

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Lexington County  
Honorable William P. Keesley, Circuit Court Judge

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Appellate Case No. 2019-001104

S.C. SUPREME COURT

RON O'NEAL FINKLEA, SK6025,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

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APPENDIX

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DIANA L. HOLT  
DIANA HOLT, LLC  
P.O. Box 6454  
Columbia, South Carolina 29260-6454

JOHN H. BLUME, III  
Blume, Norris, Franklin-Best & Young, LLC  
900 Elmwood Avenue, Suite #200  
Columbia, South Carolina 29201

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General  
No. 14244

W. JOSEPH MAYE  
Assistant Attorney General  
No. 100851

Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1937

1       A     Combat duty in Grenada, Panama, also in Bosnia  
2     and Kosovo.

3       Q     And what was your rank when you retired, sir?

4       A     I was a Sergeant Major.

5       Q     Can you go any higher?

6       A     No, sir.

7       Q     Did you ever work with Selectron?

8       A     Yes, sir. I worked at Selectron from December  
9     1999 until February of 2005.

10      Q     And when you started in '99, was Selectron  
11     located at the plant on Technology Drive then?

12      A     They were currently located at the NCR Plant  
13     further down Platt Springs Road in the process of  
14     relocating to the new location at 1000 Technology  
15     Drive.

16      Q     So you worked with them before that one at  
17     Technology Drive was even built?

18      A     Yes, sir.

19      Q     And what were you supposed to do, if anything,  
20     with the new building on Technology Drive?

21      A     I worked with the current security provider,  
22     ADT, in laying out the security system to include  
23     location of the security office.

24      Q     And who were you employed by?

25      A     I was employed by Wackenhut Corporation, but I



1 worked directly for Selectron.

2 Q All right, sir. And you mapped out the  
3 security for the new plant?

4 A Yes, sir, in part.

5 Q And what were you to do as far as employees in  
6 the security division?

7 A I contacted the main office, Wackenhut. They  
8 provided me a list of current employees that worked  
9 for Wackenhut. We did not want new employees  
10 starting at the plant, so they provided me with a  
11 list of current employees. And from their list, I  
12 conducted interviews and made selections for the new  
13 security team to be located at 1000 Technology  
14 Drive.

15 Q Was the position or the jobs in security at  
16 Selectron, was that kind of a plum or a prize  
17 position?

18 A Yes, sir. It wasn't your normal security  
19 operation nor is the pay that the individual  
20 received there. It was different that we operated  
21 autonomous from the main office at Wackenhut, worked  
22 very close with Selectron. So we received little or  
23 no guidance from Wackenhut other than needed  
24 training as dictated by the Selectron staff.

25 Q And there was a gentleman that testified named

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1939

1 Ed Brown. Did he work for you?

2 A He was my assistant.

3 Q What about Walter Sykes? How did you come to  
4 know Walter Sykes?

5 A The first time I met Walter was in November  
6 '99. It was an initial training at Wackenhut. At  
7 that time, we just introduced ourselves not knowing  
8 what the future held for either one of us. So that  
9 was the first time I met him.

10 Q Did you interview him in regard to Selectron?

11 A Yes, I did in January of 2000.

12 Q And why did you interview him?

13 A He came prepared for the job. He was a  
14 military retiree, which is good for that position,  
15 shift leader. He also had extensive background in  
16 military police operations, would have added to the  
17 security feature.

18 Q And when you have people and you select people  
19 to work there in security at Selectron, was there  
20 any kind of background investigation?

21 A Yes, sir. Wackenhut conducted their own  
22 background investigation for new employees, but in  
23 addition to that, each security officer has to be  
24 cleared by SLED, that's the South Carolina Law  
25 Enforcement Division.

1940

- 1 Q So SLED also conducted an investigation?
- 2 A Yes, sir.
- 3 Q You were familiar with Walter Sykes'
- 4 background?
- 5 A Yes, sir.
- 6 Q You're familiar with his military record?
- 7 A Yes, sir.
- 8 Q You were in the military?
- 9 A Yes, sir.
- 10 Q Now, I want to hand you this, also ask you
- 11 would this have been in y'all's file?
- 12 A Yes, sir. This is a DD form 214 with his -- a
- 13 cumulative list of all his assignments, awards, also
- 14 his tours of duty and how long he remained in the
- 15 service.
- 16 Q Now, he received some citations?
- 17 A Yes, sir.
- 18 Q And when you get certain things, you can get
- 19 some, we call it, scrambled eggs or some kind of
- 20 stuff up on there on your shoulder and all that.
- 21 What do y'all call them?
- 22 A We refer to them as ribbons, sir, medals,
- 23 awards.
- 24 Q Did Walter Sykes have some of those?
- 25 A Yes, sir. He had nine or ten of them.

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1941

1 Q All right, sir. I'm going to ask you about  
2 some of these on that list. Can you see this?

3 A It's a little hard from this vantage point.

4 Q If you want to, you can stand up right there.  
5 If you can just stand up right at the corner right  
6 there. Can you see it from there?

7 A (Witness leaves the witness stand.) Yes, sir.

8 Q And while he's doing that, I'm going to hand  
9 you some of these things also, if they go along with  
10 it, you just tell me. What is this first one right  
11 here?

12 A That's the Army Accommodation medal. It's  
13 normally provided for superior performance of duty.  
14 Walter had six of those, which is above the normal  
15 for an individual spending 20 years in the military.

16 Q He had six of them?

17 A Yes, sir.

18 Q What is this one?

19 A This is the Army Achievement medal. It's  
20 normally if an individual does something that's spur  
21 of the moment, somebody recognized that he did  
22 something above and beyond, they'd normally use the  
23 Army Achievement medal to award that to that  
24 individual.

25 Q The next one?

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1942

- 1       A    This is a Good Conduct medal. Normally, it's  
2       given every three years, not automatically. Walter  
3       had six of these and really this attests to you  
4       doing things in good faith with the military. They  
5       just don't give those away. And if you get one  
6       every three years, and he had six so that covered  
7       him for 20 years, so that said he was doing a great  
8       job during that time.
- 9       Q    The next one?
- 10      A    This is good conduct -- excuse me -- National  
11      Defense Service medal. Most military, matter of  
12      fact, all of them will get that.
- 13      Q    Next one?
- 14      A    This is Expeditionary medal for service in  
15      Korea.
- 16      Q    In Korea?
- 17      A    Yes.
- 18      Q    Next one?
- 19      A    Vietnam service medal.
- 20      Q    Next one?
- 21      A    NCR Professional Development ribbon.
- 22      Q    Next one?
- 23      A    Army service.
- 24      Q    Next one?
- 25      A    This is another ribbon from Vietnam. It's a

## JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1943

1 Cross of Gallantry medal with a clover.

2 Q Do you know if Walter saw combat in Vietnam?

3 A Yes, he did.

4 Q The next one? You see that next one to the  
5 right?

6 A That's CIB.

7 Q Can you see this one right here, what is that?

8 A Yes, sir, that's another medal from Vietnam.

9 Q Next one?

10 A This is Expert in Marksmanship badge for a  
11 rifle. This is a Combat Infantry badge. To get  
12 that, you just can't show up in the field of  
13 operation to get that, you actually have to be  
14 involved in combat operations.

15 Q Now, those boxes up there on the ledge, would  
16 you tell us what those are please, sir?

17 A This is the Vietnam service medal.

18 Q Who would have presented that, the United  
19 States Government or the Vietnamese?

20 A The United States Government did this, someone  
21 in his chain of command.

22 Q The next one?

23 A These here are actually coins of excellence.  
24 They're normally worn by, awarded by a commanding  
25 general, normally. They carry around a pocket full

1944

1 of these and they present them to individuals who  
2 impress them in doing something whether it's  
3 performance of duty, how they carry themselves,  
4 taking care of soldiers and they would normally give  
5 them one of these. Walter had two of these, one  
6 from the commanding general at Fort Jackson. And he  
7 also had one from his last assignment also before he  
8 retired.

9 Q All right, sir. What do you have next?

10 A This is the Army Achievement medal, which I  
11 told you about. And like I said, this is normally,  
12 it's a step down from the Army Accommodation medal,  
13 but this is normally given when an individual does  
14 something kind of right way, so they'll use this to  
15 reward him for that, him or her.

16 This is the Army Accommodation medal. This is  
17 a Good Conduct medal.

18 Q Were any of those in there any kind of medals  
19 he received from the Government of Vietnam?

20 A Not in these, sir, but he could have received  
21 something from the Government of Vietnam if he was  
22 involved with training the South Vietnamese Army or  
23 something like that.

24 Q Is this, what's depicted up on the screen right  
25 here, the ribbons?

JAMES BERNARD BANKS -- DIRECT BY MR. MYERS

1945

1 A Yes, sir.

2 MR. MYERS: Your Honor, we would offer this one  
3 in evidence.

4 MS. KIMBROUGH: Without objection, Your Honor.

5 THE COURT: It's admitted without objection.

6 (State's Exhibit Number 104, blowup of  
7 medals, admitted into evidence.)

8 BY MR. MYERS:

9 Q You may have a seat, Mr. Banks.

10 A (Witness resumes the witness stand.)

11 Q What kind of employee was Walter Sykes?

12 A Walter had a professional, real professional  
13 approach to the position that he held, always --  
14 most everybody referred to him as stickler for rules  
15 and regulations, which he tend to follow very  
16 closely, very neat dresser, required his subordinate  
17 officers to do the same. He required little or no  
18 supervision and I was very confident when I would  
19 leave at the end of the day, going home when he was  
20 on duty. He was personable, liked by many, in  
21 addition to the security force members of Selectron,  
22 because he worked the same shift from the day that  
23 he started at Selectron, which was March 14th, 2000  
24 until his death. He worked the same shift, only  
25 changed slightly once when I required him to work



1946

1 the day shift, but he worked the same shift, did not  
2 want to change.

3 Q Did you ever ask him about changing shifts?

4 A Yes, I did, I had an opening that would allow  
5 him to work a steady shift for the entire week. He  
6 refused, stated that he was used to that. He was  
7 used to the people at Selectron that he dealt with  
8 on a daily basis and he declined. So I respected  
9 that and left him on the shift that he was on.

10 Q Would he always remain in the security office  
11 or would he be around the plant?

12 A He would be around. Walter, like I said, he  
13 was a stickler for rules and regulations, the first  
14 thing he would do when he came on duty was to go out  
15 and assess the condition of the facility, who's  
16 working or there working, you know, who's around,  
17 who's working with him, so that's the first thing he  
18 did. And then he'd come back and talk to his  
19 subordinate officers and make a plan for the day.

20 Q Mr. Banks, when was this last time that you  
21 talked with Walter Sykes?

22 A The last time I talked to Walter Sykes was, I  
23 was getting ready to say military time, but it was  
24 about 12:15 a.m. on the 2nd of August 2003.

25 Q And what was the purpose of that call?

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1947

1       A     He -- the first time he called me was about  
2       11:15 p.m. on the 1st. The officer I had scheduled  
3       to work with him during that shift had not shown up  
4       for duty, so he called me. And I referred his call  
5       to Ed Brown, my assistant, because I was out of town  
6       at the time. We could not find someone to fill the  
7       slot, so the requirement, the rules that we  
8       generated before we started was is that if an  
9       individual didn't show up, the comparable individual  
10      from the shift that's off going would have to stay  
11      until we could find a replacement and so that  
12      individual stayed on for the shift.

13      Q     Would that have been Ms. Jane` Gibson?

14      A     Yes, sir.

15      Q     So you talked with him a few hours before he  
16      was murdered?

17      A     Yes, sir.

18      Q     When did you get a call about Walter being  
19      murdered?

20      A     Ed Brown called me about 5:15 a.m. on the  
21      morning of the 2nd.

22      Q     What did you do?

23      A     I immediately got up, took a shower and hit the  
24      road heading back from Hinesville, Georgia to here.

25      Q     Did you get back in time to assist some of the

1948

1 law enforcement officers?

2 A Yes, sir.

3 Q This is on a Saturday; is that correct?

4 A Yes, sir.

5 Q Now, on Sunday, what did you have to do around  
6 the plant on Sunday?

7 A I was told that family members was coming out  
8 to the plant. Walter's car was still there, some of  
9 his personal belongings were there. Excuse me --  
10 that's a task that I dreaded of meeting his family  
11 and trying to explain to them what had happened.

12 Q What did they want to see?

13 A They actually wanted to see where he worked at,  
14 which was a crime scene. Law enforcement division  
15 hadn't finished processing at that time. We was in  
16 the process of cleaning up. I met them in the main  
17 admin area of the building, but they insisted that  
18 they wanted to see where he worked at and to walk  
19 them to the area. And so I called my boss from  
20 Selectron, Darrell Smith, and I explained it to him  
21 and he says whatever they want, do it.

22 Q Did you tell them that area was the area where  
23 he had been murdered?

24 A Yes, sir.

25 Q What was their response?

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1949

1       A     Disbelief, hurt, you know, hurt was the word I  
2       can explain it.

3       Q     When you told them that that area where he  
4       worked was where he was murdered, did they still  
5       want to go see that?

6       A     Yes, sir. I explained it to them. They still  
7       wanted to come and look at it.

8       Q     Now, after his death, did Selectron make any  
9       type of financial payment in his memory?

10      A     Yes, sir. The chief of human resources for  
11      Selectron, which all the security fall under, they  
12      wanted to make a donation to a charity in the name  
13      of Walter. So I got with Ed Brown and we were all  
14      fellow retirees and we made a recommendation they do  
15      it to the Vietnam Veteran Association.

16      Q     Why did you make that recommendation?

17      A     Because, you know, Walter was in Vietnam.  
18      There was a lot of our comrades, fellow comrades,  
19      fellow retirees still going through changes after  
20      that war, so we thought it would be best served  
21      going there.

22      Q     And was there a letter from the headquarters in  
23      California to that effect?

24      A     Yes, sir.

25      Q     Was a copy of it sent to you?

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1950

1       A     Yes, sir.

2       Q     I hand you this letter and ask you if you can  
3 recognize that?

4       A     Yes, sir, I can.

5       Q     And was a copy of that letter sent to you also  
6 as indicated?

7       A     Yes, sir.

8       Q     And who is that letter addressed to?

9       A     It's addressed to, Dear family members of  
10 Walter Sykes.

11      Q     And this next document that I hand you, what  
12 does that reflect?

13      A     This is to indicate that a gift of \$10,000 in  
14 memory of Walter Sykes is presented to the Vietnam  
15 Veterans of South Carolina.

16           MR. MYERS: We offer these two in evidence,  
17 Your Honor.

18           MS. KIMBROUGH: No objection.

19           THE COURT: They're admitted without objection.

20                 (State's Exhibit Number 105, letter, and  
21 State's Exhibit Number 106, donation to Vietnam  
22 Veterans Organization, admitted into evidence.)

23           BY MR. MYERS:

24           Q     Exhibit 105, letter dated August 31st, 2003  
25 from Selectron. Dear family members of Walter

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1951

1 Sykes, on behalf of Selectron Corporation, please  
2 accept my sincere condolences for the loss of your  
3 father. This tragedy is still very hard for any of  
4 us to comprehend and to accept. We're all confident  
5 that justice will be served and those responsible  
6 held accountable for these evil actions. However,  
7 we also know that that will be a small consolation  
8 given your personal loss.

9 The entire Selectron community and especially  
10 our associates in Columbia will remember him as a  
11 valued individual. To many, he was a friend. In  
12 honor of your father, Selectron is sending a  
13 contribution in the amount of \$10,000 to the Vietnam  
14 Veterans Organization of Columbia, South Carolina.  
15 We hope this gift in your father's memory will  
16 provide much needed benefit and services to the  
17 veteran community. Sincerely, Kevin O'Connell,  
18 Senior Vice President, Worldwide Human Resources at  
19 Selectron. I don't know what that city is in  
20 California. It's M-I --

21 A Milpitas.

22 Q Milpitas. Thank you. I appreciate that.

23 And Exhibit 106, One Selectron presented to  
24 Vietnam Veterans of South Carolina a gift of \$10,000  
25 in memory of Walter Sykes. It's dated August the

1 31st, 2003.

2 Now, did you or some of the employees do  
3 something else in honor of Walter at Selectron?

4 A Yes, sir.

5 Q What was that, Mr. Banks?

6 A We wanted some type of a memorial or something  
7 for Walter and wanted it to be placed in the foyer  
8 exactly above where the ATM is located.

9 Q Were you part of that?

10 A Yes, sir.

11 Q And what did you do?

12 A We first submitted a picture of Walter and some  
13 writing to go on a plaque and we wanted it all to be  
14 placed on the same plaque. However, the human  
15 resources chief and the plant manager met with some  
16 of the other leaders and they thought that having  
17 his picture there would cause the hurt to linger on  
18 in the plant. Since Walter and the rest of our team  
19 was actually part of the Selectron family there,  
20 they took it as hard as we did. So the picture was  
21 deleted and the plaque was placed on the wall.

22 Q What do you mean the hurt to linger? How did  
23 his murder affect the folks out there?

24 A Because everybody -- Walter became part of the  
25 Selectron organization. There was a certain number

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1953

1 of people that worked during his shift, would see  
2 him everyday, talk, converse (sic) with him  
3 everyday, see him when he walked around everyday  
4 that he worked, so we became part of them, part of  
5 the Selectron family. We were no longer outsiders.  
6 We became part of the Selectron family. So it hurt  
7 them as much as it did us.

8 Q Were any type of counselors needed at the  
9 plant?

10 A Yes, sir. Immediately, on Monday morning,  
11 there was counselors on site both for the security  
12 personnel and Selectron employees and we had to, you  
13 know, outpatient services also available.

14 Q Did some of the employees, originally or after  
15 that, did they resign?

16 A Yes, sir. They said they could not come back  
17 to work because of that.

18 Q I want to hand this to you, ask if you can  
19 identify that?

20 A Yes, sir. This is the plaque that was done in  
21 memory of Walter. And we placed it on the wall  
22 above where the ATM is located.

23 MR. MYERS: We offer this in evidence, Your  
24 Honor.

25 MS. KIMBROUGH: Without objection.



JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1954

1           **THE COURT:** It's admitted without objection.

2                   (State's Exhibit Number 107, photograph,  
3 admitted into evidence.)

4           **BY MR. MYERS:**

5           **Q**     In memory of Walter Sykes. Thank you for your  
6 dedicated services, March 2000 to August 2003?

7           **A**     Yes, sir.

8           **Q**     Referring to State's Exhibit Number 4,  
9 Mr. Banks, any particular reason y'all put that  
10 plaque on the wall above where the ATM machine was?

11          **A**     Even though the picture wasn't allowed, we  
12 wanted the employees and the security personnel,  
13 also, to recognize and remember the personal  
14 sacrifice of Walter. And we figured that there  
15 would be no better place than to place it on the  
16 wall above where the ATM was located.

17          **Q**     Did that ATM machine stay there or not?

18          **A**     No, sir. I met with the plant manager on  
19 Sunday and he agreed to have it moved. It was moved  
20 on Tuesday morning.

21          **Q**     Permanently?

22          **A**     Yes, sir. He directed that I drive around the  
23 community and find out how many ATMs were in the  
24 area that could service the employees there. And it  
25 was picked up by Fort Jackson Federal Credit Union

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1955

1 on Tuesday, the following Tuesday.

2 Q Now, the camera system for the plant, who  
3 developed that camera system or who installed it?

4 A ADT installed it. I was more so a consultant  
5 while they was doing the installation.

6 Q Now, we have heard previously about a camera in  
7 the ATM machine?

8 A Yes, sir.

9 Q Was that camera part of your security thing?

10 A No, sir, separate.

11 Q So you have another camera system?

12 A Yes, sir.

13 Q And was there another camera in this foyer  
14 area?

15 A Yes, sir.

16 Q And tell me about where that camera was  
17 located. You can come down, if you want to.

18 A (Witness leaves the witness stand.)

19 Q If you would, stand right over here where I am  
20 and use this pointer and speak loudly enough so that  
21 young lady there can hear you.

22 A The camera was located in a ceiling tile that  
23 was in the ceiling. This (indicating) being the ATM  
24 right here, about right here up in the last ceiling  
25 tile, the camera was actually fitted right into the

1956

1 ceiling tile.

2 Q So if we put this right here, that's about  
3 where it was?

4 A Yes, sir.

5 Q The security camera?

6 A Yes, sir..

7 Q Up in the ceiling?

8 A Yes, sir.

9 Q If you didn't know it was there, was it  
10 noticeable?

11 A No, sir.

12 Q And that camera, were there monitors for that  
13 camera back in this area?

14 A Yes, sir.

15 Q Did y'all have hard drives or whatever was on  
16 that camera, could it be captured, also?

17 A Yes, sir.

18 Q And did some folks from law enforcement get  
19 that hard drive from that camera?

20 A Yes, sir.

21 Q So would it have -- you said it was in the  
22 ceiling, so it would look down in the foyer area?

23 A Yes, sir. The entire door at the security  
24 office, all the way through these doors were  
25 covered, that was in the field of view of that

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1957

1 camera. (Witness resumes the witness stand.)

2 Q Now, there was -- I don't know whether you  
3 could see it a while ago, that crime scene video?

4 A Yes, sir.

5 Q Back in the area where the desk was right there  
6 where you had a glass where you could see the people  
7 entering the plant back here.

8 A Yes, sir.

9 Q What was that area for? Was that a work area  
10 or what right in there?

11 A Yes, sir.

12 Q Now, there was also behind that another work  
13 area over here?

14 A Yes, sir.

15 Q Who had that installed?

16 A I installed that to separate the admin section  
17 from the security section. As a layout of the  
18 office, there was like three monitor -- computer  
19 monitors. One of them was for the security system,  
20 one of them was for the close circuit television  
21 system, and the separate work area was for admin  
22 where the officer on duty would log all of his  
23 rounds and any activity that he deemed necessary and  
24 I would review that the next morning.

25 Q Did Walter work in that area?

1       A     Yes, sir.

2       Q     Did you ever take a photograph of him in that  
3       area?

4       A     Yes, sir.

5       Q     Do you recognize this photograph?

6       A     Yes, sir, I do.

7       Q     And what does that depict?

8       A     That depicts Walter Sykes at the separate admin  
9       area with the radio on the desk and the computer  
10      system that he's operating.

11      Q     And that would have been in the area back over  
12      right in here behind where the other desk was?

13      A     Yes, sir.

14           MR. MYERS: We offer this in evidence, Your  
15      Honor.

16           MS. KIMBROUGH: No objection, Your Honor.

17           THE COURT: It's admitted without objection.

18                   (State's Exhibit Number 108, photograph,  
19      admitted into evidence.)

20      BY MR. MYERS:

21      Q     Mr. Banks, about when was this photograph  
22      taken?

23      A     Approximately, June 2003.

24      Q     Do you know if this is one of the last  
25      photographs taken of Walter?

## JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1959

1       A     Yes, sir.

2       Q     Now, there's something back in this photograph  
3       that's kind of a blur. Do you see that back over  
4       there?

5       A     That's his lunch bag that he brings to work  
6       everyday and he normally sits in the same spot  
7       everyday.

8       Q     Was that still there on that Sunday when the  
9       family came?

10      A     Yes, sir.

11      Q     What did you do with it?

12      A     I took those items and other items that was in  
13      the office and I took it up to the admin area in the  
14      foyer where I initially met the family, took all of  
15      those items to them.

16      Q     How tough was that day, that Sunday, with the  
17      family?

18      A     It was one of the toughest things I've ever had  
19      to do.

20      Q     Why was that?

21      A     Being in combat, you would think otherwise, but  
22      that was personal, you know. I mean, Walter worked  
23      for me. It was my responsibility to ensure that he  
24      had the right tools to do his job and then to be  
25      called and, you know, just -- I mean, it hurt me and

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

1960

1 then having to tell his family and then show his  
2 family where it happened at, you know, where he  
3 worked at, it's...

4 Q Mr. Banks, did you go to his funeral services?

5 A Yes, sir.

6 Q What, if anything, did you do at his casket?

7 A I saluted his body because it's a way of a  
8 fellow retiree, a fellow comrade to pay tribute to a  
9 fallen comrade.

10 Q Did his murder have an affect on you and other  
11 employees at Selectron?

12 A Yes, sir.

13 MR. MYERS: Thank you, Mr. Banks. Answer any  
14 questions the defense has.

15 THE COURT: Ladies and gentlemen, let's stand  
16 for a moment.

17 (Pause.)

18 THE COURT: Cross-examination.

19 MS. KIMBROUGH: Your Honor, the defense has no  
20 questions for Mr. Banks.

21 THE COURT: Mr. Banks, you may step down.

22 MR. MYERS: Call Amanda Simmons.

23 AMANDA SIMMONS,

24 having been duly sworn, testified as follows:

25 THE CLERK: If you'll have a seat, state your

AMANDA SIMMONS - DIRECT BY MR. MYERS

1961

1 full name, spelling your last for the record,  
2 please.

3 THE WITNESS: My name is Amanda Simmons,  
4 S-I-M-M-O-N-S.

5 DIRECT EXAMINATION

6 BY MR. MYERS:

7 Q By whom are you employed?

8 A I'm employed by the South Carolina Law  
9 Enforcement Division.

10 Q And what division or what area do you work in?

11 A Currently, I'm assigned to the computer crime  
12 center, which is a center that processes computers  
13 when they're submitted to SLED.

14 Q In criminal investigations?

15 A Yes, sir.

16 Q And how long have you been with SLED?

17 A I've been with SLED since October of 1997.

18 Q Prior to that, where were you?

19 A Prior to that, I was with Lexington County  
20 Sheriff's Office since 1986.

21 Q Did you have an occasion to go out to Selectron  
22 to assist in an investigation of the murder of  
23 Walter Sykes?

24 A Yes, I did. I was summonsed to Selectron on a  
25 Saturday morning on August 2nd, 2003.



AMANDA SIMMONS - DIRECT BY MR. MYERS

1962

1 Q And what, if anything, did you do when you got  
2 out there?

3 A The purpose that I was summonsed to that  
4 location was to process five computer systems. They  
5 were digital video surveillance systems. And I  
6 received a telephone call to respond. Upon my  
7 arrival, I met with Mike Phipps with the sheriff's  
8 office, as well as Jim Hickman with the sheriff's  
9 office and looked at these digital surveillance  
10 systems.

11 Q And did you retrieve anything?

12 A I subsequently took three hard drives from  
13 three of the systems, took two systems, they're  
14 complete systems with the computer system with their  
15 hard drives intact, and took those to SLED to  
16 process.

17 Q Did you view anything out there before you took  
18 these?

19 A Yes, I did. One of the officers on site had  
20 some floppy diskettes that had copies of video that  
21 was taken from these video digital surveillance  
22 systems of what turned out to be Mr. Sykes. And,  
23 obviously, he had been shot in the video, as well as  
24 been set afire.

25 Q Now, referring to State's Exhibit Number 4

AMANDA SIMMONS - DIRECT BY MR. MYERS

1963

1 again, did you take one of the hard drives out of  
2 the security office? You can come over here,  
3 please.

4 A (Witness leaves the witness stand.)

5 Q The security office back in this area?

6 A Yes.

7 Q Did you take one of the hard drives out that  
8 related to a security camera out in the foyer?

9 A Yes, I did. I took, basically, three hard  
10 drives from three of the systems and two hard drives  
11 and the computer systems that went with those  
12 systems, two full computers and three additional  
13 hard drives. (Witness resumes the witness stand.)

14 Q When you took those hard drives back to SLED,  
15 what did you do with them?

16 A In the forensic process, what we do is we make  
17 a forensic copy of any hard drive that we seize. So  
18 those five hard drives were subsequently copied in a  
19 forensic methodology and we made copies to view  
20 those copies instead of using the original evidence.  
21 With digital video surveillance systems, every time  
22 you cut that computer on, you run a chance of  
23 pushing out the older data and it collecting the  
24 newer data. So, in essence, what we do is we work  
25 with a forensic copy once we seize those systems.

AMANDA SIMMONS - DIRECT BY MR. MYERS

1964

1 Q And were you able to get a copy of what  
2 happened to Walter Sykes on the early morning hours  
3 of August the 2nd?

4 A I was able to make that copy. And,  
5 subsequently, as a result of processing those  
6 videos, we were able to attain video from those  
7 systems that was later provided to the sheriff's  
8 office for their investigation.

9 Q Do you have one of those disks or tape or  
10 whatever from that camera in the ceiling looking  
11 down in the foyer area?

12 A That is correct. I have C.D.'s that contain  
13 it, as well as the computer on the desk here that  
14 contains that as well.

15 MR. MYERS: We would offer this in evidence at  
16 this time, Your Honor.

17 MS. KIMBROUGH: Without objection.

18 THE COURT: It's admitted without objection.

19 (State's Exhibit Number 109, DVD, admitted  
20 into evidence.)

21 BY MR. MYERS:

22 Q If you'll begin playing it, please?

23 (Whereupon, State's Exhibit Number 109 was  
24 played.)

25 Can you start that over?

AMANDA SIMMONS - DIRECT BY MR. MYERS

1965

1 A Yes, sir.

2 Q Can you stop it when I tell you to stop it?

3 A Yes, sir.

4 (Whereupon, State's Exhibit Number 109 was  
5 played for the jury and the following occurred.)

6 Q The person coming in in the orange shirt, can  
7 you see what color shoes he had on? Can you run it  
8 back just a little bit? Right here when he comes in  
9 the door, right there, can you tell what color shoes  
10 the guy in the orange shirt had on?

11 A They appear to be white.

12 Q Go ahead. And when he goes in and he  
13 disappears for a while, I want you to stop it a  
14 little bit. Stop right there. Can you go back just  
15 a little bit because there's some white shoes that  
16 reappear in there after he goes in?

17 A (Witness complies.)

18 Q From here on in, he goes in that room and it  
19 gets dark. Do you ever see that white shoe come  
20 back for just a flash, right there, and then it  
21 disappears again?

22 A That's correct.

23 Q Now, I want you to stop it when this second  
24 person comes in the door. Right here. Can you tell  
25 what this second person has in his hand right there

1966

1 or what it appears to be?

2 A It appears to be a gas can, a red gas can.

3 Q Okay. Go ahead. I want you to stop it again  
4 in just a second. Right there. The fellow with the  
5 orange shirt going in, what does he appear to have  
6 in his hand?

7 A The red gas can at this time.

8 Q Go ahead. Now, when that fellow comes back  
9 out, when he gets right there at the door, I want  
10 you to stop it again. Right there. What appears to  
11 be in his left hand?

12 A In the left hand, it appears to be the gas can.  
13 In the right hand, it appears to be a firearm, a  
14 handgun of some type.

15 (State's Exhibit Number 109 was concluded.)

16 Q I'll need one of those discs to mark as an  
17 exhibit.

18 A That was the one of the videos.

19 Q That's the one we just saw?

20 A Yes, sir, that's the one we just saw.

21 MR. MYERS: I offer that in evidence, Your  
22 Honor.

23 THE COURT: What says the defense?

24 MS. KIMBROUGH: No objection.

25 THE COURT: Admitted without objection.

AMANDA SIMMONS - DIRECT BY MR. MYERS

1967

1           **MR. MYERS:** The disc by the security camera,  
2           Your Honor, is marked 109.

3           **BY MR. MYERS:**

4           **Q**     Rather than going through this frame by frame,  
5           did I ask you to make some copies of the frame by  
6           frame of what we just saw?

7           **A**     I was asked to make frame by frame copies both  
8           in eight and a half by ten approximate size and also  
9           some four by six sizes.

10          **Q**     Now, in that system, camera system, things  
11          appear to be herky-jerky. Can you explain why that  
12          is to the jury?

13          **A**     In looking at that system, there were little  
14          sections of each focus of each camera, such as if I  
15          were focusing on the jury right now and I wanted to  
16          focus on juror number three, all of the other jurors  
17          in this jury box could move, but if juror number  
18          three would move and the pixels that were focused on  
19          her would change, then it would activate that  
20          camera.

21                 So, basically, in certain sections of the  
22          buildings throughout Selectron, they had pixels  
23          picked out so that if they had movement in that  
24          particular location, then it would activate the  
25          camera. So it's not every two seconds, take a

1968

1 picture, every three seconds, take a picture. It's  
2 when motion goes through that particular field, that  
3 it activates and that would cause the herky-jerky,  
4 as you described it.

5 Q Now, are these some of the photographs that you  
6 -- some of the frames that you took photographs of  
7 for us from what we just saw?

8 A Yes, that is correct, that is some of the  
9 photographs that I printed.

10 MR. MYERS: Your Honor, we offer this in  
11 evidence.

12 MS. KIMBROUGH: Without objection, Your Honor.

13 THE COURT: It's admitted without objection.

14 (State's Exhibit Number 110, photographs,  
15 admitted into evidence.)

16 BY MR. MYERS:

17 Q Step down here, please.

18 A (Witness leaves the witness stand.)

19 Q Now, the photograph on the top left when he  
20 first came in, where is he appearing to look?

21 A He appeared to look at Mr. Sykes' back as he's  
22 walking back into the office.

23 Q The second photograph in the middle on the top,  
24 where does he appear to be looking here?

25 A There was another row of doors that were

AMANDA SIMMONS - DIRECT BY MR. MYERS

1969

1 approximately right here. He appears to be looking  
2 through those doors to possibly see if someone else  
3 is coming or anybody's out there.

4 Q The one on the top right is the second person  
5 coming in?

6 A That's when he let the second person in.  
7 Obviously, the security guard or someone had to let  
8 folks through those doors at nighttime.

9 Q And what appears to be in this path right here,  
10 you can see on that photograph? It's maybe not as  
11 clear as on the video.

12 A It's not as clear as the video, but obviously,  
13 in looking at the video many times over, it appears  
14 to be a red gas can.

15 Q Now, the one on the bottom left with the fellow  
16 in the orange shirt heading back into the office the  
17 second time, what's in his hand?

18 A In that particular photo, the red gas can is in  
19 his hand.

20 Q And when he is coming out for the second time,  
21 can you see what appears to be in his hand right  
22 here?

23 A A little bit difficult to see, but a red gas  
24 can and I believe you can see an outline of a  
25 firearm.



1970

1 Q And then the second person seems to be out the  
2 door in this photograph?

3 A That is correct..

4 Q And then, lastly, the photograph on the bottom  
5 right, fellow in the orange shirt, what's in his  
6 left hand?

7 A Left hand, gas can, and what appears to be a  
8 handgun or a firearm in his right hand.

9 Q Now, did I also ask you to do some still  
10 photographs of Mr. Sykes coming out?

11 A Yes, sir. I printed numerous photos each frame  
12 by frame of the video that I was able to.

13 Q Did you help prepare all of these on this  
14 exhibit? You've seen that before?

15 A Yes, sir, I did.

16 MR. MYERS: We would offer this in evidence,  
17 Your Honor.

18 MS. KIMBROUGH: No objection, Your Honor.

19 THE COURT: It's admitted without objection.

20 (State's Exhibit Number 111, photographs,  
21 admitted into evidence.)

22 MR. MYERS: That will be 111.

23 BY MR. MYERS:

24 Q On the top left, right in this security guard  
25 area?

AMANDA SIMMONS - DIRECT BY MR. MYERS

1971

1       A     In the security guard area, there appears to be  
2       flames or a fire starting in that area.

3       Q     And right in the bottom left of that  
4       photograph?

5       A     See a white baseball cap and a section of an  
6       orange shirt.

7       Q     The one in the middle on the top?

8       A     You see an individual with flames about his  
9       head and back.

10      Q     Does he appear to fall down in that area coming  
11      out?

12      A     He does appear to fall down. As a medic, EMT  
13      and also as a police officer, the volume of blood  
14      that I saw at the scene would probably cause someone  
15      to do something such as fall down.

16      Q     The one on the top right?

17      A     Again, flames about the head and back of the  
18      individual.

19      Q     The second row down on the left?

20      A     Flames about the head and back and upper torso.

21      Q     The one in the middle on the second row?

22      A     Similar, but also getting closer to the door.

23      Q     Now, on this one, do you see anything all over  
24      the floor right here?

25      A     No, I do not.

1972

1 Q But on the one on the right, what do you start  
2 observing right here?

3 A I start to observe a substance on the floor.  
4 Obviously, once I arrived at the scene, I recognized  
5 it as obviously blood or what appeared to be blood  
6 and in great volume, as I said, as an EMT and also a  
7 police officer, a good quantity of blood on the  
8 floor.

9 Q Third row on the bottom left compared with the  
10 photograph we just looked at, what about the blood  
11 in that area?

12 A A larger quantity of blood, obviously, on the  
13 floor. Again, the head and back, upper torso,  
14 flames in that area.

15 Q The one in the middle?

16 A Again, you start to see some additional blood  
17 in this area and the flames, again, above the upper  
18 torso.

19 Q The photograph on the right?

20 A Same situation, additional blood and, again,  
21 the flames above the torso appearing to exit from  
22 the -- trying to exit out of the building.

23 Q When you got out to the crime scene, were you  
24 able to observe this door that he's trying to go out  
25 there?

## AMANDA SIMMONS - DIRECT BY MR. MYERS

1973

1 A Yes, sir. I do recall some blood on that door.

2 Q Fourth row to the left?

3 A Again, flames above the upper torso, still see  
4 the blood on the floor and he is exiting the door at  
5 that point.

6 Q And the middle?

7 A Exiting the door a little bit further, and at  
8 that point, you still see flames.

9 Q Right?

10 A At this point, he's outside the door with the  
11 exception of his foot, you still see the flames  
12 coming about the upper torso.

13 Q The bottom left?

14 A You still see the flames outside the door, and  
15 for some period of time, you continue to see flames.

16 Q And over here, the same?

17 A The same thing.

18 Q Now, over here there's something small, what is  
19 that?

20 A Still continuing to see flames outside, outside  
21 that door. And as I understand it, the body had  
22 already been removed upon my arrival, but that's  
23 where they found Mr. Sykes.

24 Q You can have a seat.

25 A (Witness resumes the witness stand.)

## SHIRLEY PRYOR - DIRECT BY MR. MYERS

1974

1           **MR. MYERS:** If you would, answer any questions  
2 they have. I appreciate it.

3           **MS. KIMBROUGH:** We have no questions for Ms.  
4 Simmons. Thank you.

5           **MR. MYERS:** Call Ms. Shirley Sykes Pryor,  
6 please.

7                               SHIRLEY PRYOR,  
8           having been duly sworn, testified as follows:

9           **THE CLERK:** Have a seat, stating your name and  
10 spell your last for the record, please.

11           **THE WITNESS:** My name is Shirley Pryor,  
12 P-R-Y-O-R.

13                               DIRECT EXAMINATION

14           BY MR. MYERS:

15           **Q**    Ms. Pryor, where are you from?

16           **A**    From Virginia.

17           **Q**    How are you related to Walter?

18           **A**    His sister.

19           **Q**    How many brothers and sisters do y'all have?

20           **A**    I have five sisters and four brothers.

21           **Q**    Do any of them live in South Carolina?

22           **A**    No.

23           **Q**    Where do they mostly live, Ms. Pryor?

24           **A**    Two in Maryland and two in Virginia.

25           **Q**    Where was Walter in the line of brothers and

SHIRLEY PRYOR - DIRECT BY MR. MYERS

1975

1 sisters? Was he the oldest, youngest?

2 A He's the youngest.

3 Q Where were y'all raised?

4 A We were raised up on my grandparent's farm and  
5 store. We worked all around, in the yard, in the  
6 garden.

7 Q Was that in Virginia?

8 A No, that was in Trevilians (ph), Virginia.

9 Q Pardon me?

10 A That was in Trevilians, Virginia, but now it's  
11 Chesapeake.

12 Q And what kind of jobs did Walter have when he  
13 was coming up?

14 A He had worked in the field of our grandfather  
15 and my grandmother's and, also, the store on the  
16 farm.

17 Q Okay. Let me stop you. You had a farm, so he  
18 worked in the field?

19 A Yes.

20 Q And you said something about a store. What  
21 kind of store?

22 A My grandfather and grandmother had a store and  
23 we all worked in it when we come out of school.

24 Q He would go to school during the day and then  
25 work in the field and the store?

1976

- 1 A Yes, the rest of -- until about 8:00 or 9:00.
- 2 Q Did he have a nickname coming up?
- 3 A Yes, Meme.
- 4 Q Meme?
- 5 A Yes.
- 6 Q Now, was there any one of the brothers or
- 7 sisters that he was kind of closer to than the rest
- 8 of them?
- 9 A Yes, my sister Marion Sykes.
- 10 Q And where is Marion?
- 11 A Marion is in Portsmouth (ph) with my mother on
- 12 her death...
- 13 Q Now, what about your mother?
- 14 A My mother can pass any time.
- 15 Q She's in the hospital?
- 16 A Yes.
- 17 Q They don't expect her to live?
- 18 A No.
- 19 Q Did Walter have a high school sweetheart?
- 20 A Yes.
- 21 Q And when he was getting out of high school,
- 22 what did he do?
- 23 A When he got out of high school, he went into
- 24 the service and he married his sweetheart.
- 25 Q He went into the service right out of high

SHIRLEY PRYOR - DIRECT BY MR. MYERS

1977

1 school?

2 A Yes.

3 Q And he married his high school sweetheart?

4 A Yes.

5 Q Some of your other brothers and sisters not  
6 able to come down?

7 A No, because they're with my mother. I was the  
8 only one able. I came for my brother.

9 Q Ms. Pryor, the murder of Walter, what affect  
10 did that have on your family?

11 A A lot, because it's been -- day and night, yes.

12 Q What affect did it have on your mother?

13 A She went down after she heard what happened.  
14 She got sick. Then her husband died and then she --  
15 my stepfather, Hawkins, he died and she just went  
16 right on down.

17 MR. MYERS: Please answer any questions they  
18 have for you.

19 MS. KIMBROUGH: We have no questions for Ms.  
20 Sykes.

21 MR. MYERS: Call Shannon Sykes-Daniels.

22 SHANNON SYKES-DANIELS,  
23 having been duly sworn, testified as follows:  
24 THE CLERK: Please have a seat, state your  
25 name, spelling your last for the record.



SHANNON SYKES-DANIELS - DIRECT BY MR. MYERS

1978

1           **THE WITNESS:** My name is Shannon Alvena  
2           Sykes-Daniels, S-Y-K-E-S hyphen D-A-N-I-E-L-S.

3                           DIRECT EXAMINATION

4           BY MR. MYERS:

5           Q     Shannon, where are you living now?

6           A     I live in Chesapeake, Virginia.

7           Q     And what do you do?

8           A     I am a student and I work part time as a  
9           receptionist.

10          Q     And where are you a student?

11          A     At TCC, it's a community college in Virginia.

12          Q     What are you majoring in?

13          A     Business administration.

14          Q     How are you related to Walter Sykes?

15          A     I'm his oldest daughter.

16          Q     Oldest daughter, how many children did he and  
17          your mother have?

18          A     There's four of us.

19          Q     How many girls, how many boys?

20          A     Two girls and two boys.

21          Q     Are some of your -- your sister and some of  
22          your brothers here?

23          A     We're all here.

24          Q     All four?

25          A     All four.

SHANNON SYKES-DANIELS - DIRECT BY MR. MYERS

1979

1 Q Now, your mother's name, what was her name?

2 A Melinda Ilene Stephens Sykes.

3 Q Your father and mother were high school  
4 sweethearts?

5 A Yes. They started around ninth or tenth grade  
6 when they first started dating and they dated all  
7 through high school. And before he left for the  
8 military, they got married.

9 Q Being in the military and you're the oldest, I  
10 guess, y'all moved around a good bit?

11 A Yes, sir.

12 Q Where was some of the places that you lived  
13 with your mother and father?

14 A Fort Benning, Georgia; Schweinfurt, Germany;  
15 Leesville, Louisiana. There's several others, I'm  
16 drawing a blank right now.

17 Q How did you find out about your father being  
18 murdered?

19 A Actually, my husband and I were -- we were on  
20 our way to the movies and my cousin, Marion's  
21 youngest boy, caught me as we were walking out the  
22 door. So I, you know, I was like, Let me go answer  
23 the phone. And he called me and he was saying, You  
24 need to come to the house. I was like, well -- and  
25 I could tell there was something wrong. I could

1980

1 tell he was upset about something. I didn't think  
2 it was anything serious, but I thought he was upset.  
3 He was like, Well, you need to come to the house.  
4 And I was like, Well, why? And he was like, We have  
5 to tell you something. So he just kept saying, Come  
6 to the house. And I'm like -- I made him tell me on  
7 the phone what it was and he told me on the phone  
8 what it was and that's...

9 Q Did y'all come on down to South Carolina?

10 A That day.

11 Q Now, Mr. James Banks that talked about some  
12 family members coming out to Selectron, were you one  
13 of them?

14 A Yes.

15 Q Why did you want to go out there, Shannon?

16 A My father liked his work. He liked his job and  
17 we just wanted to see where he worked.

18 Q Let me show you this photograph. Who is that a  
19 picture of?

20 A That is a picture of myself, my sister,  
21 Antinette, Walter Junior and Brian.

22 Q And who's the other person in there?

23 A My daddy.

24 MR. MYERS: We offer this in evidence, Your  
25 Honor.

SHANNON SYKES-DANIELS - DIRECT BY MR. MYERS

1981

1 MS. KIMBROUGH: Without objection, Your Honor.

2 THE COURT: It's admitted without objection.

3 (State's Exhibit Number 112, photograph,  
4 admitted into evidence.)

5 BY MR. MYERS:

6 Q Now, you said it was your other sister?

7 A Yes.

8 Q What's her name?

9 A Antinette.

10 Q Where is she?

11 A She is sitting in the corner right next to my  
12 Aunt Shirley.

13 Q And you said it was Walter Junior?

14 A Walter Junior.

15 Q Where is he?

16 A He is sitting right next to my brother, Brian,  
17 in the white shirt.

18 Q And then Brian, where is Brian?

19 A Sitting right next to my Aunt Shirley.

20 Q Did y'all take a lot of photographs as a  
21 family?

22 A Yes. We have a lot of pictures. We have eight  
23 photo albums starting from when I was born until  
24 Walter and Brian's 18th birthday, I think, is one of  
25 the last pictures in the photo album.

1982

1 Q What is this a photograph of?

2 A It's an accommodation award ceremony for my  
3 father. We were living in Germany at the time. He  
4 was receiving a medal. I can't recall what medal it  
5 was, but we attended several of those ceremonies for  
6 my father.

7 Q Where he was receiving some type of award or  
8 medals?

9 A Yes.

10 MR. MYERS: We offer this in evidence, Your  
11 Honor.

12 MS. KIMBROUGH: Without objection, Your Honor.

13 THE COURT: It's admitted.

14 (State's Exhibit Number 113, photograph,  
15 admitted into evidence.)

16 BY MR. MYERS:

17 Q Now, whenever he would receive medals or  
18 ribbons and awards, would he want his family there?

19 A Yes.

20 Q What about this one?

21 A This is a picture of my parents. We were  
22 living in Germany at the time. This is a military  
23 ball that they went to together.

24 MR. MYERS: Offer in evidence.

25 MS. KIMBROUGH: No objection from the defense.

SHANNON SYKES-DANIELS - DIRECT BY MR. MYERS

1983

1           **THE COURT:** It's admitted.

2                   (State's Exhibit Number 114, photograph,  
3 admitted into evidence.)

4           **BY MR. MYERS:**

5           **Q**     Shannon, what happened to your mother?

6           **A**     In 1995, my mother passed from breast cancer.

7           **Q**     Was it a sudden thing or was it prolonged?

8           **A**     It was prolonged.

9           **Q**     What did your father do for her during that  
10 time?

11          **A**     Everything.

12          **Q**     Pardon?

13          **A**     He did everything for her. He did everything  
14 for her. He never left her side. He waited on her  
15 hand and foot.

16          **Q**     What kind of father was he like growing up?

17          **A**     My father being with a military background, he  
18 was strict, he was stern. We had rules that we had  
19 to follow. We had to -- he called us -- in our  
20 family, we have what -- we have to contribute to our  
21 family and he was just always there. He was --  
22 whatever we needed, we never went without anything.  
23 Christmas was the biggest and best. He would mess  
24 with us sometimes saying that we wouldn't get, you  
25 know, a certain something that we asked for, but it

1984

1 was always there plus some. He taught us respect,  
2 consideration for others.

3 Q Is this one of his later photographs in the  
4 military?

5 A Yes.

6 MR. MYERS: We offer that in, Your Honor.

7 MS. KIMBROUGH: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (State's Exhibit Number 115, photograph,  
10 admitted into evidence.)

11 BY MR. MYERS:

12 Q Was he proud to be a soldier?

13 A He was very proud.

14 Q What has happened with your family now? Are  
15 they all at one place? Are they together or what?

16 A Renee and I live -- Antinette and I live in  
17 Virginia. She and Hampton and I live in Chesapeake,  
18 which is about an hours away from each other.

19 Walter lives in Atlanta, Georgia and Brian is here  
20 in Columbia, Richland County.

21 Q After his murder, did y'all receive any letters  
22 from Selectron from the Columbia office?

23 A I'm sorry?

24 Q After his murder, did you receive any type of  
25 letter from the Selectron plant here in Columbia?

SHANNON SYKES-DANIELS - DIRECT BY MR. MYERS

1985

1 A Yes.

2 Q Is this one of them?

3 A Yes.

4 Q Did you also receive something from the White  
5 House?

6 A Yes.

7 Q Is that it?

8 A Yes.

9 MR. MYERS: We offer both of these in evidence.

10 MS. KIMBROUGH: No objection, Your Honor.

11 THE COURT: They are admitted without  
12 objection.

13 (State's Exhibit Number 116 letter, and  
14 State's Exhibit Number 117, certificate, admitted  
15 into evidence.)

