22 saw them. So I think he would be here by 1:00.

23 THE COURT: By 1:00 or sooner. Get him to call as
24 soon as he leaves because I want to resume as promptly as
25 we can.

1 MS. QUIMBY: Yes, sir.

2 THE COURT: I'll excuse the jury at this time and
3 take care of those issues. Well, I guess if he decides to
4 testify -- we'll come to that when we get there.

5 Ms. QUIMBY: Yes, sir.

6 (WHEREUPON, the bench conference was concluded.)

7 THE COURT: All right. Madam Forelady, and, ladies
8 and gentlemen of the jury, it appears at this time that we
9 have some matters to take up outside of your presence and
10 deal with some legal issues. And we are waiting on an
11 out-of-town witness to arrive. We're going to try and
12 determine when he will be here. And it may be that we
13 will excuse y'all to go ahead and eat lunch at this time,
14 but I need to make sure that that's appropriate. Y'all
15 probably hadn't finished digesting breakfast yet, but
16 we'll -- we're just trying to move the case forward as
17 expeditiously as we possibly can.

18 So if y'all will step back to the jury room. Please
19 don't discuss the case and we'll determine as soon as we
20 possibly can where we're headed.

21 Thank you.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 10:49 a.m.)

24 THE COURT: Okay. Yes, Ms. Quimby.

25 MS. QUIMBY: Your Honor, I have previously spoken

1 with Mr. Evins about his right to testify and his right to
2 separately address the jury. He had made a preliminary
3 decision, but I would ask the Court for a few minutes so I
4 can check and see if he is -- if he still wants to.

5 THE COURT: Okay. Why don't we take about a
6 ten-minute break or so. Y'all talk to Mr. Evins and then
7 we'll proceed however we need to proceed.

8 MS. QUIMBY: Thank you, sir.

9 THE COURT: Thank you.

10 We'll be at ease for ten or 15 minutes.

11 MR. GOWDY: Judge, at some point, would the Court
12 give us a sense of direction in terms of Dr. Martin in
13 terms of --

14 THE COURT: In terms of what?

15 MR. GOWDY: Where we are with his direct. What's
16 still left to be gone into?

17 THE COURT: Yes. We adjourned court to allow
18 Dr. Martin and the other experts in this case an
19 opportunity to -- well, we'll deal with this when
20 Mr. Evins gets back. I want him to be in the courtroom
21 for all proceedings.

22 MR. GOWDY: Okay.

23 (WHEREUPON, a break was taken.)

24 THE COURT: Yes, Ms. Quimby.

25 MS. QUIMBY: Thank you, Your Honor.

1 I have spoken with Mr. Evins about his right to
2 testify in this phase, as well as his right to address the
3 jury. It's my understanding that he declines to testify,
4 but that he does want to make a brief statement to the
5 jury. And he's been instructed on the limitations of
6 that.

7 THE COURT: Okay. Well, Mr. Evins, would you raise
8 your right hand for me again.

9 WHEREUPON,

10 FREDRICK ANTONIO EVINS,

11 after first having been duly sworn, testified as follows:

12 THE COURT: Have you had ample opportunity to meet
13 with all three of your attorneys with respect to your
14 rights to testify in this phase of the trial?

15 DEFENDANT EVINS: Yes, sir.

16 THE COURT: All right. And have you fully understood
17 your conversations with them?

18 DEFENDANT EVINS: Yes, sir.

19 THE COURT: Tell me -- do you understand you have an
20 absolute right to testify at this stage of the
21 proceedings, or you may remain silent and your silence
22 can't be held against you? Tell me what it is that you
23 want to do.

24 DEFENDANT EVINS: I would like to address the jury.
25 I wish not to take the stand.

1 THE COURT: You don't want to testify?

2 DEFENDANT EVINS: (Defendant shook head.)

3 THE COURT: You're indicating no?

4 DEFENDANT EVINS: Yes, sir.

5 THE COURT: Do you have any questions you want to ask
6 about that?

7 DEFENDANT EVINS: No, sir.

8 THE COURT: All right. And this is your decision?

9 DEFENDANT EVINS: Yes, sir.

10 THE COURT: All right. Has anyone forced you,
11 coerced you, threatened you, or promised you anything to
12 get you to arrive at this decision?