16 BY MR. MYERS:

17 Q 116: September 18, 2003, to the Walter Sykes  
18 family. As your family is going through very sad  
19 and tragic moments, I want to offer, on behalf of  
20 Selectron South Carolina, our deepest condolences  
21 and sympathy. Walter was a part of our organization  
22 for many years and earned the respect and admiration  
23 of all of us.

24 Over the past weeks, we have experienced a  
25 great deal of sadness, anger, consternation at his



1986

1 senseless death. I believe that with the passing of  
2 time, the shock of Walter's passing will be replaced  
3 by fond memories of his dedication to work, friends  
4 and family.

5 Walter's fellow associates feel compelled to  
6 help your family in any way possible. Please accept  
7 this gift to assist with the expenses brought by  
8 this tragic event. Also, if there is anything more  
9 we can do to help in any way, please contact without  
10 hesitation. Our collective thoughts and prayers  
11 will remain on your family. Frank Luger, Vice  
12 President, General Manager of Selectron South  
13 Carolina.

14 Did they send something with this letter to  
15 you?

16 A They did. I can't recall what it was right  
17 this second.

18 Q Number 117: The United States of America  
19 honors the memory of Walter A. Sykes. This  
20 certificate is awarded by a grateful nation in  
21 recognition of devoted and selfless consecration to  
22 the service of our country in the United States  
23 forces, in armed forces. Signed George Bush,  
24 President of the United States.

25 Y'all received that, too?

SHANNON SYKES-DANIELS - DIRECT BY MR. MYERS

1987

1 A Yes.

2 Q Services for him were held in Columbia?

3 A Well, there were two services, one here and one  
4 in Virginia.

5 Q Did he have -- what was he dressed in for his  
6 funeral?

7 A In his military dress.

8 Q With his ribbons and awards, some of them?

9 A Yes.

10 Q Who designed this program, Shannon?

11 A The four of us all together.

12 Q What four?

13 A His four children.

14 Q This was for his funeral services?

15 A Yes.

16 MR. MYERS: We offer this in evidence Your  
17 Honor.

18 MS. KIMBROUGH: There's no objection, Your  
19 Honor.

20 THE COURT: It's admitted without objection.

21 (State's Exhibit Number 118, funeral service  
22 program, admitted into evidence.)

23 BY MR. MYERS:

24 Q Number 118. Life reflections, who wrote that  
25 part of this in here, Shannon?

1 A I did.

2 Q Four children, the family had to organize  
3 everything for the services?

4 A Yes.

5 Q What is this?

6 A That is the flag that was given to me because  
7 his -- my mother wasn't there to receive it and as  
8 the firstborn, they gave it to me.

9 Q Where had it been?

10 A It's been in my room mounted on the mantel that  
11 I have in my room.

12 Q How was it used in the services?

13 A It was on his coffin. They folded it.

14 Q Shannon, I heard you say a little while ago in  
15 one of those photographs, That's my daddy. Is that  
16 what you call him?

17 A Yes.

18 Q What do you miss about him?

19 A I was and I still am a daddy's girl and I just  
20 miss my daddy. I miss my daddy. And I want my  
21 daddy back. He's the only man who ever loved me  
22 just because, just because I was me. He never  
23 expected anything from me. And I just want my -- I  
24 just -- I just miss my daddy.

25 MR. MYERS: Please answer any questions they

1989

1 have.

2 MS. KIMBROUGH: We have no questions for Ms.  
3 Daniels.

4 MR. MYERS: Can we take a short break?

5 THE COURT: Ladies and gentlemen, please go to  
6 the jury room. We'll take a recess at this time.  
7 Please do not discuss the case.

8 (The jury retires to the jury room.)

9 THE COURT: We'll take 15 minutes.

10 (Brief Recess.)

11 (State's Exhibit 119 through 129,  
12 photographs, were marked for identification  
13 purposes.)

14 THE COURT: Are there any matters before the  
15 jury comes in?

16 MR. MYERS: Yes, sir. Not with this witness,  
17 but with the next witness, who will be the  
18 pathologist, Your Honor, we've got some photographs  
19 she will use to testify to.

20 MS. KIMBROUGH: Your Honor, we do have some  
21 concerns with the autopsy photographs. We  
22 understand Your Honor's ruling insofar as the five  
23 photographs that were admitted previously that  
24 depict wounds on various locations on the victim.  
25 State's Exhibit 127 through 129 show --

1990

1           **THE COURT:** Will you speak a little louder,  
2 please?

3           **MS. KIMBROUGH:** I apologize, Your Honor.  
4 State's Exhibit 127 through 129, if I may approach?

5           **THE COURT:** Yes.

6           **MS. KIMBROUGH:** Just so I can explain the  
7 objections.

8           These photographs have some sort of tubing  
9 placed into the victim. I understand that Doctor  
10 Yacoub needs to explain how this crime occurred.  
11 It's part of the circumstances. We understand that.

12           Quite frankly, I think it's very prejudicial to  
13 have these tubes sticking out here, there and  
14 everywhere. That's not a circumstance of the crime.  
15 I believe she can testify as to the trajectory of  
16 the bullet wounds where the -- where the bullet went  
17 in, where the bullet went out and she could probably  
18 do so based on the other photographs that the State  
19 is seeking to introduce that depict bullet wounds,  
20 burning and the like.

21           **MR. MYERS:** We can withdraw those.

22           **THE COURT:** All right. You're withdrawing 128,  
23 129 and 127?

24           **MR. MYERS:** Yes, sir.

25           **MS. KIMBROUGH:** The only other one that I have

1991

1 a concern with is State's 119, which shows --

2 MR. MYERS: 119 is about the only one that we  
3 have that has a clear representation of the thermal  
4 burn marks whether they be first, second or third  
5 degree burns to the right hip, right thigh and right  
6 buttock area, but it also shows some burning on the  
7 right shoulder blade and the top of the right  
8 shoulder.

9 MS. KIMBROUGH: Your Honor, I would note that  
10 State's Exhibit Number 120 is a very clear shot of  
11 the burning on the shoulders.

12 MR. MYERS: But not the lower part on the  
13 thighs and hips.

14 MS. KIMBROUGH: I'm also somewhat concerned  
15 about the duplication between 122 and 126. 126 is a  
16 very close photograph of the victim laying on the  
17 autopsy table. 122 is also -- it's a little further  
18 away, but it also shows Mr. Sykes' head. It would  
19 appear she could testify as to the wounds to the  
20 victim's facial area based on Number 122.

21 MR. MYERS: Photograph 126 shows the entrance  
22 wound of the shot above the upper lip which lodged  
23 in his back. You can also see its relationship to  
24 the exit wound to his neck and it also shows the  
25 blood in the nostrils, which goes along with the

1992.

1 pathologist's testimony about blood in the airways.  
2 And it also shows a close up of the thermal burning  
3 more clearer.

4 MS. KIMBROUGH: And I believe 122 also shows  
5 the bullet wound, as well as the thermal burning and  
6 you can depict a slight amount of blood.

7 THE COURT: How about 122, Solicitor?

8 MR. MYERS: 122 is the only one that gives us a  
9 frontal view from his head down to his waist showing  
10 the thermal burns on each shoulder, down both arms  
11 and all that coming together with the face area.  
12 It's the only one that shows us the full extent of  
13 all those burns from the front of the face, down to  
14 the shoulders where the burn marks came down on each  
15 side of the shoulder and then the charring of the  
16 skin on both arms.

17 MS. KIMBROUGH: Your Honor, I would simply note  
18 that 123 also shows the thermal burns on the  
19 victim's arms.

20 MR. MYERS: That's the back of the head shot.

21 MS. KIMBROUGH: Yes, sir, but it also shows the  
22 arms and that in conjunction with 126, or 122 minus  
23 126, would do the same thing without introducing  
24 more than what's necessary to make the point.

25 THE COURT: So what do you object to?

1993

1 MS. KIMBROUGH: Your Honor --

2 THE COURT: Which ones do you object to?

3 MS. KIMBROUGH: Your Honor, I believe Number  
4 126 in light of Number 122, this would be more  
5 prejudicial than probative. Doctor Yacoub can  
6 certainly testify as to the injuries sustained by  
7 the victim in the frontal area in his face, in his  
8 arms in his front without this close up.

9 THE COURT: You object to 126. What other ones  
10 -- what else do you object to?

11 MS. KIMBROUGH: Your Honor, at this point, that  
12 would be the remaining objection.

13 THE COURT: As to 126, the only one objected  
14 to, Solicitor, the ones that are --

15 MR. MYERS: Then I do not have a photograph  
16 then of the gunshot wound above the lip.

17 MS. KIMBROUGH: Your Honor, I believe it's  
18 duplicated in 122, as well as the previous  
19 photographs you can see the gunshot wound above the  
20 lip.

21 MR. MYERS: The wound depicted in Exhibit 122  
22 looks more like a spec, whereas the one in 126 shows  
23 the size of it and it more clearly depicts the  
24 entrance wounds.

25 MS. KIMBROUGH: Your Honor, I would simply note



1994

1       that 122 is similar to that which the State  
2       indicated it needed previously to depict that wound.

3           **THE COURT:** All right. Exhibits number -- did  
4       you object to 119?

5           **MS. KIMBROUGH:** Based on the Solicitor's  
6       representation that it was the only burn showing --  
7       or the only photograph depicting the burn on the  
8       buttock area, no, Your Honor.

9           **THE COURT:** All right. Number 119, Number 121,  
10       Number 122, Number 120, Number 123, Number 125 and  
11       Number 127, they are admitted without objection.  
12       Exhibit Number 126 is admitted over objection. I  
13       find that the -- that Number 126 should be admitted  
14       in that it shows the extent of the damages done or  
15       injuries sustained to the facial area. It's the  
16       only photograph that shows it clearly, particularly  
17       considering the two photographs marked for  
18       identification of the State has withdrawn. Which  
19       two were those?

20           **MR. MYERS:** We withdrew three, Your Honor. We  
21       withdrew 127, 128 and 129.

22           **THE COURT:** Considering those three that the  
23       State withdrew and also this particular exhibit,  
24       126, would be beneficial in allowing the jury to  
25       determine the existence of physical torture,

BRIAN ALEXANDER SYKES - DIRECT BY MR. MYERS

1995

1 assessing the seriousness of the abuse and injury  
2 inflicted upon the victim.

3 MS. KIMBROUGH: Thank you, Your Honor.

4 MR. MYERS: Thank you, sir.

5 THE COURT: Anything else before we bring them  
6 out?

7 MR. MYERS: Not from the State, Your Honor.

8 MS. KIMBROUGH: None from the defense, Your  
9 Honor.

10 THE COURT: Okay. Let's see if they'll come  
11 back.

12 (The jury returns to the courtroom.)

13 THE COURT: The jury is back. You may call  
14 your next witness.

15 MR. MYERS: Brian Sykes.

16 BRIAN ALEXANDER SYKES,  
17 having been duly sworn, testified as follows:

18 THE CLERK: If you'll have a seat and state  
19 your name for the record, please.

20 THE WITNESS: Brian Alexander Sykes, S-Y-K-E-S.

21 DIRECT EXAMINATION

22 BY MR. MYERS:

23 Q Brian, you're one of Walter Sykes' sons?

24 A Yes, sir.

25 Q Where do you fit in?

BRIAN ALEXANDER SYKES - DIRECT BY MR. MYERS

1996

1       A     The youngest, the last born.

2       Q     Brian, how old were you when your mother died?

3       A     I was 15.

4       Q     Now, how did that affect your family when she  
5       died?

6       A     It wasn't the same, never again was it the  
7       same.

8       Q     How old were you when your father was murdered?

9       A     Twenty-three.

10      Q     Brian, I'm going to show you two photographs,  
11      this one and then this one, your father?

12      A     Yes, sir.

13           MR. MYERS: Your Honor, we'd offer these two in  
14      evidence.

15           MS. KIMBROUGH: Without objection, Your Honor.

16           THE COURT: They are admitted.

17                   (State's Exhibit Numbers 130 and 131,  
18      photographs, admitted into evidence.)

19      BY MR. MYERS:

20      Q     Photograph 130, Brian, that photograph, do you  
21      have any special liking to that photograph for any  
22      particular reason?

23      A     Just the fact that it's him.

24      Q     That's when he was younger?

25      A     Yeah, much younger.

BRIAN ALEXANDER SYKES - DIRECT BY MR. MYERS

1997

1 Q Number 131, more recent photograph?

2 A Yes, sir.

3 Q Looks kind of like you in that photograph.

4 A I think so.

5 Q Brian, were you able to develop a close  
6 relationship to your father?

7 A Yes, sir.

8 Q What did you depend on him for?

9 A Everything.

10 Q What do you miss most about his being murdered  
11 and about him?

12 A (Pause.) (Witness leaves the witness stand and  
13 the courtroom.)

14 MR. MYERS: Can we take just a few seconds,  
15 Your Honor?

16 THE COURT: All right. Ladies and gentlemen,  
17 I'll have you go to the jury room. Please do not  
18 discuss the case.

19 (The jury retires to the jury room.)

20 THE COURT: I want security and the Solicitor  
21 to make sure that he's okay before coming back.

22 MR. MYERS: I will, Your Honor. Thank you.

23 THE COURT: We'll step down for a moment.

24 (Brief Recess.)

25 MR. MYERS: Your Honor, with the Court's

INAS YACoub - DIRECT BY MR. MYERS

1998

1 permission, I propose that we go ahead and call the  
2 next witness and wait and call Mr. Sykes after that.

3 THE COURT: What says the defense about that?

4 MS. KIMBROUGH: No objection.

5 THE COURT: Okay. We'll do that. If you'll  
6 bring the jury in.

7 (The jury returns to the courtroom.)

8 THE COURT: The jury's back. Ladies and  
9 gentlemen, we're going to -- the State will call a  
10 witness out of order.

11 Mr. Myers.

12 MR. MYERS: Thank you, Your Honor. We call  
13 Doctor Yacoub.

14 INAS YACoub,  
15 having been duly sworn, testified as follows:

16 THE CLERK: If you'll have a seat and state  
17 your name, spelling your last for the record,  
18 please.

19 THE WITNESS: My name is Inas Yacoub. Last  
20 name is spelled, Y-A-C-O-U-B.

21 DIRECT EXAMINATION

22 BY MR. MYERS:

23 Q Doctor Yacoub, I think we had shown you the  
24 video tape of the victim running out of that office,  
25 out the door?

INAS YACOB - DIRECT BY MR. MYERS

1999

1 A Yes.

2 Q And we asked you about this blood right here  
3 coming out?

4 A Yes.

5 Q What wound could that blood have come from?

6 A Either the wound from the right side of the  
7 face or the wound on the left side of the neck that  
8 came out from the right side.

9 Q Now, that was a through and through shot; is  
10 that correct?

11 A That's correct.

12 Q And it could have come out either side?

13 A Correct, or from the wound that entered the  
14 right side of the face.

15 Q So it could have come out the one by the lip,  
16 too?

17 A Yes, sir.

18 Q Now, Doctor Yacoub, his condition being shot,  
19 set ablaze from inside that office when it first  
20 happened out to that grass where he rolled over, is  
21 there any way you could kind of describe for the  
22 jury in layman's terms the amount of pain that would  
23 have been involved?

24 A I would describe it as a lot of pain. The man  
25 was on fire and trying to run out of that fire and

1 it seems like he was running very fast and he did  
2 not last for long before he collapsed.

3 Q Now, when you performed your autopsy, were  
4 there some photographs taken at the same time and  
5 also depicting the thermal burns, depicting the  
6 gunshot wounds?

7 A Yes, sir.

8 Q And would these be of assistance to you in  
9 explaining them further to the jury?

10 A Yes, sir.

11 Q Doctor, if can I ask you to come down, please,  
12 ma'am, if you can stand right here.

13 A (Witness leaves the witness stand.)

14 Q Looking at 119.

15 A You want me to describe this?

16 Q If you would to the jury, yes, ma'am.

17 A State's Exhibit 119 shows the back of Mr. Sykes  
18 and it shows --

19 THE COURT: A little louder, please.

20 THE WITNESS: State's Exhibit Number 119 shows  
21 the back of Mr. Sykes before it was -- just with the  
22 clothes removed before the blood or soot was  
23 removed. And it shows the thermal burns on the  
24 head, on the back of the neck, on the upper back and  
25 on the right side of the buttock and the thigh. And

**Volume Five of Five**

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RON O. FINKLEA,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

(803) 734-3727

DONALD V. MYERS  
Solicitor, Eleventh Judicial Circuit  
205 East Main Street

Lexington, SC 29072  
(803) 785-8352

Attorneys for Respondent



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\* NOTE: STATE'S EXHIBIT 109 (DVD OF SURVEILLANCE VIDEO), STATE'S EXHIBIT 111 (STILLS FROM SURVEILLANCE VIDEO), STATE'S EXHIBITS 119 THROUGH 165 (PHOTOGRAPHS) ARE ON FILE AT THE SOUTH CAROLINA SUPREME COURT

1       you can see the range of some burns being grabbed  
2       (ph), but still the skin intact. Some of the burns,  
3       these are kind of first degree burns and these would  
4       be painful.

5             Other burns like here, the skin has blistered  
6       and it's coming off. Other burns -- the ones with  
7       blisters are second degree burns. And then third  
8       degree burns where the skin is discolored and kind  
9       of a grayish burn than the rest of the unburned  
10      skin. But it shows the appearance of the burns and  
11      their locations and the variation of the degrees  
12      first to third.

13      BY MR. MYERS:

14      Q       Number 120?

15      A       State's Exhibit 120 also shows a closer view of  
16      the back of Mr. Sykes' thermal burns, some areas are  
17      red, some areas are blistering and some areas are  
18      kind of grayish and thickened. And, again, the  
19      location of the head and the neck and the upper  
20      portion of the back and the back of the arms, but  
21      this is not the complete picture of the arms.

22      Q       121?

23      A       State's Exhibit 121 is a clean picture of the,  
24      again, of the thermal burns of the back. The blood  
25      is removed to show a better view of the, again, the



1 locations of the thermal burns and the appearance,  
2 head, neck, portion of the back. And it shows part  
3 of the -- would be the left arm, again the  
4 distribution of the thermal burns.

5 Q In 121 on the head area and 120 in the head  
6 area, what degree thermal burns were those; do you  
7 recall?

8 A First and second and third. And we can see the  
9 redness and the blistering of the skin, the hair  
10 singeing, the hair is burned and the exposing part  
11 of the scalp. And then there are darker areas that  
12 I would classify as third degree burns.

13 Q Now, looking to the front part in Number 122?

14 A State's Exhibit 122 shows the front view of the  
15 body of Mr. Sykes. And, again, it shows the  
16 distribution of the burns involving the head, the  
17 nose and the mouth, the eyes and ears, the neck, the  
18 upper portion of the shoulders, the upper  
19 extremities. And, again, you see areas that are  
20 red, like the top of the nose here for example, the  
21 areas that are blistered and the skin is peeled off  
22 and areas that are just black, which explains the  
23 variation of the degrees of burns from first to  
24 third.

25 Q And then 123, a shot taken from the back of the

1 head?

2 A Again, State's Exhibit 123 shows the  
3 distribution of the thermal burns of the head and of  
4 the face and of the shoulders and the back of the  
5 extremity. There is some sparing of the -- I mean,  
6 the clothes were burned in those locations, clothes  
7 were still covering a portion of the chest and lower  
8 body. And, again, there was some -- this picture  
9 does not show the burns on the right side of the  
10 thigh and the buttocks in this picture that's shown.

11 Q Now, I think you talked the other day about the  
12 gunshot wounds. Number 124, which wound was that?

13 A State's Exhibit Number 124 is the gunshot  
14 entrance wound on the left side of the neck just  
15 below the ear. And, again, you can see that there's  
16 separate types of areas, the thermal burns and the  
17 gunshot wound, apparent in that picture.

18 Q And 125?

19 A State's Exhibit 125 is the picture of the right  
20 side of the lower part of the face and the right  
21 side of the neck. And it shows the gunshot exit  
22 wound on the right side of the neck, entered the  
23 left side and it came out from the right side of the  
24 neck. And, again, it shows the thermal burns and  
25 the blistering of the skin and exposure of the

1 underlying tissue with the side of the gunshot  
2 wound.

3 Q And then the wound in 126?

4 A State's Exhibit 126 shows the gunshot entrance  
5 wound on the right side of the face. And that  
6 bullet entered -- it lodged in the back of the head.  
7 And, again, it shows the extent of the thermal burns  
8 on the face and the involvement of the nose portion  
9 as hot gas is being inhaled.

10 Q What did you say about the nose now? I'm  
11 sorry, I didn't hear you.

12 A There's thermal burns on the nose and you can  
13 also see blood inside the nose. You have bleeding  
14 that's aspirated into the airways only externally  
15 going out. You have bleeding inside the airway and  
16 that combined with the hot gases, that makes  
17 breathing difficult. The person can succumb quickly  
18 with that.

19 Q The person can what? I'm sorry.

20 A Can die quickly with that.

21 Q You can have your seat back.

22 A (Witness resumes the witness stand.)

23 MR. MYERS: And, of course, Your Honor, we move  
24 that all those be entered into evidence as exhibits.

25 THE COURT: What says the defense?

1           **MS. KIMBROUGH:** Subject to your prior ruling,  
2           Your Honor.

3           **THE COURT:** They are admitted.

4                   (State's Exhibit Numbers 119 through 126,  
5           photographs, were admitted into evidence.)

6           **BY MR. MYERS:**

7           **Q**     Doctor Yacoub, one final time, the cause of  
8           death, when we're talking about the gunshot wounds  
9           and the thermal burn, you said something the other  
10          day about the gunshot wounds and the thermal burning  
11          being a contributing factor, what was that again,  
12          ma'am?

13          **A**     It was my opinion that the cause of death were  
14          the gunshot wounds to the head and neck and that the  
15          thermal burns were other significant conditions  
16          contributing to that death.

17          **Q**     And that last photograph when you were pointing  
18          out about the nose and the blood and all, you  
19          indicated something about, was that breathing in or  
20          what?

21          **A**     Right. I mean, if a person has thermal burns  
22          on their face, that is fire in their face, they're  
23          breathing hot gasses and it can damage the airway.  
24          And with the gunshot wound that he had on the face,  
25          you have bleeding inside the airway and we try to

1 cough it out and you breathe the blood again, that  
2 makes the breathing difficult and the person dies.

3 MR. MYERS: Thank you, ma'am. Please answer  
4 any questions they have.

5 MS. KIMBROUGH: We have no questions.

6 THE COURT: You may step down, ma'am.

7 MR. MYERS: We call Brian Sykes again, Your  
8 Honor.

9 THE COURT: Mr. Sykes, you're still under oath.

10 THE WITNESS: Yes, sir.

11 BRIAN ALEXANDER SYKES,  
12 having been previously duly sworn, resumed the  
13 witness stand and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MYERS:

16 Q Brian, are you all right now?

17 A Yes, sir. I'd like to apologize to the ladies  
18 and gentlemen of the jury and to Your Honor for that  
19 scene. I apologize.

20 Q Brian, I was trying to ask you, the murder of  
21 your father, how did that affect you or how has it  
22 affected you?

23 A Me, personally, it had a very strong effect,  
24 you know, with me being 23, you know, I was going  
25 through a lot of changes and, you know, trying to

1       become a man and everything. And it was just a lot  
2       of unanswered questions, a lot of things I didn't  
3       get to show and prove. I can go on and on.

4       Q       What do you miss most about your dad?

5       A       Aside of -- aside of just not having him  
6       physically here, I'd say the fact that I haven't had  
7       the chance to prove to him or just to show him what  
8       I'm capable of or what I can be capable of. Just he  
9       hasn't seen the -- he hadn't seen the best of me.  
10      And, again, there was just so much that --  
11      information that I didn't collect from him, so many  
12      conversations that we never held.

13           MR. MYERS: Thank you for coming back.

14           THE WITNESS: Thank you.

15           MR. MYERS: Answer any questions they have.

16           MS. KIMBROUGH: We have no questions for  
17      Mr. Sykes.

18           THE COURT: Thank you. You may step down.

19           MR. MYERS: Your Honor, I think the law takes  
20      care of it, but we would officially move to have all  
21      of the evidence in the first phase incorporated into  
22      this phase so it's all one total package. And I  
23      think the law says it does that, but we make a  
24      motion just to make sure.

25           THE COURT: What says the defense?

1           **MS. KIMBROUGH:** Your Honor, I believe the law  
2 does provide for that automatically.

3           **THE COURT:** All of the evidence presented  
4 during the course of the trial, the guilt phase and  
5 this phase, are incorporated into these proceedings.

6           **MR. MYERS:** Thank you, Your Honor. And, Your  
7 Honor, at this time, we're going to rest our case in  
8 chief for the penalty phase.

9           **THE COURT:** Ladies and gentlemen, the State has  
10 rested its case in chief in the penalty phase. I  
11 need to talk with the lawyers for a moment, so I  
12 need you to go to the jury room while we do that.

13           (The jury retires to the jury room.)

14           **THE COURT:** Are there any matters at this time?

15           **MS. KIMBROUGH:** None from the defense, Your  
16 Honor.

17           **MR. MYERS:** None from the State.

18           **THE COURT:** Any matters of law regarding the  
19 proof offered by the State?

20           **MS. KIMBROUGH:** Yes, Your Honor. I believe the  
21 State alleged four aggravating circumstances,  
22 torture, which we would concede that there is  
23 evidence from which the jury might infer that that  
24 particular aggravating circumstance is met.

25           Now, insofar as the murder being committed in

1 the course of a -- in the commission of a burglary,  
2 as well as in the commission of an armed robbery, we  
3 don't think there's evidence from which any  
4 reasonable trier of fact could conclude that there  
5 was an armed robbery. I believe that in the first  
6 phase, the State proved beyond a reasonable doubt  
7 that there was an attempted safe cracking.

8 However, as far as an armed robbery goes, I  
9 don't think that legally you can commit an armed  
10 robbery against a safe. There's no evidence that  
11 Mr. Sykes was robbed of anything or that anyone  
12 attempted to rob him of anything. So in that  
13 regard, Your Honor, we would move for a directed  
14 verdict.

15 Insofar as the commission of a burglary, I  
16 understand the State is relying on the deception or  
17 trick or artifice element to burglary in the first  
18 degree. I don't think it's been shown, certainly  
19 even with the extensive -- I don't think there's any  
20 evidence from which anyone could conclude that  
21 whoever entered the doorway first did so by  
22 artifice, trick or deception. There's been no  
23 indication that Mr. Sykes even knew that a person  
24 was at the door.

25 I understand that there's been some testimony



1       that Mr. Sykes knew Ron Finklea. However, we would  
2       submit that the proof is insufficient in so far as  
3       deception or artifice or trick is concerned.

4               And in regard to the grand larceny while armed  
5       with a weapon, again, I don't think there's been a  
6       larceny. A larceny is a taking. Nothing was taken.  
7       There was an attempt, there was an attempted safe  
8       cracking, but there certainly is no evidence that  
9       anything whatsoever of any value was removed from  
10      Selectron or from Mr. Sykes. So in that regard,  
11      Your Honor, we would also move for a directed  
12      verdict. Thank you.

13             **THE COURT:** What says the State?

14             **MR. MYERS:** Your Honor, on the burglary part of  
15      it, we do rely on 16-11-311, I think the section is,  
16      or 310. And subsection C talks about enters a  
17      building without consent under the burglary statute  
18      that it means to enter a building by using  
19      deception, artifice, trick or misrepresentation to  
20      gain consent to enter from the person in lawful  
21      possession.

22             And in support of that, we cite State versus  
23      Tammy Lynn Dixon, 523 S.E.2d 784, and the State  
24      versus Theodore Allen Fuller, 296 S.E.2d 871. And  
25      those cases both stand for the proposition that when

1 someone goes into a place to commit a crime and that  
2 they do so under some type of false pretenses, that  
3 that statute is satisfied. The court held in those  
4 cases that entry gained by trickery or deception is  
5 a constructive breaking and satisfies the breaking  
6 element in the definition of burglary or in entering  
7 into a building when consent is needed, that the  
8 consent is only given as a result of the deception  
9 or the trickery involved.

10 In Dixon, there was a first degree burglary  
11 prosecution and they entered and they were let in,  
12 but the real purpose of getting in was to commit a  
13 crime. And the court held in there that the  
14 defendant gained entrance through deceit, trickery,  
15 artifice or misrepresentation as she knew she would  
16 at least gain entry into a house to explain why she  
17 was there, but her intentions were not to gain entry  
18 so she could ask for money as she had done in the  
19 past, but to gain entry so she could distract the  
20 victim long enough to provide access for  
21 co-defendants to come in and rob him. This is where  
22 somebody had said their car had broken down or  
23 something of that nature or had some excuse for  
24 coming in.

25 In this case, the defendant entered Selectron

1       for one reason only and that was to break into the  
2       ATM machine to steal or rob for money. There was no  
3       other purpose for them to coming in by merely saying  
4       they were coming in -- or he was coming in to use  
5       the ATM, that was a lie. He wasn't going to use the  
6       ATM. He was coming in to rob the ATM. So,  
7       certainly, the consent of him coming in was granted  
8       based on his deception, his deceit, his trickery and  
9       his misrepresentation.

10       Now, as to the armed robbery part of it, State  
11       versus Humphries, we submit, is controlling, 479  
12       S.E.2d 52. In that case, it was an attempted armed  
13       robbery that was not completed. And the court  
14       analyzed the terms of murder committed during the  
15       commission of armed robbery and they said this, The  
16       phrase, While in the commission of, implies acts  
17       that are concurrent with the murder. That the  
18       murder may occur before an armed robbery actually is  
19       completed does not mean that a robbery was not  
20       taking place.

21       And, in fact, it doesn't have to be completed.  
22       It's while in the commission. As a matter of fact,  
23       in Humphries, it was an attempted armed robbery,  
24       nothing was ever taken, nothing was ever gained,  
25       just like we have in this situation.

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1           So we submit to you burglary, consent and entry  
2           was by trickery. They were there to rob the ATM  
3           machine. You don't have to rob a person. It's in  
4           the presence of a person. And, certainly, a deadly  
5           weapon was involved when you have a pistol and  
6           gasoline and a lighter. Those we contend to you  
7           satisfy the burglary element, the armed robbery  
8           element, the grand larceny element. They're  
9           conceding the physical torture element.

10           **THE COURT:** Ms. Kimbrough.

11           **MS. KIMBROUGH:** Briefly, Your Honor. I don't  
12           think even looking at the videos in the light most  
13           favorable to the State, that there is any evidence  
14           to support that anyone other than the attempted --  
15           the person who was attempting to commit safe  
16           cracking was in the ATM area at the time that was  
17           attempted. Nobody saw that except the person who  
18           was attempting to break into that ATM machine. It's  
19           not armed robbery to try to commit safe cracking.

20           Likewise, the grand larceny while armed with a  
21           weapon, nothing was taken. To be larceny, you have  
22           to steal something, nothing was stolen.

23           Insofar as the burglary first, I have to say  
24           I'm quite familiar with State versus Dixon because I  
25           was the person unfortunate enough to argue it and

1       lose it in the Court of Appeals. In that case,  
2       Tammy Lynn Dixon went to the home of someone with  
3       whom she had had a on again/off again relationship.  
4       He opened the door, but he was deaf. She knew he  
5       would open the door because they couldn't  
6       communicate without opening the door. It was  
7       impossible for him to communicate and, therefore,  
8       she knew, based on the prior relationship, that he  
9       would automatically open the door.

10           I don't think we have testimony to that effect  
11       here. We certainly don't have indication of anyone  
12       flashing a badge or an I.D. knowing that they'd be  
13       allowed in. So we would submit, Your Honor, that  
14       insofar as the burglary is concerned, that it  
15       doesn't fall under State versus Dixon.

16           And an attempted armed robbery under Humphries  
17       is not what we have here. What we have here is an  
18       attempted safe cracking. There's nobody in that  
19       lobby when someone attempted to break into that  
20       safe. The video shows that very clearly. Whoever  
21       that second person was who came in and attempted to  
22       crack that safe open, Mr. Sykes was nowhere nearby  
23       and Ms. Gibson was completely gone. She was using  
24       the restroom. She was in another part. Nobody saw  
25       it. And so insofar, certainly, as the armed robbery

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1 and the grand larceny is concerned, the State has  
2 utterly failed in its burden of proof.

3 **THE COURT:** Is the degree of proof required to  
4 establish a prime fascia case for these charges  
5 standing alone the same degree of proof required to  
6 establish a statutory aggravating circumstance?

7 **MS. KIMBROUGH:** Your Honor, I hope I understand  
8 your question correctly. I believe the State has  
9 the burden of proving aggravating circumstances  
10 beyond a reasonable doubt. In this case, we would  
11 argue that even if the standard of proof was less,  
12 there's no proof. There's no evidence. The extent  
13 to which there's evidence in this case utterly  
14 negates the crimes of armed robbery and grand  
15 larceny. There was no armed robbery. There was no  
16 grand larceny. There was nothing taken. There was  
17 never a larceny. And there's absolutely no evidence  
18 whatsoever of an armed robbery.

19 **THE COURT:** The Solicitor argues that it  
20 doesn't have to be, that if it's in the commission  
21 of, that the robbery does not have to be completed  
22 per State versus Humphries.

23 **MS. KIMBROUGH:** Yes, Your Honor. Well, again,  
24 you'd need some attempt to commit armed robbery.  
25 There's no evidence of any armed robbery attempted,

1 completed or otherwise. We've got attempted safe  
2 cracking, we concede that. The jury found it. We  
3 agree. That's not the same thing.

4 **THE COURT:** Well, you have property that's  
5 within the control of someone, meaning Mr. Sykes,  
6 and the property would not have been taken or no  
7 attempt to take it would have taken place without  
8 the murder and that's -- that was the reason for the  
9 murder, wasn't it, in order to --

10 **MS. KIMBROUGH:** According to the State's  
11 theory, absolutely, but, again, armed robbery is not  
12 the same thing as safe cracking, Your Honor. I  
13 mean, you have to have some victim to have armed  
14 robbery. Mr. Sykes was a victim of murder. The  
15 facts have shown attempted safe cracking, but we  
16 would argue that you cannot arm rob an ATM machine.  
17 I don't think there's any case that would hold that.  
18 That's why we have safe cracking, I think.

19 **THE COURT:** What do you say, Mr. Myers?

20 **MR. MYERS:** Robbery is basically stealing.  
21 State versus Williams is a case that cites that.  
22 Robbery is taking the goods of another person and  
23 putting that person in fear. Armed robbery is where  
24 you are armed.

25 State versus Humphries says that if you're in

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1 the commission of doing that, even if you don't take  
2 anything, that satisfies the aggravating  
3 circumstance. Now, we can call it petty larceny.  
4 We can call it safe cracking. You can call it  
5 whatever you want, it's still robbery, stealing and  
6 taking.

7 Walter Sykes was there as a security officer  
8 protecting that plant. You don't have to steal from  
9 the one who owns the goods. All it is is a person  
10 there and you are armed and you use those implements  
11 to try to rob something and that's what we have in  
12 this situation, Your Honor. We have an attempted  
13 robbery. We have a murder committed during the  
14 commission of an armed robbery.

15 **THE COURT:** And is the standard for  
16 establishing a statutory aggravating circumstance,  
17 that particular crime, is it the same of  
18 establishing the elements if the -- if this was an  
19 armed robbery trial as opposed to a statutory  
20 aggravating circumstance in a death penalty trial?

21 **MR. MYERS:** I think the burden of proof in  
22 statutory aggravating circumstances is proof beyond  
23 a reasonable doubt. Now, we have on a video --

24 **THE COURT:** Well, the jury finds beyond a  
25 reasonable doubt, the Court -- I don't have to find



1 proof beyond a reasonable doubt. That's for the  
2 jury to determine.

3 MR. MYERS: No, sir. And I guess that's the  
4 crux of it, Your Honor. This is a jury question.  
5 The jury can give it no weight or if we don't meet  
6 the burden of proof to which we're held, they can  
7 reject it, but the elements are there. You have a  
8 fellow coming in, he had his wallet open. We don't  
9 know whether he had that badge where he used to work  
10 there in the wallet or not, you could look at that  
11 video tape and you could argue either way. But in  
12 any event, he was looking in ahead for that ATM,  
13 machine, that's why the officer goes back into his  
14 area, then he turns around and follows him in.

15 Now, you can commit a murder and then you can  
16 take something and that's still armed robbery. The  
17 murder can precede the act. And you notice that  
18 after he shot Walter Sykes twice and after he poured  
19 that gasoline on him and ignited him, the defendant  
20 didn't run out the door. He went back to the ATM  
21 machine. So he, himself, is going back to the ATM  
22 machine. It's very clear. And we think it's a jury  
23 question for the jury to decide.

24 THE COURT: Ms. Kimbrough.

25 MS. KIMBROUGH: Again, Your Honor, in order for

1 it to be an armed robbery, I think this is a huge  
2 stretch. No one attempted to steal anything that  
3 belonged, personally, to Walter Sykes. They didn't  
4 ask him for his wallet. They didn't steal money in  
5 front of him. He was nowhere around at the time of  
6 this attempted safe cracking. This is clearly not  
7 an armed robbery in the classic sense or in any  
8 other. It's a huge stretch.

9 Likewise, the whole attempted grand larceny or  
10 -- excuse me -- grand larceny while armed with a  
11 weapon, where is the larceny? Nothing was stolen.  
12 Again, it's a stretch. And we think it stretches it  
13 too far.

14 Sure, the proof is proof beyond a reasonable  
15 doubt. And if there was any -- if there was any  
16 evidence to support the legitimate elements of those  
17 two offenses, then, yes, it would go immediately to  
18 the jury, but if there's no evidence, we're entitled  
19 to a directed verdict. And I think, in this  
20 instance, there isn't any evidence that this was an  
21 armed robbery or a grand larceny and we think a  
22 directed verdict is appropriate.

23 **THE COURT:** Well, if a person goes into a  
24 convenience store armed with a weapon, pulls the  
25 weapon on the cashier and makes him open the safe,

1 is that safe cracking or is it armed robbery?

2 MS. KIMBROUGH: Your Honor, that's a completely  
3 different scenario. I would agree that it's --

4 THE COURT: Ma'am, I didn't ask whether it's a  
5 different story. I just asked a question. Is it  
6 safe cracking or armed robbery?

7 MS. KIMBROUGH: I believe it's armed robbery in  
8 that instance.

9 THE COURT: All right. Well, if the person  
10 goes in to the convenience store and rather than  
11 having the clerk open the safe, they take a crowbar  
12 and if they could, they pry open the safe, would  
13 that be armed robbery or safe cracking?

14 MS. KIMBROUGH: It could be both depending on  
15 where the clerk is.

16 THE COURT: Well, what if the clerk is on the  
17 floor dead? What if they shoot the clerk and the  
18 clerk is dead?

19 MS. KIMBROUGH: Did they tell the clerk to open  
20 up the safe? I mean, I think it's going to depend  
21 on the facts.

22 THE COURT: They didn't say anything to the  
23 clerk. They go and they shoot the clerk and then  
24 they pry open the -- or attempt to pry open the  
25 safe.

1           **MS. KIMBROUGH:** I believe that's attempted -- I  
2 believe under those facts, again, the clerk is  
3 there, the safe is there, they shoot the clerk, it's  
4 a little fuzzier. I mean, I'll admit to you that  
5 that situation, in my mind, is not real clearcut.  
6 It sounds like murder and attempted safe cracking.  
7 I think once somebody's dead --

8           **THE COURT:** Because you can't rob a safe is  
9 that your argument?

10          **MS. KIMBROUGH:** Sure you can if you get it  
11 open.

12          **THE COURT:** What if you attempt to get it open  
13 and you're spooked because you see the police  
14 coming? It wouldn't be in the commission of?

15          **MS. KIMBROUGH:** It would be attempted safe  
16 cracking, I believe.

17          **THE COURT:** Well, let me ask you another  
18 question. Are you ready to proceed with your  
19 defense tonight?

20          **MS. KIMBROUGH:** Your Honor, we can certainly  
21 start; although, we would respectfully request to  
22 start fresh in the morning.

23          **THE COURT:** Well, we'll leave everything  
24 hanging, including the answer to the question and  
25 then I'll rule on it in the morning and then we'll

1 proceed with the defense at that time.

2 MS. KIMBROUGH: Thank you, Your Honor.

3 THE COURT: All right. Let's bring the jury  
4 back and turn them loose.

5 (The jury returns to the courtroom.)

6 THE COURT: Ladies and gentlemen, we're going  
7 to adjourn for the day and start back at 9:30  
8 tomorrow morning. I want to thank you for your  
9 cooperation. Please remember the admonition about  
10 not discussing the case, viewing any television,  
11 radio, Internet or discussing it with anyone or  
12 allowing anyone to discuss it in your presence. We  
13 will continue with the testimony tomorrow morning  
14 and we'll see you at 9:30 tomorrow morning.

15 (The jury was excused for the day.)

16 THE COURT: Concerning the issues of these --  
17 we've heard arguments concerning the burglary and  
18 the robbery aggravating circumstances. Are those  
19 the extent of the ones that you're questioning for  
20 purposes of, I guess, this would be a directed  
21 verdict stage of the sentencing proceeding?

22 MS. KIMBROUGH: Yes, Your Honor. We would also  
23 challenge the grand larceny for the same reason as  
24 the armed robbery. I sort of lumped those two  
25 together because they both involve theft.

2023

1           With Your Honor's permission, I'd like -- I can  
2           spend a little time this evening and perhaps have  
3           something to supplement the argument, would  
4           appreciate the opportunity to do so tomorrow  
5           morning.

6           **THE COURT:** All right. You're challenging also  
7           number three, that the alleged murder was committed  
8           while in the commission of a larceny with the use of  
9           a deadly weapon.

10          **MS. KIMBROUGH:** Yes, Your Honor.

11          **THE COURT:** And number four.

12          **MS. KIMBROUGH:** The torture -- Your Honor, I  
13          don't have specific argument as to torture.

14          **THE COURT:** Anything else from the State on any  
15          of those points?

16          **MR. MYERS:** Not at this time, Your Honor.

17          **THE COURT:** All right. Well, we'll be back at  
18          9:30 in the morning and we'll finish this up prior  
19          to bringing the jury in.

20          **MS. KIMBROUGH:** Thank you, Your Honor.

21          **MR. MYERS:** Thank you, sir.

22          **THE COURT:** All right. We'll be in recess  
23          until that time.

24                 Let's see now, I'm going to have everyone in  
25          the audience to remain so that the jury can leave --

1 we'll have everyone stay put for about five minutes  
2 from the audience, give the jury an opportunity to  
3 leave the premises before folks here leave.

4 (Whereupon, the proceedings were concluded  
5 for September 4, 2007.)

6 (The following proceedings were held on  
7 September 5, 2007.)

8 **THE COURT:** Concerning this directed verdict  
9 motion, any further arguments from the defense?

10 **MS. KIMBROUGH:** Yes, Your Honor, just briefly,  
11 and I'm relying on the authority cited in the Fourth  
12 Edition of the South Carolina -- excuse me -- the  
13 Criminal Law of South Carolina by former Professor  
14 McAninch and relying on page 348 and I'll cite the  
15 cases, Dukes versus State, 248 S.C. 227, robbery is  
16 defined as the larceny from the person or in the  
17 immediate presence of another by violence or  
18 intimidation. And, obviously, the armed version of  
19 that simply means that the person was armed. I  
20 think that's a fairly straightforward definition.

21 In this case, we have the taking of nothing.  
22 Nothing was taken, period. There's been no evidence  
23 to that effect. There's been evidence that a  
24 superficial cover on a safe was opened, but that  
25 nothing of value was taken from anyone and certainly

1 not within the immediate presence of the victim in  
2 this matter, Walter Sykes. And so, Your Honor, we  
3 believe that those two aggravating circumstances are  
4 not -- there's no evidence to support them and we  
5 would ask for a directed verdict as to those.

6 **THE COURT:** How about the Humphries case that  
7 says while in the commission of satisfies the  
8 criteria for armed robbery? That's a case where the  
9 guy went into the store at Fountain Inn and pulled a  
10 gun on the clerk and they thought the clerk was  
11 reaching for a weapon under the counter and he shot  
12 the clerk and he ran out the store. He got nothing.

13 **MS. KIMBROUGH:** Yes, Your Honor.

14 **THE COURT:** And the court said that that was  
15 still while in the commission of an armed robbery  
16 and it didn't matter whether he was successful or  
17 not.

18 **MS. KIMBROUGH:** I would agree with Your Honor  
19 and -- but I would also -- I mean, obviously, that's  
20 the ruling of that case, so obviously it is what it  
21 is. But in that particular case, we have different  
22 facts there than we do here.

23 **THE COURT:** In what way?

24 **MS. KIMBROUGH:** Well, the victim was in the  
25 security office. There's no evidence that anybody



1 demanded money or tried to hold him up.

2 In the Humphries case, it's pretty clear this  
3 was a stickup. They pulled the gun. They wanted  
4 the money from the drawer. They were going to take  
5 something in the immediate presence of the victim.  
6 The fact that the victim was dead before they  
7 accomplished that or before they could accomplish  
8 that does not defeat the immediate presence  
9 requirement.

10 And in this particular case, nothing was taken  
11 or attempted to be taken in the immediate presence  
12 of Walter Sykes. All the evidence shows that he was  
13 murdered in the office. He was murdered in a place  
14 where he could not see the safe. There's no  
15 evidence that anyone tried to take anything from him  
16 prior to his murder.

17 And so, Your Honor, we just don't think that  
18 the facts in this case are sufficient in the way  
19 that they were in the Humphries case. I mean, that  
20 was clearly someone trying to rob the clerk, get out  
21 of my way, give me the money.

22 **THE COURT:** Every case you'll never find the  
23 exact facts in every case because you're dealing  
24 with different people in different situations, but  
25 the question is whether the principle to both

1 situations.

2 MS. KIMBROUGH: Yes, Your Honor.

3 THE COURT: Go ahead.

4 MS. KIMBROUGH: I was going to say, Your Honor,  
5 we just don't think that the principle is met here  
6 either. The taking from a victim, it needs to be  
7 either from them or in their presence and that  
8 simply is not met here.

9 THE COURT: Anything further from the State?

10 MR. MYERS: Yes, sir. Humphries, Your Honor,  
11 as you stated, is quite clear on it in that our  
12 Supreme Court said, No South Carolina case squarely  
13 addresses the propriety of using an attempted crime  
14 accompanying in a murder as an aggravating  
15 circumstance supporting a request for the death  
16 sentence. For the first time, our Supreme Court  
17 said in Humphries, the act does not have to be  
18 completed, it's while in the commission of.

19 And a case cited in there was a Georgia case,  
20 Amadeo versus the State of Georgia, which held the  
21 same thing. In Georgia, which we pretty much based  
22 our statute upon, there was another case after that  
23 in Georgia, Roberts versus the State of Georgia at  
24 314 S.E.2d 83, a 1984 case which cited Amadeo. And  
25 Amadeo is A-M-A-D-E-O. And in that case, nothing

1        was taken again and the court reaffirmed Amadeo as  
2        to when nothing is taken but a murder is committed  
3        during the commission of an armed robbery, that  
4        satisfies a submission to the jury as robbery while  
5        armed with a deadly weapon being an aggravating  
6        circumstance if the murder occurred during the  
7        commission of an armed robbery. So we submit on  
8        those cases, it's proper to be submitted to the  
9        jury.

10            **THE COURT:** Aside from that point, Mr. Myers,  
11        what would be the difference between the robbery  
12        aggravating factor and the larceny aggravating  
13        factor while in the commission of robbery versus  
14        while in the commission of larceny?

15            **MR. MYERS:** I can only tell you what I've been  
16        told, Judge. I've never understood that either.  
17        But I've been told when the general assembly adopted  
18        or enacted the death penalty statute in 1977, they  
19        looked at the Georgia statute and Georgia had  
20        robbery while armed with a deadly weapon and grand  
21        larceny while armed with a deadly weapon. And our  
22        general assembly just adopted that. I put it in  
23        there because our government said that that was an  
24        aggravating circumstance.

25            I think they are very similar. We've used it

2029

1 in several cases and the judges have charged armed  
2 robbery and grand larceny. And in grand larceny,  
3 they talk about with a deadly weapon. But I've used  
4 it in both. But as to the difference, Your Honor, I  
5 didn't enact the law and all I can tell you is what  
6 I've been told.

7 **THE COURT:** Well, there are some issues and it  
8 hasn't been addressed by the U.S. Supreme Court, but  
9 it has been addressed by courts of some other states  
10 concerning the -- permitting the State to double up  
11 aggravating circumstances, to double up aggravating  
12 factors where essentially you're talking about the  
13 same thing.

14 Your argument yesterday was he went in with a  
15 gun to steal and whether the stealing constitutes  
16 robbery or whether the stealing constitutes larceny,  
17 to have two separate aggravating factors concerning  
18 the very same thing, that raises a constitutional  
19 issue of doubling up the aggravating factors. And  
20 as I understand it, in some states, that problem is  
21 solved by instructing the jury that the jury must  
22 consider them as one in determining the  
23 appropriateness of a sentence. They cannot consider  
24 them as the State having established separate  
25 aggravating factors, but the two are really one for

1 -- in determining the appropriateness of the  
2 sentence.

3 So that sort of leads me to the question of  
4 whether the State should be required to elect on the  
5 one hand between the two or whether the jury should  
6 be instructed that they should consider them -- must  
7 consider them as only one for -- in determining the  
8 appropriateness of the death penalty as the  
9 appropriate sentence.

10 While he's thinking on that, let me hear from  
11 you Ms. --

12 MS. KIMBROUGH: Thank you, Your Honor.

13 MR. MYERS: I thought you were going to make  
14 that decision for me.

15 MS. KIMBROUGH: Your Honor, I would also note  
16 that grand larceny requires the establishment of a  
17 certain value. We have petty larceny, grand  
18 larceny. And even with the higher levels of  
19 larceny, there are amounts that are designated  
20 between one and five, between five and above. And  
21 less than one is the misdemeanor petty larceny.

22 And there has been absolutely no evidence  
23 whatsoever, even if you completely subscribe to the  
24 State's argument that this was an attempted grand  
25 larceny, they have the obligation and the

1 responsibility to produce some value. There's been  
2 no testimony as to the value of what was in that ATM  
3 machine. We have no idea. It could have been \$50.  
4 It could have been a hundred thousand dollars.

5 **MR. MYERS:** I can shortchange it. We'll  
6 withdraw the grand larceny factor.

7 **MS. KIMBROUGH:** And, Your Honor, again, we  
8 would rely on the fact that there's been no taking  
9 and that the attempted safe cracking occurred  
10 outside the immediate presence of the victim in this  
11 case and, therefore, we do not believe it should be  
12 allowed. Thank you.

13 **THE COURT:** All right. Mr. Sykes' purpose of  
14 being there was to protect the property and  
15 everything there, including the property of safe --  
16 not safe -- Fort Jackson Federal Credit Union and  
17 whereas the -- there is no specific aggravating  
18 factor for safe cracking and there's no specific  
19 statutory aggravating circumstance even for the  
20 arson.

21 The purpose of the aggravating factors under  
22 whatever statutory scheme you have is that if the  
23 person commits a crime for a pecuniary gain, then it  
24 is an aggravating circumstance, that's why the one  
25 concerning larceny is that if the murder occurs

1 while stealing or trying to obtain some pecuniary  
2 gain, then it is a statutory aggravating  
3 circumstance as far as fitting the intent of the law  
4 to make the death penalty available under those  
5 circumstances where you commit a murder while trying  
6 to obtain some pecuniary gain.

7 So, in this instance, particularly in the  
8 absence of safe cracking or murder while committing  
9 safe cracking being a statutory aggravating  
10 circumstance, the principle still applies and I find  
11 that this was while in the commission of a robbery.  
12 And, of course, the statute itself does not specify  
13 crimes necessarily, it specifies crimes or acts.

14 And so the question I raised yesterday as to  
15 whether or not the State had to establish a prima  
16 facie case on all of these offenses as opposed to  
17 presenting sufficient -- the existence of facts  
18 where the jury can weigh it, I think that -- well,  
19 first of all, in this instance, I think the State  
20 has established the prima facie case because there's  
21 a taking or attempt to take property from another  
22 while armed with a deadly weapon, those are the  
23 facts.

24 The argument we have here is whether or not  
25 because the property was a safe versus the property

1 being money in the jar on a shelf, he's still  
2 attempting to steal money while armed in some  
3 pecuniary gain. So I respectfully deny the motion.

4 While there may not be a case specifically on  
5 point, I think the principles of Humphries apply to  
6 this case and the -- and this ruling comports with  
7 our statutory scheme, so I will allow in the three  
8 aggravating factors. The State has withdrawn  
9 larceny.

10 I do believe that the two would constitute a  
11 doubling and would be in effect attempting to get  
12 two aggravating circumstances out of one single set  
13 of facts and the -- and I would have either required  
14 an election or directed a verdict as to one or the  
15 other, but I believe that the State has sufficiently  
16 established these three for them to go to the jury.

17 Anything else before we bring the jury in?

18 MS. KIMBROUGH: Would you note our objection?

19 THE COURT: Yes, ma'am, absolutely.

20 MS. KIMBROUGH: Nothing from the defense.

21 MR. MYERS: Nothing from the State, Your Honor.

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

24 (Pause.)

25 THE COURT: I believe the State rested, then we



1 took up these motions. Do you want me to advise the  
2 jury that the -- this phase of the proceeding is  
3 proceeding on the three aggravating circumstances  
4 for their consideration or don't say anything about  
5 it?

6 **MR. MYERS:** We would just rather go on into it,  
7 Your Honor.

8 **MS. KIMBROUGH:** We agree, Your Honor.

9 **THE COURT:** Okay.

10 (The jury enters the courtroom at 10:08  
11 a.m.)

12 **THE COURT:** Good morning, ladies and gentlemen.  
13 Welcome back. Ladies and gentlemen, the State  
14 rested. It's now the defense's turn.

15 Ms. Kimbrough, Mr. Soltis.

16 **MS. KIMBROUGH:** Thank you, Your Honor. May it  
17 please the Court. At this time, Mr. Finklea calls  
18 Erica Middleton.

19 ERICA MIDDLETON,  
20 having been duly sworn, testified as follows:

21 **THE CLERK:** Have a seat, please, ma'am. Once  
22 you have a seat, state your full name on the record,  
23 spelling your last.

24 **THE WITNESS:** Erica Finklea Middleton,  
25 M-I-D-D-L-E-T-O-N.

## DIRECT EXAMINATION

1

2

BY MS. KIMBROUGH:

3

Q Good morning, Erica.

4

A Good morning.

5

Q Erica, where do you live?

6

A Miles Point, Mississippi.

7

Q Okay. And how old are you?

8

A Thirty.

9

Q Okay. And how are you related to Ron Finklea?

10

A We're two sister's children. I'm a first

11

cousin.

12

Q You're first cousins?

13

A Yes, ma'am.

14

Q Did you grow up with Ron?

15

A Yes, ma'am.

16

Q What can you tell me about Ron?

17

A I can tell you that through the times that we  
grew up together, I look at him as an older brother.

18

19

He's been there for me through thick and thin.

20

Whenever I had a problem and I didn't want to go to

21

my mom, I can go to Ron and we would talk. I mean,

22

he's a sweet kid, always have been as far as, you

23

know, the 30 years that I've been knowing him.

24

And I mean, you know, we used to have a dance

25

routine. We would always go to the skating rink

1 every Friday and Saturday night. And me, him, my  
2 sister, we was called the Three Fight Girls. And it  
3 was -- we would go and we would dance against other  
4 groups. And he would be the leader. We get in,  
5 just being there together. Everything was exciting.

6 There wasn't nothing that I never would ask him  
7 or anyone that called and asked him for, he wouldn't  
8 do it. And Ron the type of person that if you walk  
9 up to him back home, anywhere, and if you didn't  
10 have a shirt to put on your back, this is the type  
11 of Ron that I know, he would actually pull his shirt  
12 off and give it to you. That's the Ron. And I  
13 respect him for that. Through all the years that  
14 I've been knowing him, I respect him for that.

15 We're church going people. We was born and  
16 raised up in church. We had our own little church  
17 group. I can't remember what was the name of it,  
18 but we had it and everything. And then when he went  
19 off in the military, you know, I'd see him when he  
20 would come home every now and then. But when he did  
21 come home, I was excited to see him. So that's the  
22 Ron that I know of.

23 Q And, Erica, were you surprised when you learned  
24 that Ron was involved in this?

25 A Yes, very much, yes.

1 Q Had you ever known Ron to be violent?

2 A No, ma'am, never.

3 Q How about drug use?

4 A Never. To my knowledge, never. From the time  
5 that we had been together, never.

6 Q Would you describe him as a homebody?

7 A He's a homebody. He's very educated. I mean,  
8 you know, he will be at home, we would just sit  
9 around, we was all -- play games, go outside, just  
10 sit around and talk and that's the type of Ron that  
11 I know.

12 Q Okay. Now, Erica, you live in Mississippi now?

13 A Yes, ma'am.

14 MS. KIMBROUGH: Please answer any questions  
15 that the Solicitor may have for you.

16 CROSS-EXAMINATION

17 BY MR. MYERS:

18 Q Prior to this week, when was the last time you  
19 had seen the defendant?

20 A Prior to this week, the last time I had seen  
21 him is, I think, when they was bringing him back to  
22 Lexington.

23 Q Pardon me?

24 A When they was bringing him back to Lexington.

25 Q You were in Alabama then?

1           **A**     Yes, sir.

2           **Q**     So you were there when he came to Alabama from  
3           Lexington after he murdered Walter Sykes?

4           **A**     I was at home..

5           **Q**     Did he say anything about the murder?

6           **A**     No, sir. He never said anything to me and I  
7           never did get to ask..

8           **Q**     Didn't even talk about it?

9           **A**     No, sir.

10          **Q**     That's when he was in that white Mustang with  
11          the Florida tags?

12          **A**     Yes, sir.

13               **MR. MYERS:** Thank you, ma'am.

14               **MS. KIMBROUGH:** Your Honor, we have no further  
15          questions for Ms. Middleton.

16               **THE COURT:** Okay. Thank you, ma'am.

17               **MS. KIMBROUGH:** Your Honor, at this time, the  
18          defense calls Johnnie Finklea, Johnnie L. Finklea.

19                       JOHNNIE LEE FINKLEA,  
20          having been duly sworn, testified as follows:

21               **THE CLERK:** Have a seat up there, please, sir.  
22          Once you have a seat, state your full name, spelling  
23          your last name.

24               **THE WITNESS:** My name is Johnnie Lee Finklea,  
25          J-O-H-N-N-I-E, L-E-E, Finklea, F-I-N-K-L-E-A. I'm

1 Ron Finklea's uncle. And Ron, every time I see Ron,  
2 he was just Ron.

3 THE COURT: Just a moment, sir.

4 DIRECT EXAMINATION

5 BY MS. KIMBROUGH:

6 Q I'm sorry, Johnnie. I have to ask you the  
7 question first. Are you nervous?

8 A Kind of halfway.

9 Q Johnnie, how are you related to Ron Finklea?

10 A I'm Ron's uncle.

11 Q And whose brother -- were you his mother's  
12 brother?

13 A I'm his mother's brother.

14 Q Okay. And, Johnnie, where do you live?

15 A I live in Monroeville, a little place out from  
16 Monroe called Franklin.

17 Q How long have you lived there?

18 A Been there all of my life.

19 Q Your whole life?

20 A Yes, ma'am.

21 Q And were you around when Ron was born?

22 A No. Ron came around rest up on, you know, the  
23 route he was on, he came, you know, but I never had  
24 been staying around Ron and them all the time. I  
25 always stayed off, you know, out from there. Yes,

1       ma'am. But when I see -- be around Ron, he would  
2       just say, Uncle Billy, you know, he always give me  
3       respect. I never heard nothing about him in school,  
4       you know, into nothing. Like I said, I couldn't  
5       believe it was Ron, you know, what went on, I just  
6       can't believe it because Ron always been a  
7       respectful child. He never had, you know, gave you  
8       no trouble, you never heard nobody talking about  
9       him, any trouble.

10       Q     So were you around him a good bit when he was  
11       growing up?

12       A     Ma'am?

13       Q     Were you around Ron a good bit while he was  
14       growing up?

15       A     You know, I just wasn't staying right behind  
16       them because I was living off from them, you know.

17       Q     Did you ever see Ron do anything that you would  
18       describe as bad or violent or anything like that?

19       A     Never have, never.

20       Q     He was respectful?

21       A     He was a respectful child.

22       Q     And were you surprised when you heard about  
23       this?

24       A     Yes, ma'am, it shocked me, shocked me to death.  
25       I couldn't believe it, not the Ron that I knew

1 because like I say, you never heard anything from  
2 him no time, even going to school, whatever, never  
3 did hear nothing of Ron. See him, he say, yes, sir,  
4 no, sir. He never did say nothing to me 'less I  
5 said something to him, then, you know, we laugh it  
6 off or something like that. That's Ron.

7 MS. KIMBROUGH: Thank you, Johnnie. Please  
8 answer any questions that the Solicitor may have.

9 CROSS-EXAMINATION

10 BY MR. MYERS:

11 Q Mr. Finklea, prior to this week, when was the  
12 last time you saw the defendant?

13 A Last time I saw Ron, I think when he was in the  
14 white car, but we didn't conversate (sic). We never  
15 did conversate (sic) because I was moving. I spoke  
16 to him and I kept, you know, I be headed to town on  
17 some business or something, yes, sir, that was  
18 during the period of that time.

19 Q You were in Alabama when he was arrested down  
20 there?

21 A Yes, sir.

22 Q You saw him around?

23 A No. I just saw him and just, you know, the car  
24 was -- I was kind of ahead or done something, but I  
25 spoke to him. Mostly when Ron come to Alabama, I



1 never did get a chance to see him because I lived  
2 off from them, you know. If they tell me Ron been  
3 there, I say, oh, I didn't get a chance to see Ron.  
4 I never did get a chance to just see him when he  
5 come home really, not most of the time when he get  
6 there.

7 Q So that time down there you saw him and spoke  
8 to him when he was arrested, you said he was just  
9 like he'd always been?

10 A He was just like he always have.

11 Q Nice, easy going?

12 A Easy going.

13 Q Nothing unusual about him?

14 A No.

15 MR. MYERS: Thank you.

16 THE COURT: Redirect?

17 MS. KIMBROUGH: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. KIMBROUGH:

20 Q Johnnie, you haven't seen Ron since his arrest;  
21 is that correct?

22 A No, ma'am, I haven't saw him since then.

23 Q And would it be fair to say that financially it  
24 would be difficult for you to come to South Carolina  
25 to come see him?

1 A Ma'am?

2 MS. KIMBROUGH: I don't think I have any  
3 further questions. Thank you, Johnnie.

4 THE COURT: Just a moment, Mr. Finklea.

5 MR. MYERS: Nothing else, Your Honor.

6 THE COURT: Okay. Go ahead.  
7 Your next witness.

8 MS. KIMBROUGH: Thank you. Mr. Finklea calls  
9 Curtis Blunt.

10 CURTIS BLUNT,  
11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat, sir. Once you have a  
13 seat, state your full name, spelling your last.

14 THE WITNESS: Curtis Blunt, B-L-U-N-T.

15 DIRECT EXAMINATION

16 BY MS. KIMBROUGH:

17 Q Good morning, Curtis. How are you?

18 A All right. How are you doing?

19 Q Good. Curtis, where do you live?

20 A Monroe, Alabama.

21 Q And what is your relationship to Ron Finklea?

22 A He's my brother.

23 Q Is he your older brother or younger brother?

24 A Older.

25 Q And, Curtis, what do you do for a living?

- 1       A     I work at a furniture factory.
- 2       Q     Curtis, what can you tell the jurors about the
- 3       Ron Finklea that you know?
- 4       A     He's loving, caring, never did nothing wrong.
- 5       He never had a speeding ticket, just a good child,
- 6       good brother to anybody, white, black, Puerto Rican,
- 7       it don't matter, he was always good.
- 8       Q     And what kinds of things did Ron and you do
- 9       together when you were growing up?
- 10      A     We'd go riding, go fishing. Sometimes he'd
- 11      take me to go play with one of my little
- 12      girlfriends, you know, brotherly things that
- 13      brothers do.
- 14      Q     Would you describe him as a good brother?
- 15      A     Yes, ma'am, great. I wouldn't trade nothing
- 16      for him.
- 17      Q     Were you around -- do you recall when he went
- 18      off to the military?
- 19      A     Yes, ma'am. I think it was back in '90 or '91.
- 20      Q     Have you stayed in touch with him since then?
- 21      A     Yes, ma'am, pretty much.
- 22      Q     You work full-time, don't you?
- 23      A     Yes, ma'am.
- 24      Q     Has it been real easy for you to see Ron in the
- 25      last four years?

1       A     No, ma'am.

2       Q     Okay. How about writing and calling, is that  
3       something --

4       A     Yes, ma'am. He writes and call all the time.

5       Q     What sorts of things do you and Ron share  
6       together in your communication with that writing and  
7       that calling?

8       A     Love, all the above, I can't explain it because  
9       I miss him and ain't nothing I can do about it.  
10      It's just all the above, you can't explain it.

11      Q     So you still love your brother?

12      A     Yes, ma'am, I always will.

13      Q     You were surprised or how did you feel --

14      A     Hurt --

15      Q     I'm sorry, I didn't mean to lead you. How did  
16      you feel when you learned about this?

17      A     Hurt, deeply hurt. I couldn't believe it.

18      It's not something that my brother would just up and  
19      do. I don't believe it.

20      Q     Did you ever know your brother to be involved  
21      in drugs?

22      A     No, ma'am, never, never.

23      Q     Did you ever know him to hurt another person?

24      A     No, ma'am. No, ma'am. If anything, he will  
25      try to help you, talk you out of it, but never hurt

1 no one, no, ma'am.

2 Q And, Curtis, is there anything else you can  
3 think of that you would want the jury to know about  
4 your brother?

5 A He was a good child, always have, never been in  
6 the principal office or nothing. He just always was  
7 a good brother to anybody. And I don't understand  
8 it, maybe some of y'all do, but I don't because he's  
9 never done anything. He don't have a record,  
10 nothing but a military record. I don't understand  
11 it. That's the best -- that's all I can say. He's  
12 never done anything.

13 Q Curtis, I hate to bring this up, but have you  
14 been in trouble before?

15 A Yes, ma'am, I have.

16 Q Okay. What happened?

17 A I have got a DUI and put a -- drug charge, a  
18 personal use drug charge.

19 Q And when was that?

20 A Back in '98.

21 Q The past nine years?

22 A Yes, ma'am.

23 Q Been straight and narrow?

24 A Yes, ma'am, working everyday, yes, ma'am.

25 MS. KIMBROUGH: Thank you, Curtis. Please

1 answer any questions that the prosecutors may have  
2 for you.

3 CROSS-EXAMINATION

4 BY MR. MYERS:

5 Q Did you know Latisha Gilmore?

6 A No, sir.

7 Q How about Marissa Carrie?

8 A Who?

9 Q Marissa Cayce?

10 A No, sir.

11 MR. MYERS: Thank you.

12 THE COURT: Anything further?

13 MS. KIMBROUGH: Just briefly.

14 REDIRECT EXAMINATION

15 BY MS. KIMBROUGH:

16 Q Were you here when Latisha Gilmore testified?

17 A Not being funny or anything, that's the  
18 heavysset one that was here yesterday.

19 Q With the orange and white shirt on, yes, sir.

20 A Never seen her in my life.

21 Q You never saw her at your mom's house?

22 A Nowhere, never.

23 Q Nowhere else in Alabama?

24 A Nowhere, never.

25 MS. KIMBROUGH: Thank you.

1           **MR. MYERS:** Nothing further.

2           **THE COURT:** All right. Next witness.

3           **MS. KIMBROUGH:** Thank you, Your Honor. At this  
4 time, Mr. Finklea calls Johnnie Finklea, Senior.

5                       JOHNNIE FINKLEA, SR.,

6           having been duly sworn, testified as follows:

7           **THE CLERK:** Have a seat right up there for me,  
8 please, sir. Once you have a seat, speak up loud  
9 and clear and state your full name, spelling your  
10 last.

11           **THE WITNESS:** Johnnie Finklea, J-O-H-N-N-I-E,  
12 F-I-N-K-L-E-A.

13                       DIRECT EXAMINATION

14           BY MS. KIMBROUGH:

15           **Q**     Good morning, Johnnie.

16           **A**     Good morning.

17           **Q**     Sir, where do you live?

18           **A**     I live in Franklin, Alabama.

19           **Q**     How long have you lived there?

20           **A**     I've been there all my life. I've been there  
21 74 years right there in Franklin.

22           **Q**     Right there in Franklin?

23           **A**     Right there in Franklin.

24           **Q**     And, Johnnie, what is your connection to Ron?

25           **A**     That's my grandson and I love him.

1 Q Yes, sir.

2 A Yes, ma'am.

3 Q And, Johnnie, can you describe for the jury  
4 what kind of child --

5 A Oh, he was just handsome. He just was a nice  
6 child any way. If me and my (sic) grandmother  
7 wanted to go somewhere and he had a car, he'd drive  
8 me. If we wanted to go, then he was right there.  
9 He was there for us and so that's all I could say.  
10 He was there for anybody would needed help, if there  
11 was any way he could help them, he was right there.  
12 He just was a good child. And I love him to death.  
13 And so I couldn't understand why, when that came  
14 out, why he would do something like that. He wasn't  
15 the Ron I know because, in my opinion, he wouldn't  
16 have did nothing like that.

17 Q Yes, sir. So you were surprised --

18 A Because he'd been a good child all the way  
19 through school and, you know, after he -- the  
20 morning when he left to go to the military, his mama  
21 and my wife they was crying and hollering, My child  
22 is gone. He was there laughing, said, Mama, I'll be  
23 all right, because some -- only the one was looking  
24 to the hills where my help come from. And so that's  
25 coming from the Lord. And so he -- that's the



1 reason I can't understand why my grandbaby did that,  
2 so he couldn't be the Ron I know about.

3 Q So it was out of character?

4 A Ma'am?

5 Q In other words, you were surprised?

6 A Yes, ma'am. Yes, ma'am. It just shocked me to  
7 death when I heard that.

8 Q Did the Ron you know have anything to do with  
9 drugs?

10 A No, ma'am.

11 Q Anything to do with alcohol?

12 A No, ma'am. No, ma'am. No, ma'am.

13 Q Did he run with a rough crowd?

14 A He never did run around with nothing like that.

15 Q Did he hang out with his cousins?

16 A When he'd go out, when he'd go out, he's going  
17 to be with somebody that he know. He wasn't just  
18 going out there just because he could go, go. He  
19 like me, he wouldn't mess with this different kind  
20 of stuff, so that's what carried you out there a  
21 lot. And so he just was Ron to his self and so I  
22 appreciated him for that.

23 MS. KIMBROUGH: Johnnie, please answer any  
24 questions the Solicitor may have for you.

25 MR. MYERS: You can come down, Mr. Finklea.

BETTY FINKLEA PEOPLES - DIRECT BY MS. KIMBROUGH

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1 Thank you, sir.

2 THE COURT: Your next witness.

3 MS. KIMBROUGH: Thank you, Your Honor. At this  
4 time, the defense calls Betty Finklea Peoples.

5 BETTY FINKLEA PEOPLES,  
6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat up there, please,  
8 ma'am. I need you to speak up loud and clear,  
9 please. State your full name, spelling your last.

10 THE WITNESS: My name is Betty Ann Finklea  
11 Peoples, P-E-O-P-L-E-S.

12 DIRECT EXAMINATION

13 BY MS. KIMBROUGH:

14 Q Good morning, Betty.

15 A Good morning.

16 Q Betty, where do you live?

17 A I live in Franklin, Alabama, Monroe County.

18 Q Is that in Monroeville?

19 A Yes, ma'am.

20 Q Okay. And, Betty, how long have you lived  
21 there?

22 A Well, I lived there all of my life, but I left  
23 and I went to Washington D.C. at an early age and I  
24 returned when Ron was six years old. I stayed there  
25 and he was born in Washington D.C., then I returned

1 back home and I'd been there from then on.

2 Q And how are you related to Ron?

3 A I'm his mother.

4 Q And, Ms. Betty, how many other children do you  
5 have?

6 A Two.

7 Q And who are they?

8 A Chanel Finklea Grace and Curtis Blunt.

9 Q Ms. Betty, I'm going to show you a few items  
10 that I would like you to identify.

11 (Defendant's Exhibit Number 4, photograph,  
12 was marked for identification purposes.)

13 Ms. Betty, can you describe what do you see  
14 there?

15 A Yes. It's Ron Finklea, my baby.

16 Q Do you recall when these photographs were  
17 taken?

18 A Yes, the one with brown plaid shirt on, he was  
19 in kindergarten. The one with the stripe on, he was  
20 in first grade. And if I'm not mistaken, the one  
21 with the gray and the red, he was in something like  
22 the third grade. And the one with the black sitting  
23 in the chair, he was something like maybe the sixth  
24 grade.

25 Q And so these are photographs of Ron growing up?

1       **A**     Yes, ma'am.

2               **MS. KIMBROUGH:** Your Honor, may I publish this  
3       -- I didn't introduce it.

4               **THE COURT:** Is it in evidence? Any objection?

5               **MR. MYERS:** No objection.

6               **THE COURT:** All right, you may.

7                       (Defendant's Exhibit Number 4, photograph,  
8       admitted into evidence.)

9       **BY MS. KIMBROUGH:**

10      **Q**     I'm going to show you another photograph, see  
11      if you can explain this to the jury.

12      **A**     Yes. Those are my --

13      **Q**     Just one moment. Please go ahead.

14      **A**     Yes. Those are my two babies. The girl,  
15      Chanel, she's the oldest, and Ron, he's next to  
16      Chanel. And those are my two babies, which I love  
17      very much.

18      **Q**     About how old was Ron when this photograph was  
19      taken?

20      **A**     He must have been about four, three or four.

21      **Q**     And Chanel?

22      **A**     Ron was about three, she was about four.

23               **MS. KIMBROUGH:** Okay. Your Honor, we would  
24      offer this as Defense Exhibit Number 5.

25               **THE COURT:** What says the State?

1           **MR. MYERS:** No objection.

2           **THE COURT:** All right.

3                   (Defendant's Exhibit Number 5, photograph,  
4           admitted into evidence.)

5           **BY MS. KIMBROUGH:**

6           **Q**     Ms. Betty, I ask you to describe what you see  
7           in that.

8           **A**     I see Chanel and Ron, they still are my babies.

9           **Q**     About how old were they then?

10          **A**     If I'm not mistaken, Chanel was six and Ron was  
11          five.

12          **Q**     They look pretty close there.

13          **A**     They are.

14          **Q**     How is their relationship?

15          **A**     They was real close. Yes, ma'am, they real  
16          close together.

17          **MS. KIMBROUGH:** I offer this as Defense Exhibit

18          6.

19          **MR. MYERS:** No objection.

20          **THE COURT:** All right.

21                   (Defendant's Exhibit Number 6, photograph,  
22           admitted into evidence.)

23          **BY MS. KIMBROUGH:**

24          **Q**     Betty, how would you describe your son, Ron?

25          **A**     Well, as a mother, no one know him no better

1       than I do. Ron was a good child. I have never had  
2       a problem out of him from birth up until this  
3       occurred. And he came -- I brought him up in  
4       school. I brought him up in church. And he never  
5       disrespect me. He always have been a good child and  
6       a child that I love dearly. And I just don't  
7       understand what could have happened because that Ron  
8       that did this is not the Ron that I brought up. I  
9       didn't bring him up like this. I don't know what  
10      could have happened, he got with the wrong crowd or  
11      he got over to something, but I never knew he was on  
12      drugs. I never seen him do drugs. I never seen him  
13      drink anything. I just believe that Ron got with  
14      the wrong crowd.

15      Q     Yes, ma'am. Now, as his mother, is there  
16      anything you would like the jury to know about Ron  
17      that I've not asked about?

18      A     Yes, it is. I would ask y'all as a mother,  
19      would y'all, please, please, I'm begging, spare my  
20      child's life. I would rather see him do life. I  
21      can go see him. I'm sorry about what happened and I  
22      feel for the other side of the family.

23           MR. MYERS: Objection. We object to the  
24      expounding on things simply of that nature, Your  
25      Honor. She's talking to the wrong folks.

1           **THE COURT:** Ms. Kimbrough.

2           **MS. KIMBROUGH:** Are you sustaining the  
3 objection, Your Honor?

4           **THE COURT:** Do you have a response to the  
5 objection? Would you like to pose another question?

6           **MS. KIMBROUGH:** Your Honor, our objection is I  
7 don't think it's improper for Ms. Peoples to ask for  
8 mercy on behalf of Ron.

9           **THE COURT:** Solicitor, tell me the basis for  
10 the objection again.

11          **MR. MYERS:** She can tell her feelings and her  
12 love, but she can't tell the jury what verdict to  
13 render, Your Honor.

14          **THE COURT:** The objection is sustained to the  
15 extent that the -- plea to ask the jury for a  
16 specific verdict. You can testify concerning your  
17 feelings, ma'am.

18          **THE WITNESS:** Okay. I love my son and I'm  
19 sorry what happened. I don't know what happened.  
20 And the only thing that I'm saying that I am really  
21 sorry.

22          **MS. KIMBROUGH:** Thank you, Ms. Betty. Please  
23 answer any questions that the Solicitor may have for  
24 you...

25

\*\*\*\*

## CROSS-EXAMINATION

1

2

BY MR. MYERS:

3

Q Ms. Peoples, I only have a few. When your son came back to Alabama, he was in that white car; is that right, ma'am?

5

6

A Yes, sir.

7

Q And [REDACTED] was with him? Theodore Davis,

8

[REDACTED] another fellow with was with him?

9

A Yes, sir.

10

Q They came there together in that white car; isn't that right, ma'am?

11

12

A Yes, sir.

13

Q And when he was there, South Carolina police called looking for him; isn't that right, ma'am? South Carolina Law Enforcement people called down there wanting to know where he was?

14

15

16

17

A Yes, sir.

18

Q Were you with him when he called back and said he was in Louisiana?

19

20

A No, sir.

21

Q You wasn't with him when he told the police he was in Louisiana?

22

23

A No, sir.

24

Q And do you know anything about that orange

25

shirt the police found behind your house?



1           A     No, sir, because when Ron and them came to  
2           Alabama, I was at work.

3           Q     Do you know anything about that white Army hat  
4           the police found behind your house?

5           A     No, because when they found it, they did not  
6           show it to me. They didn't let me see what was in  
7           the bag.

8           Q     Do you know anything about that gun that Ron  
9           had?

10          A     No.

11          Q     You didn't know he was on drugs?

12          A     No.

13          MR. MYERS: Thank you, ma'am.

14          THE COURT: Ms. Kimbrough.

15          MS. KIMBROUGH: Thank you, Your Honor.

16                         REDIRECT EXAMINATION

17          BY MS. KIMBROUGH:

18          Q     Ms. Betty, were you around when Ron voluntarily  
19                 turned himself in to law enforcement?

20          A     Yes, ma'am.

21          Q     And, to your knowledge, Ron never did drugs?

22          A     No, ma'am.

23          Q     Were you here when the lady, she's not in the  
24                 courtroom now, do you remember Ms. Gilmore's  
25                 testimony yesterday?

BETTY FINKLEA PEOPLES - REDIRECT BY MS. KIMBROUGH

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1       A     I wasn't here yesterday.

2       Q     Okay. Sorry about that. My fault. Do you  
3     (ever remember meeting someone named Latisha Gilmore?

4       A     No, ma'am, never seen her.

5       Q     To your knowledge, no such person has ever been  
6     in your home?

7       A     No, ma'am.

8           MS. KIMBROUGH: All right. Thank you, Ms.  
9     Betty. Please answer any other questions the  
10    Solicitor may have.

11          MR. MYERS: Nothing further, Your Honor.

12          MS. KIMBROUGH: Thank you.

13          THE COURT: Just a moment, ma'am, before you  
14    step down.

15          Counsel approach.

16                 (Whereupon, a bench conference was held off  
17    the record, in the presence of the jury, but out of  
18    the hearing of the jury.)

19    BY MS. KIMBROUGH:

20       Q     Ms. Betty, I just have one more question.  
21    Earlier when you were asking the jury to spare Ron's  
22    life, could you again explain to them why you're  
23    asking for that?

24       A     Because I just feel like if he was living, I  
25    could go see him, and if he's dead, I can't. There

1 ain't nothing I can do.

2 MS. KIMBROUGH: Thank you, Ms. Betty.

3 THE COURT: Anything further?

4 RECROSS-EXAMINATION

5 BY MR. MYERS:

6 Q How many times have you seen him since he's  
7 been arrested?

8 A One.

9 Q Where was that?

10 A At the hospital.

11 MR. MYERS: Thank you, ma'am.

12 THE COURT: You may step down, ma'am.

13 MS. KIMBROUGH: Your Honor, I have one follow  
14 up to that.

15 THE COURT: Just a moment she has one follow-up  
16 question. You can stand right there.

17 RE-REDIRECT EXAMINATION

18 BY MS. KIMBROUGH:

19 Q Ms. Betty, the Solicitor asked you how many  
20 times you'd been to South Carolina in the past four  
21 years and you said one time at the hospital?

22 A Yes, ma'am.

23 Q Ms. Betty, is it difficult for you to travel to  
24 South Carolina?

25 A No.

1 Q How about financially?

2 A Yes.

3 Q If you had more money, you'd be able to see him  
4 more often?

5 A Yes, I would.

6 Q And you'd want to do that?

7 A Yes, I would.

8 Q But you rely on letters and phone calls, is  
9 that --

10 A Yes, ma'am.

11 MS. KIMBROUGH: Thank you, Ms. Betty.

12 MR. MYERS: Nothing further, Your Honor.

13 THE COURT: Next witness.

14 MS. KIMBROUGH: Thank you, Your Honor. Nicole  
15 Fantroy.

16 NICOLE FINKLEA FANTROY,

17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat, please, ma'am. Speak  
19 up loud and clear. Once you have a seat, spell your  
20 last name.

21 THE WITNESS: My name is Nicole Finklea  
22 Fantroy, F-A-N-T-R-O-Y.

23 DIRECT EXAMINATION

24 BY MS. KIMBROUGH:

25 Q Good morning, Nicole.

1           A     Good morning.

2           Q     Nicole, where do you live?

3           A     Monroeville, Alabama.

4           Q     How long have you lived there?

5           A     I have lived there all my life.

6           Q     Okay. And how old are you?

7           A     I'm 31.

8           Q     And what is your connection to Ron Finklea?

9           A     Ron and I are first cousin (sic), but really

10          and truly, our mom and his mom are sister, but Ron

11          and I are brothers and sister.

12          Q     So you're close?

13          A     Very close.

14          Q     And you grew up together?

15          A     Yes, ma'am. We did everything together, I

16          mean, everything. We ate together. We sang

17          together. We slept together. And the reason that I

18          say that is because my mom she have seizures and I

19          was the oldest and Ron would always come out to my

20          mom's house to help me. And, I mean, he was just

21          there for her because it was certain things that she

22          couldn't do that he could help me do for her. I

23          mean, he just did everything for her and she took

24          him to be her son.

25          Q     So he would stay at your house?

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1       A     Yes, ma'am, he stayed at our home.

2       Q     And growing up, what kinds of things did Ron do  
3       for you?

4       A     Growing up, oh, God, I know a lot of people  
5       here would think of mentors being like artists,  
6       Oprah Winfrey, Donnie McClurkin, but that young man  
7       that's sitting over there is my mentor and will  
8       always be. He inspired me to go on and be all that  
9       I can be.

10           And the reason that I'm saying that, because my  
11       grandparents has eight children and they have at  
12       least 12 grandkids. Ron is the first grandkid to  
13       ever walk out with a diploma in his hand. He went  
14       on to fulfill his lifelong dream to become what we  
15       all had never been. And he told me, Nikki, you can  
16       do the same. And I was determined.

17           I had two kids before I graduated from high  
18       school, wanted to drop out, but Ron, he told me,  
19       Nikki, you can do it. We've got to prove everybody  
20       else wrong, we can do this. And I went on to  
21       complete high school after I had my two kids. I  
22       wanted to be a mother to my two kids, so I didn't  
23       move off to go to college, but later on, I met this  
24       young man that pushed me along. And right today, I  
25       have a degree in associate of business of

1 administration thanks to Ron O'Neal.

2 Q And the man you're referring to is your  
3 husband?

4 A Yes. Keith Fantroy, yes, ma'am. Whenever Ron  
5 came home, everybody was excited to see Ron. It was  
6 like family gatherings. You could put a center  
7 piece on the table, that's the way we looked at Ron.  
8 First cousins, second cousins, aunties, great  
9 aunties, everybody wanted to see Ron because, I  
10 mean, it was just something about Ron. He brought  
11 everybody together. I mean, it wasn't going to be  
12 no disagreements. If it was a disagreement, we're  
13 going to get this right today.

14 Ron was raised in the church. We sang  
15 together. I mean, we prayed together. We did  
16 everything together. And to sit here, I know what  
17 my eyes are seeing, it's still hard to believe, but  
18 I know that my grandparents, my auntie, my mom, they  
19 didn't have everything that everybody else have, but  
20 I tell you they did all they could to instill moral  
21 values in us. And Ron have those values.

22 We don't know what took place. We can't erase  
23 that, but we know that Ron is not a monster, Ron is  
24 not a whore monger, Ron is not a drug dealer. If  
25 some drugs was brought before me today, I couldn't

1 tell you what they are because we was not raised  
2 around that. I don't know what took place, only God  
3 knows, only God knows.

4 Q Nicole, were you in the courtroom when a woman  
5 named Latisha Gilmore testified?

6 A Yes, ma'am.

7 Q Had you ever seen this woman before in your  
8 life?

9 A I have never seen her before. I couldn't  
10 identify her if she came back in here today. If  
11 y'all put her in a lineup, I couldn't.

12 Q Did you ever, this may be redundant, did you  
13 ever see her come with Ron to Alabama?

14 A Never. The only people I've ever seen Ron with  
15 was his wife, Cherena, his son, [REDACTED] [REDACTED] his  
16 wife, Teresa, and his stepchildren. Those are the  
17 only people. And whenever I'd seen Ron, he was in  
18 his own vehicles. He would come and sit at my  
19 house, I mean, get on my computer. We would hold  
20 conversation. I mean, anything --

21 Q Do you know anything about drugs and Ron?

22 A Never. Never. Never seen it in him. I mean,  
23 he just didn't present himself like no drug dealer  
24 or drug user.

25 Q Nicole, is there anything else you would like



1 Ron's jury to know?

2 A Yes. Like I first stated, that Ron is not this  
3 monstrous person that had been presented to you all.  
4 I can ask you all to forgive him, I plead for  
5 forgiveness, but like we said, you can't erase what  
6 has taken place, but please, I mean, I know we all  
7 deserve a second chance and that's all I'm saying  
8 because like I said, that young man that sit over  
9 there, we don't know what took place. We all try to  
10 raise our kids to the best of our ability. I have  
11 three beautiful children and I instill in them all  
12 the time what to do, but when they grow up, if we  
13 get around the wrong people, if we're not strong  
14 individuals, we can be easily persuaded. So I come  
15 here today to plead for his forgiveness.

16 Q Nicole, I'd like to present a few things for  
17 you to identify. I apologize, I meant to show you  
18 these earlier. I'm handing you some photographs.  
19 Can you tell me what the first one is?

20 A This is myself smiling because I knew that this  
21 picture was on its way to South Carolina to Ron.

22 Q And you're Ron's first cousin?

23 A First cousin.

24 MS. KIMBROUGH: Your Honor, I'd move to have  
25 this admitted as Defendant's Exhibit 7.

1           **MR. MYERS:** No objection.

2           **THE COURT:** It's admitted.

3                   (Defendant's Exhibit Number 7, photograph,  
4 admitted into evidence.)

5           **BY MS. KIMBROUGH:**

6           **Q**     Nicole, how about this photograph?

7           **A**     These are my grandparents, Rosa Finklea and  
8 Johnnie Finklea.

9           **MS. KIMBROUGH:** Your Honor, I'd move to have  
10 this photograph admitted as Defense Exhibit Number  
11 8.

12           **MR. MYERS:** No objection to any of them.

13           **BY MS. KIMBROUGH:**

14           **Q**     How about this photograph, Nicole?

15           **A**     This is my second cousin, Loraine Jackson, that  
16 would make her Ron's second cousin. Her and Ron mom  
17 are very close. She has been there for Aunt Betty  
18 since Ron's been here.

19           **Q**     Did she spend time with Ron?

20           **A**     Yes, ma'am. She was around Ron growing up.

21           **MS. KIMBROUGH:** I believe that the State has no  
22 objection to Defense Number 9.

23           **THE COURT:** All right. If you'll just have  
24 them all marked and we'll introduce them all at the  
25 same time -- admit them all.

1 MS. KIMBROUGH: Yes, sir.

2 BY MS. KIMBROUGH:

3 Q How about this lady?

4 A This is my Aunt Betty, Ron mother. She's  
5 smiling because she knew that the picture was on its  
6 way to South Carolina.

7 Q Last but not least?

8 A This is a picture of our family together  
9 smiling because we knew that this would bring joy to  
10 Ron knowing that we were standing by him.

11 MS. KIMBROUGH: Your Honor, at this time, the  
12 defense would move Exhibits 8 through 11 into  
13 evidence.

14 THE COURT: They're admitted without objection.

15 MS. KIMBROUGH: Thank you, Your Honor.

16 (Defendant's Exhibit Numbers 8 through 11,  
17 photograph, admitted into evidence.)

18 MS. KIMBROUGH: Nicole, please answer any  
19 questions the Solicitor may have for you.

20 CROSS-EXAMINATION

21 BY MR. MYERS:

22 Q Ma'am, you said you saw the defendant in  
23 Alabama only with family members?

24 A Yes, sir, correct.

25 Q You never saw him with Theodore Davis, Junior?

1 A No, sir, not until the night of the arrest.

2 Q You said he only came down in his own vehicle?

3 A Yes, sir.

4 Q What kind of vehicle did he own?

5 A Older vehicles.

6 Q What kind?

7 A A little small car and it was an Explorer,  
8 older model vehicle.

9 Q What about that white Mustang with the Florida  
10 tags?

11 A No, sir, that was the first time I ever seen it  
12 the night of the arrest.

13 Q And you said he wasn't a whore monger?

14 A No, sir, no, sir.

15 Q Why did you say that?

16 A Why did I say that? Because I have never seen  
17 Ron chase women. He had never brought any women in  
18 our presence that you would think Ron was a whore  
19 monger?

20 Q What about a woman in Texas that he had a baby  
21 by when he was married to Teresa?

22 A I don't know anything about that.

23 Q You don't know anything about that?

24 A No, sir.

25 MR. MYERS: Thank you, ma'am.

1 THE COURT: Ms. Kimbrough.

2 MS. KIMBROUGH: Thank you, Nicole.

3 THE WITNESS: Thank you.

4 THE COURT: Next witness.

5 MS. KIMBROUGH: Your Honor, I've been advised  
6 that my client may need to take a brief break.

7 THE COURT: All right. Ladies and gentlemen,  
8 please go to the jury room. Please do not discuss  
9 the case. Please leave all exhibits in the  
10 courtroom.

11 (The jury retires to the jury room.)

12 MS. KIMBROUGH: Thank you, Your Honor.

13 THE COURT: Anything before we break?

14 MR. MYERS: Yes, sir. We had that bench  
15 conference and I'd like to put that on the record,  
16 Your Honor, where we brought up the thing about the  
17 mother --

18 THE COURT: Just a moment. Does he need to use  
19 the restroom?

20 MS. KIMBROUGH: Yes, Your Honor. We'll waive  
21 his presence.

22 MR. MYERS: Well, we can wait until he comes  
23 back. We'll do that after the break, Your Honor.

24 THE COURT: All right.

25 (Brief Recess.)

1           **THE COURT:** Concerning the bench conference,  
2           Mr. Solicitor.

3           **MR. MYERS:** Yes, sir. When the mother was  
4           testifying, she made some statements of what  
5           sentence or verdict the jury should reach and that's  
6           when I objected. And at the bench conference, you  
7           called us up and we had a discussion about that,  
8           that she could state a reason to spare her son's  
9           life or her opinions, but she couldn't tell the jury  
10          what verdict they ought to reach. And you gave Ms.  
11          Kimbrough an opportunity to go back into that line  
12          of questioning in which we didn't object to.

13          Our main objection, Your Honor, State versus  
14          Johnson, as you well know, 525 S.E.2d 519, discusses  
15          the history of it from State versus Matthews, State  
16          versus Taurence, which adopted a Georgia case called  
17          Childs versus the State of Georgia. And the State  
18          versus Johnson said, Although a defendant may  
19          present witnesses who know and care for him and are  
20          willing on that basis to ask for mercy on his  
21          behalf, a defendant may not present witnesses to  
22          testify merely to their religious or philosophical  
23          attitudes about the death penalty nor is a defendant  
24          entitled to present the opinion of a witness about  
25          what verdict the jury ought to reach.

1           My objection was solely I thought she had  
2           crossed the line when she started telling the jury  
3           what sentence they should return, but I had no  
4           objection to her asking for mercy on behalf of her  
5           son based him being her son and that's when Ms.  
6           Kimbrough was able to go back on re-recross, I think  
7           it was, in which we didn't object. I just wanted to  
8           put that on the record since we had the bench  
9           conference.

10           **THE COURT:** All right. Ms. Kimbrough.

11           **MS. KIMBROUGH:** I agree for the most part with  
12           what the Solicitor just said, but I don't think that  
13           Ms. Peoples ever said, you ought to give him life.  
14           I think she simply said -- she was pleading for  
15           life, but I believe that's been adequately  
16           addressed.

17           **THE COURT:** All right. As a result of the  
18           bench conference and this colloquy, do you want to  
19           examine her any further on this issue?

20           **MS. KIMBROUGH:** At this point, no, Your Honor.

21           **THE COURT:** All right. I concur that the bench  
22           conference was called to be certain that the -- that  
23           there was no misinterpretation of the Court  
24           sustaining the objection that the witness was  
25           entitled to give a plea for mercy and the follow-up

1 questions by counsel addressed that. And the  
2 counsel for the defense was given an opportunity  
3 with that particular witness, mother, to do a direct  
4 exam, a redirect and a re-redirect.

5 So whereas the rules only provide for two  
6 rounds of questioning, she was given a third  
7 opportunity. And the Court has now extended yet a  
8 fourth opportunity if counsel is not satisfied as to  
9 her ability to bring out whatever appropriate  
10 information that she's entitled to bring out  
11 pursuant to the line of cases referenced by the  
12 Solicitor.

13 MS. KIMBROUGH: Thank you, Your Honor.

14 THE COURT: What's next?

15 MS. KIMBROUGH: We're ready to call our next  
16 witness.

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

19 At some point, Ms. Kimbrough, Mr. Soltis, I'll  
20 need to do a colloquy with Mr. Finklea, again,  
21 concerning his right to testify.

22 MS. KIMBROUGH: Yes, Your Honor. At this  
23 point, that question has not been answered.

24 THE COURT: All right.

25 (The jury returns to the courtroom.)



1           **THE COURT:** The jury is back. Your next  
2 witness, please.

3           **MS. KIMBROUGH:** Thank you, Your Honor.  
4 Mr. Finklea calls Sergeant Major Charlie Turner.

5                   CHARLIE TURNER, JR.,  
6           having been duly sworn, testified as follows:

7           **THE CLERK:** Have a seat, please, sir. Once you  
8 have a seat, state your full name and spell your  
9 last.

10           **THE WITNESS:** My name is Charlie Turner,  
11 Junior, last name is spelled, T-U-R-N-E-R.

12                   DIRECT EXAMINATION

13           BY MS. KIMBROUGH:

14           **Q**     Good morning, Sergeant Major Turner. How are  
15 you?

16           **A**     Good morning, ma'am, Judge.

17           **Q**     Sir, how long have you been in the Army?

18           **A**     I just went over 21 years, ma'am.

19           **Q**     And where do you live?

20           **A**     I live in Fort Campbell, Kentucky.

21           **Q**     And why are you here today?

22           **A**     I'm here to testify on Ron's behalf because  
23 Ron, in the past, has always been there for me.

24           **Q**     Okay. And, Sergeant Major Turner, I'd like to  
25 show you some documents. There are quite a few..

1           **MS. KIMBROUGH:** I've given a set to the  
2           Solicitor's office, Your Honor.

3           **Q**     Why don't we go through these one by one  
4           beginning with the top. Can you explain to me what  
5           that is, explain to the jury what that is?

6           **A**     Okay. This first one right here is a  
7           certificate of him completing the unit supply  
8           specialist course.

9           **Q**     Is that a basic course?

10          **A**     It's after you go through basic training, then  
11          you go through what's called AIT to learn the  
12          technical job and that's what this is.

13          **MR. MYERS:** Your Honor, I'd like to have this  
14          marked.

15          **THE COURT:** Is that dated?

16          **BY MS. KIMBROUGH:**

17          **Q**     Would you please read the date?

18          **A**     The date is 15, October 1991.

19          **MR. MYERS:** Your Honor, I don't have any  
20          objection to all of that coming in.

21          **MS. KIMBROUGH:** Thank you, Solicitor.

22          **THE COURT:** How many exhibits is it?

23          **MS. KIMBROUGH:** Probably somewhere in the  
24          neighborhood of 20.

25          **THE COURT:** And do you want them --

1 MS. KIMBROUGH: Perhaps we can go through them,  
2 then have them marked and present them to the jury.

3 THE COURT: All right. They're all admitted  
4 and present them -- and have them marked as you  
5 present them.

6 MS. KIMBROUGH: Thank you, Your Honor.

7 (Defendant's Exhibit Number 12, diploma,  
8 admitted into evidence.)