13 DEFENDANT EVINS: No, sir.

14 THE COURT: You're doing this freely and voluntarily?

15 DEFENDANT EVINS: Yes, sir.

16 THE COURT: Do you fully understand all of your
17 rights?

18 DEFENDANT EVINS: Yes, sir.

19 THE COURT: Are there any questions you want to ask
20 me with respect to these issues?

21 DEFENDANT EVINS: No, sir.

22 THE COURT: Very good.

23 Any questions y'all would like to ask Mr. Evins?

24 MS. QUIMBY: No, sir.

25 THE COURT: All right. Thank you.

1 Did you -- have we talked to Dr. Martin?

2 You can sit down.

3 Thank you, Mr. Evins.

4 MS. QUIMBY: Yes, sir, I have. I called him and he
5 is finishing up with his last patient -- well, he's with
6 his last patient, in the middle of the appointment. And
7 he is going to call me as soon as he walks out of the
8 building and he will be here as quickly as he can.

9 MR. BOGGS: Judge, we have called his office and told
10 them we needed him at 1:00. He may run a little past
11 that, but he will be here before 2:00. I think originally
12 we said 2:00, but he'll be here as close to 1:00 as he can
13 get here.

14 THE COURT: Well, I'm going to release the jury to go
15 eat lunch, and I'll have them back here at 1:00. I
16 anticipate we're going to argue and charge this afternoon.

17 MS. QUIMBY: Yes, sir.

18 THE COURT: We'll be at ease until 1:00.

19 (WHEREUPON, a lunch break was taken.)

20 THE COURT: Are we ready to go?

21 MS. QUIMBY: Yes, sir.

22 THE COURT: Anything before we start?

23 Have you had ample opportunity to meet with your
24 witness?

25 MS. QUIMBY: Yes, sir, I have.

1 THE COURT: Dr. Martin, you're still on the witness
2 stand. So come on around and have a seat. You're still
3 under oath.

4 Before we bring the jury back, the Defense had ceased
5 its direct examination. But I understand there may be
6 some new evidence or new analysis that this witness could
7 provide; is that correct?

8 MS. QUIMBY: Yes, sir.

9 THE COURT: So what I would allow you to do, then, is
10 go into the new matter. Okay.

11 MS. QUIMBY: Okay. Do I need to address -- that's
12 fine.

13 Thank you.

14 THE COURT: I'd just ask him what he's done since
15 yesterday and what are his conclusions.

16 Do you want any instruction to the jury?

17 I'll just give them a brief explanation.

18 Let's bring the jury in.

19 (WHEREUPON, the jury came into open court at
20 approximately 1:12 p.m.)

21 THE COURT: Ladies and gentlemen of the jury, we have
22 a bit of an unusual circumstance in the procedure of the
23 trial. You may remember when we adjourned yesterday that
24 Dr. Martin was on the stand. We adjourned in the middle
25 of his testimony. And so we're going to pick up kind of

1 where we left off. Y'all, of course, understand he's
2 still under oath.

3 Ms. Quimby.

4 MS. QUIMBY: May it please the Court, Your Honor?

5 FURTHER DIRECT EXAMINATION

6 BY MS. QUIMBY:

7 Q Hi, Dr. Martin.

8 A Good afternoon.

9 Q Good afternoon. When you were on the stand the other
10 day, you stated that you had some concerns based on
11 Mr. Evins' low IQ score about the potential for any
12 retardation; is that correct?

13 A Yes. That's correct.

14 Q Okay. And at that point, it was just concerns;
15 correct?

16 A Yes.

17 Q Since that time, have you had an opportunity to look
18 into any other matters, to gain any further information?

19 A Yes, I have.

20 Q In what ways?

21 A I was able to further examine several of the
22 witnesses and individuals that have known Mr. Evins for a
23 number of years, all the way back to his youth. I've
24 consulted with the State's psychiatrist and also with
25 another psychologist on the matter where some additional

1 testing -- adaptation testing was performed, and also,
2 where other individuals in the school system have also
3 been interviewed that even provided more comprehensive
4 assessments of how Mr. Evins was doing as a youth.

5 Q And following all of that, have you formed any
6 impressions or opinions?

7 A Yes, I have.

8 Q What are those?

9 A I believe that Mr. Evins suffers from what's called
10 borderline intellectual functioning.

11 Q Okay. Could you explain that, please?

12 A Sure. Borderline intellectual functioning is a level
13 of intelligence, as it indicates, borderline, which is
14 near the range of mild mental retardation. But it doesn't
15 quite meet all the criteria of mild mental retardation.
16 It's the next step up from that. It is below what is
17 called below average intelligence and it's on the
18 borderline, as it's named.