9 THE WITNESS: This next one is his certificate  
10 where he completed basic training.

11 BY MS. KIMBROUGH:

12 Q And what is the date on that sir?

13 A The date on it is 15, August 1991, Fort  
14 Jackson, South Carolina, which is the hardest basic  
15 training course to go to.

16 Q Thank you.

17 (Defendant's Exhibit Number 13, certificate,  
18 admitted into evidence.)

19 A The next one is a good conduct medal, which was  
20 received for doing three years of exemplary  
21 performance, efficiency and behavior. Every three  
22 years if you have no blemishes or marks on your  
23 record, then you receive this award.

24 Q Thank you.

25 (Defendant's Exhibit Number 14, good conduct

1 medal, admitted into evidence.)

2 A That was his first good conduct medal. This  
3 next one is a second good conduct medal for another  
4 three years of exemplary efficiency and behavior.

5 Q And what date is that?

6 A This one is dated 7, May 1998.

7 Q Thank you.

8 (Defendant's Exhibit Number 15, good conduct  
9 medal, admitted into evidence.)

10 And the next?

11 A Okay. This is a duplicate award. The next one  
12 is a certificate of recognition for a service during  
13 Desert Storm from 2, September 1945 to 26, December  
14 1991. And this was awarded for his tour of duty in  
15 combat.

16 THE COURT: Did you say 1945?

17 BY MS. KIMBROUGH:

18 Q Could you clarify that and read the text of the  
19 award?

20 A Okay. It says, In recognition of your service  
21 during the period Cold War 2, September 1945 to 26,  
22 December 1991. So it's a broad time period that if  
23 you went to combat during that time period, you  
24 receive this award.

25 Q Thank you.

1 (Defendant's Exhibit Number 16, certificate,  
2 admitted into evidence.)

3 And the next?

4 A The next one is Emergency Management Institute,  
5 has reaffirmed in dedication to serving times of  
6 crisis through continued professional development  
7 and completion of independent study courses. This  
8 is actually a correspondence course, a course which  
9 you do on your own voluntarily to just better  
10 yourself for the military and be competitive for  
11 future promotions.

12 Q So that would be like continuing ed?

13 A That's exactly what it is, continuing  
14 education.

15 Q Thank you. And what's the date on that, sir?

16 A The date on this one is 17, July 1999. I would  
17 add that during the time period Sergeant Finklea  
18 worked for me, I had about eight people in my  
19 section and Ron actually got all of them started on  
20 doing these same courses. You know, he was the  
21 motivator to make that happen.

22 Q Thank you.

23 (Defendant's Exhibit Number 17, certificate,  
24 admitted into evidence.)

25 A This next one is pretty much another

1 correspondence course, pretty much same thing. I'd  
2 be repeating myself. But it's another  
3 correspondence course which he completed. It's  
4 dated 17, July 1999.

5 Q So he was taking more than one course at a  
6 time?

7 A Yes, ma'am.

8 Q And he completed both of them?

9 A To my knowledge, he completed every one -- he  
10 completed those two, but he completed every one he  
11 started.

12 Q Thank you.

13 (Defendant's Exhibit Number 18, certificate,  
14 admitted into evidence.)

15 A This one is dated 18, July 1999, which is  
16 another correspondence course. Radiological  
17 Emergency Response is what this one was awarded for.

18 Q Okay. And the date was 18, July?

19 A 18, July 1999.

20 Q Thank you.

21 (Defendant's Exhibit Number 19, certificate,  
22 admitted into evidence.)

23 A This next one is another correspondence course.  
24 It's dated 19, July 1999. And this one was for  
25 Animals in Disaster Community Planning.

1 Q Thank you.

2 (Defendant's Exhibit Number 20, certificate,  
3 admitted into evidence.)

4 A This next one is dated 20, July 1999, which is  
5 another correspondence course for awareness and  
6 preparedness.

7 Q Thank you.

8 (Defendant's Exhibit Number 21, certificate,  
9 admitted into evidence.)

10 A This next one is a correspondence course. It's  
11 dated 21, July of 1999 and this was awarded for a  
12 Citizen's Guide to Disaster Assistance.

13 (Defendant's Exhibit Number 22, certificate,  
14 admitted into evidence.)

15 This next one is another correspondence course  
16 it's dated 22, July 1999. It's awarded for  
17 Hazardous Materials, dealing with hazardous  
18 materials.

19 (Defendant's Exhibit Number 23, certificate,  
20 admitted into evidence.)

21 This next one is dated 23, July of 1999. It's  
22 another correspondence course and it's awarded for  
23 Radiology Emergency Management.

24 (Defendant's Exhibit Number 24, certificate,  
25 admitted into evidence.)

1           The next one is another correspondence course,  
2           it was dated 24, July of 1999. And the basis of  
3           this one was for Emergency Preparedness Around the  
4           U.S.A.

5           Q     Thank you.

6                     (Defendant's Exhibit Number 25, certificate,  
7           admitted into evidence.)

8           A     And this next one is another correspondence  
9           course it's dated 25, July of 1999. It was awarded  
10          for Emergency Program Manager.

11                    (Defendant's Exhibit Number 26, certificate,  
12          admitted into evidence.)

13          Q     Now, each and every one of these certificates  
14          were obtained through voluntary enrollment?

15          A     Through voluntary enrollment. They're courses  
16          that you actually order them, books come to you in  
17          the mail and you go home on your own time and do  
18          those courses. After some time, they became  
19          automated and you could go on line and actually do  
20          those courses, but it was definitely done on your  
21          own time. It wasn't done when I was in charge and  
22          it wasn't done during duty hours. It was definitely  
23          done after duty hours.

24          Q     So you gave up your free time in order to learn  
25          additional information?



1 A Yes, ma'am.

2 Q What about the next document?

3 A The next document is called a NCO ER, an NCO  
4 Evaluation Report, which, in layman's term, is your  
5 report card for your performance in the military.  
6 This one, he was a property book NCO. And when you  
7 see it, if you look on the second page, they have  
8 categories for excellence, success and needs  
9 improvements and they have five categories in that  
10 area. And out of those five categories, Ron rated a  
11 -- for four excellence and one success.

12 Q And who authored that report?

13 A I was the rater, so I was the one that wrote  
14 the report and the senior rater was a Mr. Lonnie  
15 Watson.

16 Q Thank you.

17 (Defendant's Exhibit Number 27, NCO  
18 Evaluation Report, admitted into evidence.)

19 A Ma'am, can I see that one more time?

20 Q Certainly. Anything else you'd like to add to  
21 that?

22 A Yeah, I just want to kind of highlight, on the  
23 initial report right here, this is actually the key  
24 to you being written and evaluated on your duty  
25 performance what you actually do, okay. Down here

1 there's two blocks a portion that I wrote, which is  
2 called the rater portion, and a senior rater  
3 portion, which Mr. Lonnie Watson wrote. And I just  
4 want to highlight on the senior rating portion,  
5 everybody don't get these comments right here. And  
6 his comments are, Promote ahead of peers. The  
7 majority of the comments that you receive on this  
8 would read, promote with peers, okay. Only the top  
9 five percent can obtain a promote ahead of peers.

10 So he received a promote ahead of peers,  
11 warrant officer potential, meaning he had the  
12 potential to become a warrant officer, which he  
13 truly did have the potential to be a warrant officer  
14 and I don't know why he never became a warrant  
15 officer, and select for a BNCOC. And BNCOC is like  
16 your Basic Noncommissioned Officer Courses. You  
17 have two noncommissioned officer courses, a basic  
18 and an advanced. And your basic is the one that you  
19 go to while you're a E-5 or an E-6. So he was  
20 recommended to go to that BNCOC course. And in  
21 another evaluation, he did go to that BNCOC course.

22 Q Thank you.

23 (Defendant's Exhibit Number 28, NCO review,  
24 admitted into evidence.)

25 A The next one is a certificate of completion of

1 another correspondence course, continued education.  
2 It's dated 15, June 1999. You have -- basic  
3 industrial for user agency personnel.

4 (Defendant's Exhibit Number 29, certificate,  
5 admitted into evidence.)

6 The next one is another correspondence course.  
7 It's dated 15, June 1999. It was awarded for basic  
8 information security course. In our job, we dealt  
9 with a lot of security, so instead of him just doing  
10 a bare minimum, he wanted to learn about security to  
11 make sure he was doing everything correctly.

12 Q Thank you.

13 (Defendant's Exhibit Number 30, certificate,  
14 admitted into evidence.)

15 A This next document is another NCO evaluation  
16 report. This was before my time frame. The rater  
17 was De Shonda King. The senior rater -- Staff  
18 Sergeant King. The senior rater was Sergeant First  
19 Class Jose Martinez. And the way promotion boards  
20 can really tell if a soldier deserves a promotion or  
21 not is when they see comments on NCO ER's and they  
22 see the same type of comments coming from multiple  
23 individuals.

24 And like I said, I'm nowhere on the report card  
25 at all. This was before my time frame. But the

1 senior rater had pretty much some of the same  
2 bullets. The very first bullet was, Promote ahead  
3 of peers. So not only me, but, you know, anyone  
4 that dealt with Sergeant Finklea had the same  
5 recommendation of him getting promoted ahead of  
6 peers. He was not amongst his peers. He was better  
7 than his peers in his performance of duties.

8 None better for the next higher grade is the  
9 second bullet. And, again, Send to BNCOC ahead of  
10 peers.

11 (Defendant's Exhibit Numbers 31 and 32, NCO  
12 Evaluation Report, admitted into evidence.)

13 Okay. The next six are correspondence courses.  
14 This one is actually a Marine correspondence course,  
15 which you have to get permission to actually do  
16 another selected service correspondence course. And  
17 this one was for NCO Career Nonresident Program  
18 Techniques of Military Instruction. It was dated  
19 September of 1995.

20 (Defendant's Exhibit Number 33, certificate,  
21 admitted into evidence.)

22 The next Marine Corps correspondence course,  
23 which all six of these are, is dated 14, September  
24 1996. And it's for leadership, simply put  
25 leadership.

1 Q How would you describe Ron's leadership?

2 A Ron's leadership was right where it was  
3 supposed to be. Any time I had to be away for  
4 anything, I automatically turned to Ron for Ron to  
5 be in charge. Ron was actually -- he wasn't the  
6 next higher ranking person, he was second, but Ron  
7 had the abilities and the capabilities to ensure  
8 things ran the way they were supposed to run, so  
9 that's why I left him in charge.

10 (Defendant's Exhibit Number 34, certificate,  
11 admitted into evidence.)

12 The next one?

13 Q Yes, sir.

14 A Okay. Is a Marine correspondence course dated  
15 13, September 1996. It's for drill and ceremonies,  
16 uniforms and inspections and customs and courtesies.  
17 And one thing I can say about drill and ceremonies  
18 and uniforms and inspections is that Ron set the  
19 standard. At no time was his uniform not the best  
20 looking uniform in the section. And drills and  
21 ceremonies, not every soldier was willing to get out  
22 front and march the platoon somewhere or give P.T.,  
23 but on a moment's notice, Ron would just volunteer.  
24 He would almost have to sit back and not volunteer  
25 to see if someone else wanted to do it. And when no

1 one else wanted to do it, Ron kind of like  
2 volunteered, which I kind of knew that was going to  
3 happen anyway.

4 (Defendant's Exhibit Number 35, certificate,  
5 admitted into evidence.)

6 The next Marine correspondence course is  
7 certificate of a completion. It's dated 12,  
8 September 1996. It's for physical training  
9 management. And from the time frame I've known  
10 Sergeant Finklea, he always was physically fit the  
11 P.T., the highest P.T. score you could get was a  
12 300. And Ron on multiple NCO ER's scored a 300, so  
13 that was his thing right there.

14 (Defendant's Exhibit Number 36, certificate,  
15 admitted into evidence.)

16 Two more. The next one is Marine Corps  
17 certificate of completion. It's dated 11, September  
18 1996. It's for battle skills. Your battle skills  
19 are basically skills that you have to have or  
20 possess to basically make it in combat, how to react  
21 to fire, how to set up a land mine, how to apply  
22 first aid, immediate aid to save one of your fellow  
23 comrade's life. And Ron, he strived to be the best  
24 in all areas that he could during that time frame.

25 (Defendant's Exhibit Number 37, certificate,

1 admitted into evidence.)

2 The last one is Marine Corps Certificate of  
3 Achievement. It's dated September 1996. It's for  
4 administrative plans, policies, procedures and  
5 programs. When you're dealing in the military, a  
6 lot of policies and Army regulations comes into  
7 play. And my soldiers I stress that you've got to  
8 do things by the book. And Ron, he wouldn't do  
9 something that he was questionable about unless he  
10 looked it up in the regulation or he wouldn't share  
11 it with the fellow soldiers unless he looked it up  
12 in the regulation and showed them where to go find  
13 it themselves so they can look it up in the  
14 regulation and learn how to do it correctly.

15 (Defendant's Exhibit Number 38, certificate,  
16 admitted into evidence.)

17 The next award is the Army Achievement medal,  
18 which is a medal that the Army awards for valor or  
19 an act, heroism or something that you did. This one  
20 was awarded for meritorious service while serving as  
21 a supply clerk. Specialist Finklea's dedication,  
22 professionalism and motivation are in keeping with  
23 the highest standards of the second armored calvary  
24 regiment and bring great credit upon himself, the  
25 War Eagle Squadron and the United States Army. And

2089

1 it's from 1, June 1993 to May 1995.

2 (Defendant's Exhibit Number 39, medal,  
3 admitted into evidence.)

4 The next one is a NCO evaluation report.

5 Again, its close out month, it doesn't have a date,  
6 but its close out month on it is May of 2000. His  
7 rating scheme was me as his rater and Mr. Lonnie  
8 Watson as his senior rater, which was another report  
9 card that me and him wrote. A couple of areas on  
10 this report card right here, it says, Selected as  
11 honor graduate of his BNCOC class with an average of  
12 95 point 85. Your BNCOC class is a class consisting  
13 of anywhere from 35 to 45 students. And out of that  
14 class, Ron was selected number one. That was his  
15 BNCOC class, the class that I was talking about  
16 before.

17 Awarded the physical fitness badge, scored 298.  
18 I said before that the highest you could score was a  
19 300. On this one right here, Ron scored a 298.

20 His senior rater bullets are, Promote ahead of  
21 peers, select for a battle staff position. The  
22 battle staff position is a position where you track  
23 how we fight a combat. You know, you actually track  
24 it on a map board and you advise the commander of  
25 strategies and the best way to try and accomplish a



2090

1 mission. Outstanding performance as a leader and  
2 trainer and unlimited potential, assign as a BNCOC  
3 instructor.

4 (Defendant's Exhibit Numbers 40 and 41, NCO  
5 Evaluation Report, admitted into evidence.)

6 This one right here is a promotion order where  
7 Ron was promoted from a sergeant E-5 to a staff  
8 sergeant E-6. I believe he was a staff sergeant E-6  
9 when he got out on a medical discharge. During that  
10 time frame, I had PCS'd and I was in Kuwait and I  
11 didn't really keep up with him at that point, but I  
12 do see that he did get promoted to staff sergeant,  
13 which is a hard promotion to obtain.

14 Q Is that one of the higher promotions for an  
15 enlisted man?

16 A For enlisted ranks, they go from E-1 to E-9.  
17 So E-9 is the highest that you can go. I'm an E-9.  
18 So he had got promoted to E-6. I'm 100 percent sure  
19 had he not got out of the military, he was on his  
20 way to becoming an E-9. I saw the potential.

21 Q But you say he was injured?

22 A I've heard he got out on a medical discharge, I  
23 think, for asthma.

24 (Defendant's Exhibit Number 42, promotion  
25 order, admitted into evidence.)

1           The next one is a certificate of achievement in  
2           recognition for the outstanding performance of duty.  
3           And this is dated -- this is from the NCO Academy  
4           where he went to BNCOC and got honor graduate. This  
5           was awarded the 15th day of February 2000.

6                     (Defendant's Exhibit Number 43, certificate,  
7           admitted into evidence.)

8           Okay, this next one is awarded by the battalion  
9           commander for Ron obtaining a 300 in P.T. score,  
10          physical fitness. It says, For outstanding  
11          achievement in physical fitness while assigned to  
12          the support battalion first special warfare training  
13          group airborne, a sign Ron Finklea demonstrated  
14          exemplary physical fitness by earning the Army  
15          physical fitness badge with a score of 300 on the  
16          Army physical fitness test. Sergeant Finklea's  
17          pursuit of excellence in being the most fit to fight  
18          clearly sets him above his contemporaries and  
19          reflects great credit upon him, support battalion  
20          first special warfare training group airborne and  
21          the United States Army.

22          Q       Thank you.

23          A       Can I add that in reading that certificate  
24          right there with the airborne on it, we was, during  
25          the time frame in an airborne unit, not 100 percent

1 of the unit was airborne. My goal for my section of  
2 around nine soldiers was for everyone to be airborne  
3 qualified. And I would say maybe five out of my  
4 soldiers was airborne qualified. And Ron, he set  
5 the mark for going to airborne school and always  
6 volunteering to go on additional jumps instead of  
7 the one jump, you know, every three months, which  
8 was a requirement. If there was a jump and a  
9 section was jumping or someone in the section was  
10 jumping, then Ron wanted to jump.

11 (Defendant's Exhibit Number 44, certificate,  
12 admitted into evidence.)

13 The last two, the next one is a NCO ER, which  
14 is an NCO evaluation report, again, another report  
15 card. I'm nowhere in this rating scheme. It's  
16 First Sergeant Kjellsen and Captain Mapley-Brittle  
17 is his rater and senior rater. This is from the  
18 2001 time frame, the through date on it is January  
19 2001. I was long gone from that unit, but by  
20 evidence of this, Ron was still doing an outstanding  
21 job.

22 It says, Selected over several senior 92  
23 Yankees, which was his MOS, to act as the battalion  
24 S-4 NCOIC for 90 days. The battalion S-4 NCOIC was  
25 an E-7 position. And during this time frame, Ron

1 was an E-6. I'm sure there were some E-7's, but  
2 they pretty much selected Ron because of his  
3 commitment and abilities to get the job done.

4 Under the senior rater bullets, the senior  
5 rater stated, Promote ahead of peers, select for  
6 ANCOC as soon as eligible. I said that there was  
7 two courses that you have to complete, one was  
8 BNCOC, basic course, and the next is ANCOC, your  
9 advanced course. So at the young E-6 level, they  
10 were already recommending him to go to ANCOC. They  
11 saw the potential in Staff Sergeant Finklea at that  
12 time.

13 Also, it says, Routinely excels on complex  
14 missions with little guidance and minimal  
15 supervision. And I can attest, when Ron worked for  
16 me, I'd tell him what to do and I never had to go  
17 back and check. I would get a thumbs up, Sergeant  
18 Turner, it's done, job completed. That's how he  
19 operated.

20 It says, Continue to assign to special  
21 operations units. A special operations unit is just  
22 not your everyday, average United States unit. We  
23 was in a special ops unit. When called on for  
24 combat, your special ops unit is usually at that  
25 location in like 36 hours. We were located at Fort

1 Bragg. Pope Air Force base, it is side by side with  
2 Fort Bragg. We would load up and actually fly from  
3 Fort Bragg to wherever, you know, an area that was  
4 in combat. That's the basis of Fort Bragg and the  
5 basis of being in a special operations unit.

6 (Defendant's Exhibit Numbers 45 and 46, NCO  
7 Evaluation Report, admitted into evidence.

8 Q Thank you.

9 A You're welcome. The last document is Ron's  
10 service school academic evaluation report. I say it  
11 again that NCO's had to complete two courses before  
12 they can actually make it to E-9 or sergeant major.  
13 The basic course which Ron -- this is what I have in  
14 the advance course which he never got the  
15 opportunity to go to.

16 And on this evaluation right here, it says,  
17 Exceeded course standards limited to 20 percent of  
18 class enrollment, okay. It says, Attained honor  
19 graduate/commandant's list for academics achievement  
20 and military attributes. So in a class of 35, 45  
21 students, Ron obtained the top score. He was number  
22 one in that class.

23 Written projects were logical, concise and  
24 exceeded the standard for style and grammar.  
25 Demonstrated ability to express ideas clearly and

1       concisely. Clearly demonstrated strong leadership  
2       traits throughout the course. Extra effort was an  
3       important factor in class productivity and cohesion.  
4       Displayed a positive attitude and willingness to  
5       learn. Demonstrated superior academic skills.  
6       Performed duties as a member of the Quartermaster  
7       Canter and School Flag Detail Team with outstanding  
8       results. And received a letter of commendation from  
9       the commandant, NCO Academy, for scoring 281 on an  
10      APFT.

11             And then he received this for his performance  
12      of BNCOC and being rated as top in his class to  
13      number one. He was on a flag detail which instill,  
14      you know, paying homage to our fallen comrades  
15      before us and that was just the type of soldier that  
16      Ron Finklea was.

17             (Defendant's Exhibit Numbers 47, Service  
18      School Academic Evaluation Report, admitted into  
19      evidence.)

20      Q       Sergeant Major Turner, you've gone through a  
21      lot of Ron's military career and the things he  
22      accomplished. I'd like to turn now to your own  
23      personal observations, things that may not be  
24      reflected in those awards and accommodations and to  
25      ask you, in your own words, what type of person you

1 saw Ron Finklea as being when he was around you in  
2 the Army?

3 A Okay. I first arrived to Fort Bragg, North  
4 Carolina in 1997. For one year from '97 to '98, I  
5 was working as the brigade S-4 NCOIC and Ron was  
6 working for the battalion. He was working in the  
7 CIF. He was the NCOIC of the CIF. So for a year, I  
8 just observed Ron's work performance and uniform  
9 performance because the main thing you can see is a  
10 person's uniform and you can pretty much suspect  
11 that a soldier is squared away based off his or her  
12 uniform, but that's just a suspicion (sic).

13 When I actually left that job, I went down to  
14 be the NCOIC of the CIF where then I became Ron's  
15 boss. And seeing his duty performance, it matched  
16 his outward performance. I mean, it matched his  
17 uniform. It matched the way he was well spoken, the  
18 way he said, hey, if you need something done, just  
19 let me know, I'll make it happen, okay. So I was  
20 kind of proud to see that it wasn't just artificial,  
21 it wasn't a dog and pony show when it came to  
22 dealing with Sergeant Finklea, okay. He was about  
23 business. He was about getting promoted. He was  
24 about taking care of soldiers. That's how he  
25 conducted business.

1 Q And how did he treat those around him, other  
2 soldiers, not just his superiors, but his peers?

3 A It's kind of comical because Ron was trying to  
4 be the best that he could be. And the rest of the  
5 team they were kind of like characters or jokers and  
6 not really up to speed the way Ron was up to speed.  
7 And he wanted to remain friends with them, but he  
8 also realized that, hey, I got to do the right  
9 thing.

10 So it was funny seeing him chastise his buddies  
11 and friends that, you know, he called friends, but  
12 Ron knew, hey, it was about business, okay. Play  
13 time is over with, we've got a job to do. We'll be  
14 here on weekends working, so let's do what we got to  
15 do and get it done. And that's how his leadership  
16 abilities was.

17 I noticed at work Ron talked about family all  
18 of the time. He was dating, I'm assuming, his wife  
19 right now. They were dating. He had pictures of  
20 his son in his office which he always talked about.  
21 He lit up when it was time to go home and pick up  
22 his son when he could, you know, pick up his son and  
23 bring his son back. And, I mean, he was just -- he  
24 was family oriented. You know, he was a good  
25 soldier. He was my best soldier that I had in 20



1 years of service, 21 years of service.

2 Q So would you say that he encouraged others,  
3 tried to help them bring out the best in who they  
4 could be?

5 A Oh, definitely without a doubt, without a  
6 doubt. Ron he knew he was going to make it, but Ron  
7 banded to bring the team along with him. He just  
8 didn't want to make it his self and be like, okay, I  
9 got mine. Ron was like, okay, I'm going to get  
10 mine, I'm going to bring the team along so they can  
11 get theirs, too, so they can get promoted, too.

12 Q So he lifted people up?

13 A Yes, ma'am.

14 Q I know you haven't been here for the whole  
15 trial, but when you heard about this incident, when  
16 you heard about the murder of Walter Sykes, can you  
17 describe, upon learning that Ron had a role in it,  
18 what your reaction was?

19 A I first heard about this through a  
20 Mr. McDougall, a detective, who was telling me that  
21 I could possibly be subpoenaed to come down here.  
22 When he first told me what had happened, I kind of  
23 like paused for probably a good 20 seconds. And I  
24 kind of heard him saying, Sergeant Major Turner, are  
25 you here, because I was just shocked. This is not

1 Ron's character. I don't know what happened. I  
2 don't know anything about the case, but I was just  
3 shocked because that's not Ron's character. Ron led  
4 from the front. Ron would have been a sergeant  
5 major. Ron would have obtained his bachelor's  
6 degree, probably pursuing a masters degree. That's  
7 the caliber of soldier he was, man that he was,  
8 father that he was, husband that he was, so I don't  
9 know what happened.

10 Q You were surprised?

11 A I was very surprised, shocked, disappointed.

12 Q Yes. I don't think I've asked you this  
13 question yet, but if you had to go into combat, is  
14 there one person you can think of who you would want  
15 to be in combat with?

16 A Hands down 21 years of service, there's  
17 probably three individuals that I would want to take  
18 into combat with me with Ron leading the front on  
19 that. I mean, he was just, Sergeant Major, let's go  
20 make it happen, let's do what we got to do.

21 We had to work numerous hours sometimes. What  
22 we did, we issued out equipment to individuals going  
23 through the special forces school and a lot of times  
24 we had to come in on weekends. And any time I had  
25 to come in on a weekend or the section had to come

1 in on a weekend, I would hear grumblings from  
2 everyone but Sergeant Finklea. So I knew who was  
3 loyal and who was going to make mission and that was  
4 Sergeant Finklea.

5 Q And, Sergeant Major Turner, as we discussed in  
6 this phase of the trial, the question for this jury  
7 is life without parole or the death penalty. And I  
8 believe I've asked you all the questions that I  
9 have, but is there anything you want the jury to  
10 know about Ron that you think is important that I've  
11 not touched on?

12 A From what I've gathered, what I've heard, I  
13 just think Sergeant Finklea made a mistake  
14 somewhere. Don't know what, why or how, but I think  
15 he made a mistake somewhere. From the time frame,  
16 the three years that I've known Sergeant Finklea, he  
17 was definitely an American soldier. He was ready to  
18 go to fight, go to combat for America. So whatever  
19 happened, I hope he's punished justly. I'm  
20 disappointed. But Ron's character, from what I  
21 knew, he was an excellent soldier, father and  
22 husband like I said before.

23 MS. KIMBROUGH: Thank you. Please answer any  
24 questions the Solicitor may have.

25

\*\*\*\*

CROSS-EXAMINATION

1

2

BY MR. MYERS:

3

Q Major Sergeant, about the detective,

4

Mr. McDougall --

5

A Yes, sir.

6

Q -- what law enforcement agency is he with?

7

A Mr. McDougall?

8

Q You said he was a detective.

9

A He was a detective. I don't know -- his

10

business card is out in my vehicle, but he contacted

11

me and said that Ron Finklea is being tried for

12

murder.

13

Q Well, your name --

14

A In South Carolina.

15

Q I'm sorry. Go ahead.

16

A Being tried for murder in South Carolina. You

17

may or may not be subpoenaed to come appear in

18

court.

19

Q Well, when were you notified to come here

20

because your name wasn't on the witness list?

21

A I was notified probably last week some time.

22

Q What part of last week? We started this trial

23

two weeks ago -- Monday.

24

A Like I said, I have a folder out in my car. If

25

we want to recess, I can bring it in, but I have the

1 actual subpoena and that's how I was notified.

2 Q But it was some time during last week?

3 A Yes, sir.

4 Q That's probably why your name wasn't on the  
5 jury list when we started Monday a week ago.

6 A Yes, sir.

7 Q And --

8 A Sir, when he told me -- he did tell me when the  
9 trial was going to start, but he told me that I was  
10 only needed for the time period of being a character  
11 witness.

12 Q You said the defendant was always the one you  
13 turned to to being in charge. He set the standard,  
14 his uniforms were always the best looking, battle  
15 skills, how to react under fire, right?

16 A Correct, sir.

17 Q How to apply first aid?

18 A Correct, sir.

19 Q He knew if someone were injured, he knew and  
20 was trained by the Army to administer first aid?

21 A That's correct, sir.

22 Q If he chose to do so?

23 A That's correct, sir.

24 Q Fit to fight, fit to fight. Routinely excelled  
25 in complicated missions without guidance, superior

1 skills.

2 A That is correct.

3 Q He was like if you need something done, let me  
4 know and I'll get it done?

5 A That is correct.

6 Q With him, it's all about the business, getting  
7 it done?

8 A That is correct.

9 Q He was a leader?

10 A Yes, he was.

11 Q He led people. He was in charge. He was  
12 trained, I looked through some of these things here  
13 and you're going to have to help me with them,  
14 trained in radiological or emergency response.  
15 What's that?

16 A That's just being in a response mode if there's  
17 a radiological attack or something like that.

18 Q He can help you --

19 A It's informing BATOC (ph) what has transpired.

20 Q He can render assistance?

21 A Yes.

22 Q Hazardous material, a citizen's orientation,  
23 what is that?

24 A That's dealing with hazardous materials.

25 Q Hazardous situations, gasoline, stuff like

1 that?

2 A Correct.

3 Q He was trained in that?

4 A He was trained in dealing with hazardous  
5 materials.

6 Q Radiological emergency management, what's that?

7 A That's being the manager of situations.

8 Q What kind of situations?

9 A Situations dealing with radio active materials.

10 Q Dangerous situations?

11 A Correct.

12 Q Emergency preparedness, what is that?

13 A That's same thing, being prepared to deal with  
14 situations.

15 Q To render assistance --

16 A Being on standby..

17 Q I'm sorry. Or render assistance to people, if  
18 needed to?

19 A Yes.

20 Q Another hazardous material medical personnel,  
21 what is that? What's the medical part?

22 A Medical training.

23 Q Medical training, again. Emergency program  
24 manager, what is that?

25 A Emergency program manager is just being trained

1 in dealing with, you know, whatever the medical  
2 situation is --

3 Q If there's a --

4 A -- how to contact higher headquarters, how to  
5 properly give a location of where a fallen comrade  
6 could be, where a soldier could be.

7 Q Medical emergency rendering aid?

8 A Correct. It's pretty much -- what it is is  
9 lifesaving measures until you can actually get a  
10 soldier to a higher level of medical treatment.

11 Q Lifesaving measures, if somebody's life was in  
12 danger, rendering lifesaving assistance?

13 A That's correct, which is a course he  
14 volunteered to go to actually save lives.

15 Q Volunteered to go to be trained to actually  
16 save lives. Now, here's two here, animals in  
17 disaster awareness and preparedness, and animals in  
18 disaster community planning, what is that?

19 A Sir, I don't know what that's for.

20 Q It's something that y'all gave me that you put  
21 in evidence. Something about helping animals when  
22 they needed help, what is that about?

23 A Okay. Let's say for instance when you had  
24 Hurricane Katrina and you had animals in a disaster  
25 area, this is just so you know how to deal with



1 situations like that.

2 Q So if you had a situation where an animal  
3 needed assistance, he could render help even to an  
4 animal?

5 A That is correct.

6 Q You said that he received some accommodations  
7 and things; is that right?

8 A He received numerous awards more than the  
9 average soldier.

10 Q Let me ask you something here if I could. You  
11 don't have to get up. You can probably see it here.  
12 Looking at what you said, you said the good conduct  
13 medal, you said you get those every three years?

14 A That's correct.

15 Q So if you're in for three years, you get one,  
16 six years you get one and nine years you get one?

17 A Correct.

18 Q And if you're in 20 years, you could get six?

19 A That is correct.

20 Q Yes, sir. I noticed here on some paperwork  
21 that I have on the defendant that he went in the  
22 Army on June the 11th of 1991 and he was discharged  
23 April the 4th of 2002. Do you agree with that?

24 A I can't agree with that. I only know him in  
25 the time frame from --

1 Q Well, let me show you this. You know what a  
2 214 is, don't you?

3 A I do.

4 Q And right here it says, Enter date 6/11/91?

5 A Correct.

6 Q Separation date, April -- 4/24/2002?

7 A Correct.

8 Q So that's a service of ten years, ten months,  
9 14 days?

10 A That is correct.

11 Q So he received a lot of awards, he was top of  
12 the class and he served ten years, ten months and 14  
13 days, nearly 11 years?

14 A That is correct.

15 Q And you get a good conduct medal every three  
16 years?

17 A That is correct.

18 Q What happened to that ninth year, how come he  
19 didn't get a good conduct?

20 A I can't answer that, sir. I wasn't -- I didn't  
21 know him during that time frame.

22 Q You didn't know him during that time frame.

23 A He didn't work for me during that time frame.

24 I PCS'd, meaning my duty station changed in 2000.

25 So after 2000, I can't attest for anything, sir.

1 Q So you just didn't know him -- you said you  
2 only -- you don't get one, I think your term was, if  
3 there's a blemish on your record, you don't get one?

4 A Correct, that's correct.

5 Q Well, somewhere along in here there had to be a  
6 blemish on his military record.

7 A Well, is there a record saying that he never  
8 received a third good conduct medal?

9 Q I don't know. You just told me a little while  
10 ago that he only got two. I heard you say a little  
11 while ago he got two and you get one every three  
12 years.

13 A That's a correct statement, sir. When I knew  
14 him --

15 Q So --

16 A Can I finish? When I knew him, he received two  
17 good conduct medals. He received the one which I  
18 knew of because I look at my soldier records, okay.  
19 I didn't know him when he received the first one,  
20 but I knew him when he received the second one,  
21 okay. And then I PCS'd. So he could have gotten  
22 awards or he could have gotten disciplinary actions.

23 Q But you don't know about them?

24 A I don't know about them, sir.

25 Q But the 214 lists how many good conduct medals?

1 See right there where it says accommodations, Ron O.  
2 Finklea, Ron O'Neal Finklea.

3 A That's actually three good conduct medals, sir.

4 Q Well, why is that two there, second award?

5 A What happens when they list that, sir, the  
6 first one is counted as your one, your subsequent  
7 award is counted as your first award and then your  
8 second is counted as a second award. So that's  
9 actually three good conduct medals.

10 Q So if we had another fellow that served 20  
11 years and on his it said he got six, there's a mess  
12 up in paperwork --

13 A If it --

14 Q -- when it shows Mr. Finklea only got two?

15 A If it says that he had six and he did 20 years,  
16 then that's wrong. It should say five.

17 Q So the records are wrong?

18 A No, the records is correct, sir. You're  
19 interpreting it wrong.

20 Q Well, on one, it says six in 20 years. This  
21 says two in ten years.

22 A What says six in 20 years? I missed that.

23 Q I'm sorry. You weren't here when we had this  
24 other discussion and that's unfair for me to ask it.

25 Did you serve with him at Fort Pope in North

1 Carolina?

2 A Negative. I served with him for three years  
3 only, that was from '97 to 2000.

4 Q What is BNCOC? I heard you say something about  
5 BNCOC, what is that?

6 A BNCOC stands for your Basic Noncommissioned  
7 Officer Course. There's two courses which you must  
8 complete before you can become a sergeant major.  
9 One of them is a BNCOC you go to as a E-5 or E-6.  
10 And the other is ANCO, your Advanced  
11 Noncommissioned Officer Course.

12 Q And on BNCOC, would they do that at every Army  
13 base or not?

14 A BNCOC?

15 Q Yes, sir.

16 A No. There are select military bases where they  
17 do that at.

18 Q Well, this one says, Fort Lee, Virginia, here,  
19 that's one of them?

20 A That's correct, that's where he did it at.

21 Q And Fort Lee, Virginia, did you know Sophia  
22 Diane Reed who now lives in Texas?

23 A I never heard that name before.

24 Q You didn't know that he had a son by her?

25 A Is that R [REDACTED] [REDACTED]?

1 Q No. His name is Joshua Reed.

2 A Don't know him, sir.

3 Q Don't know him?

4 A Correct.

5 Q Now, you said something about his wife, that  
6 was R [REDACTED], [REDACTED]'s mother?

7 A No, it wasn't. She was a soldier. She's still  
8 active duty, not sure where she's stationed at.

9 Q Who are you talking about?

10 A Sergeant Fink --

11 Q You're talking about his first wife or his  
12 second wife or his girlfriend?

13 A I'm thinking this is probably his second wife.

14 Q What's her name?

15 A I don't know her name. I know her as Sergeant  
16 Finklea. We don't go by first names.

17 Q Would that be Teresa, the wife that served in  
18 Iraq about three times?

19 A Yes.

20 Q It would be that one?

21 A Yes.

22 Q You knew her?

23 A He married her.

24 Q Well, they're divorced now, but you knew her?

25 A I don't know.

1 Q You just don't know?

2 A Yeah, I don't know, sir.

3 Q Did you know anything about his first wife, R  
4 s, s mother?

5 A I just knew he was married and divorced.

6 Q She was in the service --

7 A But I knew they had a son --

8 Q Pardon?

9 A I knew they had a son and I knew he loved his  
10 son.

11 Q Did you know about him loving his son from the  
12 woman from Texas, Sophia Reed...

13 A I can't hear you, sir.

14 Q Had no pictures of Joshua Reed from Texas, had  
15 none of those?

16 A Who is Joshua Reed?

17 Q You don't know?

18 A I don't know.

19 Q That's all right. What about his stepson,

20 B, did he have any pictures of B?

21 A I don't know who B is.

22 Q You don't know who B is. You would  
23 classify the defendant a leader of men?

24 A A leader of soldiers, men and women.

25 Q Men and women?

1 A Yes.

2 Q Who if called upon, could render lifesaving  
3 assistance, trained to?

4 A A leader, a leader of soldiers, to lead  
5 soldiers into combat.

6 Q And if there was combat and there were  
7 injuries, he was trained to render lifesaving  
8 assistance?

9 A True.

10 MR. MYERS: Thank you, sir. That's all I have.

11 MS. KIMBROUGH: Thank you, Your Honor. May it  
12 please the Court?

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MS. KIMBROUGH:

16 Q Sergeant Major Turner, the type of men that Ron  
17 was around when he was in the Army, would you  
18 describe them as fairly straightlaced?

19 A Straightlaced --

20 Q In other words, I'll rephrase, the people in  
21 your troop or in his group --

22 A Yes, ma'am.

23 Q -- were these people who were out there doing  
24 drugs?

25 A I wouldn't know, ma'am. I don't think so. The



1 individuals that I saw Sergeant Finklea hang around  
2 was other soldiers, okay. And I know for three  
3 years, Ron probably had to take five or six  
4 urinalysis where it came up negative on every  
5 urinalysis.

6 Q So the type of people that Ron was hanging  
7 around when he was in the Army were basically people  
8 who were employed?

9 A They were soldiers, ma'am.

10 Q Yes, okay.

11 A Yes, ma'am, they were soldiers.

12 Q This was not an environment in which drug  
13 abuse --

14 MR. MYERS: Objection to leading.

15 THE WITNESS: They --

16 MR. MYERS: Objection to leading.

17 THE COURT: Do not lead him. Please restate  
18 the question.

19 BY MS. KIMBROUGH:

20 Q Was drug use permitted in the Army?

21 A Drug use is not permitted, that's frowned upon.  
22 You automatically get kicked out with drug use now.

23 Can I make another statement, ma'am? Sergeant  
24 Finklea, when you asked me about the people that he  
25 hung around, the soldiers that he hung around

1 weren't the average soldiers neither. Ron made sure  
2 he hung around the good soldiers, ones that he could  
3 learn from, ones that he could share stuff with,  
4 that was how he was. And I think I kind of taught  
5 him that a little bit, you know, for you to be  
6 successful, surround yourself around other  
7 successful soldiers.

8 Q So he was around the good group?

9 A He was.

10 Q That's what he was accustomed to?

11 A That's what he was known for.

12 MS. KIMBROUGH: Thank you.

13 RECROSS-EXAMINATION

14 BY MR. MYERS:

15 Q He didn't hang around the wrong crowd?

16 A No, he didn't, sir.

17 MR. MYERS: Thank you.

18 THE COURT: You may step down, sir.

19 THE WITNESS: Okay. Thank you, Judge.

20 THE COURT: Yes, sir.

21 Next witness.

22 MS. KIMBROUGH: Thank you, Your Honor. At this  
23 time, the defense calls Doctor Tora Brawley.

24 TORA BRAWLEY,

25 having been duly sworn, testified as follows:

1           **THE CLERK:** Once you have a seat, state your  
2 full name, spelling your last, please.

3           **THE WITNESS:** Tora Brawley, T-O-R-A,  
4 B-R-A-W-L-E-Y.

5                               DIRECT EXAMINATION

6           BY MS. KIMBROUGH:

7           **Q**     Good morning, Doctor Brawley. How are you?

8           **A**     Good morning.

9           **Q**     I guess I should say good afternoon. Doctor  
10 Brawley, what do you do for a living?

11          **A**     I'm a clinical neuropsychologist at the USC  
12 School of Medicine.

13          **Q**     And can you describe your educational  
14 background, how you got to become a  
15 neuropsychologist?

16          **A**     Right. I have a bachelor's degree from the  
17 University of Texas at Austin with a -- my major is  
18 psychology and premed. I received my masters and my  
19 Ph.D. from California School of Professional  
20 Psychology. I did my predoctoral internship at  
21 Baylor College of Medicine in Houston, Texas. I  
22 also obtained a postdoctoral degree from Duke  
23 University Medical Center in Durham.

24          **Q**     And did you do any fellowships or internships  
25 during all that training?

1       **A**     The internship was at Baylor and the  
2       fellowship, postdoc, was at Duke.

3       **Q**     And are you in private practice or what do you  
4       do now?

5       **A**     I work through the medical school.

6       **Q**     And have you testified previously in court?

7       **A**     Yes, I have.

8       **Q**     And you've been qualified as an expert?

9       **A**     Yes, I have.

10      **Q**     In the field of neuropsychology?

11      **A**     Clinical psychology and neuropsychology, yes.

12           **MS. KIMBROUGH:** Your Honor, at this time, we  
13       would offer Doctor Brawley as an expert in the field  
14       of clinical psychology.

15           **THE COURT:** What says the State?

16           **MR. GRAHAM:** No objection, Your Honor.

17           **THE COURT:** She is an expert in the field so  
18       stated.

19           **BY MS. KIMBROUGH:**

20      **Q**     Doctor Brawley, have you evaluated Ron Finklea?

21      **A**     Yes, I have.

22      **Q**     Okay. Can you explain, in preparation for  
23       evaluating him, what sorts of information you  
24       reviewed?

25      **A**     I'm a neuropsychologist, so I basically am

1 consulted by physicians, neurologists, attorneys and  
2 asked to perform evaluations on cognition. With  
3 Mr. Finklea, I did not review any previous records.  
4 I was asked by a doctor to look at his current brain  
5 function.

6 Q Okay. So you were strictly looking at what was  
7 going on now?

8 A Right.

9 Q Okay. So history wasn't relevant to that?

10 A I take history as it pertains to cognitive  
11 function.

12 Q And, Doctor Brawley, what tests did you  
13 perform?

14 A I performed a neuropsychological battery of  
15 tests that includes an IQ test, the Weschler scale  
16 of adult intelligence, the Weschler test of adult  
17 reading. I can -- do you want an entire list of all  
18 the tests?

19 Q If you could.

20 A The Boston naming test, controlled verbal  
21 fluency test, finger tapping test, group pegboard  
22 test, trail making part A, trail making part B, the  
23 Weschler memory scale, some select subtests for math  
24 that look at both verbal and visual memory. I also  
25 administered the California verbal learning test,

1 the Ray-Osterrieth complex figure test and the test  
2 of memory malingering.

3 Q When you say malingering, what is malingering  
4 in lay terms, what does that mean?

5 A Faking or exaggerating.

6 Q Okay. And as you went through and performed  
7 all these tests on Ron, what was the result you came  
8 -- or the conclusion you came to with respect to  
9 whether or not he was faking?

10 A He gave excellent effort with me. Our tests  
11 completely rely on the amount of effort that a  
12 patient is putting forth, so it's very important for  
13 us to excess effort. And he performed perfectly on  
14 those tests for me. He was putting forth good  
15 effort and was very straightforward.

16 Q Okay. And did you have any other significant  
17 findings?

18 A I did find some areas of deficit. I was asked  
19 to evaluate him to look for the presence of anoxia,  
20 lack of oxygen to the brain. And he did have some  
21 deficits that were consistent with an anoxic injury.

22 Q And, again, his symptoms were inconsistent with  
23 somebody faking deficits?

24 A Correct.

25 MS. KIMBROUGH: I believe that's all the

1 questions I have. Please answer any questions the  
2 Solicitor may have.

3 **THE COURT:** I want to review the field that she  
4 is admitted as an expert in. She testified that she  
5 she's a clinical neuropsychologist. Is that the  
6 field that you offer her as an expert in?

7 **MS. KIMBROUGH:** Yes, Your Honor, I believe  
8 Doctor Brawley, and I may have not stated it fully,  
9 but it's clinical psychology and clinical  
10 neuropsychology.

11 **THE WITNESS:** I can clarify. The State of  
12 South Carolina doesn't yet divide us into different  
13 categories. We're licensed in the area of clinical,  
14 but my area within clinical psychology is  
15 neuropsychology. I'm not -- I don't perform  
16 therapy. I do strictly the neuropsychological  
17 assessments. It's a little confusing.

18 **THE COURT:** And you offer her as an expert in  
19 what field?

20 **MS. KIMBROUGH:** I believe it was clinical  
21 psychology.

22 **THE WITNESS:** Clinical psychology with the  
23 subcomponent of neuropsychology.

24 **THE COURT:** And what says the State?

25 **MR. GRAHAM:** No objection, Your Honor.

1 THE COURT: She's an expert in those fields.

2 Cross-examination.

3 MR. GRAHAM: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. GRAHAM:

6 Q Doctor Brawley, if I understood what you said,  
7 you evaluated Ron Finklea -- when did you evaluate  
8 him?

9 A I saw Mr. Finklea May 17th of this year.

10 Q And how much time did you spend with him?

11 A He was in my office for, approximately, three  
12 hours. And then it takes another three to four  
13 hours to score, interpret and interpret the data.

14 Q So you spent three hours talking to him and  
15 three hours grading the tests?

16 A Three hours talking and administering the test,  
17 yes.

18 Q And you didn't review any other documents or  
19 talk to any other people?

20 A No, sir.

21 Q And you were looking to see what his current  
22 function was at that time?

23 A Correct.

24 Q And you weren't looking to see -- and you can't  
25 give an opinion as to what his mental state was at



1 any other time other than the time you spoke to him?

2 A That's correct.

3 Q When you say you did a test for malingering,  
4 that was whether he was malingering in that  
5 discussion with you about his current function?

6 A Correct. Often times patients will come in and  
7 try to fake to look worse to help out for whatever  
8 reason they've come in, but that did not occur with  
9 Mr. Finklea.

10 Q As to his current status when you talked to  
11 him?

12 A That's correct.

13 Q But you don't have an opinion as to whether  
14 he's malingering to any other claims that he makes  
15 that happened at any other time before you saw him?

16 A No, sir.

17 Q You said you took a history of cognitive  
18 function. What does that mean?

19 A Well, I ask basically things that might have  
20 impact on how your brain is working now, have you  
21 ever had a head injury, seizure, stroke, that type  
22 of thing, any problems in school, having to repeat  
23 grades, medical, psychological problems that affect  
24 your current thinking.

25 Q And did he give you any answers that affected

1 your conclusion that he had characteristics, I  
2 guess, that were consistent with an anoxic event?

3 A There was nothing in the history that was  
4 provided to me that would indicate that he had  
5 problems before. He did tell me that he had a head  
6 injury at age 13, but other than the hanging, you  
7 know, there had been no other reported injuries.

8 Q All right. What physical findings did you see  
9 with Mr. Finklea as far as showing brain damage?

10 A The deficits that I found on my evaluation,  
11 some of his motor functioning was impaired, that's  
12 mediated primarily by the cortical motor strip. He  
13 had --

14 Q Let me stop you right there. Motor skills,  
15 what does that mean?

16 A The first thing that he had problems with was  
17 simple manual speed and that's basically how your  
18 hand is working.

19 Q And that was -- you determined that from  
20 administering some type of test?

21 A Yes, that assesses that area of the brain.

22 Q Did you talk to anybody else other than him as  
23 to whether that problem with his motor skills  
24 existed prior to your evaluation back in 2003 or  
25 earlier?

1       A     No, that was based on my evaluations on his  
2       problems now.

3       Q     So you cannot say that those deficits and motor  
4       skills didn't exist before, can you?

5       A     I cannot say that for sure, but it certainly  
6       would not be consistent with someone who has ability  
7       with fine motor skills and training that may go into  
8       being a soldier. I can't say -- the only way we  
9       could say absolutely sure is if he had been  
10      administered a battery of these tests beforehand,  
11      but that doesn't happen.

12      Q     And since you didn't review anybody else's  
13      stuff, you don't know whether that's true or not.  
14      So isn't it true that you can't say that those  
15      deficits in motor skills didn't exist before you saw  
16      him?

17      A     I was not asked to review any previous records,  
18      that's correct.

19      Q     The question is, you cannot say that those  
20      motor skills did not exist before you talked to him,  
21      can you?

22      A     That's correct. I'm sorry. That's correct.

23      Q     The next deficit that you found besides the  
24      motor skills was what?

25      A     Well, there were a couple in the motor skills.

1 The next one was -- and they were at the second and  
2 first percentile. And a lot of these things I'll be  
3 talking about in percentiles. And the way  
4 percentiles work, if you take a hundred people your  
5 same age and you give them this test, if they score  
6 at the 50th percentile, that means half did better,  
7 half did worse. So 50th percentile is average, it's  
8 right in the middle. Ninety-ninth percentile is the  
9 best that you can be. And first percentile is the  
10 worst. So his motor skills ranged, the deficits  
11 were at the second percentile, the first and the  
12 fifth.

13 The next thing that I noted was below average  
14 verbal memory for stories, for verbal information  
15 that was told to him.

16 Q So you administered some tests where you told  
17 him a story and then asked him to recall the story  
18 to you?

19 A That's correct. And that taps into the left  
20 temporal lobe to look at that area of functioning.

21 Q And that's just a -- so that's a short-term  
22 memory?

23 A Yes, sir.

24 Q Okay. Again, you don't know whether that  
25 short-term memory didn't exist prior to your

1 evaluation of him prior to 2003 when he murdered  
2 Walter Sykes, do you?

3 A Correct.

4 Q What's the next physical finding that you  
5 found?

6 A Below average verbal learning.

7 Q What does that mean?

8 A Your ability -- it's ability to learn a list of  
9 things that are repeated. They're usually  
10 nonrelated items where the other is kind of  
11 contextual information where it's put into story  
12 format. This is just a list of things to look at  
13 your ability to learn. It's repeated five times to  
14 look and see if you pick up more and more across  
15 each trial. That, again, is the left temporal lobe  
16 function.

17 Q And, again, you can't say that that didn't  
18 exist prior to the murder of Walter Sykes either,  
19 can you?

20 A Correct.

21 Q What else?

22 A Below average confrontation naming, that's his  
23 ability to name items, another left hemisphere  
24 function.

25 Q And the same question again, other than how he

1 performed on a test that day, which is him answering  
2 questions, so he had to be answering truthfully,  
3 correct?

4 A Correct.

5 Q So other than relying on his answers, do you  
6 have any proof that that problem existed prior to  
7 2003?

8 A No, I don't.

9 Q And the next issue?

10 A The last one was his ability to copy and recall  
11 a complex design.

12 Q And what does that mean?

13 A They're given a very complex figure, this looks  
14 at right hemisphere functions, it's a spatial task,  
15 it looks at their ability to copy. It looks at  
16 organization, strategies, precision, attention to  
17 detail. They're asked to copy it and then you take  
18 it away and a short time later ask them to produce  
19 that design from memory as much as they can.

20 Q And, again, that's him working on the test with  
21 whatever effort he puts into it, and, again, you  
22 can't say that that wasn't -- if it was a valid  
23 finding, you can't say that it didn't exist prior to  
24 2003?

25 A I couldn't say that for sure.

1 Q And is that the last physical finding that you  
2 found?

3 A Yes, sir.

4 Q You're aware of, I believe, another consult by  
5 Doctor Gaines in this case; are you aware of that?

6 A I'm aware of that, yes.

7 Q And you're aware that he found that under the  
8 American Medical Association Guidelines, that  
9 Mr. Finklea had zero impairment, aren't you?

10 A I've not seen Doctor Gaines' report.

11 Q Didn't you hear Doctor Gaines testify to that?

12 A I did hear some of it, but I was also, at the  
13 time, reviewing my notes. So unless I -- I'd be  
14 happy to review that transcript and look at that for  
15 you. I didn't know I was going to be quizzed on it  
16 later.

17 Q It wouldn't surprise you, though, if I told you  
18 that Doctor Gaines found that he had zero  
19 impairment, would it?

20 A I don't do impairment ratings, so I'm not  
21 exactly sure how those work. So I don't feel  
22 comfortable testifying about impairment ratings.

23 Q As far as the mental status of Ron Finklea,  
24 when you evaluated him on 2003, would that have been  
25 the same person. -- I mean, I'm sorry, when you

1 evaluated him, would he have been the same person  
2 other than the physical deficits you found, his  
3 mental status, his ability to determine right and  
4 wrong and all those kind of things, would he have  
5 been the same person he would have been on August  
6 2nd, 2003?

7 A I'm not sure I understand your question. I  
8 mean, I evaluated him in the here and now. I cannot  
9 testify how he was in 2003. I can tell you how he  
10 was on May 17th of 2007.

11 Q So it's just a one time snapshot of his effort  
12 on that day?

13 A Yes. And it gives you a little bit of an idea.  
14 There are some areas of function that are called  
15 crystalized function, that hold is what we call if  
16 you have a mild dementia or a mild head injury and  
17 things like that. So it gives you a little bit of  
18 an idea how they may have performed in the past, but  
19 I was asked to asses his current cognitive function.

20 MR. GRAHAM: Thank you, Doctor.

21 THE COURT: Redirect?

22 MS. KIMBROUGH: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. KIMBROUGH:

25 Q I believe the Solicitor asked you if you had



1 spent three hours with the exam and three to four  
2 hours grading the test results. Doctor Brawley, do  
3 you feel like you needed additional time to assess  
4 Ron's current level of functioning?

5 A No, I did a full battery of tests.

6 Q So that's all the time you needed?

7 A That's correct.

8 Q And I believe the Solicitor also asked you in  
9 so far as your knowledge to sort of retroactively  
10 get a snapshot of Ron, obviously I believe your  
11 testimony was you can't do that?

12 A Correct.

13 Q But when you went and tested him in May of  
14 2007, he gave his best effort?

15 A Yes, he did.

16 Q You saw no evidence he was trying to fake  
17 anything?

18 A No.

19 MS. KIMBROUGH: Thank you.

20 MR. GRAHAM: Nothing else, Your Honor.

21 THE COURT: All right. Thank you, Doctor  
22 Brawley.

23 Next witness.

24 MS. KIMBROUGH: Thank you, Your Honor. The  
25 defendant calls Vincent Smith. Excuse me, Mr.

1 Finklea calls Vincent Smith.

2 VINCENT SMITH,

3 having been duly sworn, testified as follows:

4 THE CLERK: Have a seat up there please, sir.

5 Once you have a seat, state your full name and spell  
6 your last, please.

7 THE WITNESS: Good afternoon. Vincent Tobias  
8 Smith, S-M-I-T-H.

9 DIRECT EXAMINATION

10 BY MS. KIMBROUGH:

11 Q Good afternoon. Is it Sergeant Smith?

12 A First Sergeant Smith, ma'am.

13 Q Okay, First Sergeant Smith. Sir, are you still  
14 in the military?

15 A No, ma'am, I retired four years ago.

16 Q Okay. But you were previously in the military?

17 A Yes, ma'am, 27 years.

18 Q And can you explain your military career? Just  
19 give us a snapshot of how far you went and what you  
20 did.

21 A Came in the Army March of '77 and I guess I did  
22 a lot of training. And I joined Special Forces  
23 Rangers, went to combat a few times, took over first  
24 sergeant position back in 1998 when I returned from  
25 Korea and that's when I ran into Sergeant First

1 Class Turner and Sergeant Ron Finklea.

2 Q Okay. That brings me to my next question.

3 What were your experiences with Sergeant Finklea  
4 like when you all were comrades or together in the  
5 Army?

6 A We had a lot of fun together training. I used  
7 to run them six miles everyday and they used to  
8 think that I was crazy, but he always called cadence  
9 for me and he kept up, so did Sergeant Turner.

10 Q And how would you describe Ron's work ethic in  
11 the Army?

12 A Ron's work ethic, ma'am? He was smart. He had  
13 a lot of motivation, a lot of dedication to the  
14 military and anything you asked him to do, he was  
15 always there.

16 Q Did you ever know Ron to use drugs or alcohol?

17 A No, ma'am. I always ran a urinalysis test  
18 about every three months. And we have a hundred  
19 percent, that means everybody in the unit have to do  
20 a urinalysis test.

21 Q So he was always clean?

22 A Yes, ma'am.

23 Q Now, I believe when private investigator Dave  
24 McDougall spoke to you, he explained the purpose of  
25 your visit here today?

1       A     Yes, ma'am.

2       Q     And is there anything you would like to tell  
3     the jurors about Ron, anything you'd like them to  
4     consider when they deliberate on their punishment  
5     decision?

6       A     Well, I think that I don't know how Sergeant  
7     Finklea got in the situation that he in because  
8     every time I've seen him, like Sergeant Turner said,  
9     that he always took care of his family, always  
10    talked about things that he was going to do after  
11    work, you know, motivated and, you know, he was just  
12    a model soldier.

13            Like Sergeant Turner said, he could have been a  
14    command sergeant major one day, but evidently he got  
15    kicked out of the Army for asthma and now he's in a  
16    situation that we don't, you know, understand how he  
17    got to that point. Evidently, to my knowledge, I  
18    think that he might have been led into it because I  
19    ain't never seen him lead --

20           MR. MYERS: Objection, that's just an opinion  
21    by him. He knows nothing of the facts or anything.  
22    It's irrelevant. It's strictly opinion.

23           THE COURT: I'll overrule the objection. You  
24    may answer, sir.

25           THE WITNESS: Just an opinion, but Sergeant

1 Finklea was a leader. He always will be a leader,  
2 but things out of our control sometimes take a wrong  
3 turn.

4 MS. KIMBROUGH: Thank you. Please answer any  
5 questions the Solicitor may have.

6 THE WITNESS: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MR. MYERS:

9 Q Where are you from, sir?

10 A From Melbourne, Florida stationed in Fort  
11 Bragg, North Carolina.

12 Q You're still in the service?

13 A No, sir, retired four years ago.

14 Q And where did you serve with the defendant?  
15 What air base -- I'm sorry, I was in the Air Force,  
16 I apologize. What Army base?

17 A Fort Bragg, North Carolina, sir.

18 Q Is that the only place, Fort Bragg?

19 A Yes, sir.

20 Q And how long was that?

21 A Say again, sir?

22 Q How long were you at Fort Bragg with the  
23 defendant?

24 A I got there in 1998 from Korea and that's when  
25 I ran into Sergeant Finklea and Sergeant Turner.

1 Q And how long were you there with him?

2 A Until 2001.

3 Q And that was at Fort Bragg?

4 A Yes, sir.

5 Q And you agreed with the prior testimony of  
6 Master Sergeant Turner -- he was with y'all, too?

7 A Yes, sir.

8 Q The defendant's a leader, leads men?

9 A Yes, sir.

10 MR. MYERS: Thank you, sir.

11 THE COURT: Any redirect?

12 MS. KIMBROUGH: Just briefly.

13 REDIRECT EXAMINATION

14 BY MS. KIMBROUGH:

15 Q First Sergeant Smith, the people that Ron was  
16 leading in the Army, they were soldiers, right?

17 A Yes, ma'am, male and females.

18 Q And he did his job?

19 A Yes, ma'am. Whenever Sergeant Turner took  
20 vacation, Sergeant Finklea always took over. He  
21 called me, First Sergeant, what do you need to be  
22 done? I have my people here. And he did training.  
23 He took care of the soldiers out in the field.

24 Whenever we did exercising on NBC training or first  
25 aid or any other weapons training, he was always one

1 to be an instructor.

2 MS. KIMBROUGH: Thank you very much.

3 MR. MYERS: No further questions.

4 THE COURT: Thank you, sir.

5 THE WITNESS: Yes, sir.

6 THE COURT: Yes, ma'am.

7 MS. KIMBROUGH: Your Honor, we would like to  
8 respectfully request a very brief break.

9 THE COURT: All right. Ladies and gentlemen,  
10 please go to the jury room. Please do not discuss  
11 the case.

12 (The jury retires to the jury room.)

13 MS. KIMBROUGH: Thank you, Your Honor.

14 THE COURT: We'll take about five minutes and  
15 then we'll come and assess where we're going.

16 MS. KIMBROUGH: Thank you, Your Honor.

17 (Brief recess.)

18 THE COURT: Ms. Kimbrough, what's your plan?

19 MS. KIMBROUGH: Your Honor, with your  
20 permission, we'd like to break for lunch now.

21 THE COURT: Okay. We'll bring in the jury and  
22 break for lunch.

23 MS. KIMBROUGH: And I apologize for the delay.  
24 We just have an expert who needed to speak with  
25 Mr. Finklea about some additional information.

1           **THE COURT:** That's fine. No problem.

2           (The jury returns to the courtroom.)

3           **THE COURT:** Ladies and gentlemen, you don't  
4 have to sit because we're going to break for lunch  
5 at this time. We're going to take an hour for lunch  
6 and we'll see you after lunch. Please do not  
7 discuss the case.

8           (The jury retires to the jury room.)

9           **THE COURT:** All right. We'll be back at 1:45.

10          (Whereupon, there was a luncheon recess.)

11          **THE COURT:** Anything before we bring in the  
12 jury?

13          **MS. KIMBROUGH:** Nothing from the defense, Your  
14 Honor.

15          **MR. MYERS:** Nothing from the State.

16          **THE COURT:** All right. Let's bring in the  
17 jury.

18          (The jury returns to the courtroom.)

19          **THE COURT:** The jury's back. You may call your  
20 next witness.

21          **MS. KIMBROUGH:** Thank you, Your Honor. May it  
22 please the Court. At this time, the defense calls  
23 Cherena Roland.

24                           **CHERENA ROLAND,**

25           having been duly sworn, testified as follows:



1           **THE CLERK:** If you'll have a seat and state  
2 your name and spell your last name for the record,  
3 please.

4           **THE WITNESS:** My name is Cherena Roland and  
5 it's R-O-L-A-N-D.

6           **COURT REPORTER:** Can you spell your first name?

7           **THE WITNESS:** Yes. It's C-H-E-R-E-N-A.

8                               DIRECT EXAMINATION

9           BY MS. KIMBROUGH:

10          **Q**     Good afternoon, Cherena. How are you?

11          **A**     I've been better, but...

12          **Q**     Cherena, where do you live?

13          **A**     I live in Tacoma, Washington.

14          **Q**     And what do you do in Tacoma? How are you  
15 employed?

16          **A**     I work in real estate investment.

17          **Q**     And what is your connection to Ron Finklea?

18          **A**     We were married.

19          **Q**     And when were you married to Ron?

20          **A**     We got married when I was, I think, 16 and  
21 until I was 20, 21.

22          **Q**     And --

23               **MS. KIMBROUGH:** May I approach the witness,  
24 Your Honor?

25               **THE COURT:** Yes.

1 BY MS. KIMBROUGH:

2 Q Do you recognize this photograph?

3 A Yes, ma'am.

4 Q Can you tell the jury what this is?

5 A This is a picture of Ron in the military when  
6 we were dating.

7 MR. MYERS: No objection.

8 MS. KIMBROUGH: Thank you.

9 BY MS. KIMBROUGH:

10 Q So you were dating when Ron was in basic?

11 A Actually, I guess it's right after. I'm sorry.

12 Q Right after he was out?

13 A Yes, ma'am. I'm sorry, the time frame's a  
14 little off.

15 Q Now, during the course of your marriage to Ron,  
16 did you all have any children?

17 A Yes, we did.

18 Q And can you identify this photograph?

19 A This is my son, this is our son. We call him

20 J [REDACTED].

21 THE COURT: Any objection to this --

22 MR. MYERS: No objection, Your Honor.

23 THE COURT: Both of those are admitted without  
24 objection.

25 MS. KIMBROUGH: Thank you, Your Honor.

1 (Defendant's Exhibit Numbers 48 and 49,  
2 photographs, admitted into evidence.)

3 BY MS. KIMBROUGH:

4 Q Now, Cherena, you said that you and Ron were  
5 married when you were very, very young?

6 A Yes, ma'am.

7 Q Sixteen?

8 A Yeah.

9 Q And can you describe the person that you knew,  
10 the person that you married, the Ron, at that point  
11 in your life?

12 A Ron, honestly, this is -- all of this, it's  
13 not -- I just can't even link it to him. Ron is  
14 very -- he is very, very caring. He would -- the  
15 Ron that I know and the Ron that I knew, he would  
16 never do anything like -- he wouldn't deliberately  
17 hurt anybody. He was just trying to get his head on  
18 straight, you know. He had a lot of insecurities.  
19 And, you know, he, like the gentleman before said,  
20 that he did try to surround himself with good  
21 people. I don't know percentage-wise how much is  
22 good and how much is bad, but he definitely did make  
23 an effort to try to build himself into a better  
24 character than what was presented to him when he was  
25 growing up.

1 Q What did you learn about Ron's early life?

2 A I'm sorry, it just -- the whole thing is just  
3 off, but he had a hard -- he had a rough younger  
4 life. I think that the stuff that happened to him  
5 when he was younger it caused him to have a lot of  
6 insecurities to devalue himself.

7 Q So did --

8 A I think he was just looking to be in a  
9 productive environment and be around people that --  
10 I mean, don't take this wrong, you know, I don't  
11 want to cause any problems or anything, but I just  
12 think that he wanted to be, you know, valued and  
13 appreciated for who he was or who he is.

14 Q So did he try hard to do well?

15 A He did. He did.

16 Q And can you describe the relationship he had  
17 with your son?

18 A They -- he had a good relationship with him, he  
19 did. Despite us being young parents and us going  
20 through our growing stages, trying to discover where  
21 our priorities should -- what our priorities should  
22 be at, he did the best that he could at the time. I  
23 believe that's why I hung in there and we kept  
24 communicating the way we did.

25 Q And how long were you married before ultimately

1 you divorced?

2 A I believe when I was 21.

3 Q So it was a brief marriage, five years?

4 A I think so, yeah. I'm sorry, I'm a little  
5 rusty on that, so, yes, but it was.

6 Q So R [REDACTED] was a young child?

7 A Yes.

8 Q And there's been some talk about some back due  
9 child support?

10 A Yes, ma'am.

11 Q Did you and Ron communicate about his financial  
12 support for his son?

13 A We did. I think that -- like when he was in  
14 the military, he was making good money and then we  
15 were kind of going through this divorce like battle,  
16 you know, just kind of, you know, how it gets kind  
17 of ugly and stuff and just trying to get to a point  
18 and we -- I actually got a pretty decent amount of  
19 child support a month.

20 And when he was in the military, it was fine,  
21 but sometimes we kind of went back and forth and it  
22 -- this was when he was going through his growing  
23 stage and trying to, you know, get his priorities in  
24 line, he ended up owing me some money. And I kind  
25 of -- it wasn't a big deal because I always had, you

1 know, he knew he was taken care of, so it didn't  
2 mean anything to me. I mean, we talked about just  
3 voiding the whole thing, but he and I just kind of  
4 wanted to see him grow a little bit more before I  
5 did that. I mean, we did talk. It wasn't a big  
6 deal for me.

7 Q So R [REDACTED] did not go without as a result of  
8 the back due amount?

9 A No.

10 Q Did Ron ask you about his son?

11 A Always.

12 Q Yeah. And I'd like to show you a few items and  
13 ask if you can identify these?

14 A This is my son with my new son, he's a year and  
15 a half. And this was actually last Christmas. And  
16 these are little brief clips of school pictures how  
17 he's growing up.

18 Q And that would be R [REDACTED]?

19 A Yes, ma'am. I'm sorry.

20 Q That's all right.

21 A And this is R [REDACTED] at my inlaw's house.  
22 He's swimming in the swimming pool and this is him  
23 just giving me a dirty face.

24 Q Are these relatively recent photographs?

25 A Predominantly those two and then the smaller

1 one with him and his younger brother.

2 (Pause.)

3 MR. MYERS: No objection.

4 MS. KIMBROUGH: Thank you.

5 THE COURT: Admitted without objection.

6 (Defendant's Exhibit Numbers 50 through 53,  
7 photographs, admitted into evidence.)

8 BY MS. KIMBROUGH:

9 Q Ms. Roland, when you were married to Ron, did  
10 you ever know him to be involved in any sort of drug  
11 activity?

12 A No. He's never been around that. He's never  
13 been -- he's never interacted with anybody that was  
14 around that either. He never drank. We just  
15 basically -- he loved to play basketball and just  
16 relax at the house and just have a good time, but he  
17 would never go in that direction.

18 Q So he didn't hang around on the streets with  
19 people?

20 A No, not when I -- not from what I know and not  
21 from what I've seen.

22 Q And your impressions of Ron as a father?

23 A I think that he loves his son very, very much.  
24 I think that he tried the best that he can of what  
25 he knew to be a good father to him and he was

1 learning to be a good father to him as well.

2 It's kind of intermingled with the other issue  
3 with the child support. He actually -- he loved R  
4 very much, J, very much. I knew that he didn't  
5 have -- he wasn't getting paid that much when he got  
6 out of the military, but he wouldn't tell me because  
7 he felt that I was entitled to the money and stuff.  
8 And I told him that he doesn't have to worry about  
9 the child support, okay, you know. And he was  
10 determined to pay me back because he says that he  
11 owed it to me, you know, I've earned it and stuff.

12 So I think that, to the best of his knowledge,  
13 he's a good father, you know. He's just limited on  
14 what he saw as being a father, you know, or a  
15 family. Not saying his family is bad or anything,  
16 but from what I have seen, he was missing a lot of  
17 things.

18 Q Like a father himself?

19 A Yeah, and I think unconditional love, you know.

20 Q Is there anything that you think the jury needs  
21 to know about Ron as part of their decision making  
22 on his sentence?

23 A This act that he did, it's a horrific act. I  
24 am very, very, very sorry for your loss and this  
25 shouldn't even have happened. And I know he has to



1 be responsible for his actions, but it's not him. I  
2 never saw that in him. I saw no pattern, no trace,  
3 nothing. I talked to Ron quite a bit and never saw  
4 it, never, ever. It's just I didn't -- it's just  
5 not him.

6 And I mean I know that, you know, God has  
7 written, you know, he's wrote everything, so however  
8 it plays, I mean I know that he's very, very  
9 remorseful. And I just I think that he's -- he was  
10 so remorseful, that's why he tried to commit suicide  
11 in the jail because I think that's -- he realized  
12 what he did. But it's done and I know that he needs  
13 to face the consequences, but that act, that's  
14 not -- that's not Ron. That's not him at all. I've  
15 never seen that side ever and I've known him for a  
16 while, a long time.

17 MS. KIMBROUGH: Thank you, Ms. Roland. Please  
18 answer any questions the Solicitor may have.

19 CROSS-EXAMINATION

20 BY MR. MYERS:

21 Q Ms. Roland, you said that he was trying to  
22 change his character, is that what I understood you  
23 to say?

24 A Yes.

25 Q And the last time that he saw your son, that

1 would have been in Alabama when your son was about  
2 two years old?

3 A No, that's not correct, sir.

4 Q How old is he now?

5 A He's 13.

6 Q Thirteen now?

7 A Uh-huh.

8 Q You still have custody?

9 A Oh, yes.

10 Q And you live in the State of Washington?

11 A Yes, sir.

12 Q Thank you. I have one more question. You  
13 weren't on the jury list. When did you decide to  
14 come here?

15 A It was kind of in limbo. I had planned on  
16 coming, I can't tell you the exact date, maybe like  
17 a month ago or so.

18 Q I was just wondering why your name wasn't on  
19 the witness list. Thank you.

20 THE COURT: Ms. Kimbrough.

21 REDIRECT EXAMINATION

22 BY MS. KIMBROUGH:

23 Q Ms. Roland, do you remember talking to the  
24 investigators from Lexington County?

25 A Yes.

1 Q So you were aware of this and they were aware  
2 of you?

3 A Oh, yes.

4 Q And for the last four years, has it been your  
5 decision as a parent to not advise R [REDACTED] of his  
6 father's predicament?

7 A Yes.

8 Q To protect him?

9 A Yes. Recently I did disclose to him where,  
10 kind of a little gist of what's going on, but I  
11 didn't tell him the details or anything like that.  
12 I just said that he was at the wrong place at the  
13 wrong time and someone was killed and now he has to  
14 face the consequences.

15 MS. KIMBROUGH: Thank you, Ms. Roland.

16 MR. MYERS: Nothing further, Your Honor.

17 THE COURT: You may step down, ma'am.

18 Next witness.

19 MS. KIMBROUGH: Your Honor, the defense calls  
20 Doctor Anna Cherry.

21 ANNA CHERRY,

22 Having been duly sworn, testified as follows:

23 THE CLERK: If you'll have a seat, state your  
24 name, spelling your last for the record, please.

25 THE WITNESS: My name is Doctor Anna Cherry,

1 C-H-E-R-R-Y.

2

DIRECT EXAMINATION

3

BY MS. KIMBROUGH:

4

Q Doctor Cherry, what field of medicine do you practice in?

5

6

A I am board certified in psychiatry. And I work for the Department of Mental Health. And they contract with the jail so that I do see the inmates at Lexington County Detention Center. And I guess, for the record, I'm supposed to make it clear to the Court that I have gotten permission to talk freely by Mr. Finklea.

7

8

9

10

11

12

13

Q And that would be pursuant to the HIPAA laws?

14

A Correct.

15

16

17

Q And in your capacity as a contract psychiatrist with Lexington County Detention Center, did you come in contact with Ron Finklea?

18

19

20

21

22

A Yes, I did. He was there for about a year when I started working here. I moved here in August or July of '04. And so I had seen him after he had been there for about a year and I have been seeing him ever since that time.

23

24

Q Okay. And what types of treatment have you provided for Ron?

25

A Well, first, I had to get the diagnosis correct.

1 because the depression, I think, was obvious. And I  
2 gave him major depressive episode and we were  
3 treating him accordingly for that, but then he  
4 started having some nightmares and other things and  
5 I realized that he actually had post-traumatic  
6 stress disorder.

7 And for people with PTSD, talking about traumas  
8 can be very upsetting to them and he's one that  
9 talked very little of that. I know that a lot of  
10 inmates will sit there and throw it out and  
11 volunteer it and say, oh, I had a horrible  
12 childhood, woe is me, but he just isn't that type of  
13 person. You almost had to dig it out of him.

14 And so I did get the diagnosis correct and  
15 started treating him. And we had to keep layering  
16 medications on board. And he's required high doses  
17 of several medications, but he is actually doing  
18 fairly well.

19 There's a lot of residual symptoms and like  
20 most PTSD patients, little things can trigger the  
21 symptoms. He can start having more panic attacks  
22 and having difficulty with little things that you  
23 and I would just see as normal, like he had had an  
24 abscess on his thumb. His thumb looked big and  
25 ugly, I remember that. And he was more concerned

1 about having to go to see the dermatologist because  
2 it required putting chains on him and the chains  
3 actually triggered a lot of his past trauma. And he  
4 was more concerned about that than actually getting  
5 the thumb taken care of and -- so just little things  
6 has been a challenge for him.

7 When they ran out of his inhaler, he started  
8 having a lot of his PTSD systems triggered and we  
9 got that taken care of. But for the most part, I  
10 think that we found some medications that work  
11 pretty well to control his depression and his  
12 anxieties.

13 Q How about your observations of Ron as a person?  
14 Have you had a chance to get to see him and develop  
15 some opinions?

16 A I have. This is going to be so hard for people  
17 to understand given what's gone on in the past in  
18 the courtroom, but I honestly see him as a kind,  
19 gentle soul. And he, out of everyone I've treated  
20 there -- and I'm not afraid to call a spade a spade.  
21 There's plenty of narcissists and antisocials and  
22 everything else out there, you know, and I --

23 Q Are there lots of spades in the detention  
24 center?

25 A There's a lot of spades at the detention

1 center. But I've never told him this because I  
2 think it's kind of inappropriate, but I've never --  
3 he's -- out of everyone there, I have more respect  
4 for him and I like him more than any of the other  
5 inmates. And that is so hard for people who just  
6 see the other side to understand, but you're in a  
7 place where everybody is thinking about themselves  
8 and how they've been cheated or they've been, you  
9 know, mistreated or everything is -- so many of the  
10 people there it's all about them and Ron is not that  
11 way. He's concerned about other people.

12 He has an instinct which you wouldn't believe  
13 as far as being able to tell who the good people  
14 are, the bad people are, who the people are who need  
15 my help and who the people are, which he has told me  
16 on a couple of occasions, who did not need my help  
17 that I was helping and he was spot on. You know, he  
18 just has a really good sense of the inner workings  
19 of human beings. And he would gravitate toward the  
20 good people and not the bad people. And yet he, and  
21 now I, you know, can better understand why, he's not  
22 a judgemental individual. He doesn't judge people  
23 for what they've done or who they are.

24 But I guess the best thing I can say is he was  
25 a stabilizing influence in the jail. He would be

1 more likely to deescalate a situation. I've never  
2 seen him escalate a situation.

3 He, you know, there are people that we're not  
4 able to see sometimes because there's so much work  
5 that needs to be done there, we've actually put  
6 people in the cell with him knowing that he would  
7 take care of them because I haven't been able to see  
8 them yet. We have put people in cells with him, or  
9 recommended putting people in cells with him that  
10 are people that their mouths would get them in  
11 trouble and they're likely to get beat up by anybody  
12 else, or people who are very vulnerable and we just,  
13 you know, he's just someone you could put in a cell  
14 with him -- someone in the cell with him and know  
15 they will be okay and know that he will do whatever  
16 it takes in order to keep the environment peaceful.

17 And I don't know why. I'm guessing that with  
18 all the trauma and the violence that he has  
19 experienced and given out and with the PTSD symptoms  
20 with the severity that they were, I think he needs  
21 peace in his environment to survive. I think he  
22 needs, you know, anything that's negative, whether  
23 it be anger or hatred or violence, I think is a  
24 trigger for his PTSD and also it triggers all of  
25 these other things inside him and he does what he



1 can in order to make the environment not only more  
2 peaceful for him, but for other people as well.

3 Q Now, as a result of his PTSD, you said it --

4 A I can't speak for how he was before this. I  
5 understand what I see is consistent with what other  
6 people have seen in his past, but I can't talk -- I  
7 can only talk about, you know, what's going on now.

8 Q But insofar as the jail's concerned, his  
9 influence in the jail, would you -- you would  
10 describe it as positive?

11 A Oh, yes. Oh, yes. And it -- it is -- he gets  
12 along really well with the C.O.'s and the C.O.'s  
13 think a lot of him.

14 Q A C.O. is a correctional officer?

15 A Yes. And, you know, if there's anything that  
16 went on in the jail, he's not going to be jumping up  
17 and down and volunteering to give the information.  
18 He's going to -- but if he's approached and asked  
19 about it, he's a very reliable person as far as  
20 being able to say what happened and who's at fault,  
21 but...

22 Q So he's not a discipline problem?

23 A Oh, no. I don't think in the four years he's  
24 been there, there's been an incident, but I could be  
25 mistaken. I haven't checked before coming here, but

1 to my knowledge, I don't think I've ever seen him in  
2 stripes.

3 Q And that's what he would be in if he were in  
4 trouble?

5 A And he's always shown me the utmost respect.  
6 He's shown the C.O.'s a lot of respect, the other  
7 inmates respect, people who are close to him and his  
8 family respect. And I've never seen him any other  
9 way.

10 Q Can you think of anything else you think the  
11 jury needs to know about Ron?

12 A Well, with what I do, I learn a lot about  
13 people. I learn their secrets. I know their past.  
14 Out of respect for Ron and people he cares about,  
15 I'm going to choose not to discuss those things even  
16 though it might help him, but just keep in mind that  
17 everyday something happens -- everyday that I work  
18 something happens that I think but for the grace of  
19 God go I.

20 And I've lived a very sheltered life and it's  
21 hard to understand why people do the things that  
22 they do, but what you grow up with determines so  
23 much what you become. And I see Ron as someone who  
24 keeps fighting to not become the kind of person that  
25 he could become. And he's tried to be a good

1 person. He's trying to be a person like you and me.

2 And, Ron, in case I don't get to say anything  
3 to you again because who knows how this will turn,  
4 we haven't talked religion, but God has saved your  
5 life once, he'll do it again.

6 MR. MYERS: Objection.

7 THE COURT: Ma'am, do not comment about  
8 religion.

9 MS. KIMBROUGH: Thank you, Doctor Cherry.  
10 Please answer --

11 THE COURT: You can finish your answer, but do  
12 not -- proceed, ma'am.

13 THE WITNESS: Then since we don't talk about  
14 religion, I will say that if this Court sees fit to  
15 save your life again, I expect you --

16 MR. MYERS: Is she responding to a question,  
17 Your Honor? I forgot what the question was.

18 THE WITNESS: I have asked permission to say  
19 something to Ron because I have a feeling this Court  
20 will not allow me to talk to him again.

21 THE COURT: Just a moment, ma'am.

22 MR. MYERS: It seems like it's a narrative type  
23 rambling on and she's not responding to a question.

24 THE COURT: Pose the question, Ms. Kimbrough.

25 MS. KIMBROUGH: Your Honor, I believe Doctor

1 Cherry has addressed all of my questions.

2 And I would simply ask that any question that  
3 the Solicitor has, please answer those.

4 THE COURT: Solicitor.

5 CROSS-EXAMINATION

6 BY MR. GRAHAM:

7 Q Doctor Cherry --

8 A And I apologize for being so emotional. I  
9 usually am not, but this is very difficult for me.

10 Q He's not a patient, he's a friend, isn't he?

11 A I keep the boundaries intact. This is probably  
12 the first time that the boundaries have slipped.

13 Q And you're having a problem being detached from  
14 it and keeping more of a clinical aspect of it,  
15 aren't you?

16 A It's both. Clinically, I think that everything  
17 I said is correct. I think that other people who  
18 have testified probably would say the same thing  
19 about him.

20 Q But you're not only testifying about him as his  
21 doctor, you are also testifying about him as a  
22 friend; isn't that true?

23 A As a person. We didn't talk like I talk with  
24 my friends. But I do feel like that life is  
25 precious and it would be wasted -- I mean, it's -- I

1 do feel like life is precious and --

2 MR. GRAHAM: Your Honor, I don't think that's  
3 responsive to my question.

4 A I don't understand -- I understand what you're  
5 trying to get at, I guess. You want me to -- you  
6 want to say that this is personal and everything I'm  
7 saying is because of a personal attachment I have to  
8 him, but this would be difficult no matter what  
9 because death is a difficult thing for me.

10 Q So you're just against the death penalty in  
11 general?

12 A I am -- it's one of those things that...

13 Q Can you point to before you --

14 A I can understand both sides of it.

15 Q Before you explain, would you answer my  
16 question, please?

17 A Okay. I'm not allowed to talk about religion.

18 MS. KIMBROUGH: Your Honor, I believe the  
19 witness should be able to answer the question.

20 THE WITNESS: I'm not allowed to talk about  
21 religion.

22 THE COURT: Just a moment, ma'am. When there's  
23 an objection, wait until I rule before responding.

24 THE WITNESS: I'm sorry.

25 THE COURT: Pose the question again. Answer

1 the question, you may explain whatever answer you  
2 wish to explain.

3 MR. GRAHAM: Thank you, Your Honor.

4 BY MR. GRAHAM:

5 Q You're against the death penalty, aren't you?

6 A Legally or religiously?

7 Q Yes or no?

8 A Legally, the death penalty is okay in this  
9 country. Personally, religiously, I feel that it is  
10 wrong, but legally, you know, I guess talking about  
11 religion is okay in this case.

12 Q Thank you. Personally, you're against the  
13 death penalty, true?

14 A Yes.

15 Q You are the first person who diagnosed Ron  
16 Finklea with post-traumatic stress disorder; is that  
17 correct?

18 A To my knowledge, I am.

19 Q And that was in 2004, correct?

20 A It was in 2004, yes. It may have been -- it  
21 may have slipped into 2005. Like I said, the first  
22 time I diagnosed it, I think I had it, you know,  
23 just the depression and panic disorder, maybe.

24 Q And he never disclosed to you anything  
25 underlying that would be the cause for that

1 post-traumatic stress, is that true, because he  
2 didn't talk about it, that's what you testified to;  
3 is that correct?

4 A When he started having nightmares, we talked  
5 about whether he had had traumatic events in his  
6 past, so we talked about it, but I did not ask  
7 detailed questions because that is not my role. My  
8 role is not to ask about -- you know, it actually  
9 would be counter therapeutic for me to delve into  
10 the details about his abuse. We talked about it  
11 just enough for me to understand that there was  
12 trauma in his past and that he responded to the  
13 trauma like someone with PTSD would respond.

14 Q Well, let me ask you this next question. It's  
15 a yes or no question and then you can explain.  
16 Isn't it true that Ron Finklea could be suffering  
17 from post-traumatic stress disorder because he took  
18 a gun and shot Walter Sykes twice in the head and  
19 set him on fire? Is that true that that could be  
20 the cause of post-traumatic stress disorder that you  
21 have diagnosed Ron Finklea with, yes or no?

22 A I believe it was a trigger for his symptoms  
23 getting worse. I don't believe it was the initial  
24 trauma. It was a trigger that can -- remember I  
25 said that sometimes things come along which cause

1 your symptoms to get worse.

2 Q But you don't know, do you? Yes or no, please.

3 A PTSD isn't --

4 MR. GRAHAM: Your Honor, I'd ask her to answer  
5 my question before she explains.

6 THE COURT: If you can answer with a yes or no  
7 answer, you answer yes or no. If you can't answer  
8 yes or no, then you can't answer the question.

9 THE WITNESS: I can't answer those questions  
10 for you with yes or no.

11 MR. GRAHAM: No other questions, Your Honor.

12 THE COURT: Anything further, Ms. Kimbrough?

13 MS. KIMBROUGH: Just very briefly.

14 REDIRECT EXAMINATION

15 BY MS. KIMBROUGH:

16 Q Doctor Cherry, are you testifying here today  
17 based on your opposition of capital punishment?

18 A No, no, I am not. I have been an advocate for  
19 my patients. I've never advocated for or against  
20 capital punishment.

21 MS. KIMBROUGH: Thank you.

22 THE COURT: Anything further from the State.

23 MR. GRAHAM: No, Your Honor.

24 THE COURT: All right. You may step down,

25 ma'am.



1           **THE WITNESS:** Okay. Thank you very much. And  
2 I apologize again to the Court for -- if I did not  
3 ask -- if I cried and all that and didn't know the  
4 rules.

5           **THE COURT:** All right. Ladies and gentlemen,  
6 we're going to take a very short break, a very short  
7 break. Please go to the jury room for a very short  
8 break.

9           (The jury retires to the jury room.)

10          **THE COURT:** Let's take a four minute break.

11          (Brief Recess.)

12          (The jury returns to the courtroom.)

13          **THE COURT:** The jury is back. Your next  
14 witness.

15          **MS. KIMBROUGH:** Thank you, Your Honor. The  
16 defense calls Doctor Rick Frierson.

17                       RICHARD FRIERSON,  
18 having been duly sworn, testified as follows:

19          **THE CLERK:** If you'll state your full name and  
20 spell your last for the record, please.

21          **THE WITNESS:** My name is Richard Lasane  
22 Frierson, F-R-I-E-R-S-O-N.

23                       DIRECT EXAMINATION

24          BY MS. KIMBROUGH:

25          **Q**     Good afternoon, Doctor Frierson. Doctor

1 Frierson, what do you do for living?

2 A I'm a forensic psychiatrist.

3 Q Where are you employed?

4 A I'm employed by the University of South  
5 Carolina School of Medicine, but I do contractual  
6 work with the South Carolina Department of Mental  
7 Health at the forensic evaluation service.

8 Q Okay. And what's your educational background?

9 A Well, actually, my undergraduate degree is a  
10 bachelor of music from the University of South  
11 Carolina. And then I completed medical school in  
12 1988 at the University of South Carolina School of  
13 Medicine. I then completed four years of residency  
14 in general psychiatry at William S. Hall Psychiatric  
15 Institute here in Columbia. And then I completed a  
16 one year fellowship in forensic psychiatry at the  
17 William S. Hall Psychiatric Institute.

18 Q And, Doctor Frierson, have you testified in  
19 court before?

20 A Yes.

21 Q Approximately, how many times would you say  
22 you've been qualified as an expert in forensic  
23 psychiatry?

24 A This is an estimate, somewhere between 150, 200  
25 times.

1           **MS. KIMBROUGH:** Your Honor, at this time, we  
2           would offer Doctor Frierson as an expert in the  
3           field of forensic psychiatry.

4           **MR. HUBBARD:** No objection.

5           **THE COURT:** He's admitted as an expert in  
6           forensic psychiatry.

7           BY MS. KIMBROUGH:

8           **Q**     Doctor Frierson, do you recall evaluating Ron  
9           Finklea?

10          **A**     Yes.

11          **Q**     And that was pursuant to a court order?

12          **A**     Yes. We only evaluate people under a court  
13          order.

14          **Q**     So it wasn't at the behest of the defense?

15          **A**     No.

16          **Q**     And as part of your diagnosis, did you review  
17          certain documents?

18          **A**     You mean as part of the evaluation?

19          **Q**     I mean, as part of your evaluation, I  
20          apologize.

21          **A**     Yes. I reviewed police reports, witnesses'  
22          statements, the video of the alleged offense that  
23          was taken at the scene of the alleged offense,  
24          employment records, military records, his prior  
25          criminal record, the co-defendant's criminal record,

1 pictures from the airport, receipts from K-Mart, I  
2 mean it goes on and on and on of the stuff that we  
3 reviewed, as well as medical records that we had  
4 when Mr. Finklea was in the Lexington County Medical  
5 Center following his arrest.

6 Q Okay. And could you discuss your primary  
7 findings based on the review of those records, as  
8 well as the mental status exam and interview you  
9 conducted?

10 A Yes. Well, there were three purposes for my  
11 seeing Mr. Finklea. The first was to render an  
12 opinion to the court on whether or not he was  
13 competent to stand trial, which just means can he  
14 understand what's going on in court, can he  
15 understand what the judge does, what all of the  
16 various court officers does and can he help his  
17 attorney.

18 The second reason I saw him was to evaluate --  
19 the second and third reasons had to do with his  
20 mental state at the time of this offense and was he  
21 suffering from a mental illness to an extent that he  
22 couldn't distinguish right from wrong or he couldn't  
23 conform his conduct to the requirements of the law.

24 On all of those three issues, it was my opinion  
25 that, yes, Mr. Finklea was competent to stand trial.

1 He was not mentally ill to an extent that he would  
2 have been unable to distinguish right from wrong.  
3 And he was not mentally ill to an extent that he  
4 would have lacked the ability to conform his  
5 conduct.

6 The other part is I have to render any  
7 diagnostic impression of Mr. Finklea. And it was my  
8 opinion that Mr. Finklea clearly suffered from a  
9 major depressive disorder single episode that  
10 appeared by the time I saw him to be in full  
11 remission with treatment that he was receiving.

12 Q And what other significant findings did you  
13 find, in particular on axis three?

14 A Axis three is where we diagnose medical  
15 conditions. He certainly had a history of asthma.  
16 He's had a right knee injury, a meniscus injury. He  
17 had a history of something called pyogenic  
18 granuloma, which is just a fancy term for sort of  
19 like a skin abscessed. And then he had evidence of  
20 a hypoxic brain injury with residual symptoms from  
21 that and that had to deal with a suicide attempt  
22 where he attempted to suicide via hanging shortly  
23 after his arrest and was taken to Lexington Medical  
24 Center where he was in a coma for some period of  
25 time and had all the signs and symptoms in the

1 hospital of having a significant brain injury.

2 Q And did you find any evidence that Mr. Finklea  
3 was making up his amnesia?

4 A No. There was nothing in my interviews with  
5 him to suggest that he was faking his memory loss.  
6 I had him evaluated as part of my evaluation by a  
7 board certified neurologist who also works with us.  
8 And I have spoken with a second neurologist who  
9 evaluated him, I believe with the defense team. And  
10 both of those neurologists said that his period of  
11 pattern of memory loss is very consistent with this  
12 type of brain injury.

13 Q And do you recall what that period of memory  
14 loss, how far --

15 A To my recollection, it was some time mid-July  
16 to being in jail.

17 Q So that would be 2003?

18 A I'm sorry. Yes, around the time of the  
19 offense. The suicide attempt was in 2003.

20 MS. KIMBROUGH: I believe that's all the  
21 questions I have. Please answer any questions the  
22 Solicitor may have.

23 CROSS-EXAMINATION

24 BY MR. HUBBARD:

25 Q Doctor Frierson, how are you doing?

1       A     Fine.

2       Q     Originally, you said you were ordered by the  
3       court to do a series of tests to determine, first of  
4       all, whether Mr. Finklea was competent to even be  
5       here today?

6       A     Yes.

7       Q     And, unfortunately, that's the only report I've  
8       got, but in talking to him, you put some quotes in  
9       here where he spoke and he seems to speak very  
10      clearly, does he not?

11      A     Yes. He was able to answer all of my questions  
12      in a rational manner.

13      Q     In fact, when you asked him does he know why  
14      he's here in front of you, you've got in your report  
15      that he responded to you, You're here to see where I  
16      stand from a mental standpoint in assisting my  
17      attorney to proceed to trial?

18      A     Yes.

19      Q     And you've had a lot of clients or a lot of  
20      people that you've had to talk to that could never  
21      make a sentence like that?

22      A     Correct. He is not an unintelligent man.

23      Q     And when you concluded he was competent, one of  
24      the things you wanted to know is does he know who  
25      the prosecutor is, who his defense lawyer is, the

1 roles of the people in court, correct?

2 A Yes.

3 Q And he stated, The job of his attorneys is to,  
4 quote, present evidence for the defense to show a  
5 reasonable doubt that the client committed the  
6 crime, unquote?

7 A If I quoted it, that's what he said.

8 Q So he's talking about client as opposed to show  
9 a reasonable doubt that I committed the crime, it's  
10 client?

11 A Yes.

12 Q Mr. Finklea was able to define the role of the  
13 Solicitor as to, quote, to present evidence that I  
14 did commit the crime I'm charged with, unquote,  
15 correct?

16 A Yes.

17 Q He states the judge is a, quote, a mediator who  
18 makes sure that everybody plays fair, unquote?

19 A Yes.

20 Q Pretty bright guy?

21 A Bright's in the eye of the beholder, but, yes,  
22 compared to the people that I normally see charged  
23 with criminal offenses, he's brighter than the  
24 average.

25 Q And your conclusion was Mr. Finklea's clearly



1 competent?

2 A Yes.

3 Q He knows what's going on today?

4 A Yes.

5 Q And you talked about his mental state at the  
6 time, that was one of the other things you had to  
7 determine whether he, and I'll use a layman's term,  
8 whether he was insane at the time he committed the  
9 crime?

10 A Yes.

11 Q You determined that at the time he committed  
12 this crime, he knew right from wrong?

13 A Yes.

14 Q If he didn't, he wouldn't be here, right?

15 A Oh, he might still be here on trial for this.

16 Q You can't prosecute somebody who doesn't even  
17 know if something's right or wrong, correct? You've  
18 been exposed to the legal system enough to know --

19 A I've been to many cases where people have been  
20 prosecuted who I thought didn't know right from  
21 wrong and it was a contested case of insanity.

22 Q This isn't one of them?

23 A No.

24 Q He clearly knows right from wrong?

25 A It was my opinion that there was evidence

1 around the time of the offense that whoever  
2 committed the offense, because of actions of  
3 concealing evidence, disposing of evidence, those  
4 sorts of things, would have been able to know that  
5 what they were doing was wrong.

6 Q Right. And then you had to go a step further  
7 to say, all right, if he's got some type of mental  
8 disorder or some kind of problem, did that problem,  
9 even though he might know right from wrong, did that  
10 problem prevent him from obeying the law, layman's  
11 terms?

12 A From conforming, right, from conforming to the  
13 requirements of the law. And I found no evidence of  
14 a mental illness that predates the offense.

15 Q Whatever problems he had, they're not  
16 responsible for what he chose to do August 2nd,  
17 2003?

18 A No, to my knowledge. I did not find evidence  
19 of a mental illness. Now, does the remote  
20 possibility exist that Mr. Finklea did have symptoms  
21 of a mental illness right before the offense and  
22 could not report them to me because he doesn't  
23 remember having them because of his memory loss?  
24 You know, that's always a remote possibility, but I  
25 didn't -- from the collateral information I had on

1 Mr. Finklea, I did not have any sufficient evidence  
2 to suggest to me from anybody that he was mentally  
3 ill before the offense.

4 Q When we talk about his memory loss, I think I  
5 missed your second part of your statement, you said  
6 from mid-July to some time --

7 A It was after he got out of the hospital and was  
8 back in the jail.

9 Q So what's that like August the 12th, some time  
10 like that?

11 A Yes.

12 Q And you're not saying that from mid-July to  
13 August 12th, it's just a blank slate, he can never  
14 remember what happened?

15 A I'm saying that he did not report memories to  
16 me from that time period.

17 Q Correct. He would have to tell you, I remember  
18 something that happened during that time?

19 A Yes.

20 Q And it just so happens the time period that he  
21 didn't report remembering anything would include  
22 that time period when he, according to all that  
23 material that was given to you, when he went to  
24 Detroit to get a pistol?