19 MS. QUIMBY: Thank you very much.

20 Please answer any questions that the State has.

21 MR. GOWDY: May it please the Court, Your Honor?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. GOWDY:

25 Q Hello, Dr. Martin.

1 A Hi. How are you?

2 Q You testified Wednesday that you thought this
3 Defendant might be mildly mentally retarded?

4 A That was my concern.

5 Q Your testimony this morning is that he is not
6 mentally retarded; correct?

7 A That is correct.

8 Q Your testimony this morning is that he has borderline
9 intellectual functioning?

10 A Yes, sir.

11 Q And you came to that conclusion after talking to
12 Dr. Crawford, Dr. Ginsberg, and some other people
13 yesterday?

14 A Yes, sir.

15 Q Can you tell the jury what part of borderline
16 intellectual functioning causes you to commit crimes like
17 rape, murder, and kidnapping?

18 A Borderline intellectual functioning does not cause
19 anybody to commit a particular kind of crime. As the name
20 indicates, it's somebody who has a very low level of
21 intelligence.

22 Q So this Defendant is able to tell the difference
23 between right and wrong?

24 A Yes, sir, he can.

25 Q And he is able to conform his conduct accordingly;

1 correct?

2 A Yes, sir, he can.

3 Q When you -- what is antisocial personality disorder?

4 A Antisocial personality disorder is a disorder that is
5 describing one's character throughout development. They
6 are typically diagnosed with conduct disorder. They're
7 criminal-like in their behavior at times. They can be
8 aggressive. They can lie. They cheat and are deceitful,
9 and manipulate. They may steal. They don't follow the
10 rules of the law. And this is -- beyond the age of 18,
11 some individuals are diagnosed with antisocial personality
12 disorder.

13 Q Repeated lying?

14 A Yes, sir. It's a pattern of all those.

15 Q Impulsivity?

16 A Yes. That includes that as well.

17 Q Reckless disregard for the safety of others?

18 A That may be included.

19 Q Irrationalization of injury that you commit to
20 others?

21 A Yes, sir.

22 Q But you didn't diagnose Mr. Evins with antisocial
23 personality disorder, did you?

24 A No, sir, I did not.

25 Q Did you talk to the Defendant prior to your testimony

1 on Wednesday?

2 A Yes, sir, I did.

3 Q How many times?

4 A Once.

5 Q For how long?

6 A Approximately 45 minutes, I believe.

7 Q You talked to him for 45 minutes?

8 A Yes, sir.

9 Q Were you here Sunday when he testified?

10 A No, sir, I was not.

11 Q But yesterday, you listened to a tape recording of
12 his testimony; right?

13 A Yes, I did, part of it.

14 Q Just part of it?

15 A Yes, sir. Probably a total of 15 minutes.

16 Q Would you agree with me, Dr. Martin, that the
17 validity of your opinion is contingent upon the accuracy
18 of the information that you received?

19 A Yes. That does help.

20 Q Is that fair to say?

21 A That's fair.

22 Q If somebody is being disingenuous or untruthful with
23 you, that would have an impact on your opinion?

24 A Yes, it would.

25 Q To the extent that your opinion relies upon

1 self-disclosure?

2 A To some extent, yes, sir.

3 Q Did you see the six-page statement that this
4 Defendant gave in February of 2003, in connection with the
5 death of Rhonda Ward?

6 A Yes, sir, I did.

7 Q Did you hear his -- the relevant parts of his
8 testimony before this jury last Sunday afternoon?

9 A Yes, I believe I did.

10 Q Would you agree with me that those are two totally
11 divergent explanations for the same incident?

12 A Yes, sir. I believe in the statement, he lied.

13 Q But you believe his testimony?

14 A His testimony was more consistent with what he
15 presented to me when I met with him originally on this
16 case.

17 Q Had you watched any other portion of the trial? Have
18 you seen any part of the guilt phase?

19 A No, sir.

20 Q You didn't hear him testify?

21 A I just heard what I described to you on the tape.

22 Q 15 minutes?

23 A Approximately.

24 Q Did you listen to cross-examination?

25 A A little bit of that, yes, sir.

1 Q Did you see Dr. Wren's pathology report?

2 A The autopsy, yes, sir, I did.

3 Q And you think his testimony was consistent with that?

4 A No, sir. I think he lied.

5 Q Well, I'm asking you, did he lie when he testified or
6 did he lie when he gave his statement to the police, or
7 both?