25 A Yes.

1 Q And when he went to K-Mart and bought a gas can  
2 and then bought gas?

3 A Everything that happened from mid-July to after  
4 his suicide attempt is --

5 Q All the planning?

6 A He does not recall that period of time.

7 Q Not only the murder, but the planning to commit  
8 the murder, he doesn't remember?

9 A Correct.

10 Q And one way to help somebody remember, because  
11 I believe in the past you've said memory is  
12 contextual, sometimes you can't remember something,  
13 but if you put it in context, all of a sudden a  
14 light goes off. You might see a face you don't  
15 recognize, but all of a sudden they're in that  
16 certain context, maybe in a mall or in a store and  
17 you're like, I know where I've seen that person.

18 A Right.

19 Q So the important thing to do is to pour all of  
20 the information you can before this person to see if  
21 it rings a bell, if anything jars the memory?

22 A It might be -- that would depend on the  
23 situation of the person. I know in this case we did  
24 not present evidence to the defendant during the  
25 course of my evaluation because there was concern

1 that you could implant false memories which might be  
2 damaging to his defense. If it was someone not  
3 involved in the legal proceeding, you might try to  
4 give clues and see if you could stimulate memory.

5 Q So you didn't sit down and show him the video?

6 A No.

7 Q You didn't go through all of that information  
8 you said that you looked at beforehand, you didn't  
9 go through that stuff with him and say, do you  
10 remember going to Detroit?

11 A No.

12 Q Remember buying gas, remember renting a car?

13 A I did not.

14 Q And the most serious medical condition you  
15 mentioned was this anoxic brain injury?

16 A Yes.

17 Q From the hanging. And you say that's what  
18 caused this amnesia?

19 A I'm saying that it is consistent with the  
20 injury that his brain suffered. We know that it  
21 suffered both from an imaging done at the Lexington  
22 Medical Center, his dilated and fixed pupils, the  
23 neurologist writing in his chart that it was very  
24 unlikely that he would survive. In fact, right  
25 after this happened, the majority of his medical

1 team did not think Mr. Finklea would survive.

2 Q But the furthest you can branch out there or  
3 step out on that limb is to say, symptoms as he  
4 reports them plus the medical information you had,  
5 it's consistent with?

6 A With what we know happens to people who have  
7 these types of brain injuries, they commonly are  
8 associated with a retrograde amnesia, a period of  
9 memory loss for a time just preceding the time that  
10 you have the brain injury. That's what happens when  
11 you have an anoxic brain injury.

12 Q And, of course, from all those notes and all  
13 the material given to you, you know this happened  
14 August 8th, 2003, was when he was found hanging in a  
15 cell in Lexington County's Detention Center?

16 A Yes.

17 Q Okay. Well, I guess you probably have all of  
18 your notes there and police report where they talk  
19 about talking to Mr. Finklea the day before when  
20 he's in Alabama?

21 A Yes.

22 Q And when they do confront him with the  
23 evidence, that credit card, with a statement from  
24 the co-defendant and with a video what's going on,  
25 and his response is, I don't know what you're

1 talking about, three times. And then his response  
2 is, If that's me, I don't remember, the day before  
3 he hanged himself.

4 A Uh-huh.

5 Q So we know or can we say that this brain injury  
6 didn't cause him to have that memory failure the day  
7 before?

8 A Sure. He was either being self-protective,  
9 which many criminal defendants do to try to protect  
10 themselves legally; or the other possibilities would  
11 be that he was intoxicated with alcohol or drugs at  
12 the time of the offense and for that reason, doesn't  
13 remember; or for some reason, his mind blocked it  
14 out because the act of killing somebody is a  
15 traumatic thing. Just like people who go to war,  
16 fight traumatic battles on the battlefields  
17 sometimes will say, I don't remember what happened  
18 out there. Your mind defensively blocks it out.  
19 But I would say in this situation, most commonly  
20 what I've encountered is people wanting to try to  
21 avoid facing the music.

22 Q Okay. So that's probably the most likely in  
23 this situation?

24 A In my experience.

25 Q And as far as his brain injury, the failure to

1 remember things from that incident on August 8th,  
2 none of that, none of that has anything to do with  
3 his decision to commit the brutal murder on August  
4 the 2nd, 2003?

5 A No. The brain injury just causes him not to  
6 perhaps remember it.

7 Q But it's not --

8 A Obviously, the brain injury could not have  
9 affected him before it happened.

10 MR. HUBBARD: Correct. Thank you, Doctor.

11 THE COURT: Redirect?

12 MS. KIMBROUGH: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. KIMBROUGH:

15 Q Doctor Frierson, when you were going through  
16 your list of documents, obviously you reviewed a  
17 fairly large stack, you mentioned that you reviewed  
18 rap sheets for or criminal histories on both  
19 Mr. Finklea and his co-defendant. And I just wanted  
20 to bring out the fact you did learn that Ron had  
21 absolutely no criminal record?

22 A Yes, that his criminal record was clean.

23 Q I just wanted to clarify that. And insofar as  
24 the hypoxia leading to amnesia, is there ever any  
25 100 percent definitive test to show that a



1 particular injury caused amnesia? Is that ever a  
2 hundred percent possible to show or do you have to  
3 rely on what's consistent?

4 A There's no test, unfortunately. It would be  
5 nice if we had a magic test. But we know that his  
6 brain injury was severe and we know that by the  
7 clinical signs and symptoms that he showed right  
8 after. His pupils were dilated and fixed. In other  
9 words, when you shine the light in them, they didn't  
10 constrict like everybody else's pupils would. We  
11 don't have any ability to control what our pupils  
12 do. We can't control our pupils. This is an  
13 automatic response the way our neurological system  
14 works.

15 So I know he had fixed, dilated pupils as  
16 reported in the medical records and that he was not  
17 responsive to even very painful stimuli that you do  
18 to try to get someone -- it measures the depth of  
19 the coma.

20 So in reviewing those medical records, it was  
21 clear that, at that time, his injury was so severe  
22 that several of the neurologists who saw him and the  
23 treating physician said, survivability is low, will  
24 be surprised if he survives this, or I can  
25 actually -- I was looking at this before I came

1 today. From the actual medical records, on  
2 admission, it says, His prognosis is extremely poor  
3 and I doubt the patient will survive.

4 MS. KIMBROUGH: Thank you.

5 MR. HUBBARD: No further questions.

6 THE COURT: Thank you, sir. You may step down.  
7 Next witness.

8 MS. KIMBROUGH: Your Honor, the defense calls  
9 James Aiken.

10 JAMES AIKEN,  
11 having been duly sworn, testified as follows:

12 THE CLERK: If you'll have a seat, stating your  
13 name, spelling your last for the record, please.

14 THE WITNESS: My name is James Evans Aiken.  
15 And it's spelled A-I-K-E-N.

16 DIRECT EXAMINATION

17 BY MS. KIMBROUGH:

18 Q Good afternoon, Mr. Aiken. How are you?

19 A Good afternoon. I'm fine. Thank you.

20 Q Doctor Aiken, where do you live?

21 A I'm not a doctor.

22 Q I'm sorry. Mr. Aiken, where do you live?

23 A Yes. I live in Brevard, North Carolina.

24 Q And what do you do for living?

25 A I am President of James E. Aiken and

1 Associates, Inc.

2 Q And what is James E. Aiken and Associates,  
3 Inc.?

4 A It is a prison consulting concern.

5 Q And can you describe your educational  
6 background?

7 A Yes. I was educated in Kershaw County in South  
8 Carolina. I graduated from Camden High School.  
9 From there, I attended Benedict College in Columbia,  
10 South Carolina and received a bachelors degree. I  
11 went to work in the department of corrections at  
12 that time. And after extended period, I attended  
13 the University of South Carolina to which I received  
14 a Masters degree in criminal justice.

15 Q Thank you. And can you describe for the jury  
16 your professional experiences?

17 A Yes. I started working for the South Carolina  
18 Department of Corrections in 1971 in the capacity of  
19 a social worker or drug counselor in a medium  
20 security prison in Manning Correctional Institution,  
21 which was located in Columbia, South Carolina. I  
22 was promoted to the rank of administrative assistant  
23 to the warden of that same prison.

24 Back in those days, the duties of an  
25 administrative assistant was you got to do

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1 everything no one else wanted to do. You worked the  
2 gun towers. You broke up fights. You worked on  
3 weekends on security call. You hunt for contraband.  
4 You watch the inmates in very destructive behavior  
5 patterns. You were the disciplinarian. You looked  
6 at policy. You helped count -- help feed cell  
7 blocks. And then after that, you wrote letters for  
8 the warden.

9 And then from there, I was promoted to the rank  
10 of deputy warden at that same facility. In that  
11 capacity, I was the second in charge in command of  
12 that prison. I was in charge of policy development  
13 and interpretation, contraband control activities,  
14 emergency response, escape apprehension and  
15 prevention, as well as the monitoring of destructive  
16 groups of inmate populations collectively and  
17 singularly within the correctional environment.

18 Also, I was the chief disciplinarian for that  
19 particular facility. Also, I was involved with  
20 everything that would go on in a prison setting. In  
21 teaching people how to manage their facilities  
22 better, I underwent, of course, a lot of training,  
23 as well as to getting a lot of hands on experience.

24 From there, I was promoted to the rank of  
25 deputy warden at the state penitentiary, commonly

1        called CCI, the Central Correctional Institution  
2        located here in Columbia. I was appointed there as  
3        a deputy warden, one of several deputy wardens of  
4        that facility.

5                And CCI, at that particular time, it's now been  
6        torn down, was the largest institution within the  
7        South Carolina Department of Corrections. It housed  
8        the most disruptive, predator, dangerous, violent  
9        people in the criminal justice system of South  
10       Carolina. In fact, we had a statute, and I  
11       understand, in fact, the statute is still there,  
12       where we even had to take inmates in pre-adjudicated  
13       pretrial in which the counties could not adequately  
14       manage these individuals and especially their  
15       behavior patterns.

16               We managed gangs. We managed sexual predators.  
17       We handled individuals that were mentally  
18       disordered. We managed death row population, as  
19       well as those individuals that have done some very  
20       bad things in the community and which they adjusted  
21       to the prison setting, but they still stayed there  
22       because of the type of behavior they demonstrated  
23       while in the community.

24               From there, I was promoted to the rank of  
25       warden at the women's prison in South Carolina. At

1       that particular time, I began my so-called niche in  
2       the prison business, that is, looking at  
3       institutions and understanding how to better manage  
4       and control and ensure public protection of these  
5       facilities, to look at policies, rules, regulations,  
6       protocols, equipment in relationship to better  
7       managing that inmate population in a more cost  
8       effective and productive manner.

9               I might digress for a little bit, all of those  
10       positions that I shared with you and the rest of the  
11       positions that I've held working in the prison  
12       systems involved classification of inmates, that is  
13       reviewing behavior patterns, documents in  
14       relationship to their criminal activity, social  
15       history, psychological history, et cetera and making  
16       a decision on how to manage that particular  
17       individual for short term, as well as extended stays  
18       within prison systems.

19              And looking at those systems, we began to  
20       change them around to make them more productive and  
21       accountable as it relates to safety and security of  
22       community of the inmates, as well as staff.

23              From there, I was promoted to the rank of  
24       warden of CCI, the institution that I just got  
25       finished describing to you, in which we had, of

1 course, maximum security inmate population, as well  
2 as that population that was being condemned to  
3 death. In the capacity of warden of that particular  
4 facility, I had the responsibility to carry out  
5 death sentences. I put two inmates to death  
6 personally by execution while holding that position.

7 From there, I was promoted to the rank of  
8 deputy regional administrator over 16 prisons in  
9 South Carolina. And then from there, I was promoted  
10 to the position of commissioner of correction for  
11 the State of Indiana where I was over adult,  
12 juveniles, as well as every aspect of the criminal  
13 justice prison system. And I was a part of the  
14 governor's cabinet and the chief policy maker.

15 And then from there, I was appointed director  
16 of corrections for the bureau of corrections for the  
17 United States Virgin Islands. I had jail under me.  
18 I had prisons of juvenile corrections for a small  
19 time. And the reason why I went to that particular  
20 facility or that agency is to give me exposure to  
21 international criminal activities with drug cartels  
22 and the beginning of drug gangs and terrorists  
23 organizations and things of that nature.

24 And then from there, I took over, I created  
25 James E. Aiken and Associates. Basically, really, I

1 started consultancy in 1986 when I was a warden at  
2 the penitentiary. I was asked by the justice  
3 department to provide expert technical assistance to  
4 jurisdictions throughout the United States involving  
5 with classification, the proper placement and  
6 security of inmate population, gang management,  
7 managing the hard to manage violent inmate, also  
8 teaching wardens how to be wardens, as well as  
9 teaching new wardens or existing wardens better  
10 techniques in management and control of inmate  
11 behaviors, as well as teaching wardens how to be  
12 wardens of super maximum security prisons.

13 This was conducted at a place called ADEX in  
14 Florence, Colorado and it's operated by the Federal  
15 Bureau of Prisons. It's the most secure prison in  
16 this world. It houses terrorists, all of the people  
17 that you have heard about in the newspapers, those  
18 people are basically housed in this super secure,  
19 highly, highly technical institution.

20 And then, also, I was involved with the  
21 leadership development, as well as managing gangs,  
22 critical events, evaluating the productivity of  
23 prisons, et cetera. And I have provided these  
24 services to just about every jurisdiction in the  
25 United States or their employees, as well as through



1 countries of Canada, Costa Rica, as well as the  
2 Dutch Kingdom.

3 Finally, James E. Aiken and Associates, I  
4 provide expert testimony in civil and criminal  
5 proceedings. I also serve -- I was appointed by  
6 Congress the leadership of the House, the leadership  
7 of the Senate, as well as the President of the  
8 United States.

9 President Bush signed into law the Prison Rate  
10 Elimination Act of 2003 which requires that federal,  
11 state, local facilities must implement standards to  
12 eliminate prison predator activity within  
13 confinement facilities. This law, as I understand  
14 it, was passed unanimously by the House and Senate  
15 and signed by President Bush and with that, was a  
16 nine member commission. And I'm a member of that  
17 nine member commission and we're coming up with  
18 standards that all agencies under any government  
19 jurisdiction must comply with and failure to do such  
20 can cause them to lose their federal funding.  
21 Additionally, we are granted subpoena power to  
22 gather any information we need in order to present  
23 these standards.

24 Q Thank you. That was quite a mouthful. So  
25 you've been in the prison industry for 36 years?

1. A Well, since 1971.

2. Q And you said you've testified in court as an  
3. expert?

4. A Yes, ma'am.

5. Q And you, I gather, have been qualified as an  
6. expert in the field of prison adaptability?

7. A That's correct, as well as some others, yes.

8. MS. KIMBROUGH: Your Honor, at this time, we  
9. would offer Mr. Aiken as an expert in the field of  
10. prison adaptability.

11. MR. MYERS: No objection.

12. THE COURT: He is an expert in the field of  
13. prison adaptability.

14. THE WITNESS: Thank you, Mr. Myers. And thank  
15. you, Your Honor.

16. BY MS. KIMBROUGH:

17. Q Mr. Aiken, have you had an opportunity to  
18. review documentation about Ron Finklea?

19. A Yes.

20. Q Specifically, which documents, which records  
21. have you reviewed that are relevant to Ron?

22. A I've had opportunity to review the proceeding  
23. -- or the information related to this particular  
24. proceeding. I've also had an opportunity to look at  
25. his military record, his medical record, his

1 incarceration records in relation as well as partial  
2 records from his co-defendant.

3 Q Okay. And I'm going to take a step back for a  
4 moment. When you're assessing a particular person  
5 for prison adaptability, what factors are you  
6 looking for?

7 A Well, the factors that I'm looking for is what  
8 type of behavior patterns, and I'm talking a  
9 layman's language now, what type of behavior  
10 patterns is this individual demonstrating prior to  
11 the criminal offense, after the criminal offense,  
12 especially during the incarceration period, what are  
13 those behaviors that are taking place with this  
14 individual that will cause me concern or no  
15 observation in relationship to the ability of the  
16 prison system to manage that behavior, as well as to  
17 look at the motivations and the circumstances around  
18 the certain behavior.

19 Q Okay. And with respect to Ron, what did you  
20 find about him that you consider significant?

21 A Well, it's not so much what's in his record,  
22 but what's not in his record. I don't see him  
23 involved in the military with systematic or random  
24 violence against people, insubordination to  
25 superiors. I don't see information in relationship

1 to him using lethal weapons against other people,  
2 being involved in disruptive activity while in a  
3 very regimented environment such as the military.  
4 One notation I saw in there is his patriotism and he  
5 was noted for that.

6 Now, I'm looking at this as a prison warden.  
7 I'm looking at him in a regimented society, being  
8 told what to do and how to do and he adjusts very  
9 well not for the first day, but all the way through  
10 his military career basically and that is of  
11 noteworthy. And I'm also seeing that -- or don't  
12 see should I say while he was in the military or in  
13 the society, he was involved with predator gangs.  
14 He was not involved with drug cartels. He was not  
15 involved with international movement and trafficking  
16 of drugs.

17 And on top of that, I don't see a criminal  
18 record. I don't see a criminal record other than  
19 this current offense, obviously.

20 And, finally, I look at his institutional  
21 adjustment. He's incarcerated. He's watched 24  
22 hours a day, seven days a week, 365 days a year for  
23 four years.

24 Q And what did you find?

25 A Well, what I found was he had well-adjusted to

1 that environment, that confinement environment. And  
2 let me qualify that. Well-adjusted means to mean  
3 that he's not stabbing staff. He's not in  
4 contraband weapons. He's not getting his gang  
5 members to shoot him out of the jail so he can  
6 escape. He's not involved with criminal sexual  
7 predator activity. He's not running things, if you  
8 know what I'm saying. He's not in a situation in  
9 which he has exerted control and power over other  
10 inmates in order to cause disruptive disruption,  
11 should I say, of operations within the facility.

12 I don't see staff injured. I don't see inmates  
13 injured. I see, the only concern that I would have  
14 for him is his propensity to harm himself when in  
15 crisis and some inmates do that. They tend to take  
16 their own lives versus attacking other people and  
17 causing the type of criminal activity and violence  
18 that you often probably hear about in a prison  
19 setting.

20 Q So, in your opinion, would Ron present a  
21 physical or other type of threat to other inmates?

22 A He's at the lowest ebb for that. And one of  
23 the other variables I look at is his age. He's  
24 beyond 30 years old. And being beyond 30 years old  
25 in a prison context, and I've had to classify

1 thousands and thousands of inmates as well as  
2 develop and implement and validate classification  
3 systems throughout the nation, he's at the lowest  
4 ebb, he's at the lowest probability.

5 Now, understanding that the motivation here,  
6 the reason that he will be going into a prison  
7 environment is not rehabilitation, it's  
8 incapacitation. So I don't care how good he is, I  
9 really don't care how bad he is, because we're going  
10 to control what we need to control.

11 The understanding of incapacitation is that he  
12 will never return to society. We are not preparing  
13 him for another chance to be around law abiding  
14 citizens. And if I have to kill him to attain that,  
15 I will, and that's what these systems, and, yes,  
16 they make mistakes, but that's what these systems  
17 are designed for now with public protection.

18 Q Okay. But in the case of Ron, you're saying  
19 there is a continuum and he's on the lowest end?

20 A He's on the lowest end. The highest level of  
21 concern that I would have is him taking his life and  
22 maybe as a secondary thing, someone else attacking  
23 him because he has no affiliation with gangs or  
24 security threat groups. And often times predator  
25 inmate population will want you to be hooked up and

1 if you're not, quote unquote, hooked up, you'll  
2 become a victim. And he's getting to be an old man.  
3 Thirty years and more in a prison environment, you  
4 age very quickly.

5 Q So if anything, prison would be more of a  
6 threat to Ron than Ron would be to anyone in a  
7 prison?

8 A That's most appropriately said, and that he  
9 will stay there till he rots.

10 Q And you may have already said this, but when  
11 you reviewed all the records, did you see any  
12 incidents whatsoever, any disciplinaries with  
13 respect to Ron over the past four years?

14 A Yes. And I can rephrase it, I said what's not  
15 in his record. I saw no indication of him being  
16 disruptive, even disrespectful toward staff and  
17 that's highly unusual because you can't fake your  
18 behaviors.

19 MS. KIMBROUGH: Thank you so much, Mr. Aiken.  
20 Please answer any questions the Solicitor may have.

21 CROSS-EXAMINATION

22 BY MR. MYERS:

23 Q Mr. Aiken, how are you doing?

24 A Just fine, sir. How are you?

25 Q Good. Nice seeing you again.

1 A Pleasure's all mine, sir.

2 Q You said that two things that would be, is him  
3 committing suicide or other inmates attacking him;  
4 did I understand that correctly?

5 A That would be the higher concerns that I would  
6 have, yes, sir.

7 Q And you examined them for the last four years?

8 A Beg your pardon?

9 Q You examined the inmate records for the last  
10 four years?

11 A Yes, sir, I did.

12 Q How many times has he been attacked in the last  
13 four years?

14 A None.

15 Q Thank you. And you said that the system will  
16 control him?

17 A Yes, sir.

18 Q Because that's what they're designed to do?

19 A Yes, sir.

20 Q And I think you've said before, that's the job,  
21 they control inmates?

22 A They control inmates that are there for  
23 incapacitation and there are avenues for if they  
24 can't control them, to put them in places where they  
25 can be controlled.



1 Q They can control anybody coming in?

2 A Beg your pardon?

3 Q Anybody coming in, that's the system designed  
4 to control them. Whatever they have to do, I think,  
5 let me put it in your words, they'll do whatever  
6 they have to do to control an inmate?

7 A Basically for inmates that are in for clinical  
8 incapacitation, that is correct, sir.

9 Q And I forget, when did you retire from the  
10 South Carolina prison --

11 A I retired, you're asking a question, I'm kind  
12 of forgetful, back in 1987.

13 Q 1987, thank you, sir.

14 A You're quite welcome, sir.

15 THE COURT: Any redirect?

16 MS. KIMBROUGH: Just briefly.

17 REDIRECT EXAMINATION

18 BY MS. KIMBROUGH:

19 Q Mr. Aiken, is it true that there are some  
20 inmates who are, in fact, a threat to others?

21 MR. MYERS: Your Honor, we don't talk about  
22 other inmates now. We don't talk about other  
23 inmates, I think, under State versus Bowman, inside  
24 the prison walls. It's as to this defendant.

25 MS. KIMBROUGH: Your Honor, I believe the

1 Solicitor opened the door when he asked the  
2 question, so we can control anybody.

3 MR. MYERS: No, sir. I asked him about  
4 attacks, anybody attacked him since he's been in  
5 jail, that's the only thing I said about attacks.  
6 Has anybody attacked this man and he said, no.

7 THE COURT: And what's the question, Ms.  
8 Kimbrough?

9 MS. KIMBROUGH: Your Honor, my question was in  
10 response to the Solicitor's question as -- insofar  
11 as, well we can manage anybody, I'm asking if  
12 there's some types of inmates who, in fact, are not  
13 adaptable to prison or who are considered a  
14 tremendous risk.

15 MR. MYERS: See, we can't talk about other  
16 people, wish we could. The Supreme Court said we  
17 can't do that. So that was my objection.

18 THE COURT: Response?

19 MS. KIMBROUGH: Your Honor, I believe when the  
20 Solicitor opens the door by implying that anybody  
21 can be managed, that, in fact, I am allowed to ask  
22 that question.

23 THE COURT: All right. In relation to  
24 Mr. Finklea, Mr. Aiken.

25 THE WITNESS: Okay. Thank you, Your Honor.

1           Could you rephrase it or make sure that I  
2           answer correctly, ma'am? Repeat it, I'm sorry, not  
3           rephrase it.

4           BY MS. KIMBROUGH:

5           Q     Yes, sir. Let me put it this way, when you  
6           classify inmates, I gather you do so on a continuum?

7           A     That's correct, ma'am, yes.

8           Q     The easiest to most difficult?

9           A     Yes.

10          Q     So some people are going to fall on the most  
11          difficult and some are going to fall on the easy?

12          A     That's correct, ma'am.

13          Q     If easy's here and difficult is here, where is  
14          Ron Finklea?

15          A     He's a little on the outside of easy.

16          Q     And that's because of a potential for suicide?

17          A     Potential for suicide, as well as being at the  
18          lowest level of probability to cause direct  
19          disruptive behaviors within the period he's going to  
20          be incarcerated based on his previous incarceration  
21          record.

22          Q     Which is zero?

23          A     Which is zero.

24          MS. KIMBROUGH: Thank you.

25          THE COURT: Anything further?

1 MR. MYERS: No, sir.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Next witness.

5 MS. KIMBROUGH: Your Honor, may we have a brief  
6 three minute break?

7 THE COURT: A three minute break, yes, a three  
8 minute break. Please go to the jury room. Please  
9 do not discuss the case.

10 (The jury retires to the jury room.)

11 THE COURT: As I indicated, we're going to  
12 break early today. What's your plan?

13 MS. KIMBROUGH: Your Honor, we have one more  
14 expert witness. And I'm going to discuss with  
15 Mr. Finklea his right to testify. However, I  
16 believe at this point that he will make a final  
17 summation without actually testifying. Obviously,  
18 we'd need something on the record insofar as him  
19 understanding those rights and waiving them.

20 THE COURT: Your final witness is Ms.  
21 Schwartz-Watts?

22 MS. KIMBROUGH: Yes, sir, Doctor  
23 Schwartz-Watts.

24 THE COURT: Okay. We'll take, you said three  
25 minutes and we've used 30 seconds of that, two and a

1 half now.

2 (Brief Recess.)

3 **THE COURT:** Ms. Kimbrough.

4 **MS. KIMBROUGH:** Thank you, Your Honor. We've  
5 had a change of plans. We are not going to present  
6 anymore witnesses. And this is after consultation  
7 with Doctor Watts. We believe all of the  
8 information we need has been presented. And at this  
9 point, we would simply think that the only thing  
10 remaining would be to have a waiver of Mr. Finklea's  
11 right to testify.

12 **THE COURT:** All right. Mr. Finklea, we'll  
13 swear you once again. If you'll stand and raise  
14 your right hand, please.

15 **RON O. FINKLEA,**  
16 having been duly sworn, testified as follows:

17 **THE COURT:** Mr. Finklea, at this time, I'm  
18 going to explain to you certain of your rights. You  
19 may recall that I did the same thing last week  
20 during the guilt phase of this trial. If you do not  
21 understand anything that I say, please let me know  
22 and I'll be happy to explain it to you in more  
23 detail; do you understand?

24 **DEFENDANT FINKLEA:** Yes, sir.

25 **THE COURT:** We've now reached the stage of the

1 trial where you may present whatever mitigating  
2 evidence that you wish to present during this phase  
3 of the trial.

4 Now, you have the right to claim the  
5 protections given to you by the Fifth Amendment to  
6 the Constitution which states in part that no person  
7 can be compelled in any criminal case to be a  
8 witness against themselves, that means that you cannot  
9 be required to testify in this case. However, you  
10 do have the right to testify on your own behalf if  
11 you would like to, but no one can make you testify.

12 Now, this is a personal right and no one can  
13 waive this right except you; do you understand that?

14 **DEFENDANT FINKLEA:** Yes, sir.

15 **THE COURT:** Now, if you decide to testify, you  
16 will be subject to the same rules that govern other  
17 witnesses and you may be examined and cross-examined  
18 on any relevant issue in this case. And, of course,  
19 there's no -- as I understand it, you have no  
20 criminal record, so there will be no criminal record  
21 that the State could use to attack your credibility.  
22 Do you understand that?

23 **DEFENDANT FINKLEA:** Yes, sir.

24 **THE COURT:** Now, if you decide to testify, this  
25 decision on your part must be freely, voluntarily,

1 intelligently made with knowledge of the protections  
2 given to you by the Fifth Amendment, as well as the  
3 consequences of your decision to testify.

4 Now, if you decide not to testify, I will  
5 instruct the jurors that they cannot give the fact  
6 that you did not testify any consideration  
7 whatsoever and that there is to be absolutely no  
8 prejudice to you because you did not testify. It's  
9 left entirely up to you whether or not you testify.  
10 You may talk with your attorney, your attorneys,  
11 your family, your friends or anyone else. Do you  
12 understand that?

13 **DEFENDANT FINKLEA:** Yes, sir.

14 **THE COURT:** But in the -- but the final  
15 decision will be left entirely up to you whether or  
16 not you should testify. Do you understand  
17 everything that I've explained to you?

18 **DEFENDANT FINKLEA:** Yes, I do.

19 **THE COURT:** Do you have any questions about  
20 what I've explained to you?

21 **DEFENDANT FINKLEA:** No, sir.

22 **THE COURT:** Have you talked with your lawyer  
23 enough on this question about whether or not you  
24 should testify?

25 **DEFENDANT FINKLEA:** Yes, sir.

1           **THE COURT:** Do you want to talk with them  
2 anymore about this?

3           **DEFENDANT FINKLEA:** No, sir.

4           **THE COURT:** Do you want to talk to anyone else  
5 about it?

6           **DEFENDANT FINKLEA:** No, sir.

7           **THE COURT:** Do you want to testify?

8           **DEFENDANT FINKLEA:** No, sir.

9           **THE COURT:** Very good. You may be seated.

10           Since you have no additional witnesses, do you  
11 intend to rest at this time?

12           **MS. KIMBROUGH:** Yes, Your Honor.

13           **THE COURT:** And does the State intend to offer  
14 anything further?

15           **MR. MYERS:** No, sir.

16           **THE COURT:** All right. So we're going to come  
17 in and have you rest in the presence of the jury and  
18 then I'm going to let them go to come back at --  
19 have them come back at ten o'clock tomorrow morning  
20 and we will come back at 9:30 to be sure that we're  
21 ready for them at 10:00 for final arguments.  
22 Anything else?

23           **MR. MYERS:** Will you -- when will you advise  
24 the defendant about speaking to the jury? Will that  
25 be this afternoon or tomorrow morning?



1           **THE COURT:** We can do that right now as well.

2           Mr. Finklea, we discussed this last week as  
3 well as -- as you know, you have the right to make  
4 the final argument to the jury.

5           **DEFENDANT FINKLEA:** Yes, sir, I do.

6           **THE COURT:** And have you talked with your  
7 lawyers about that?

8           **DEFENDANT FINKLEA:** Yes, sir.

9           **THE COURT:** And do you intend to exercise that  
10 right?

11          **DEFENDANT FINKLEA:** Yes, sir.

12          **THE COURT:** Anything further, any other  
13 questions on that issue?

14          **MR. MYERS:** None from the State.

15          **MS. KIMBROUGH:** Your Honor, the only thing I  
16 would say is, at this point, that is Mr. Finklea's  
17 intention, but, certainly, he obviously reserves the  
18 right to change it should he choose to do so.

19          **THE COURT:** He has the right to make the final  
20 argument and I will recognize him to make that  
21 argument after you've given your final summation or  
22 Mr. Soltis has given his.

23          **MS. KIMBROUGH:** Thank you.

24          **THE COURT:** All right. Well, let's bring them  
25 in.

1 (The jury returns to the courtroom.)

2 THE COURT: The jury's back. Ms. Kimbrough.

3 MS. KIMBROUGH: Thank you, Your Honor. At this  
4 time, the defense would rest.

5 THE COURT: All right. Ladies and gentlemen,  
6 you have now heard the defense's presentation.

7 Anything further by the State?

8 MR. MYERS: No, sir.

9 THE COURT: Ladies and gentlemen, you now have  
10 heard all of the evidence in this phase of  
11 proceedings. And we're going to adjourn early today  
12 or at this time. You may consider it early or not  
13 early. But we're going to adjourn at this time and  
14 have you come back at 10:00 tomorrow morning, at  
15 which time you will hear the final summations, the  
16 final instructions and then the case will be yours  
17 for your deliberations.

18 Please remember not to talk about the case or  
19 be exposed to anything concerning it. And I hope  
20 that you will have a good evening and I need you  
21 back at 10:00 a.m. tomorrow morning.

22 (The jury was excused for the day.)

23 THE COURT: Now, requested charges. First, let  
24 me ask the defense what mitigating circumstances, if  
25 any, are you seeking to have me charge the jury,

1 statutory or nonstatutory mitigating circumstances?

2 MS. KIMBROUGH: Certainly insofar as the  
3 statutory mitigation is concerned, I think we're  
4 clearly entitled to the no significant history of  
5 prior violent crime -- excuse me -- prior violent  
6 crimes.

7 Now, insofar as other statutory mitigators are  
8 concerned, we certainly didn't raise it, but I  
9 believe the prosecution, some of their  
10 cross-examination certainly implied that there was  
11 an issue as to what his mentality was at the time of  
12 his offense; however, I don't believe there's any  
13 evidence to support that one. So insofar as the  
14 statutory mitigators are concerned, it would just be  
15 the no prior history.

16 THE COURT: What says the State about all of  
17 that?

18 MR. MYERS: We do not object to any statutory  
19 mitigating circumstance that the defendant requests.

20 THE COURT: And the only one that you request  
21 is no history of criminal activity or criminal  
22 convictions?

23 MS. KIMBROUGH: Well, Your Honor, I would like  
24 a little bit of time to think about it. With Doctor  
25 Cherry's testimony, I'm now somewhat concerned that

1 it would be ineffective to not request some of the  
2 more mental health statutory mitigators like the age  
3 or mentality of the defendant at the time of the  
4 crime. I believe her testimony brought forth a  
5 diagnosis of posttraumatic stress disorder.

6 THE COURT: The age or mentality of the  
7 defendant at the time of the crime --

8 MS. KIMBROUGH: Yes, sir.

9 THE COURT: -- as a statutory mitigating  
10 circumstance?

11 MS. KIMBROUGH: Yes, Your Honor.

12 THE COURT: The State has no objection?

13 MR. MYERS: No, sir.

14 THE COURT: All right. We'll charge them that  
15 as well.

16 MS. KIMBROUGH: Thank you. All the other  
17 mitigating circumstances we believe are nonstatutory  
18 in nature, one would obviously be his honorable  
19 military service and we would certainly request  
20 that. Obviously, we can argue it even if you don't.

21 THE COURT: Do you want -- as a nonstatutory  
22 mitigating circumstance, you want me to tell the  
23 jury what?

24 MS. KIMBROUGH: That he -- that evidence has  
25 been presented for them to consider insofar as

1           honorably serving in the U.S. Army.

2           **THE COURT:** Anything else?

3           **MS. KIMBROUGH:** No, Your Honor. I believe the  
4           rest of it can be covered in argument.

5           **THE COURT:** And what says the State concerning  
6           that?

7           **MR. MYERS:** Your Honor, there's case law about  
8           nonstatutory aggravating circumstances as you well  
9           now.

10          **THE COURT:** Nonstatutory mitigating  
11          circumstances?

12          **MR. MYERS:** I'm sorry. Mitigating, yes, sir.  
13          And there were several leading cases that we would  
14          submit to Your Honor that rather than charging the  
15          nonstatutory ones, since they aren't listed, is that  
16          you charge the jury that they can consider any other  
17          mitigating circumstances that is so shown by the  
18          evidence rather than listing them out.

19                 State versus Linder is kind of -- it's the  
20          leading case on it, 278 S.E.2d 335. Linder  
21          challenged the adequacy of the charge in written  
22          instructions on mitigating circumstances and talked  
23          about that they should be listed. And I think the  
24          court basically held that the language of the charge  
25          that the jury must be told that they may consider

1 any mitigating circumstances supported by the  
2 evidence that this does not require that they be  
3 given to the jury in writing or require it as to the  
4 statutory mitigating circumstances. I think that  
5 was also an issue in State versus Severance, 427  
6 S.E.2d 175.

7 But in any event, Your Honor, however you want  
8 to handle that, but I think if you -- my problem is  
9 this, if you list out nonstatutory mitigating  
10 circumstances and then later on somebody says, well  
11 there should have been some more listed out, it  
12 wouldn't be an all inclusive list. Whereas, if you  
13 give the charge as was given in Linder that they are  
14 to consider any other mitigating circumstances,  
15 anything beneficial to the defendant supported by  
16 evidence, that would cover everything, if I'm making  
17 myself clear.

18 **THE COURT:** All right. What do you say about  
19 that, Ms. Kimbrough?

20 **MS. KIMBROUGH:** Well, I certainly don't think  
21 that it's error for Your Honor to charge certain  
22 nonstatutory mitigation. And in that regard, we'd  
23 not only request the military history, but also  
24 adaptability to prison life. Obviously, it's up to  
25 Your Honor, but --

1           **THE COURT:** I guess that's sort of his  
2           objection, by tomorrow you may have some more.  
3           You're adding to the list.

4           **MS. KIMBROUGH:** I believe that's the only one I  
5           left out.

6           **MR. MYERS:** That's the problem that I foresee  
7           maybe in the future, Your Honor. In State versus  
8           Simmons, 1993 case that I cited to you, 427 S.E.2d  
9           175, the defendant argued that the trial judge  
10          errored in denying his request that a detailed list  
11          of 27 nonstatutory mitigating circumstances be  
12          submitted to the jury. The court says the judge did  
13          not error in refusing to do that. This procedure is  
14          not required so long as the jury is instructed, as  
15          it was there, to consider any other nonstatutory  
16          mitigating circumstance. And they cited the Linder  
17          case.

18          So if that instruction is given that they are  
19          to consider any other nonstatutory mitigating  
20          circumstance supported by the evidence, that covers  
21          everything and there wouldn't be a danger of later  
22          on, well there should have been another two or three  
23          to the list.

24          **MS. KIMBROUGH:** Your Honor, we're all familiar  
25          with State versus Simmons and the fact that it held

1 it wasn't error, but there's also no error in  
2 providing a couple of nonstatutory mitigators by  
3 topic, military service, adaptability to prison life  
4 and then the catchall, for any reason or no reason  
5 at all. So those are the two that we see are  
6 suggested by the evidence, supported by the evidence  
7 and everything else between now and tomorrow morning  
8 would simply be a matter of argument.

9 **THE COURT:** Well, I'll look at the -- review  
10 everything concerning that particular issue  
11 overnight and we're going to come back at 9:30, the  
12 jury's coming back at 10:00, so that will be a loose  
13 end that we will clear up before argument.

14 Anything else before we shut down for the day?

15 **MR. MYERS:** Not from the State, Your Honor.

16 **MS. KIMBROUGH:** None from the defense.

17 **THE COURT:** All right. We're shut down for the  
18 day until 9:30 tomorrow morning.

19 (Whereupon, the proceedings were concluded  
20 for September 5, 2007.)

21 (The following proceedings were held on  
22 September 6, 2007.)

23 **THE COURT:** Concerning the issues of  
24 nonstatutory mitigating circumstances, anything  
25 further on that?



1 MS. KIMBROUGH: None, Your Honor.

2 MR. MYERS: No, sir.

3 THE COURT: And the two that you want, tell me  
4 again what they are?

5 MS. KIMBROUGH: Your Honor, adaptability to  
6 prison life and honorable service in the United  
7 States military.

8 THE COURT: I'm going to charge those two and  
9 also tell the jury any other nonstatutory mitigating  
10 circumstances that they may find to exist. Are you  
11 ready for the jury?

12 MR. MYERS: Yes, sir.

13 MS. KIMBROUGH: Your Honor, I apologize, I just  
14 have one brief issue that I believe I need to renew  
15 our objection to the use of this mannequin form with  
16 the victim's clothes. I'm pretty certain it will be  
17 the -- part of the focus of the closing argument.  
18 We do believe it's prejudicial. So I just renew our  
19 objection to that exhibit.

20 THE COURT: Okay. Very well.

21 Concerning in the commission of the armed  
22 robbery issue and language, the way the charges are  
23 prepared, it says that the defendant -- a statutory  
24 aggravating circumstance is that the murder occurred  
25 in the commission of an armed robbery. And to prove

1       that, prove the State -- the State must prove that  
2       he took away from or attempted to take away from the  
3       person property. Any question concerning that being  
4       explained in that way?

5               **MS. KIMBROUGH:** Your Honor, the only request we  
6       would have is that Your Honor charge the language  
7       from the person or in the immediate presence, that  
8       language that was cited in Dukes.

9               **THE COURT:** Cited in Dukes?

10              **MS. KIMBROUGH:** Yes, Your Honor, referring back  
11       to our discussion yesterday --

12              **THE COURT:** Hold on just a moment, please.

13              (Pause.)

14              **THE COURT:** All right. Yes, ma'am.

15              **MS. KIMBROUGH:** Thank you, Your Honor. I was  
16       just referring back to Dukes versus State, which is  
17       248 S.C. 227. And it explains robbery or defines  
18       robbery as a larceny from the person or in the  
19       immediate presence of another. And so having not  
20       seen Your Honor's charge, I would just respectfully  
21       request that the immediate presence language be  
22       included.

23              **THE COURT:** All right. The language is that he  
24       took or attempted to take personal property from the  
25       person or presence of another person. You want me.

1 to add the word immediate presence?

2 MS. KIMBROUGH: Yes, Your Honor.

3 THE COURT: Or presence versus immediate  
4 presence. Is there a difference? When you say the  
5 presence of another person, does it clarify it  
6 anymore to add another word, immediate presence, or  
7 can it be a presence and immediate presence, or are  
8 they the same?

9 MS. KIMBROUGH: I believe it's a very small  
10 distinction and perhaps I'm splitting hairs.  
11 Obviously, you know, our argument would be that it  
12 was neither in the presence nor the immediate  
13 presence, but certainly...

14 THE COURT: Are you satisfied with took from  
15 the -- attempted to take from the presence of or do  
16 you want me to add the word immediate presence of?

17 MS. KIMBROUGH: We would appreciate the  
18 additional language, Your Honor.

19 THE COURT: Anything from the State on that?

20 MR. MYERS: No, sir.

21 THE COURT: Okay. We'll add immediate presence  
22 of.

23 MS. KIMBROUGH: Thank you.

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

1 (The jury enters the courtroom at 10:23  
2 a.m.)

3 **THE COURT:** Good morning. Welcome back, ladies  
4 and gentlemen. Has anyone contacted you, attempted  
5 to contact you or have you otherwise been exposed to  
6 any information concerning this case since leaving  
7 yesterday?

8 No one responds.

9 Ladies and gentlemen, you have now heard all of  
10 the evidence in this case. It's now time for  
11 closing arguments. If you'll give the parties your  
12 attention.

13 First, from the State, Mr. Myers.

14 **MR. MYERS:** Thank you, Your Honor.

15 Murder is the most heinous crime known to  
16 mankind, the deliberate, malicious taking of a life  
17 of another human being.

18 But there are different kind of murders and  
19 different ways in which murder is inflicted. And  
20 when you plan for days, when you plan for weeks and  
21 you pick out your victim and then you carry that  
22 plan out by torturing that victim to death, that's  
23 the worst of the worst.

24 And for that type of crime, that type of  
25 planning, that type of thinking, inhumane, horrific,

1 vile, torturing someone to death, there's only one  
2 punishment that fits that crime and that punishment  
3 is the death penalty. And that's what we're seeking  
4 for the worst of the worst of the worst of the worst  
5 murder you can ever think of.

6 Now, I want to thank you on behalf of this  
7 family for what all you've done so far. You have  
8 served admirably, paid close attention. You've done  
9 the right thing, the correct thing, the just thing  
10 and we have one more difficult decision to make.  
11 It's not easy, I know that. It's not something to  
12 be taken lightly, but when something's necessary,  
13 when it's the punishment that fits the crime, then  
14 we have the courage to do it and that's the stage  
15 we're in now.

16 I think all of you were probably asked Monday  
17 and Tuesday a week ago, all of you are in that third  
18 category. You have to listen to the evidence, have  
19 to hear everything. And after hearing everything, I  
20 can make up my mind. And if it's warranted, if it's  
21 necessary and the punishment fits the crime for the  
22 worst of the worst, I can vote for the death  
23 penalty. And that's what we're asking you to do.

24 We talked a little bit the other day about  
25 aggravating and mitigating circumstances. And I

1 told you and the Judge has told you and he'll tell  
2 you again, just because someone's murdered, that  
3 doesn't bring the death penalty into play because  
4 there's different kinds of murders. We've got to  
5 prove to you a statutory aggravating circumstance.  
6 And we've combined two together, armed robbery and  
7 larceny, to make it simple.

8 But when Mr. Walter Sykes was tortured to  
9 death, while he was tortured, in the commission of  
10 that torture, we can prove to you other things  
11 happened and you may consider the death penalty.  
12 And those other things were burglary in any degree,  
13 we've got several degrees of them, but any degree.  
14 Burglary is simply going into a place without  
15 consent to commit a crime therein.

16 Did Ron O'Neal Finklea go inside Selectron?  
17 Yes, sir, yes, ma'am. Did he have the intent to  
18 commit a crime? Oh, God, did he have intent, the  
19 worst of the worst type crimes.

20 But you said, well Walter Sykes let him in.  
21 Well, our law uses some common sense every once in a  
22 while. And our law is that if somebody tricks their  
23 way in, if they use deception, if they gain entry by  
24 fooling and trickery, then that's not really  
25 consent.

1           And what was the reason for Ron O'Neal Finklea  
2 going into Selectron? It wasn't to use that ATM.  
3 It was to steal and rob from that ATM and to torture  
4 Walter Sykes to death. The Judge will tell you the  
5 law on that.

6           And what was the thing, what was the greed,  
7 what was the drive? Money, to rob that safe.

8           Robbery is simply to go in somewhere and to  
9 take something that's not yours. Robbery is  
10 stealing. And even though the robbery wasn't  
11 carried out, the law says if you commit murder while  
12 in the commission of trying to rob, that's an  
13 aggravating circumstance. Why did they go in? To  
14 break into the ATM, to rob with a deadly weapon.  
15 The deadly weapon was a nine millimeter pistol, can  
16 of gasoline. So robbery is there.

17           And, folks, the last one, the most horrific,  
18 the worst of the worst, physically torturing another  
19 human being to death. The Judge is going to give  
20 you a long definition on physical torture, but  
21 really what physical torture is is what you can  
22 imagine. Physical torture occurs when the victim,  
23 Walter Sykes, is subjected to serious physical abuse  
24 and aggravated battery. Isn't that what happened?  
25 Isn't that what this murdering, torturing defendant

1 did?

2 Or, it is the infliction of serious, vile,  
3 horrible or inhumane abuse to the body of the  
4 victim. How worse can you get lighting somebody on  
5 fire?

6 Or, it's the unmerciful prolonging of severe  
7 pain. When you're engulfed in gasoline and fire,  
8 isn't that severe pain, folks?

9 Or, it's disfiguring the body of the victim.  
10 You saw the photographs. I told you it wasn't going  
11 to be pretty because the defendant intentionally  
12 with malice aforethought not only murdered Walter  
13 Sykes, he disfigured his body, the ultimate insult.

14 Or, the unmerciful infliction of extensive  
15 physical pain on the victim.

16 All of those are true in this case. All of  
17 them are true. We only have to prove one. It's up  
18 to you from the evidence and the facts how you use  
19 it with your good common sense. Wasn't all three  
20 involved? And we combined grand larceny and  
21 robbery. The stealing is robbery and larceny. But  
22 aren't they all there? That's for you to decide.  
23 If you find any one of those or all of them, then  
24 you can consider the death penalty.

25 The Judge is going to tell you about statutory



1 mitigating evidence, that's things for the  
2 defendant, and they're in the law books, too. He'll  
3 give you these in writing just like the aggravating  
4 circumstances.

5 The defendant has no significant history of  
6 prior criminal conviction involving the use of  
7 violence against another person. And he has no  
8 prior convictions. But, folks, do you have to  
9 commit crime after crime after crime for what this  
10 defendant did to Walter Sykes? That's for you to  
11 decide. That's for you to decide.

12 Now, you can consider his age. Well, you saw  
13 him, you heard them talk about his military stuff.  
14 He got out of the military, served ten years and got  
15 out April of 2002. The doctor said he's well over  
16 30, that's age. If that's something you want to  
17 consider, please consider it. If you want to give  
18 him consideration for that, please do.

19 And the mentality of the defendant at the time  
20 of the crime. What kind of mentality? What goes in  
21 his favor? Their own doctor said at the time of the  
22 crime, there's nothing wrong with him. He had just  
23 gotten out of the military a year before and he  
24 said, oh, he's a leader, brilliant, made number one  
25 in his class. Where is the mentality? He's not

1        mental, he's mean. He's malicious. He's a murderer  
2        and a torturer. But if you want to give him  
3        consideration for that, then please do. That's in  
4        the law.

5                And then the Judge will tell you some other  
6        things about mitigating evidence. He'll tell you,  
7        well you can consider his service in the Army, that  
8        goes in his favor. What about Walter Sykes? He  
9        served.

10               He'll tell you about, well doctor -- not  
11        doctor, but the prison man, Mr. Aiken, he said, well  
12        he's going to be a good prisoner. He'll fit in good  
13        in prison. So if you think that's something in his  
14        favor, please give him that consideration, I ask you  
15        to do it.

16               And then the Judge is going to tell you this,  
17        you can consider anything in his favor supported by  
18        the evidence whether it's listed or not. You can  
19        consider anything in his favor if you think that's  
20        something favorable for him.

21               And then the Judge will tell you this, even if  
22        you find all of this aggravation and even if you  
23        don't find any mitigation, you can still give him  
24        life for any reason or no reason at all. They call  
25        that a mercy verdict, well, yeah, it's bad, yeah,

1 it's horrible, oh, yeah, it's aggravating, we'll  
2 just give him mercy. Did he show Walter Sykes  
3 mercy? That's for you to decide. But the Judge is  
4 going to tell you about that.