8 A It may have been both.

9 Q Both?

10 A Because the victim was stabbed 11 or 12 times. He
11 recalls only four times.

12 Q Okay. So I ask you again, would you agree with me
13 that the validity of what you're able to tell this jury is
14 dependent in part on the truthfulness of Fredrick Evins?

15 A That's correct.

16 Q Did you go back and read any statements that he gave
17 in connection with other crimes he is accused of
18 committing?

19 A Yes, I did.

20 Q Did you make any determinations of whether or not the
21 statements he gave were consistent with the other evidence
22 in the case?

23 A Yes. He may have been deceitful in those as well.

24 Q Are people that suffer from borderline functioning
25 capable of complex reasoning?

1 A To some limited extent. That is, actually, where
2 they will begin to start falling apart. Multiple tasks
3 and so forth may be difficult.

4 Q How about just average reasoning, are they capable of
5 average reasoning?

6 A When not under stress, they probably would do okay.

7 Q The Defendant -- do you know the difference between
8 murder and manslaughter?

9 A Do I know the difference?

10 Q Yes.

11 A Yes, sir.

12 Q Manslaughter is the killing of another in the sudden
13 heat of passion upon sufficient legal provocation; right?

14 A It could be, yes, sir.

15 Q Murder is the unlawful killing with malice
16 aforethought?

17 A Yes, sir.

18 Q All right. If a defendant were able to tailor his
19 testimony to get a jury instruction on voluntary
20 manslaughter --

21 Ms. QUIMBY: Objection, Your Honor.

22 THE COURT: What's the basis?

23 MS. QUIMBY: Your Honor, I just don't think that's --
24 may we approach?

25 THE COURT: All right.

1 (WHEREUPON, a bench conference was held with the
2 attorneys.)

3 MS. QUIMBY: I just don't think that's a relevant
4 question.

5 THE COURT: Well, it's going to the --

6 MR. GOWDY: Of course, it is. It goes to his ability
7 to reason. I'm asking him does that show reasoning to be
8 able to tailor your testimony. That's a perfectly legit
9 question.

10 THE COURT: I think it is reasonable. You can
11 follow-up.

12 MS. QUIMBY: Thank you, sir.

13 (WHEREUPON, the bench conference was concluded.)

14 BY MR. GOWDY:

15 Q Dr. Martin, if someone were able to tailor their
16 testimony to fit the elements of voluntary manslaughter,
17 would that, in your opinion, show an ability to reason?

18 A Do you mean if the Defendant were to describe what
19 had happened in a form that would sound like --

20 Q If the Defendant originally -- if his original
21 statement was murder and if he was able under
22 cross-examination -- direct examination in a stressful
23 situation be able to sit in the witness chair you're in
24 right now and change his testimony to one of voluntary
25 manslaughter so he could get that jury instruction, does

1 that show reasoning?

2 A I would say that it does, yes, sir.

3 Q Did you do a report?

4 A No, sir, I did not.

5 Q Why not?

6 A I was not asked to.

7 Q Not asked by whom?

8 A By the Public Defender's Office.

9 Q Would you agree that it would be helpful to
10 Dr. Crawford and other experts to have had a report from
11 you to review?

12 A It may have been, but I was never asked to do one and
13 did not provide one.

14 Q Dr. Brawley did one.

15 A Yeah. She gave me a list of testing results.

16 Q Did she give you the underlying data?

17 A No, sir, she did not.

18 Q Have you seen the underlying data from her tests?

19 A No, I have not.

20 Q You said Wednesday that Dr. Brawley had ruled out
21 malingering?

22 A Yes, sir.

23 Q And so to refresh my recollection, I think
24 malingering is the intentional faking of symptoms to reach
25 a desired result?

1 A Yes, sir.

2 Q Can you show me the specific tests that Dr. Brawley
3 conducted on the issue of malingering?

4 A I can't show it to you. She described it to me and I
5 was familiar with it.

6 Q But you don't have the data?

7 A No, sir, I don't.

8 Q You didn't rely upon everything Dr. Brawley told you,
9 did you, Dr. Martin?

10 A I took into consideration what Dr. Brawley told me.

11 Q Some things you followed and some things you didn't?

12 A I'm not sure what you mean.

13 Q Well, she never said he was even close to being
14 mentally retarded?

15 A She said --

16 Q In fact, she refused to give an opinion on it, didn't
17 she?

18 A She did not have enough information, that's correct,
19 sir.

20 Q So you disregarded her opinion on that, but accepted
21 her opinion on malingering?

22 MR. BOGGS: Your Honor, I object to the form of that
23 question. He just said that she didn't have enough
24 information.