5 Now, let's talk a little bit about evidence for  
6 the defendant, let's go over some things for him.  
7 He put up some family members, he put up some  
8 friends. They said, oh, he was respectful when he  
9 was young. He was a caring person when he was  
10 young. He dressed well. He was nice to his  
11 relatives. They enjoyed seeing him, said that he  
12 was a good father to the son, J [REDACTED], in Washington  
13 state even though when he got out of the Army, he  
14 was already \$21,000 behind in child support. When  
15 he got out in April, he gets a letter in September,  
16 he's already \$21,800 behind.

17 His ex-wife said it was an ugly divorce. She  
18 wanted him to grow up, wanted him to act better,  
19 become a man.

20 Well, what about that girlfriend and son in  
21 Texas, a good father to him?

22 MS. KIMBROUGH: Objection, Your Honor.

23 THE COURT: Objection sustained.

24 MR. MYERS: What about Teresa, his other  
25 ex-wife, and her son, [REDACTED], who lived with him,

1 good father to him? Had him selling drugs. Good  
2 father to him? That's for you to decide.

3 And then they had two military men that came  
4 in, wonderful soldier, outstanding leader, led  
5 people, taught him how to fight, combat, how to  
6 kill, if necessary, for your country. He talked  
7 other people into taking classes. He picked good  
8 crowds. He was the leader. He picked the good  
9 people to hang around. They also taught him first  
10 aid to render to a -- not only to a fellow human  
11 being, to a fellow soldier, taught him that.

12 But you know what, when I hear all of these  
13 people testify, and I made some notes down here,  
14 they talk about, well, you know, that's not the Ron  
15 I knew, that's not the Ron I remember, that's not  
16 the Ron Finklea that I'm associated with. I just  
17 can't believe it, can't understand it.

18 And, you know, somewhere along in there, his  
19 ex-wife and that Doctor Cherry, the one that was  
20 crying and trying to talk to him in the courtroom, I  
21 don't know what she was doing, but anyhow, they were  
22 saying he said something about bad stuff happening  
23 to him in Alabama. I don't know what that was about  
24 because he brought his family in to testify that  
25 good things happened to him. Is he manipulating

1 people here? I don't know what that was about,  
2 that's for you to decide.

3 But, you know, as I listen, and I made some  
4 notes over here, from the latter part of the 1990's,  
5 1998, 1999, 2000, 2001, and he gets out of the Army  
6 in 2002, ain't heard nothing about him. Those  
7 military guys said we didn't know him the latter  
8 part of his military because we got transferred to  
9 other places. Well, I hadn't heard anybody talk  
10 with him during that time period. If you did, you  
11 give that the consideration that you think is  
12 necessary.

13 But what happened to him during those years?  
14 Nobody's testified to it, maybe that's the two Rons  
15 here, young good Ron and bad Ron, the evil Ron.

16 But who testified favorably for him? We've got  
17 some testimony about him, but it ain't favorable.  
18 If y'all heard anything about that, y'all please  
19 give it the consideration that you think's  
20 appropriate.

21 And then the doctors come in and they said,  
22 well when he was brought back to Lexington Jail, he  
23 tried to hang himself and the next thing he  
24 remembered was from the hospital to the jail and now  
25 he has a loss of memory. Well, the facts, the

1 circumstances, the horrific crime here, if I wanted  
2 to claim I forgot something, I'd probably pick the  
3 middle of July to when I got out of the hospital.

4 What did the defendant say he couldn't  
5 remember? Middle of July till August the 12th when  
6 he got out of the hospital and all of a sudden he  
7 woke up in jail. That's a convenient time period to  
8 say you can't remember because during that time  
9 period, he knew money was in an ATM. He knew that  
10 ATM was used by employees at Selectron. He had  
11 worked at Selectron, he knew it was there. People  
12 with the machine had changed money out. Ed Brown,  
13 the manager over there, said there was money in  
14 there, he knew money was in there. People would go  
15 in and put a card in it and money would come out.

16 He needed money because he had taken all of his  
17 wife's. He needed a pistol, so he drove straight to  
18 Michigan to his father-in-law's house to get his  
19 wife's black nine millimeter pistol and turns around  
20 and drives straight back to South Carolina, 12 or 14  
21 hour trip, 750 miles. He rents a white Mustang with  
22 Florida tags. He goes to K-Mart and he buys a  
23 gasoline can and some gloves. He takes a trip out  
24 to Selectron the night before to check out the  
25 place. He goes back on August the 2nd and tortures

1       Walter Sykes to death.

2               He goes to Alabama and disposes of some  
3 evidence. They catch up with him. The police call  
4 and he said he was in Louisiana. It's a good thing  
5 to forget it. What does he say? He can't remember.  
6 That's for you to decide. And if he can't remember,  
7 so what? At the time of the crime is what counts.  
8 That's for you to decide, the mentality at the time  
9 of the crime.

10              But he's all right now. He knows what's going  
11 on. Everything's okay from August the 12th on, he  
12 knows exactly what's going on.

13              That doctor said some of the answers he gave  
14 were pretty good answers. The doctor used this  
15 term, He is not an unintelligent man. You take out  
16 the not and un and what he says is, that's an  
17 intelligent fellow. And that's the most dangerous  
18 kind, people, somebody with malice in their heart,  
19 torture on their mind that's pretty smart, that's a  
20 dangerous person and that's what he is. That's  
21 exactly what he is. And you've seen it, amnesia.

22              And by the way, he doesn't remember this, when  
23 he was arrested in Alabama and Detective Peake back  
24 here says in Alabama, Mr. Finklea, we're here to  
25 talk about the murder of Walter Sykes at Selectron,

1        what was his answer? I don't know what you're  
2        talking about.

3                Well, we found your Star card right outside the  
4        door where you tortured Walter Sykes. What was his  
5        answer? I don't know what you're talking about.

6                Well, we've talked to J [REDACTED], and there's an  
7        exhibit in there, Defendant's Exhibit Number 1, when  
8        Mr. Peake also talked with his brother-in-law,  
9        J [REDACTED], and J [REDACTED] says about them going there and  
10       Mr. Finklea torturing or murdering Walter Sykes. We  
11       talked to J [REDACTED], what's his response? I don't know  
12       what you're talking about.

13               Well, Mr. Finklea, we have you on video tapes.  
14       And they played it. And he said this, and I wrote  
15       it down, If that's me, I'm F'd. And then he fell  
16       out of his chair on the floor. They get him back  
17       up, that's you on the video tape. He said, If  
18       that's me, I don't remember.

19               Now, the hanging ain't occurred yet, ain't  
20       nothing happened to him yet. He's that same  
21       intelligent man, but I don't remember. And what is  
22       the defense now in court? Well, later on they bring  
23       him back and he tries to hang himself and what does  
24       he say? I don't remember. Mid-July until he got  
25       back from the hospital to the jail. Does that



1 appeal to your common sense, folks? Does that  
2 appeal to your common sense? That's for you to  
3 decide. You're the judges of the facts.

4 And Doctor Frierson said this, Doctor, we asked  
5 him, When the defendant denied remembering the  
6 murder in Alabama, what was that? Here's what the  
7 doctor said, He probably was trying to avoid  
8 remembering to keep from facing the music.

9 MS. KIMBROUGH: Objection, Your Honor, that's  
10 not what the testimony reflects.

11 MR. MYERS: You can ask that lady to play it  
12 back. You didn't hear the doctor say that?

13 THE COURT: Let me respond to the objection.  
14 Of course, jurors, you remember the testimony as the  
15 testimony was.

16 You may proceed.

17 MR. MYERS: If you didn't hear Doctor Frierson  
18 say that, you disregard what I say. But don't you  
19 remember him saying about the defendant not wanting  
20 to face the music? That struck a cord, that's why I  
21 wrote it down. He's facing the music now and it's  
22 playing loud. It's like a crescendo going through  
23 this ceiling, but he can't remember.

24 And the doctor said this, There is no test we  
25 have to show absolutely whether someone can remember

1 or can't. There is no test we have to say  
2 absolutely if you can remember or you can't.

3 Well, if he can't remember in Alabama, why?  
4 Why? He's just tortured somebody to death, why  
5 can't he remember that in Alabama? He's facing the  
6 music. The music's playing loud.

7 Now, let's talk about the real Ron Finklea, the  
8 real person. What good deed has he ever done since  
9 the late 1990's to August of 2003? What one good  
10 thing has he done? If you heard it from that stand,  
11 you give it the weight that it deserves.

12 Oh, he probably -- I take that back. He  
13 probably sent in some money for child support to try  
14 to catch up on that \$21,800 because down here it was  
15 \$21,503 when he was working at Selectron. Other  
16 than that, what one good deed has he done, but paid  
17 \$300 off on his child support debt for his own flesh  
18 and blood?

19 And why is he going from job to job? Is he  
20 outrunning something? Is he trying to get away from  
21 something? He gets out of the Army some time in  
22 April 2002, he shows up in Alabama. He works there  
23 from July to October. I don't know what he did in  
24 May and June, but he started working in July. But  
25 he gets that letter September 4th from these people

1 in Washington state.

2 Well, what happens? He ends up in South  
3 Carolina at Shealy Electric November the 11th, so we  
4 know he's in South Carolina by November 2002. And  
5 then that letter comes in from these people in  
6 Washington again, January the 7th he needs child  
7 support payment. Well, he leaves there on March the  
8 4th. Then he goes to Selectron and he goes there  
9 from March the 6th and works to around May the 3rd.  
10 Well, here comes that letter again, you're still  
11 behind.

12 I tell you one thing, these people must be  
13 pretty good, they stay on you about supporting  
14 children and thank God for them, but why is he  
15 changing from job to job to job? Is there something  
16 wrong with the companies he's working for, or is  
17 there something wrong with him?

18 And what did he do in June, July before he  
19 tortured Walter Sykes to death on August the 2nd?  
20 What's he running from? What's he hiding from? And  
21 what good deed has he done during that time? If  
22 you've heard something, then you give it the weight  
23 it deserves.

24 Now, I heard some things he was doing during  
25 that time. I heard he got into another business.

1 He was self-employed. He was a drug dealer. I  
2 heard he came to stay with some folks, some  
3 relatives, Irena. And as soon as he got there, he  
4 started selling crack to the Mexicans. The Mexicans  
5 would come to the house. Sherry Bolin says, You've  
6 got to have a talk with your brother-in-law. He  
7 apologized. It won't happen anymore. Right back  
8 into selling drugs. They would come to the house  
9 looking for the drugs.

10 Latisha, going to Alabama with him. Of course,  
11 nobody in Alabama ever seen her. Why? To get the  
12 cocaine, powder, and get the weed, marijuana. Come  
13 back to her house in Columbia and when you buy it in  
14 bulk in that kind of business, the drug business,  
15 the drug trade, you've got to make a profit, so you  
16 cut it down into smaller things and you re-bag it  
17 into smaller bags. She keeps five bags of  
18 something, two bags of something, sells it. He  
19 comes and gets the money and gives her her cut and  
20 brings her more. Then he says he takes the rest  
21 down to Saint Matthews and he's got him and J [REDACTED]  
22 and B [REDACTED] selling it for him, his own stepson  
23 selling for him.

24 That ain't enough, it didn't work out right, so  
25 we have to go back to Alabama again. This time they

1 take a girl named Marissa. And they go back down  
2 for more powder and more weed. They get it again,  
3 come back to Columbia, but during that trip for some  
4 reason, Marissa he doesn't know too good is riding  
5 with them, he says, Marissa, I could shoot you in  
6 the head, burn your body and hide it where your  
7 folks will never find it.

8 Why would he say something like that? Or, why  
9 would he make that statement? I can shoot you in  
10 the head, burn your body and hide it so it never  
11 would be found. He shot somebody else in the head  
12 later on and burned his body. Torture on his mind,  
13 evil on his mind, that's what you're dealing with,  
14 the worst of the worst.

15 He had people out there, J [REDACTED], and J [REDACTED] was  
16 a tag along. They call J [REDACTED] a slob. He's along  
17 for the ride.

18 Well, what else was he doing in this time when  
19 he got out of the service in April 2002? He had a  
20 wife named Teresa who wasn't there. Teresa's on her  
21 third tour in Iraq, a woman on her third tour in  
22 Iraq. And while she is there in war for her  
23 country, he is stealing her money, stealing her  
24 money, not only a fellow soldier, his wife and got  
25 her son dealing drugs for him. How much worse can

1 we get, folks?

2 Remember Willie Gripper? Worried, his wife's  
3 mad because she can see the bank account and he's  
4 taking the money.

5 Remember their witness, Robin Gripper, Willie's  
6 estranged wife, their witness? Upset, Teresa in  
7 Iraq's mad because Ron Finklea is taking her money,  
8 living high, dealing drugs, said he might even have  
9 to rob a bank to get it back, worried.

10 Good deeds, good acts, mitigation.

11 Now, what about violence? Remember John  
12 Leaphart, the fellow that worked out at Selectron  
13 who was a supervisor back in the shipping  
14 department, he was supervising Finklea when he  
15 worked there? One day I think he got into an  
16 argument with a guy named Peoples, Finklea came up  
17 and said, He doesn't know who he's messing with  
18 because I could beat his brains out with this M.F.  
19 hammer, which he had in his hand. Marissa, I could  
20 shoot you, burn your body and hide it where nobody  
21 could find it.

22 The letter that he gave to B [REDACTED] when B [REDACTED]  
23 went back with his grandfather to Michigan after  
24 summer school in the Summer of 2002. B [REDACTED], son,  
25 please change, you are headed down a dead end

1 street. You are just like Tommy. I know if I came  
2 across you, I would put a bullet in your head.

3 Nice fellow? Loving fellow? Good fellow?  
4 He's a ticking time bomb. He's just waiting to  
5 explode and he exploded on August the 2nd when he  
6 picked out Walter Sykes and he tortured him to  
7 death. That's what you're dealing with, folks, but  
8 you give him whatever consideration you think he  
9 deserves and whatever good about him, you give that  
10 to him. This intelligent man, is he also a  
11 manipulator? That's for you to think about.

12 Well, said everything was good in Alabama, but  
13 then his ex-wife and Doctor Cherry again said, well  
14 he said things wasn't so good in Alabama. Which is  
15 it? Who is he manipulating? The good side or the  
16 bad side? Family members testified. What's going  
17 on? I heard that.

18 And Doctor Cherry's over there at the jail, the  
19 psychiatrist, a professional person, and when she  
20 breaks down on the stand and starts crying as a  
21 professional wanting to talk with him in the  
22 courtroom how he's her favorite and asking y'all not  
23 to give him the death penalty, is he manipulating  
24 the prison system over there? He's got one over  
25 there he's manipulated somehow. That was unusual.

1 Not just a patient, I have crossed the line. Ron, I  
2 like you better than any of them, crying, a  
3 professional person. Did he manipulate her?

4 When doctor -- not doctor -- but James Aiken,  
5 the prison man, good fellow, he said I've looked in  
6 the records, he's all right, he's good, we can  
7 control him. Well, is he already manipulating that  
8 system? That woman, Doctor Cherry, said, he picks  
9 out the good people, he doesn't hang around with the  
10 bad. He knows who to deal with, who not to deal  
11 with. He knows what's going on. Do you leave him  
12 again? Do you leave him in the system?

13 But they said, oh, he'll adapt to prison. The  
14 only thing is somebody might attack him or he might  
15 commit suicide again, that's the only bad thing's  
16 going to happen. But this intelligent man, who else  
17 did he manipulate? That's for you to decide.

18 Well, he's manipulated his family. They said  
19 we don't know that Ron. We don't know that Ron. So  
20 all of those family members, we don't know him.

21 He's manipulated the servicemen, the soldiers  
22 because they say we don't know that Ron. We don't  
23 know that Ron. He's manipulated them.

24 He's manipulated his ex-wife. She said one  
25 time that -- she said, well, I don't want any child



1 support, but you've got to grow up, you've got to  
2 change.

3 He's manipulated Teresa, his new ex-wife,  
4 taking her money living high while she's defending  
5 our country in Iraq. He's manipulated her.

6 He manipulated Latisha going with him to  
7 Alabama coming back and selling drugs.

8 He manipulated Sherry Bolin and Irena Fuller  
9 when he was living with them and selling his drugs  
10 to the Mexicans. He manipulated B [REDACTED], his  
11 stepson, into selling drugs for him and then he  
12 wants to put a bullet in his head. He manipulated  
13 J [REDACTED], his co-defendant, his brother-in-law.

14 Did he manipulate Doctor Cherry? You decide  
15 about her credibility. Has he manipulated the  
16 prison system with James Aiken? Is he manipulating  
17 these doctors who says he claims he can't remember?

18 Well, you know what, folks, worst of all is he  
19 manipulated Walter Sykes when he tricked Walter  
20 Sykes into letting him in Selectron so he could  
21 torture him to death.

22 And who else is he going to manipulate? That's  
23 what you're dealing with, the worst of the worst.  
24 That's for you to decide, good Ron Finklea and bad  
25 Ron Finklea.

1           Let's go back to the Summer of 2002. I need  
2           some money, Ron Finklea says, I've been taking my  
3           wife's money. I know where some is. It's in a  
4           machine out at Selectron where I used to work. And  
5           all you've got to do is just pop this front door  
6           open and you can get in. And there's a fellow that  
7           works night shift because I've talked with him  
8           before going in and out when I worked there. I've  
9           talked with him. I can get me some of that money  
10          and it's a bundle in there, but I can't let that  
11          security guard live when I get it.

12          Well, I'm going to need me something to shoot  
13          him with. My wife's got a gun, but her father's got  
14          it in Michigan. So I think I'll just take me a  
15          little road trip and go up to Michigan for a day and  
16          turn around and come back after I get my nine  
17          millimeter black pistol that my wife owns. Does he  
18          do that? Now, this is the middle of July.

19          Well, now I'm going to have to get some other  
20          things. I'm going to have to get me a car that  
21          can't be identified, so I'm going to go out to the  
22          airport and I'm going to rent me a white Mustang  
23          with Florida tags. And he signs his name on it.

24          Well, now I'm going to have to get some other  
25          things, so I think I'll get me a gas can and some

1 gloves, go to K-Mart and get me that.

2 What else do I need? I got to think about  
3 getting somebody to help me because while I'm taking  
4 care of the guard, he's got to take care and rob the  
5 ATM machine. And the other fellow he can wear a  
6 mask, but I can't wear one because Walter Sykes  
7 won't let me in if I'm wearing a mask, he's a good  
8 security guard.

9 Now, I've got to have a dry run, a rehearsal,  
10 so I think I'll go out there the night before,  
11 August the 1st, and see what's going on. A lady  
12 named Angel Peters was there. I think I'll go in  
13 and check that ATM out. On the tape, he talks with  
14 Angel Peters. When he comes in the door, she tells  
15 him the ATM machine is broken because of the weather  
16 that night, some time the weather, lightening's up  
17 and knocks it off.

18 Does he turn around and go out the door? No,  
19 ma'am, no, sir, no, ma'am. He heads straight for  
20 the ATM. It was a dry run, a rehearsal, checking it  
21 out.

22 Then he comes back -- no, he doesn't go back,  
23 he goes out the door. He's going on to his white  
24 Mustang, but does he get in? No. He turns around  
25 and walks back inside. I've got to check out that

1 security office a little more. Angel Peters says he  
2 comes back in and he comes in and he says, Are there  
3 any jobs here? Why did he ask that? He just quit  
4 there. She said, Well, they go through Kelly  
5 Services, I'll get you the information. And he  
6 stands around while she's getting the information.  
7 And she gives him the number for Kelly Services.  
8 Why? He's already worked at Kelly Services. He  
9 knows where they're at.

10 By the way, all these cameras in here, Security  
11 Guard Peters, how do you watch all these cameras at  
12 one time? How do you keep up with them? And by the  
13 way, who else is working here tonight? Anybody here  
14 with you? Anybody in the building? And then he  
15 sees the flash of a headlight coming, that was Ms.  
16 Peters' co-worker, and he sees those lights and he  
17 heads out because it's a rehearsal or a dry run.

18 Or is it? Or is it? Was his plans to do  
19 something that night and he got spooked off? That's  
20 for you to decide.

21 But he ain't giving up. He ain't quitting  
22 because he's got murder and torture on his mind and  
23 malice in his heart. He's ready to carry out his  
24 plan and he's going to do it come hell or high water  
25 and he knows who's going to do it, too, and he picks

1 the time.

2 But he's got to get something else. He's got  
3 to get that gas can filled. He's got to get some  
4 shells for that gun. He left one at his house. And  
5 he's got to get J [REDACTED] with him and now he's ready.

6 He goes inside, folks, and when he goes inside  
7 he's by himself. And he comes in and when he does,  
8 he's already put this plan in motion. When Walter  
9 Sykes turns and walks back to his office, who's he  
10 looking at? What's going on back over here? And  
11 then when he starts heading in that office, where is  
12 he looking? Back inside the plant, anybody else  
13 there?

14 This is the last time anyone ever sees Walter  
15 Sykes without bullets in his neck and face and  
16 engulfed in flames. The last moments of his life,  
17 his last minutes, that's a chilling picture right  
18 there. The last time you and I and the defendant in  
19 person saw Walter Sykes intact, healthy, full of  
20 life, because when he knocked on that door, he was  
21 death and Walter Sykes opened the door.

22 And he goes in, you know I stopped that video  
23 the other day because when he went inside, you can  
24 kind of see him reaching back and then the door's  
25 there and he's like this and you see that white shoe

1       come back and go again. What do you think he was  
2       doing? What do you think he was doing? Shooting  
3       Walter Sykes.

4               And then he comes back out and he lets his  
5       brother-in-law in and he's got the red can right  
6       there. His brother-in-law has got the bag of tools  
7       to break into the ATM. The brother-in-law goes over  
8       to the ATM.

9               Now, he's going back inside to finish his plans  
10      for poor Walter Sykes, but he forgets something.  
11      You remember he headed in and he forgot something  
12      and he turned around and he went back, what did he  
13      get? The coup de grace, the gas can. And he's  
14      reaching for that gun again. He shoots Walter Sykes  
15      again. And you know that in that video because when  
16      this fellow came in and he was over by the ATM, he  
17      jumped up one time, he was startled. And then his  
18      cohort goes over there and looks, kind of peeks in  
19      there and he takes off, he's out of here.

20              Here comes the defendant out with a red gas  
21      can. Gas can in the left hand, red one, running out  
22      and what's in his right? A black pistol in his  
23      right. He's done his job. Can you imagine the  
24      fear, the horror of Walter Sykes looking at a nine  
25      millimeter pistol and a --

1 MS. KIMBROUGH: Objection, Your Honor.

2 THE COURT: Yes, ma'am?

3 MS. KIMBROUGH: We believe that the use of the  
4 gun and the gas can, neither of which are in  
5 evidence, is prejudicial.

6 MR. MYERS: They're demonstrative to show what  
7 happened, Your Honor.

8 THE COURT: The objection is overruled.  
9 They're for demonstrative purposes only.

10 MR. MYERS: Can you imagine the horror, the  
11 horror of him seeing a bullet, the flash of the gun  
12 and it coming right into his lip? Can you imagine  
13 the horror of another shot going through his neck,  
14 and somewhere along in there he had to be on the  
15 floor, you remember Officer Mike Phipps that  
16 testified right here? He said, under that desk was  
17 blood splatter. He had to be below the desk. Did  
18 he shoot him when they're down, or they're down and  
19 then they get up and you remember that bloody hand  
20 print on the chair.

21 And we're just getting started, now comes the  
22 real thing. Gasoline pouring on another human being  
23 and the fire, the fire, the burning. When you're  
24 cooking sometimes and you touch the stove or the  
25 frying pan or you reach in the oven and you touch

1 that hot thing or you're grilling, whoo, oh, it  
2 hurts, it's painful. It grabs your attention, you  
3 probably run to the sink, want to put some water on  
4 it. Probably the most painful thing that a person  
5 can do --

6 MS. KIMBROUGH: Objection, Your Honor.

7 MR. MYERS: -- is to be lit on fire.

8 THE COURT: Basis for the objection?

9 MS. KIMBROUGH: Solicitor Myers has just  
10 ignited some sort of fire device, appears to be some  
11 sort of lighter. It's extremely large. We believe  
12 it's prejudicial. It's meant to prejudice the jury,  
13 to enflame them.

14 THE COURT: Mr. Myers.

15 MR. MYERS: Talking about the circumstances of  
16 this crime, Your Honor, physical torture.

17 THE COURT: The objection is overruled. The  
18 use of these things for demonstrative purposes is  
19 allowed.

20 MS. KIMBROUGH: Thank you, Your Honor.

21 MR. MYERS: For that feeling and you can't get  
22 away from it. What about when you're burning trash  
23 and you got a bunch of limbs and leaves out there  
24 and you pour a little gasoline on it and you throw a  
25 match in there, whoof, the concussion just blows you



1 back, sometimes it may singe your eyes. Well, what  
2 if it's all over your body and you can't get away  
3 from it, it's engulfed you? He's going back to the  
4 ATM machine. The last, last moments of a good man's  
5 life on fire.

6 When he first starts running, you know they  
7 teach you to roll when you're on fire, he tries to  
8 roll over, falls down, he falls up against this  
9 wall, gets up. He's still running, blood coming out  
10 of Ron Finklea's bullet holes, his life's blood is  
11 draining from his body, his life is spurting away,  
12 blood's going down his throat and fire is coming in  
13 his nose and he's trying to get away. And you see  
14 the blood, you see it spurting out with each step,  
15 with each heartbeat. And he goes out on the grass  
16 trying to roll over. The defendant's down here and  
17 he's looking out.

18 The last of the life of a good man, Walter  
19 Sykes. He's been skinned alive by the flames and  
20 gasoline of Ron O'Neal Finklea. The worst of the  
21 worst, the punishment fitting the crime, how much  
22 worse can it get?

23 Mr. Hubbard said the other day, he said, Wish  
24 we had audio. I don't. I'm glad we don't. The  
25 pictures are bad enough, to hear a man scream for

1 his life. And what if we had another sense, a sense  
2 of smell, the smell of gunpowder, the smell of  
3 gasoline, the smell of singed hair, burning flesh  
4 and death and evil, sitting over there, pure evil.

5 And you know when he went out, this shows that  
6 gun and gasoline can more clearly, gun in the right  
7 hand, gasoline in the left. And then when he's over  
8 there by that ATM and you see the last flicker of  
9 life of Walter Sykes, see it up at top, what's he  
10 raising up again? See right there in his right  
11 hand, what's he raising up again? There's an even  
12 better picture of it. What is he raising up again  
13 in his right hand? Is he going out to shoot him  
14 again or does he realize his prey is tortured to  
15 death, shot and burned alive, skinned alive?

16 Then he takes off, heads to Alabama. But  
17 everything's all right in Alabama, it's a  
18 homecoming. They were glad to see him back. Acting  
19 good, acting normal, nothing wrong with him.

20 While he's down there, he even got rid of a few  
21 things behind his mama's house, the shirt he was  
22 wearing, the orange distinctive shirt with the  
23 stripe on it. He's a good soldier, he's wearing  
24 that Army white cap. Disposing of evidence, but I  
25 don't remember. I don't know what you're talking

1     about. And he gets rid of that gun somewhere, too,  
2     we never found that. But I don't remember. I don't  
3     know what you're talking about. That's what we're  
4     dealing with.

5             He turned Walter Sykes into a human ball of  
6     fire, a human flame, and I don't remember. It was  
7     overkill. This isn't a murder, this is an overkill.  
8     How much more can you inflict fatal wounds, pain,  
9     suffering and misery on another human being that you  
10    knew? If the death penalty isn't warranted here,  
11    it's never been warranted. The worst of the worst,  
12    how can we get any worse than this?

13            I know you had no idea you were going to see  
14    this kind of stuff when you came in here, but that's  
15    why we asked you those questions. If the facts and  
16    the circumstances were bad enough, could you have  
17    the punishment that fits the crime? Yes, we could.  
18    Death penalty, that's what fits this crime. It  
19    can't get any worse, folks, torture someone you  
20    know, a fellow soldier. He knew he was in the  
21    military.

22            They said when one soldier kills another,  
23    sometimes it's friendly fire, there wasn't no  
24    friendly fire here. Evil, inhumane, horrific,  
25    horrible to another one, nothing but pure overkill.

1 Well, his mama said, you know, I think he got  
2 in with the wrong crowd. He is the wrong crowd and  
3 he's the leader of the wrong crowd. Vicious. How  
4 much worse can we get?

5 There is a code of values in the Army he was  
6 in, code of values Walter Sykes was in: Loyalty,  
7 bear true faith and allegiance to the U.S.  
8 Constitution, the Army and your other soldiers. Did  
9 he do that? Duty, fulfill your obligations. Did he  
10 do that? Respect, respect people as they should be  
11 treated. He has respect? Selfless service, put the  
12 welfare of a nation, the Army and your subordinates  
13 above your own. Did he do that? Honor, live up to  
14 these values. Did he do that? Integrity, this is  
15 the best one, do what's right legally and morally.  
16 He has no morals. Did he do that?

17 He has dishonored his family. He has  
18 dishonored his friends and fellow soldiers. He has  
19 dishonored the Army. He has dishonored this  
20 country. He dishonored a fellow comrade, Walter  
21 Sykes. He even dishonored himself for what honor he  
22 had, if any. He dishonored and shocked this  
23 community. He has no honor. The last vestige of  
24 any decency in his body went up in flames with  
25 Walter Sykes when he tortured him to death.

1           The worst of the worst, the baddest (sic) of  
2           the bad, the punishment that fits the crime and  
3           there isn't but one, only one for a good man, a man  
4           who was wearing this uniform, a man who had worn the  
5           uniform before, a man who was dedicated, loyal,  
6           honorable. When this woman was dying with breast  
7           cancer, he stood by her, he didn't desert her. He  
8           supported his children. His daughter said, We never  
9           went for anything. He was my daddy. He wanted us  
10          with him. He was my daddy.

11          And Ron O'Neal Finklea, the flame thrower,  
12          turned this good man into this. He turned this  
13          loving man into this charred body. He turned this  
14          good man into what you see here. He had the skin  
15          burned off of this good man, skinned alive. Head,  
16          neck, body of this good man.

17          Can you imagine what his head felt like with  
18          the flames in it, what it felt like when it was  
19          going down his nose with the blood in his airways  
20          from these shots in the neck, these shots?

21          If you've got any doubt about what sentence to  
22          give this murdering, torturing defendant, hold this  
23          bullet in your hand. It's his bullet taken out of  
24          the body of Walter Sykes. This is his worth. This  
25          is the fatally flame thrower good deed right here,

1 that's what he cares about, himself and what he  
2 wants and how he can get it and the hell with  
3 anybody in his way, this good man he tortured to  
4 death senselessly for no reason at all, but if you  
5 want to give him life, give him life and it will be  
6 for no reason at all. The punishment that fits the  
7 crime is but one, the death penalty. Anything less  
8 will be the final bullet to Walter Sykes.

9 **THE COURT:** Ladies and gentlemen, before we  
10 proceed further, I want to caution you that the use  
11 of any items not admitted into evidence were simply  
12 for demonstrative purposes, cannot be considered by  
13 you in any way as evidence in this case because they  
14 are not evidence in this case, but the Court allowed  
15 them to be used for demonstrative purposes and  
16 demonstrative purposes only.

17 I'm going to have you stand for a moment.

18 (Pause.)

19 **MS. KIMBROUGH:** Your Honor, may we approach?

20 **THE COURT:** Yes.

21 (Whereupon, a bench conference was held off  
22 the record, in the presence of the jury, but out of  
23 the hearing of the jury.)

24 **THE COURT:** Ladies and gentlemen, I'm going to  
25 have you go to the jury room for just a few minutes.

1 Please do not discuss the case while you're there.

2 (The jury retires to the jury room.)

3 **THE COURT:** We're going to take about three  
4 minutes, three minute break.

5 (Brief Recess.)

6 **THE COURT:** All right. You can bring in the  
7 jury.

8 (The jury returns to the courtroom.)

9 **THE COURT:** Ms. Kimbrough.

10 **MS. KIMBROUGH:** Thank you, Your Honor. May it  
11 please the Court. Solicitor.

12 Good afternoon almost. This has been a very  
13 long two weeks for everyone involved in this trial.  
14 And I appreciate, Ron appreciates and I know the  
15 State, Mr. Sykes' family, Ron's family, everyone  
16 appreciates your careful attention, your patience.  
17 And so here we are.

18 In the first phase, and I've used this term  
19 before and I'll use it again, what you were called  
20 upon to do was very academic, take the facts, use  
21 your common sense, determine what the facts are,  
22 listen to the law and come up with your verdict,  
23 guilty or not guilty. That was the easy part of  
24 this trial. And I almost don't want to use the word  
25 easy because there's nothing easy about this case.

1           Walter Sykes' death was horrific and we've seen  
2           it over and over again. And when we spoke to you  
3           all before you were selected to serve on Ron's jury,  
4           we wanted to make certain that even with the  
5           horrendous facts of murder, you could still consider  
6           additional evidence before reaching the punishment  
7           decision. You promised us you could for which we're  
8           thankful.

9           I'd like to talk a little bit about the  
10          argument just made by the Solicitor and some of the  
11          points he raised and ask you to consider the  
12          following: His Honor will instruct you that there  
13          are three possible aggravating circumstances that  
14          you can find in this case. There's the burglary,  
15          armed robbery and torture. There are elements for  
16          each of these three aggravating circumstances. So  
17          in many ways, it's very similar, your decision  
18          making insofar as aggravation is concerned, is very  
19          similar to what you did in the first phase.

20          However, I would submit to you that the facts  
21          you heard in the first phase are exactly the same  
22          facts that the State is alleging support these three  
23          aggravating circumstances. There was a murder.  
24          There was an attempted safe cracking. And so in  
25          this regard, there really isn't any new evidence,



1     you just have to take what you did in the first  
2     phase, the facts as you found them, and you apply it  
3     to some additional legal instructions, the elements  
4     of burglary, the elements of armed robbery and the  
5     elements of torture.

6     The Solicitor's right, if you find one  
7     aggravating circumstance, then you may consider  
8     imposing death for Ron. At the same time, even if  
9     you find the existence of all three, he can still be  
10    sentenced to life, life without parole.

11    Now, I want to move on to the additional  
12    evidence that the State presented in this phase.  
13    Victim impact testimony, it's so sad. This crime  
14    was such a tragedy. It affected so many people.  
15    And, ladies and gentlemen, no one on the defense has  
16    ever wanted to diminish that fact.

17    The victim impact testimony, heart wrenching  
18    though it is, is not a basis on which to impose a  
19    sentence of death. It's not an aggravating  
20    circumstance. It's the legal system's way of  
21    allowing those left behind after a murder to discuss  
22    who they lost, what that person meant to them. And  
23    you heard that testimony and it was very sad and it  
24    was very tragic, but please remember victim impact  
25    testimony is not a basis for imposing a sentence of

1 death. It's hard not to be swayed by it, we're all  
2 human. So I just caution you, ask you to please  
3 keep that in mind.

4 Character evidence, the State relies on the  
5 aggravating circumstances and what it now alleges is  
6 the bad character of Ron Finklea. Who did we hear  
7 from then? Sherry Bolin and Irena Fuller. I don't  
8 know about you, but if I let somebody stay in my  
9 house and the very first day they started dealing  
10 crack from my front door, they'd be gone.

11 Both of these women, the very first day he came  
12 in, he was dealing drugs to the Mexicans, the  
13 unnamed, nontestifying Mexicans. Did you call the  
14 sheriff's department? Did you call crime watch?  
15 Oh, we didn't have crime watch. You had access to  
16 law enforcement. You certainly had control over  
17 your own home.

18 He's a big time drug dealer, a big time drug  
19 dealer living in a mobile home, driving a '97  
20 Tracer, a big time drug dealer who doesn't have a  
21 gun so he has to travel up to Michigan to go get it,  
22 that's absurd. That's absurd.

23 Irena and Sherry, they've got J [REDACTED]'s back, no  
24 question about that. These are the same people who  
25 honestly implied we should feel sorry for J [REDACTED]

1 because he was irresponsible and never held a job,  
2 that somehow Ron helping to support him materially  
3 was a bad thing for Ron to do, that somehow that was  
4 manipulative. Nonsense. Nonsense. There's no  
5 evidence of that, none.

6 Latisha Gilmore, Theodore Davis' first cousin,  
7 are you noticing a trend here? Character evidence  
8 is coming from people who want to protect Ron's  
9 co-defendant, Junior Davis, poor Junior, poor  
10 irresponsible Junior.

11 What did Latisha Gilmore say? Me and my  
12 girlfriend and Ron were going down to Alabama and  
13 out of the blue, I remember the words, out of the  
14 blue, he said, I'm going to kill you and burn your  
15 body and dispose of it.

16 So what did you do, Ms. Gilmore, someone just  
17 threatened to kill your significant other? Well, we  
18 continued to ride around Alabama. We went to this  
19 house and there was a bunch of drugs on the table.  
20 And I think her comment was, Well, we had to get  
21 home. If you think you're going to be killed, if  
22 someone really just said that to you, do you  
23 continue to ride around with them? Do you continue  
24 to deal drugs for them? No, it's absurd. That's  
25 absurd. There's no evidence for it.

1           What dates did this occur? Who are the names  
2 of these people you bought the drugs from? Well, we  
3 had street names.

4           Well, ladies and gentlemen, you have seen the  
5 entourage of investigators, forensic technicians, if  
6 these people were out there, don't you think you  
7 would have heard from them? I submit to you you  
8 would have.

9           There's a lot of reason, a lot of potential  
10 bias that suggests that this character evidence is  
11 nonsense. So why present it? Why would the State  
12 present the completely, incredible testimony of  
13 three very biased witnesses? Well, quite frankly,  
14 it's because Ron's real character has been very,  
15 very good throughout his life. Ron doesn't have a  
16 criminal record. There's no evidence Ron dealt  
17 drugs, no evidence of that.

18          Let me just sort of summarize what I believe  
19 the State's basis for asking you to impose death is.  
20 I submit to you these are very basic principles that  
21 the State is relying on, fear, fear, well Ron's been  
22 manipulating the system.

23          He's been a model inmate. Is that  
24 manipulation? Would you rather have somebody who  
25 doesn't follow the rules? I don't think so. It's a

1 prison. Is it being manipulative to follow the  
2 rules? That's what the State wants you to be afraid  
3 of, Ron's manipulative. No evidence of that. None.

4 What I think what the Solicitor really wants  
5 you to tap into is your anger. It's easier to kill  
6 someone if you're angry. When bad things happen to  
7 good people like Walter Sykes, it makes everyone  
8 angry. It's good strategy.

9 Now, I want to talk to you about why we believe  
10 Ron should be sentenced to life. The worst of the  
11 worst, I think the Solicitor said that quite a few  
12 times. He had some good points. This was a  
13 terrible crime, it was, we acknowledge that.

14 But, ladies and gentlemen, when we talk about  
15 the worst of the worst, we're not just talking about  
16 the worst crime, we're also talking about the worst  
17 criminal. And I submit to you that Ron Finklea is  
18 not that worst criminal. This is not a predator.  
19 This is not a career criminal. This isn't a  
20 terrorist. He didn't go out and try to kill  
21 somebody at 16 like Theodore Davis, Junior, who,  
22 according to his own sister, Ms. Fuller, Oh, yeah,  
23 I'm familiar with that, it happened in our home. A  
24 16-year-old trying to kill someone in the family  
25 home. It's a whole lot worse than Ron.

1           What was Ron doing when he was 16? Was he  
2           trying to kill somebody? No. Ron went to school.  
3           He worked hard. He didn't run the streets. He  
4           wanted to go to the Army. He had a loving family,  
5           but they were poor as they are today and he wanted  
6           to make something of himself.

7           And you heard Nicole testify, his cousin, the  
8           mother of three, two of whom born when she was in  
9           high school. Ron was my mentor. He was my mentor.  
10          He was the first one of us, the first one of us to  
11          graduate from high school. That's what Ron was  
12          doing when he was a teenager, Ron graduated.

13          And I think Nicole used the expression that  
14          I've heard used in Army commercials, Be all you can  
15          be, be all that you can be. That's what Ron told  
16          her, that's who Ron was at 16 and 17 and 18. He  
17          wasn't a thug. He wasn't running the streets. He  
18          wasn't looking for trouble.

19          And you heard from a number of other family  
20          members, none of them could believe that the Ron  
21          they knew was involved in this. And, ladies and  
22          gentlemen, I do not even suggest to you that I've  
23          got an answer, that any one could come up with a  
24          satisfying answer to the question of why this  
25          happened, but when you assess the whole life of a

1 human being, you don't just look at their worst act,  
2 all of us are worth more than that.

3 I'm going to talk about a few more people,  
4 Cherena, Ron's ex-wife, the one he owed child  
5 support payments to. He was behind. Yes, he was  
6 behind. He had a medical discharge from the Army.  
7 Don't find a great job right away, I'm sure you do  
8 get behind, I'm sure you do, and he did.

9 So what did he do? Did he run away? Did he  
10 try not to pay for the upkeep of his child? No, he  
11 filled out the forms. Is that a reason to kill  
12 somebody because he's behind in child support? A  
13 lot of people out there who better hope not. Yeah,  
14 he fell down on his job as a parent to financially  
15 provide for his son. Yeah, he did. That's not a  
16 reason to kill anybody.

17 And you heard from Cherena, despite the fact  
18 that of all the people who have been in his life who  
19 would have a legitimate reason to be angry with Ron,  
20 what did she say about Ron? It's his ex-wife. He  
21 tried to be a good dad.

22 They married when they were babies, 15, 18.  
23 And, yeah, she was disappointed in him. She said  
24 that. I want him to grow up. And what she saw in  
25 Ron was the desire to do that. She testified to

1 that. He wanted to be better. He wanted to be  
2 loved. And he was caring and he was kind, that's  
3 the Ron she knew. It's the same man who owed her  
4 \$21,500 in back child support.

5 The next group of people I want to talk about  
6 are Sergeant Turner and Officer Smith. Sergeant  
7 Turner -- Sergeant Major Turner has been in the  
8 military for 21 years. He's seen lots of soldiers.  
9 He's also seen combat, actual fighting, your life is  
10 on the line. In 21 years if he had to choose one  
11 person to go into combat with, who would it be? Ron  
12 Finklea.

13 The Ron he knew was a hardworking, dedicated  
14 soldier who went above and beyond the call of duty.  
15 Is that the worst of the worst? Somebody who serves  
16 their country, is that the worst type of person to  
17 be sentenced? I submit to you it's not.

18 We can't change the crime, can't change it,  
19 can't change the facts, they are what they are. You  
20 found them and we believe you were fair in doing so.  
21 But there's the other half of that equation, it's a  
22 very delicate, two-part calculus, the crime and the  
23 criminal. And since his conviction, Ron is now a  
24 convicted criminal. Part of your job in assessing  
25 punishment is to look at everything about him to



1 determine if he's really the worst of the worst.

2 Consider his service to this country.

3 Doctor Cherry, where is her dog in this fight?

4 She works for the Lexington County -- excuse me --

5 she works at the Lexington County Detention Center

6 and she's employed by the Department of Mental

7 Health. She's not afraid to call a spade a spade.

8 And then she conceded there are lots of spades in a

9 prison setting.

10 I detected a note of cynicism in the

11 Solicitor's remarks about Doctor Cherry because she

12 cried. She cried. Well, Doctor Cherry obviously,

13 despite being around criminals, people who con her

14 on a daily basis, people who are not always the most

15 pleasant people to be around, she's not lost her

16 humanity. Rather than mock her, I applauded her.

17 The State makes a big deal about, Are you

18 opposed to capital punishment? You heard her

19 testimony. It's the law. Do I personally believe

20 in it? No, huh-huh. She was honest. It offends

21 her. Evidently her religion and her religious faith

22 has something to do with that. Sure. So does she

23 have no credibility about what she says about Ron?

24 She wasn't here to propose a moratorium on capital

25 punishment. She was here based on her professional

1 encounters with Ron Finklea.

2 And she admitted, this one time I slipped. She  
3 cared about him. We didn't employ her. She wasn't  
4 our expert. She got nothing by taking that stand,  
5 nothing except ridicule. I submit to you that that  
6 says a lot about her credibility. She was willing  
7 to concede that she slipped over the line between  
8 arm's length and developing a little feeling for  
9 another person.

10 Moving beyond that, what did she say about Ron  
11 at the detention center? He was caring, that they  
12 would request that other inmates who were vulnerable  
13 to be housed with him. I submit to you that says  
14 volumes about the kind of person he is. It doesn't  
15 do anything to change the crime, but it speaks to  
16 his character. It also speaks to his adaptability.

17 And you heard James Aiken, he personally  
18 oversaw two executions. He is the law and order.  
19 What did he say about Ron? That he's more of a  
20 danger to himself than he would be to anyone else.  
21 In other words, if Ron's given a life without parole  
22 sentence, it is very unlikely he will cause any  
23 problems within the institution and I ask you to  
24 consider that.

25 The worst of the worst, I submit to you that

1 the worst of the worst would be someone who would go  
2 into the prison and wreak havoc. Predator, Ron's  
3 not a predator.

4 There's one more reason that I ask each and  
5 every one of you to thoughtfully consider a life  
6 without parole sentence and that is because you can.  
7 You can. It's an act of mercy. It's an act of  
8 grace. You don't have to find any particular  
9 elements to exercise that mercy, to exercise that  
10 grace. There's no proof, standard of proof that has  
11 to be met in order for you to do it.

12 And the Solicitor wants you to view mercy as  
13 weak, somehow it's some liberal notion, it's some  
14 soft emotion on which you should not have. Well,  
15 ladies and gentlemen, it's not just defense lawyers,  
16 it's not just liberals who believe in the concept of  
17 mercy. I quote, A country which is secure in its  
18 institutions and confident in its laws should not be  
19 ashamed of concept of mercy.

20 Probably very few of you, if any, will recall  
21 who said this. It hasn't been quoted very often.  
22 It was Justice Anthony Kennedy of the United States  
23 Supreme Court.

24 The concept of mercy is embraced from the top  
25 to the bottom. Our system incorporates it. It

1 embraces the concept of mercy. So I ask you to  
2 consider it.

3 Ladies and gentlemen, earlier this week as I  
4 was dropping my children off at school, my  
5 seven-year-old began complaining, not unusual for a  
6 seven-year-old, Mommy, when is this trial going to  
7 be over? Like most children, he likes his routine  
8 and it's been interrupted. I was exasperated that  
9 morning and I said, Well, I can't wait for it to be  
10 over either.

11 And after I dropped my children off on my way  
12 to the courthouse, I felt a sudden bolt of shame  
13 because Ron's life has literally been placed in my  
14 hands, my flawed human hands. I shouldn't want this  
15 trial to be over quickly. I was ashamed.

16 Do I know enough about Ron? Have I had enough  
17 time to show you who he is, to convince you that he  
18 was not the worst of the worst? I've known him two  
19 years and he's been on the planet 33. It's not a  
20 very long time. And you've had even less time to  
21 get to know him. I hope I've done my job. I hope I  
22 have served him well.

23 As a criminal defense lawyer, you run into a  
24 lot of different people, a lot of spades, to use  
25 Doctor Cherry's term. I submit to you Ron Finklea

1        isn't even close to being the worst of the worst,  
2        not even close. He was involved in one horrible,  
3        horrible murder, that's half of the equation, but  
4        the other half involves assessing who he is. I  
5        submit to you his service to his country, his  
6        kindness to other people, his model behavior in  
7        prison merits life without parole.

8        I believe the Solicitor said, If this isn't the  
9        worst of the worst, then what is. If this crime  
10       doesn't deserve death, then what crime would.

11       Well, ladies and gentlemen, if someone like Ron  
12       Finklea doesn't deserve life without parole, who  
13       would? You'll have to consider that. Anybody in  
14       this situation has committed a heinous crime, anyone  
15       who faces death has to be murder, has to be  
16       aggravated murder, but that's where the assessment  
17       of a person kicks in.

18       I wish I could tell you more about Ron. I ask  
19       you to spare his life. You can be thoughtful in  
20       your deliberations. Thank you.

21       **THE COURT:** Ladies and gentlemen, let's stand  
22       for a moment.

23       (Pause.)

24       **THE COURT:** Mr. Finklea.

25       **DEFENDANT FINKLEA:** Good morning, ladies and

1 gentlemen. I am not an animal. I am not a drug  
2 dealer. I am not a drug user, I never have been.

3 You've heard testimony of my traveling to  
4 Alabama, trafficking in get drugs, but there's no  
5 proof to that, no proof to that.

6 You've heard that I moved in with an in-law,  
7 when I first moved in, the first thing I started  
8 doing was selling crack to Mexicans, there's no  
9 proof to that, all right.

10 You heard that I talked to Mr. Sykes seven to  
11 ten times at work. Well, how is that possible  
12 because of the time that I got off from work and the  
13 late hours --

14 MR. MYERS: I'll have to object to him  
15 testifying now, Your Honor.

16 THE COURT: All right. Counsel approach and  
17 Mr. Finklea.

18 (Whereupon, a bench conference was held off  
19 the record, in the presence of the jury, but out of  
20 the hearing of the jury.)