25 THE COURT: It's cross-examination. I'll let him

1 respond to it.

2 BY MR. GOWDY:

3 Q Is that an unfair question? If it's an unfair
4 question, I'll rephrase it.

5 A Well, could you repeat it, at least?

6 Q I'll be happy to. You did not follow Dr. Brawley's
7 opinion on the issue of mental retardation. She said she
8 didn't have enough information, you concluded you did, so
9 you issued an opinion that he was mildly mentally
10 retarded. My question to you is, you didn't follow her
11 opinion on mental retardation, but you did on malingering?

12 A No. I didn't -- also, I did not conclude that he had
13 mental retardation. I thought there was enough
14 information to be concerned that there may be mental
15 retardation. So we, actually, agreed.

16 Q Do you have the specific test on malingering that I
17 can go give to Dr. Crawford that you based your opinion
18 on?

19 A No, but I can tell you what it was.

20 Q What was it?

21 A It was the test of malingered memory.

22 Q Who gave you the list of people to talk to about this
23 Defendant's background?

24 A The Public Defender's Office.

25 Q Who did they tell you to talk to?

1 A I talked to family, daughter, teacher.

2 Q Which daughter?

3 A Aubrianna.

4 Q Did she say how long she had lived with him?

5 A Not very much. But she's been trying to keep in
6 contact with him.

7 Q Who else?

8 A One of his teachers.

9 Q One?

10 A Yes, sir.

11 Q Do you know how many teachers he had?

12 A He's had four or five.

13 Q Was that -- four or five?

14 A Well, yes. But there's others that I consulted with,
15 the State's psychiatrist and --

16 Q I mean up until Wednesday afternoon, how many of his
17 teachers had you talked to?

18 A I talked to one.

19 Q You talked to his daughter who, if I recall her
20 testimony, hasn't lived with him since 2000?

21 A Yes, sir.

22 Q Who else?

23 A Brothers and his former -- or his estranged wife, as
24 well as --

25 Q Bertha?

1 A Yes, sir. And I talked to an individual that was a
2 supervisor of him at a fast food restaurant.

3 Q Ms. Aiken?

4 A Yes. And that may be the extent of it. I can't
5 think of anybody else.

6 Q What's his mother's name?

7 A Mary Madgeline.

8 Q Did you talk to her?

9 A No, sir, I did not.

10 Q You did not talk to his mother?

11 A No, sir.

12 Q What's the name of the aunt that he grew up with?

13 A I don't remember offhand.

14 Q Did you talk to her?

15 A No, sir. I did not talk to her.

16 Q You don't think that would have been important,
17 Dr. Martin?

18 A Part of what I thought was a concern was that,
19 perhaps, more people should be involved in this, and that
20 was my point the other day.

21 Q Well, I don't disagree with that point, more people
22 should be involved. But my question to you is, why didn't
23 you talk to his mother?

24 A Because I didn't have enough time to talk to his
25 mother and other people.

1 Q Why did you only talk to one teacher?

2 A That's all that was provided to me at the time.

3 Q Would you agree with me that it would be most helpful
4 to you, as a psychiatrist, to talk to as many people as
5 you possibly could?

6 A Actually, I agree with that totally. That was my
7 point the other day.

8 Q You mentioned the Geneva Greene robbery to the jury.
9 I believe you mentioned it in the context of showing a
10 lack of adaptive skills because he was dumb enough to have
11 somebody write a check using his name?

12 A He exercised poor judgment, yes, sir.

13 Q Did you review any of his other crimes -- or alleged
14 crimes to see if he had shown more adaptive reasoning in
15 others?

16 A I have reviewed his crimes. Would you like to --

17 Q Candy Hill?

18 A I'm sorry?

19 Q Candy Hill, 18-year-old girl, criminal sexual
20 conduct. Did you talk to her?

21 A No, I did not.

22 Q Would you agree that it showed some level of adaptive
23 reasoning to take a woman into the woods and to rape her,
24 as opposed to doing it right beside a trail?

25 A I agree with that, yes, sir.

1 Q Did you talk to Kimberly Clark?

2 A No, sir, I did not.

3 Q Would you agree with me that it shows more adaptive
4 reasoning to wait until a husband is not at home to
5 assault his wife than to do it while he is at home?

6 A Yes, sir. That would make more sense.

7 Q Would you agree with me that it shows adaptive
8 reasoning once you are confronted to run away from the
9 scene?

10 A Yes.

11 Q Did you talk to Annice Statin?

12 A No, sir, I did not.

13 Q Would you agree with me that it shows more adaptive
14 functioning to take a woman into the woods off of Frye
15 Road to conduct a rape, as opposed to doing it closer to
16 Reidville Road?

17 A Yes, sir.

18 Q Does it show adaptive reasoning to take all of her
19 clothes and conceal them?

20 A That sounds like a defensive reasoning, if that's
21 what you're referring to, to avoid being caught.

22 Q Which is adaptive, isn't it?

23 A Well, not in our society, but it sounds protective --
24 self-protective.

25 Q My question to you is, when you begin to do things,

1 such as conceal evidence and burn cars and hide things, it
2 shows some level of reasoning, doesn't it, Doctor?

3 A Yes, sir. I agree with that.

4 Q You said you relied upon answers given by Fredrick
5 Evins in making your assessment?

6 A Yes, sir.

7 Q Which all psychiatrists do?

8 A Yes, sir.

9 Q Self disclosure is part of your information building?

10 A Yes, sir.

11 Q You're not the only psychiatrist who does that, they
12 all do?

13 A I believe so.

14 Q Would you also review other statements that your
15 patient had made on previous occasions?

16 A Yes, sir.

17 Q Did you look at his prison records?

18 A Yes, I did.

19 Q Did you see where he specifically denied being
20 physically abused as a child?

21 A Yes.

22 Q Did you see where he specifically denied being
23 sexually abused as a child?

24 A Yes, sir.

25 Q Did you see the reports from prison where he was

1 gainfully employed?

2 A Yes, sir.

3 Q Did you see the reports from prison where he was even
4 asking for promotions?

5 A Yes, sir.

6 Q Did you talk to Kizzy Smith?

7 A No, sir, I did not.

8 Q Do you know who Kizzy Smith is?

9 A Yes. I believe that was another previous -- a
10 relationship that he had.

11 Q Would you agree with me that it would be helpful, as
12 a psychiatrist, to talk to somebody who had, actually,
13 lived with Fredrick Evins for up to a year?

14 A Yes.

15 Q Did you talk to Tyquae Smith?

16 A No, I did not.

17 Q Do you know who Tyquae Smith is?

18 A No, sir, I do not.

19 Q Did you talk to Jimmy Sligh?

20 A No, sir, I did not.

21 Q Do you know who Jimmy Sligh is?

22 A No, sir, I do not.

23 Q Did you talk to Warden Larry Powers?

24 A No, sir.

25 Q Would you agree with me that it would be helpful to

1 talk with the warden over the facility where the Defendant
2 has been living for the past 20 months?

3 A Possibly, but I often rely on the prison records to
4 do that.

5 Q And those are some of the very same prison records
6 where he denied physical abuse, denied sexual abuse, even
7 on occasions, Dr. Martin, denied alcohol or drug abuse?

8 A Yes, he has done that.

9 Q Those same records?

10 A Yes, sir.

11 Q He was not on drugs or alcohol at the time he killed
12 Rhonda Ward, was he?

13 A That's my understanding.

14 Q And that is your understanding both today and was it
15 also your understanding previously when you testified,
16 because I don't recall it?

17 A Yes. And that's also what he told me.

18 Q Okay. The drug and alcohol intoxication would not
19 have been a factor in the death of Rhonda Ward?

20 A Apparently not.

21 Q Did you talk with a lady named Ann Dixon?

22 A No, sir.

23 Q Do you know who she is?

24 A No, sir, I do not.

25 Q Did you see the note where he was described in school

1 as being an average student in both performance and
2 ability?

3 A Yes, sir, I did.

4 Q You mentioned Wednesday, if I remember correctly,
5 Doctor -- and if I don't, I want you to tell me.

6 A Yes, sir.

7 Q That he would thrive in a controlled environment
8 where there is structure?

9 A Yes. I believe that has already been shown with just
10 a few exceptions where he has been for the past several --
11 or year and a half or so, yes.

12 Q So prison would be considered a controlled structured
13 environment?

14 A Yes, sir.

15 Q Did you interview either one of the guards who were
16 threatened by Fredrick Evins?

17 A No, sir, I did not.

18 Q Did you read his intake assessment interview where he
19 answered in the negative when he was asked if he felt like
20 people didn't like him or understand him?

21 A I believe that's what he described, yes. He felt
22 that people didn't like him, nor did they understand him.

23 Q No. He, actually, answered no to that. The question
24 is, do you feel like people don't understand you or don't
25 like you, and he said, "no."