21 THE COURT: You may proceed.

22 DEFENDANT FINKLEA: You've heard about --  
23 you've heard testimony about my military career and  
24 about my patriotism to Lady America, all right.  
25 Growing up, to me, there was nothing more

1       prestigious than serving this country. To be an  
2       ambassador as a soldier for this country was the  
3       most important thing to me in my life. For me to  
4       actually have something else outside of the  
5       immediate family that I was willing to give my life  
6       for and it's this, it's this.

7               I am not an animal. I'm not an animal, all  
8       right.

9               I've lost family members to violent crimes,  
10       does that mean that I know how this family feels?  
11       No, it doesn't. I've seen the video. It jogs no  
12       memories.

13              Does an animal have a heart? No, it doesn't.  
14       I'm sorry for what happened. I'm very, very sorry  
15       for what happened, all right. I never had a father,  
16       so I don't know what it's like to lose a father, all  
17       right. I'm sorry. I'm very, very sorry, all right.  
18       I cannot stress and explain it enough how sorry I  
19       am.

20              The State would have you believe that my  
21       amnesia and my brain damage is fake. It isn't. I  
22       wish I could remember so I could give this family  
23       closure as to what happened on that night to their  
24       loved one. I wish I could remember. I really do,  
25       but I can't. I can't. So what I'm asking from the

1 family --

2 MR. MYERS: Objection, he's now talking to  
3 someone other than the jury.

4 THE COURT: You must address the jury,  
5 Mr. Finklea.

6 DEFENDANT FINKLEA: Yes, sir. Sorry, sir.

7 I'm asking you please, please, consider the  
8 expert testimony, the testimony of character  
9 witnesses that came in on my behalf, Doctor Cherry,  
10 okay, family members, friends. I'm not that person.  
11 I do not know what happened that night. I wish I  
12 did so I could explain what happened that night, but  
13 I can't. But I am so sorry that it happened.

14 I was raised to be responsible, respectable and  
15 respectful. I am not standing here trying to drop  
16 responsibility on anyone else, I'm not. I am not,  
17 all right.

18 The only thing I'm asking you to do as a jury  
19 is to look at me, me, Ron, Ron, not just the  
20 individual that the State is trying to make me out  
21 to be, me, and spare my life, please. I have a  
22 13-year-old son myself who I will not get to see  
23 grow up. Please, please, just spare my life, that's  
24 all I'm asking, that's all I'm asking, please,  
25 please. Thank you.



1           **THE COURT:** Mr. Foreman and members of the  
2 jury, now that you've heard the evidence and the  
3 arguments of both the State and the defendant, I  
4 will explain the law to you that applies to the  
5 sentencing phase of this case.

6           Just as I explained to you earlier, only the  
7 jury can make the findings of fact in this case. I  
8 am not permitted to indicate to you how I may feel  
9 or might feel about the facts. So if I have said  
10 anything or done anything during the course of this  
11 phase of the proceeding that might indicate to you  
12 that I have an opinion about the facts or that I  
13 have an opinion as to what the sentence should be,  
14 then you must disregard that.

15           As the judges of the facts, you must evaluate  
16 the credibility of the witnesses just as you did  
17 before. In passing upon their credibility, you may  
18 take into consideration many things such as: The  
19 demeanor or manner of testifying; whether the  
20 witness had reason to be biased or prejudiced;  
21 whether a witness' testimony was contradicted on the  
22 one hand or supported and corroborated on the other  
23 hand.

24           Further, you may consider both direct and  
25 circumstantial evidence. And the definition for

1 those terms that I gave you in the first phase apply  
2 equally in this phase. You certainly do not  
3 determine the credibility or believability by  
4 counting the number of witnesses for either side.  
5 You may believe a small portion of a witness'  
6 testimony and disregard the larger or vice versa.  
7 You may believe one witness against many or many  
8 against one.

9 All of these things you will consider bearing  
10 in mind that you should give the defendant the  
11 benefit of a reasonable doubt.

12 You've heard the testimony of several expert  
13 witnesses in this phase just as you did in the first  
14 phase of the trial. Expert witnesses are those  
15 witnesses who have special knowledge, skill,  
16 experience, training or education in a particular  
17 profession or occupation. Because of those special  
18 qualifications, experts are allowed to give opinions  
19 as to matters within the area of their expertise.

20 In determining the weight to be given opinions  
21 given by experts, you should consider the  
22 qualifications and credibility of the expert and the  
23 reasons given for his or her opinion. You're not  
24 bound by such opinions, give it the weight, if any,  
25 to which you believe it is entitled.

1           If you should decide that the opinion of an  
2 expert is not based upon sufficient education and  
3 experience or if you should conclude that the  
4 reasons given in support of the opinion are not  
5 sound or if you feel that it is outweighed by other  
6 evidence, you may disregard the opinion entirely.

7           Now, ladies and gentlemen, I instruct you and  
8 emphasize to you that the fact that the defendant  
9 did not testify must not be a consideration by you  
10 in any way in your deliberations. The defendant has  
11 a constitutional right to remain silent and the  
12 exercise of that constitutional right cannot and  
13 must not be held against the defendant.

14           Under the oath you have taken as jurors, you  
15 are to draw no inference and draw no conclusion  
16 whatsoever from the fact that the defendant did not  
17 testify. Do not even discuss this fact in the jury  
18 room.

19           Also, as I explained to you earlier, I am the  
20 exclusive judge of the law. So if you have some  
21 idea as to what the law is or what the law should be  
22 and it does not agree with what I now tell you that  
23 the law is, then you are obligated under your oath  
24 as jurors to set your notion of the law aside and to  
25 accept and apply the law precisely as I now explain

1 it to you.

2 Mr. Foreman and members of the jury, it now  
3 becomes your duty to decide what sentence you will  
4 recommend that this Court impose upon the defendant,  
5 Ron O'Neal Finklea. There are two verdicts you are  
6 to consider in this case if you find beyond a  
7 reasonable doubt the existence of a statutory  
8 aggravating circumstance, one is the death penalty,  
9 which in this state is by electrocution or lethal  
10 injection, and the other is life imprisonment.

11 You should understand that these sentences mean  
12 what they say, that is, if you recommend that the  
13 defendant will be sentenced to death, he will  
14 actually be put to death by electrocution or lethal  
15 injection. And if you recommend that the defendant  
16 be sentenced to life imprisonment, he actually will  
17 be sentenced to life imprisonment without the  
18 possibility of parole.

19 In your deliberations, you are not to speculate  
20 that these sentences of death and life in prison  
21 without the possibility of parole mean anything  
22 different from their ordinary and plain meaning.

23 Please understand your sentencing  
24 recommendation will be followed by the Court. And  
25 the order in which I explain these two sentences is

1 in no way a recommendation by the Court as to which  
2 sentence you should choose to recommend. It is  
3 simply that one must be stated first.

4 Now, in order to recommend either a sentence of  
5 death or life imprisonment, you must first find that  
6 a statutory aggravating circumstance existed beyond  
7 a reasonable doubt.

8 What is a statutory aggravating circumstance?  
9 It is a fact, an incident, a detail or an occurrence  
10 which the South Carolina General Assembly has  
11 declared by statute would make worse, that is,  
12 aggravate the offense of murder when the two occur  
13 together. In other words, it is something which  
14 increases the enormity or adds to the injurious  
15 consequences of the offense.

16 Now, upon this sheet of paper which I hold in  
17 my hand are written the words statutory  
18 instructions. You will have this paper in the jury  
19 room during your deliberations.

20 The body of this form states, and I quote, In  
21 determining whether to recommend that the defendant,  
22 Ron O'Neal Finklea, be sentenced by the Court to  
23 life imprisonment or to death, you may consider the  
24 following statutory aggravating circumstances: One,  
25 the murder was committed while in the commission of

1 a burglary while armed with a deadly weapon; two,  
2 the murder was committed while in the commission of  
3 a robbery while armed with a deadly weapon; and  
4 three, the murder was committed while in the  
5 commission of physical torture, end quote.

6 Now, as a statutory aggravating circumstance,  
7 the State submits that the murder was committed  
8 while the defendant was in the commission of  
9 burglary with a deadly weapon. To prove this  
10 statutory aggravating circumstance, the State must  
11 prove beyond a reasonable doubt that the defendant  
12 entered a building without consent with the intent  
13 to commit a crime in the building. And a building  
14 is any structure where people assemble for the  
15 purpose of business or public use or where goods are  
16 stored.

17 In order to prove that the defendant entered  
18 the building, the State does not have prove that  
19 force was used to gain entry. If a person enters a  
20 building by using deception, artifice, trickery or  
21 misrepresentation to get consent to enter, this is  
22 an entry without consent.

23 Next, the State must prove beyond a reasonable  
24 doubt that the defendant intended to commit a crime  
25 at the time of the entry. An intent may be shown by

1 acts and conduct of the defendant and other  
2 circumstances from which you may naturally and  
3 reasonably infer intent.

4 Finally, the State must prove beyond a  
5 reasonable doubt that when entering, while in the  
6 building or when fleeing, the defendant or an  
7 accomplice was armed with a deadly weapon or  
8 explosive.

9 The State is also submitting as a statutory  
10 aggravating circumstance that the murder was  
11 committed while in the commission of a robbery while  
12 armed with a deadly weapon. In order to prove this  
13 statutory aggravating circumstance, the State must  
14 first prove beyond a reasonable doubt that the  
15 defendant took or attempted to take personal  
16 property from the person or immediate presence of  
17 another person.

18 Property is in the presence of a person if it's  
19 within the person's reach, inspection, observation  
20 or control so that the person could, if not overcome  
21 with violence or prevented by fear, keep possession  
22 of the property.

23 The State must also prove beyond a reasonable  
24 doubt that the defendant carried or attempted to  
25 carry away the property intending to permanently

1 deprive the owner of the property and to keep the  
2 property for the defendant's own use. The taking or  
3 in carrying away or attempt to carry away other  
4 property must have been done with violence or by  
5 putting the owner of the property in fear of  
6 violence.

7 Finally, the State must prove beyond a  
8 reasonable doubt that the defendant was armed with a  
9 deadly weapon during the robbery. The following are  
10 examples of instruments which may be deadly weapons:  
11 A pistol, a shotgun, a rifle or gasoline.

12 Finally, as a statutory aggravating  
13 circumstance, the State submits that the murder  
14 was -- the murder occurred while in the commission  
15 of physical torture.

16 And, ladies and gentlemen, I instruct you that  
17 physical torture occurs when the victim is subjected  
18 to serious physical abuse before death. Physical  
19 torture is the intentional infliction of serious,  
20 vile, horrible or inhumane abuse upon the body of  
21 another before death. The instantaneous death of a  
22 victim does not constitute torture.

23 Physical torture may include the malicious  
24 infliction of bodily harm to another by depriving  
25 him of a member of his body, or by rendering a



1 member of his body useless, or by seriously  
2 disfiguring his body or a member of his body, or the  
3 intentional and unmerciful prolonging of severe pain  
4 and abuse upon the body, or the intentional and  
5 unmerciful infliction of serious and extensive  
6 physical pain and abuse to the body of another. The  
7 State must prove the existence of this statutory  
8 aggravating circumstance beyond a reasonable doubt.

9 Now, let me emphasize to you that these are the  
10 only circumstances that you may consider as  
11 statutory aggravating circumstances. Should you  
12 find, and it must be a unanimous finding, that is, a  
13 finding by each and every one of you, should you  
14 find that the State has proven beyond a reasonable  
15 doubt the existence of one or more circumstance  
16 listed on this sheet of paper, then you would be  
17 authorized, which is to say, permitted to consider  
18 recommending to this Court that the defendant be  
19 sentenced to death.

20 Now, what do I mean by the term proving beyond  
21 a reasonable doubt? A reasonable doubt is the kind  
22 of doubt which would cause a reasonable person to  
23 hesitate to act.

24 The State has also introduced evidence of other  
25 crimes that the defendant allegedly committed in the

1 past. And I charge you that the evidence of these  
2 crimes, these other crimes, may not be considered as  
3 substantive evidence of statutory aggravating  
4 circumstances. But if you are convinced that the  
5 defendant committed these crimes or any of them, you  
6 may consider them as evidence of his character.  
7 These may be considered along with all of the other  
8 evidence that you may -- evidence. And you may give  
9 them whatever weight you deem proper under the  
10 circumstances of this case.

11 Once you've considered the evidence and  
12 determined whether a statutory aggravating  
13 circumstance existed beyond a reasonable doubt,  
14 please remember that you are never required to  
15 recommend the death penalty even if you find that a  
16 statutory aggravating circumstance existed at the  
17 time the offense occurred.

18 I instruct you further that should you find the  
19 State has not proven that a circumstance existed,  
20 that is to say you find that you still have a  
21 reasonable doubt as to the existence of such a  
22 circumstance, that is a statutory aggravating  
23 circumstance, then you would not be authorized to  
24 recommend a sentence of death or life imprisonment  
25 and you must fill out the form entitled no finding

1 of a statutory aggravating circumstance, this form,  
2 and cease your deliberations at that point.

3 If you do not find the existence of a statutory  
4 aggravating circumstance, the foreman is the only  
5 one required to sign this form.

6 Now, should you unanimously find beyond a  
7 reasonable doubt that one, some or all of the  
8 aggravating circumstances listed on this sheet of  
9 statutory instruction existed at the time of the  
10 murder, the foreman should fill out the statutory  
11 aggravating circumstances on this form entitled  
12 statutory aggravating circumstances that you will  
13 have -- you'll have this form with you in the jury  
14 room. Then the foreman and each juror shall sign  
15 the form in the spaces provided where a place is for  
16 the foreman and the list for all other jurors. And  
17 you will complete the form indicating the statutory  
18 aggravating circumstances that you have found.

19 If you do find the existence of a statutory  
20 aggravating circumstance beyond a reasonable doubt  
21 and further determine, after taking into  
22 consideration any evidence for a sentence of life  
23 imprisonment, which I'll explain to you in a moment,  
24 you determine that the sentence that you will  
25 recommend to this Court is death, you will indicate

1       that decision by filling out the recommendation of  
2       sentence death penalty form. By this recommendation  
3       of sentence death penalty form, which I hold in my  
4       hand, you, the jury, may recommend that this Court  
5       sentence the defendant to death.

6               If this is the jury's instruction, Mr. Foreman,  
7       you would be responsible for writing in the form any  
8       statutory aggravating circumstance that the jury  
9       found to exist beyond a reasonable doubt. Please  
10      observe that immediately below the body of the  
11      recommendation, there are 12 lines, that is where  
12      you should -- that is where you should decide to  
13      recommend the death penalty, each one of you would  
14      sign your name.

15             It is the law in this state, Mr. Foreman and  
16      members of the jury, that a recommendation for  
17      imposition of a death penalty, that it be a  
18      unanimous recommendation and that each and every  
19      juror sign his or her name on the recommendation  
20      form.

21             I will read -- now read the text of this form,  
22      quote, We, the jury, in the above-entitled case  
23      having found beyond a reasonable doubt the existence  
24      of the following statutory aggravating circumstance,  
25      which you will put in those circumstance, now

1 recommend to the Court that the defendant, Ron  
2 O'Neal Finklea, be sentenced to death, end quote.  
3 Regarding the recommendation of life  
4 imprisonment, by this form which I hold in my hand  
5 recommendation of sentence life imprisonment, you,  
6 the jury, can recommend to this Court that the  
7 defendant be sentenced to life imprisonment. I will  
8 now read the text of this recommendation form: We,  
9 the jury, in the above-entitled case recommend to  
10 the Court that the defendant, Ron O'Neal Finklea, be  
11 sentenced to life imprisonment, end quote.

12 Please note that although you must unanimously  
13 agree to recommend life imprisonment, only the  
14 foreman is required to sign this recommendation  
15 form.

16 I will now instruct you on what you may  
17 consider in making your decision as to which  
18 sentence to recommend. As I previously instructed  
19 you, if you find the existence beyond a reasonable  
20 doubt of a statutory aggravating circumstance, then  
21 you are permitted but not required to recommend the  
22 death penalty.

23 There are three conditions which you should  
24 consider in reaching your decision as to whether to  
25 recommend the death penalty or life imprisonment.

1 First, whether the existence of a statutory  
2 mitigating circumstance or circumstances was  
3 supported by the evidence; second, whether the  
4 existence of any other nonstatutory mitigating  
5 circumstance was supported by the evidence; and,  
6 third, whether for any reason you can think of or no  
7 reason at all, the defendant should be sentenced to  
8 life imprisonment.

9 Now, what is a statutory mitigating  
10 circumstances? It is a fact, an incident, a detail  
11 or an occurrence which the South Carolina General  
12 Assembly has declared by statute would reduce the  
13 severity of the offense of murder. In other words,  
14 it is a circumstance recognized by statute as one in  
15 which in fairness and mercy may be considered as  
16 extenuating or as reducing the degree of moral  
17 culpability for the commission of the act of murder.

18 A mitigating circumstance is neither  
19 justification nor excuse for the murder. It simply  
20 lessens the degree of one's guilt, that is, makes  
21 him less blameworthy or less culpable.

22 Now, what statutory mitigating circumstances  
23 should you consider in this case? I refer you once  
24 again to the sheet of paper entitled Statutory  
25 Instructions. Immediately below the listing of

1 statutory aggravating circumstances, which I read to  
2 you earlier, the text continues. It says, You may  
3 also consider the following statutory mitigating  
4 circumstances: One, the defendant has no  
5 significant history of prior criminal convictions  
6 involving the use of violence against another  
7 person, quote unquote; and, two, the age or  
8 mentality of the defendant at the time of the crime.

9 It further reads, You may also consider any  
10 nonstatutory mitigating circumstances, including,  
11 it's including but not limited to, but including the  
12 defendant's honorable service in the military and  
13 the defendant's age or mentality at the time of the  
14 crime.

15 The second element you may consider is the  
16 existence of any nonstatutory mitigating  
17 circumstances as I just mentioned.

18 A nonstatutory mitigating circumstance is one  
19 which is not provided by statute, but is one for  
20 which the defendant claims serves the same purpose,  
21 that is, to reduce the degree of his guilt in this  
22 offense.

23 The defendant has also presented evidence of  
24 nonstatutory mitigating circumstances concerning his  
25 honorable military service and his adaptability to

1 prison life.

2 As I read to you earlier, the second  
3 nonstatutory mitigating circumstance, I hesitated  
4 because it repeated something from before, the  
5 second nonstatutory mitigating circumstance is the  
6 defendant's adaptability to prison life. And that  
7 will be corrected on this form submitted to you in  
8 the corrected fashion. In addition to these two  
9 nonstatutory mitigating circumstances, you may  
10 consider any other nonstatutory mitigating  
11 circumstances that you find to exist.

12 Now, while there must be some evidence which  
13 supports a finding by you that a statutory or  
14 nonstatutory mitigating circumstance exists, it is  
15 not necessary for you to find the existence of such  
16 a circumstance unanimously nor beyond a reasonable  
17 doubt.

18 In reaching your decision as to which sentence  
19 to recommend, you will consider the aggravating and  
20 mitigating circumstances. While an aggravating  
21 circumstance must be found before you can even  
22 consider recommending the death penalty, once such  
23 finding is made beyond a reasonable doubt, you may  
24 recommend the death sentence even though you find  
25 the existence of a statutory mitigating



1 circumstance, a nonstatutory mitigating circumstance  
2 or both. In other words, the existence of alleged  
3 statutory mitigating circumstance and alleged  
4 nonstatutory mitigating circumstance or both is not  
5 a bar to the imposition of the death penalty.

6 The third element you may consider if you  
7 should conclude that a statutory aggravating  
8 circumstance exists is whether the defendant should  
9 be sentenced to life imprisonment for any reason or  
10 for no reason at all. This is what has been  
11 traditionally referred to as a recommendation of  
12 mercy and should be such -- and should such be your  
13 decision, you would so indicate by returning to the  
14 Court the recommendation of life imprisonment form,  
15 which will be signed by the foreman alone.

16 In other words, you may choose to recommend  
17 life imprisonment if you find a statutory or  
18 nonstatutory mitigating circumstance, or you may  
19 choose to recommend life imprisonment as an act of  
20 mercy.

21 In any instance, should you choose to recommend  
22 life imprisonment, your decision must be a unanimous  
23 one and the foreman alone would be required to sign  
24 the recommendation form.

25 Now, I will summarize what I just told you.

1 You will have in the jury room during your  
2 deliberations five forms, a recommendation of life  
3 imprisonment form, a recommendation of death form,  
4 no finding of statutory aggravating circumstance  
5 form, statutory instructions, and statutory  
6 aggravating circumstances.

7 The statutory instructions state the only  
8 statutory aggravating circumstances you shall  
9 consider in this case. Should you fail to find  
10 beyond a reasonable doubt that one of these  
11 circumstances existed at the time the murder was  
12 committed, then you will fill out the no finding of  
13 statutory aggravating circumstances form and you  
14 will go no further.

15 Should you find beyond a reasonable doubt the  
16 existence of a statutory aggravating circumstance or  
17 circumstances, you would then be authorized to  
18 consider recommending the death penalty or life  
19 imprisonment.

20 Before continuing your deliberations, however,  
21 you would first list the statutory aggravating  
22 circumstances that you, the jury, found beyond a  
23 reasonable doubt on the form entitled statutory  
24 aggravating circumstances. Then the foreman and  
25 each juror will sign the form in the spaces

1 provided.

2 When you continue your deliberations on whether  
3 to recommend the penalty of death or life  
4 imprisonment, you will consider any statutory or  
5 nonstatutory mitigating circumstances which are  
6 supported by the evidence. You will also consider  
7 the statutory aggravating circumstance or  
8 circumstances you found beyond a reasonable doubt.  
9 After this consideration, you will then decide  
10 whether you will recommend the death penalty or life  
11 imprisonment.

12 In your deliberations, remember that you may  
13 also consider any other factor in mitigation of the  
14 offense and you may recommend a sentence of life  
15 imprisonment for no reason at all.

16 If you decide to recommend the death penalty,  
17 you will complete the proper form, you must write  
18 out the statutory aggravating circumstance or  
19 circumstances that you found and all 12 jurors must  
20 sign the recommendation.

21 Should you decide to recommend life  
22 imprisonment, only the foreman must sign the  
23 recommendation and no reason is to be given for your  
24 decision.

25 Whatever your recommendation is, it must be a

1 unanimous one, that is to say, it must be the  
2 verdict of each and every juror. And please  
3 remember your sentencing recommendation will be  
4 followed by this Court.

5 As final instructions in considering whether to  
6 recommend whether the defendant is to be sentenced  
7 to death or life imprisonment, I charge you that as  
8 jurors, you must decide the issue involved in this  
9 proceeding without bias and without prejudice to any  
10 party. You have been selected as fair and impartial  
11 jurors sworn to impartially try and determine the  
12 facts of this case. And when you comply with your  
13 oath to do so, then no one will have a right to  
14 criticize your verdict and you will have fully  
15 discharged your duty as jurors.

16 You are to decide this case according to the  
17 testimony which you have heard from the lips of the  
18 sworn witnesses, along with the other evidence  
19 introduced. And I charge you that as jurors, you  
20 must decide the issues in this proceeding without  
21 bias and without prejudice to any party. You cannot  
22 allow yourself to be governed by sympathy, by  
23 prejudice, by passion, by public opinion or any  
24 other arbitrary factor.

25 Both the State and the defendant have the right

1 to expect that each of you will carefully and  
2 impartially consider all of the evidence in this  
3 case and that you will follow the law as I have  
4 explained it to you.

5 Now, at this time, ladies and gentlemen, I will  
6 ask the alternates, the three alternates, to stand  
7 aside as the rest of you retire to the jury room;  
8 however, do not begin your deliberations until I  
9 send these jury charges that I just presented, the  
10 various forms and the exhibits. That will be your  
11 signal to begin your deliberations. Please remember  
12 that your verdict must be unanimous. Please go to  
13 the jury room except for the three alternates.

14 (The jury retires to the jury room.)

15 **THE COURT:** Are there any additions or  
16 exceptions to the charge from the State?

17 **MR. MYERS:** No, sir.

18 **MS. KIMBROUGH:** None, Your Honor.

19 **THE COURT:** All right. Very well. We'll  
20 gather up all the exhibits, forms and they can have  
21 at it.

22 (The jury commences its deliberations at  
23 1:12 p.m.)

24 (A recess transpired.)

25 **THE COURT:** I understand that there is a

1 verdict. And I also want to admonish everyone that  
2 the decorum of the court must be kept at all times.  
3 Let's bring in the jury.

4 (The jury returns to open court to report  
5 its verdict at 8:26 p.m.)

6 **THE COURT:** Mr. Foreman, have you reached a  
7 verdict?

8 **MR. FOREMAN:** Yes, we have, Your Honor.

9 **THE COURT:** Is it a unanimous verdict?

10 **MR. FOREMAN:** It was a unanimous verdict.

11 **THE COURT:** Okay. Everyone can be seated  
12 except for the foreperson. If you'll pass it to the  
13 clerk.

14 (The clerk hands the verdict to the Judge.)

15 **THE COURT:** If the defendant will stand. You  
16 may publish the verdict.

17 **THE CLERK:** Indictment 2004-GS-32-2259 through  
18 2264, the State versus Ron O'Neal Finklea, we, the  
19 jury, in the above-entitled case, find beyond a  
20 reasonable doubt the following statutory aggravating  
21 circumstances: The murder was committed while in  
22 the commission of a burglary while armed with a  
23 deadly weapon, the murder was committed while in the  
24 commission of a robbery while armed with a deadly  
25 weapon, the murder was committed while in the

1 commission of physical torture. And it is so  
2 signed.

3 Indictment 2004-GS-32-2259 through 2264, the  
4 State versus Ron O'Neal Finklea, we, the jury, in  
5 the above-entitled case, find beyond a reasonable  
6 doubt the existence of the following statutory  
7 aggravating circumstances: The murder was committed  
8 while in the commission of burglary while armed with  
9 a deadly weapon, the murder was committed while in  
10 the commission of robbery while armed with a deadly  
11 weapon, the murder was committed while in the  
12 commission of physical torture, now recommend to the  
13 Court that the defendant, Ron O'Neal Finklea, be  
14 sentenced to death. And it is so signed.

15 John P. Lombardi, Mr. Lombardi, as to the  
16 sentence, is this your sentence and is it still your  
17 sentence?

18 **FOREMAN:** It is our sentence, combined jury's  
19 decision and it remains so.

20 **THE CLERK:** Thank you, sir.

21 As I call your name, please hold your hand for  
22 recognition on the sentence, please.

23 Cari Moyer, as to the sentence, was this your  
24 sentence, is it still your sentence?

25 **JUROR:** Yes.

1           **THE CLERK:** Suzanne Patterson, as to the  
2 sentence, was this your sentence, is it still your  
3 sentence?

4           **JUROR:** Yes.

5           **THE CLERK:** Linda Brown, as to the sentence,  
6 was this your sentence, is it still your sentence?

7           **JUROR:** Yes.

8           **THE CLERK:** Rhonda Thompson, as to the  
9 sentence, was this your sentence, is it still your  
10 sentence?

11          **JUROR:** Yes.

12          **THE CLERK:** Jenifer Powers, as to the sentence,  
13 was it your sentence, is it still your sentence?

14          **JUROR:** Yes.

15          **THE CLERK:** Roxann Harris, as to the sentence,  
16 was this your sentence, is it still your sentence?

17          **JUROR:** Yes.

18          **THE CLERK:** Michael Smith, as to the sentence,  
19 was this your sentence, is it still your sentence?

20          **JUROR:** Yes.

21          **THE CLERK:** Preston Floyd, as to the sentence,  
22 was this your sentence, is it still your sentence?

23          **JUROR:** Yes.

24          **THE CLERK:** Bobbie McGee, as to the sentence,  
25 was this your sentence, is it still your sentence?



1 JUROR: Yes.

2 THE CLERK: Margaret Gerstung, as to the  
3 sentence, was this your sentence, is it still your  
4 sentence?

5 JUROR: Yes.

6 THE CLERK: Donald Hare, as to the sentence,  
7 was this your sentence, is it still your sentence?

8 JUROR: Yes.

9 THE CLERK: All jurors were polled, Your Honor.

10 THE COURT: The verdict appears to be the  
11 unanimous verdict of each and every juror. Are  
12 there any matters of law or post-trial motions the  
13 parties would like for me to consider at this time?

14 MS. KIMBROUGH: Your Honor, we would renew all  
15 of our prior objections and exceptions for the  
16 reasons previously stated and, at this time, would  
17 move for a new trial.

18 THE COURT: What says the State?

19 MR. MYERS: We think the verdict is supported  
20 by all of the evidence, Your Honor.

21 THE COURT: The matters submitted to the jury  
22 were matters for the jury's determination. Where  
23 there are existence of facts for the jury to make  
24 the determinations concerning, it's incumbent upon  
25 the Court to have the jury weigh those facts. I

1 find that the verdict in this case is supported by  
2 the evidence and I will not disturb the jury's  
3 verdict. And I deny the motion for a new trial and  
4 other motions made by the defense.

5 MS. KIMBROUGH: Yes, Your Honor.

6 THE COURT: Is the defense ready for sentencing  
7 to be pronounced?

8 MS. KIMBROUGH: Yes, Your Honor.

9 THE COURT: The defendant will come forward.

10 As the trial judge in the above-entitled action  
11 of the State versus Ron O'Neal Finklea and prior to  
12 the imposition of the death sentence upon the  
13 defendant, Ron O'Neal Finklea, I find as an  
14 affirmative fact that the evidence of the case  
15 warrants the imposition of the death penalty and its  
16 imposition is not a result of prejudice, passion or  
17 any other arbitrary factor.

18 Would you like to be heard, Ms. Kimbrough, Mr.  
19 Soltis?

20 MR. SOLTIS: No, sir.

21 THE COURT: Or Mr. Finklea?

22 DEFENDANT FINKLEA: No, sir.

23 MS. KIMBROUGH: No, Your Honor.

24 THE COURT: Mr. Finklea, you've been convicted  
25 of a number of offenses by the jury, including

1 criminal conspiracy, attempt to commit safe  
2 cracking, arson first degree, criminal conspiracy  
3 and possession of a firearm during the commission of  
4 a violent crime.

5 Solicitor, regarding the maximum and minimum  
6 sentences for those various offenses, do you have  
7 that before you?

8 **MR. MYERS:** I don't think that you can impose a  
9 sentence on the weapon charge, Your Honor. I think  
10 that's sort of similar to the kidnapping, as I  
11 understand the law. The criminal conspiracy is five  
12 years. On the safe cracking, I think that's up to  
13 30 -- I'm not really sure on that to tell you the  
14 truth, Your Honor.

15 **THE COURT:** I understand the jury has been  
16 curious as to what I've been doing with my lap top  
17 during the course of the week. And among the things  
18 I've been doing is finding out answers to all of the  
19 questions, including questions such as this.

20 The CDR code, Madame Clerk, that you have for  
21 attempt to commit safe cracking comes up as a  
22 robbery along with a deadly weapon.

23 **THE CLERK:** We'll get it amended, Your Honor.

24 **THE COURT:** If you'll double check the CDR code  
25 for that.

1           **THE CLERK:** Yes, sir.

2           (Pause.)

3           **MR. MYERS:** That's correct, Your Honor, safe  
4           cracking 30, arson 30.

5           **THE COURT:** For arson, must be in prison not  
6           less than ten, no more than 30 years. The sentence  
7           of the Court for the arson is ten years.

8           For criminal conspiracy, the sentence is five  
9           years.

10           Mr. Finklea, the jury has found you guilty of  
11           the offense of murder. The jury has recommended  
12           that you should be sentenced to death. It is,  
13           therefore, the judgment of the law and the sentence  
14           of the Court that you, the defendant, Ron O'Neal  
15           Finklea, be taken to the Lexington County Detention  
16           Center and thence to the State Department of  
17           Corrections, henceforth to be kept in close and safe  
18           confinement until the 5th day of November 2007 upon  
19           which day between the hours of six o'clock p.m. and  
20           six o'clock a.m. or upon an order of execution  
21           issued by the South Carolina Supreme Court, you, the  
22           defendant, Ron O'Neal Finklea, shall suffer death by  
23           electrocution or by lethal injection in the manner  
24           as provided by law.

25           May God have mercy on your soul, Mr. Finklea.

1 (The defendant leaves the courtroom.)

2 THE COURT: Ladies and gentlemen, thank you is  
3 certainly an inadequate expression for what all you  
4 have been through. And, certainly, you do not have  
5 a choice of having to be exposed over the past  
6 couple of weeks to the side of human existence that  
7 you, I'm sure, would rather have not seen and rather  
8 would not have been exposed to and rather to not  
9 have had to take a part in. You've seen human loss  
10 and human suffering and you've had the difficult  
11 task of determining how those matters should be  
12 necessarily addressed in court.

13 And I know that you will return to your homes  
14 in various ways of -- means of life and I just hope  
15 that situation that you've been in does not destroy  
16 your way of living or unduly interfere with your  
17 life.

18 Unfortunately, it was necessary for this case  
19 to come to court. And it's necessary for cases like  
20 this to be addressed in court. You're certainly an  
21 essential ingredient to the criminal justice system  
22 because the verdict is the verdict of yours, the  
23 people, your verdict to make.

24 I want to thank you on behalf of your fellow  
25 citizens in Lexington County and the State of South

1 Carolina. You've been asked to sit in judgment of a  
2 fellow human being and pass judgment on that man's  
3 life. And I don't need to remind you of that. I  
4 know it has obviously been a difficult task for you.

5 Just let me tell you that you've had to perform  
6 your duty in the tradition of our system and I've  
7 observed your close attention and your listening to  
8 the evidence and your service in this case. And you  
9 have fulfilled the oath that you've taken and you've  
10 served the function that you were called upon this  
11 week to suffer.

12 I'm releasing you from the oath of silence that  
13 you took when this case started since your service  
14 in this case have now concluded. You're free to  
15 discuss the matter with anyone that you may want to  
16 discuss it with, but certainly you're not obligated  
17 and cannot be compelled to talk with anyone about  
18 your verdict.

19 The law obligates me to give each of you a  
20 sheet of paper here that I hold in my hand  
21 concerning your service. And it reads:

22 After your service in this trial has concluded,  
23 you have the right to either refuse to discuss the  
24 verdict you have rendered or to discuss the verdict  
25 to the extent you so desire. If you choose to

1 discuss the verdict, you're free to terminate any  
2 such discussion at any point.

3 If the person with whom you are speaking  
4 continues to pursue a discussion of the verdict  
5 after you have communicated a desire to terminate  
6 the discussion or if a person continues to harass  
7 you after you have refused to discuss the verdict,  
8 you should report that person to me and you are to  
9 report that person to me through contacting Beth  
10 Carrigg, your Clerk of Court here in Lexington  
11 County. And her address and phone number are both  
12 listed here.

13 Madame Clerk, if you'll pass these to the  
14 jurors.

15 **THE CLERK:** Yes, sir Your Honor.

16 **THE COURT:** Is Mr. Finklea still back there,  
17 officer? He'll need to come back for the sentence  
18 on the safe cracking.

19 (The defendant enters the courtroom.)

20 **THE COURT:** Mr. Finklea, the matter, probably a  
21 little consolation to you what you might get on the  
22 safe cracking charge, but it's incumbent on me to  
23 sentence you on that charge as well. And the law  
24 says that a person who violates the provisions of  
25 this section is guilty of a felony and upon

1 conviction, must be in prison not more than 30  
2 years. And the sentence of the Court for the safe  
3 cracking is 30 years. Best wishes to you.

4 (The defendant leaves the courtroom.)

5 **THE COURT:** Ladies and gentlemen, I want to  
6 thank you, finally, on behalf of the family of the  
7 victim and all of the other participants in this  
8 criminal process. It's a difficult process for all  
9 of us. And we have all endured it together. And I  
10 wish you all the best and discharge you from any  
11 further participation in this case. You are free to  
12 go at this time.

13 Anything else on behalf of the clerk's office?

14 **THE CLERK:** No, sir.

15 **THE COURT:** All right. Thank you, ladies and  
16 gentlemen. You are discharged at this time.

17 (The jury was excused.)

18 **THE COURT:** Court is adjourned.

19 (Court's Exhibit Numbers 4 and 5 were marked  
20 for identification purposes.)

21 (Whereupon, the proceedings were concluded  
22 for September 6, 2007.)

23 (The following proceedings were held on  
24 September 27, 2007.)

25 **THE COURT:** Ms. Kimbrough.



1           **MS. KIMBROUGH:** Yes, Your Honor. May it please  
2 the Court.

3           I believe Mr. Graham has a copy of our -- the  
4 motion simply to settle the record insofar as the  
5 demonstrative exhibits used during the Solicitor's  
6 closing argument during the penalty phase. And I  
7 believe that Mr. Graham has brought along in a box  
8 those three exhibits that we specifically wanted to  
9 have documented.

10          Probably, the most -- the easiest way to do  
11 that is to have them photographed. And after  
12 speaking with Mr. Graham, he suggested, and I  
13 certainly think that this would be acceptable to  
14 both sides, simply to have the sheriff's department  
15 come in and make pictures of those items and rely on  
16 those photographs for purposes of the direct appeal  
17 rather than asking Mr. Myers to give up his items.  
18 I believe these are personal items. So we're  
19 certainly amenable to doing it that way, if Your  
20 Honor would see fit to allow us.

21          **THE COURT:** All right. Mr. Graham, what do you  
22 say?

23          **MR. GRAHAM:** Your Honor, if you think that we  
24 need to have photographs of it, my suggestion would  
25 be to have the sheriff's department do it, if you

1 don't believe that just describing it is enough.

2 THE COURT: I think that the actual items -- or  
3 photographs of the actual items would better  
4 preserve the record. So I grant the motion to have  
5 them photographed and made a part of the record in  
6 the case.

7 MS. KIMBROUGH: Thank you, Your Honor.

8 THE COURT: So once the pictures are taken, you  
9 all are going to get them to the clerk's office.  
10 Very good, that motion is granted.

11 MS. KIMBROUGH: Thank you, Your Honor.

12 I believe the other issue that needed to be  
13 addressed at today's hearing was the question of the  
14 post-trial Wilson factors. And I believe, Your  
15 Honor, because I've never done one of these before,  
16 I only have a vague sense of how to go about it, but  
17 I would suspect we would need to articulate why we  
18 believe the factors weren't met for the purposes of  
19 preserving our objections to the whole competency  
20 issue. While at the same time, I believe Your Honor  
21 under that case will have to conduct some sort of  
22 independent inquiry whether it's of Mr. Finklea or  
23 of Mr. Soltis and I concerning what prejudice, if  
24 any, was suffered as a result of Mr. Finklea's  
25 amnesia.

1 I hope I've stated that correctly. It's new  
2 territory and I'm very unfamiliar.

3 **THE COURT:** What's the State's understanding of  
4 all of that and the State's position concerning  
5 that?

6 **MR. GRAHAM:** Your Honor, I mean, reading  
7 Wilson, and that's the case that we talked about  
8 throughout the hearing, I think that you do have to  
9 make findings of fact as to the specific issues in  
10 there.

11 **THE COURT:** Can I borrow your copy of the  
12 Wilson case because I don't have my copy of it?  
13 Thank you.

14 (Pause.)

15 **THE COURT:** Ms. Kimbrough, do you have any  
16 evidence, testimony or argument that you would like  
17 to make concerning this issue of the effect of the  
18 alleged amnesia on the fairness in the trial of  
19 Mr. Finklea?

20 **MS. KIMBROUGH:** Yes, Your Honor, just briefly.  
21 May it please the Court.

22 Of course, I would incorporate by reference  
23 those arguments made in the pretrial motion  
24 concerning competency. But I would also  
25 specifically note for the record that Wilson being a

1 noncapital case would, therefore, directly apply to  
2 the question of participation in the guilt or  
3 innocence phase, but that it has -- virtually leaves  
4 no or very little guidance insofar as the penalty  
5 phase is concerned.

6       However, just sort of focusing on the guilt  
7 phase, obviously we brought up the issue of the  
8 somewhat blurry video tape. It was always my  
9 impression that the tape was not definitive as to  
10 who the actual shooter was. Given the sequence of  
11 events, the shooter was also the person who would  
12 have set the victim on fire which made the entire  
13 question of what the plan was, who hatched it and  
14 who essentially executed it insofar as the shooting  
15 and the burning is concerned. Those were very  
16 critical issues.

17       I would note that, you know, we relied on the  
18 discovery which was provided to us and as well as  
19 our additional investigation, but Mr. Finklea was  
20 unable to assist insofar as helping us know who did  
21 what. Obviously, if he had been able to recall the  
22 events and discuss what led up to the shooting and  
23 the burning and the robbery, we would have obviously  
24 been benefitted by that information, or at least I  
25 believe we would have.

1        So it, you know, in effect, the guilt phase  
2        strategy was based on the State's discovery, and  
3        that's, from our view, probably was not sufficient  
4        insofar as having an independent investigation into  
5        the facts.

6                The State, again, I realize they have a duty to  
7        investigate, but they also are advocates just like  
8        defense lawyers are and they had their theory of the  
9        case and did a very masterful job going out and  
10       investigating the case in such a way as to support  
11       it, whereas we were sort of left to rely on the  
12       physical evidence and, you know, without benefit of  
13       circumstantial evidence. By which, I mean simply  
14       that if we had had Mr. Finklea's version of events,  
15       obviously we would have investigated based on that  
16       version.

17        So as far as the guilt phase goes, that's, you  
18       know, I certainly think that his amnesia was a real  
19       impediment to us developing a theory of the case.  
20       We obviously did develop one and Your Honor's  
21       familiar with that.

22                Now, moving on to the penalty phase, and I may  
23       have to bounce back a little bit here, but as far as  
24       the penalty phase is concerned, there were numerous  
25       witnesses who were brought in to develop character

1 evidence. And as we discussed in the -- in the  
2 closing argument to the jury on the penalty phase,  
3 essentially the State's case relied on three things.  
4 They relied on victim impact information, which is  
5 not aggravation, so that's, really, that's, you  
6 know, we don't -- that's really not relevant to this  
7 particular part of the case. They relied on the  
8 aggravating factors and they relied on the character  
9 evidence.

10 And as far as Mr. Finklea's participation, I  
11 think the most important element, the most important  
12 way in which we were hampered as a result of his  
13 amnesia was in rebutting the character evidence.  
14 There was information that he was a big time drug  
15 dealer and he had manufactured crack and he went to  
16 Alabama. And there was all this, I mean, it was  
17 just pure hearsay, which in a death penalty case,  
18 during the penalty phase, unfortunately for us, is  
19 allowed in. And yet we were left talking to a  
20 client who couldn't tell us, you know, whether or  
21 not there was any truth to that.

22 I mean, for all we know, Theodore Davis could  
23 have been the big time drug dealer and maybe this  
24 was, you know, in some way related to his activities  
25 versus Ron's.

1           As it stood, we had no evidence of any drug  
2           involvement and were kind of left to, you know,  
3           essentially try to discredit these witness by  
4           alleging bias, which is obviously what we did, the  
5           folks who testified had connections to Theodore  
6           Davis.

7           But, you know, beyond that, beyond the sort of  
8           garden variety stuff, it was impossible to rebut it  
9           either because it wasn't true and you can't prove a  
10          negative or because there may have been some truth,  
11          but we didn't know what that was or our client  
12          certainly couldn't tell us whether there was any  
13          truth to it or not and so that was obviously not  
14          very helpful.

15          Now, insofar as the mitigation and his amnesia,  
16          again, Wilson doesn't address sentencing, so this is  
17          just trying to extrapolate, I guess, some of the  
18          basic principles of Wilson, which is what are the  
19          facts, how does amnesia hurt the defendant from  
20          being able to either rebut or confront the evidence  
21          against him.

22          Well, in the mitigation portion of the case,  
23          again, if he remembered the sequence of events,  
24          obviously that would have helped us cast this case  
25          or to challenge the case with more information. As

1 it stood, the only mitigation we had had to relate  
2 back to a time period in which we could get  
3 documented evidence, and that would be Mr. Finklea's  
4 military career, which was wonderful. I couldn't  
5 have asked for better mitigation insofar as his  
6 prior history was concerned.

7 But as to whether or not he was under the  
8 influence of drugs at the time, he didn't know, he  
9 couldn't tell us. We had no evidence to support  
10 that.

11 Whether or not Theodore Davis was, you know,  
12 the person who was ring leading it or was the person  
13 who was perhaps trying to influence Mr. Finklea, he  
14 couldn't tell us. He didn't try to make anything up  
15 about Mr. Davis. And Mr. Davis had, you know, had a  
16 lengthy history. And I would have liked, obviously,  
17 we would have liked to have known, you know, what  
18 was Davis like leading up to these events, what was  
19 his role?

20 And, you know, for mitigation purposes, that's  
21 not a statutory mitigating circumstance. You can't  
22 mitigate murder to manslaughter simply because there  
23 may have been somebody dominating someone else. I'm  
24 familiar with Roachville (ph) and that line of  
25 cases.



1           It's not a statutory question, but more it  
2           helps fill out the picture of the case. And as it,  
3           you know, as it stood with what we had, you know, we  
4           had to essentially rely on the historical evidence  
5           excluding the period of amnesia and that was  
6           wonderful evidence, but certainly the facts  
7           immediately surrounding the crime and afterwards  
8           would have -- those are things we would have liked  
9           to have known.

10           If I may briefly consult with co-counsel.

11           (Pause.)

12           **MS. KIMBROUGH:** And I would just point out one  
13           more thing, Your Honor, that, you know, we had a  
14           Jackson versus Denno hearing. And, obviously,  
15           again, there was very little we could do about the  
16           comment that Mr. Finklea allegedly made that never  
17           made it into Duane Peake's report, If that's me, I'm  
18           fucked, which was hugely prejudicial. We don't know  
19           if it's true or not.

20           You know, one can certainly postulate that,  
21           well even if Ron said it wasn't true, so what, you  
22           know, he was going to say it anyway. However, I  
23           think if, you know, that's just -- that's  
24           speculation. I mean, I don't know what Ron would  
25           have told us.

1           Certainly -- and again, getting back to the  
2 whole question of the guilt and the sentencing, it's  
3 very difficult to stick someone on the stand to  
4 testify when they don't remember anything. In fact,  
5 I don't think we could have put him on the stand to  
6 testify really at either phase.

7           He was able to allocute because that didn't  
8 rely on -- have any sort of knowledge of the six  
9 week period for the amnesia, that was simply asking  
10 for mercy and apologizing based on what he learned  
11 and what we told him about the facts, but he  
12 certainly could not have testified in part because  
13 he'd have nothing relevant to say. If you don't  
14 remember the facts, then how could anything you say  
15 be relevant, period.

16          So, Your Honor, obviously we would just argue  
17 that the amnesia really left us in the dark and was  
18 not -- was extremely significant insofar as giving  
19 Mr. Finklea the fair trial and the competent trial  
20 that we tried to give him. And so we would simply  
21 renew our previous motion, which I guess at this  
22 point would be the equivalent of asking for a new  
23 trial based on the incompetence of Mr. Finklea  
24 during the trial.

25          So, again, I've never been in this situation

1 before, so I hope I'm asking for the appropriate  
2 relief so that this doesn't become a PCR issue. I  
3 suspect the record is pretty clear at this point.  
4 And unless Your Honor has any questions, I believe  
5 that's all we have. Thank you.

6 THE COURT: Mr. Graham.

7 MR. GRAHAM: Thank you, Your Honor. One thing  
8 I'd like to start off by saying is that I know we're  
9 talking about Wilson and we're talking about amnesia  
10 and we're talking about the defense not being able  
11 to make an accurate defense, but the first thing, I  
12 think, that needs to be addressed is whether or not  
13 they have proved that he has amnesia before we even  
14 start going down that road. And I don't know  
15 whether it's proper or improper for you to make a  
16 finding of fact as to your opinion as to that on the  
17 record or not.

18 But they've made claims and they've had doctors  
19 testify and the best I know is nobody's been able to  
20 say for sure that he does have amnesia because he's  
21 the only one that knows that. No doctor can do --  
22 they told you there was no test they could do to  
23 verify that he did have amnesia. Some people said  
24 that he had symptoms that were consistent with that,  
25 but that doesn't necessarily imply that he does have

1 amnesia.

2 The second thing, Your Honor, is that we have  
3 talked about Wilson, it's a case that the defense  
4 brought forward to you, but, again, it's not binding  
5 or controlling in South Carolina jurisdictions and,  
6 again, it doesn't address death penalty situations.  
7 I guess it provides us a framework for us to  
8 discuss, but it's probably not all inclusive and  
9 accurate maybe for South Carolina. I believe it's a  
10 1968 case, so it's almost 40 years old.

11 As to the strength of the State's case, which I  
12 know is one of the -- I don't have the case in front  
13 of me, Your Honor. I believe, and, Your Honor, it's  
14 up to you as well, but you saw the video, there were  
15 only two people who were identified to be in that  
16 and that's Mr. Davis and Mr. Finklea.

17 And I think that you can tell from facial  
18 characteristics, that the shooter, the person with  
19 the gun and who went into the room was Mr. Finklea.  
20 One of the things you can look at not only, you  
21 know, clothing obviously is not controlling, but you  
22 have the clothing, but as for physical facial  
23 characteristics, you can look at the nose, the  
24 breadth and width of the nose of Mr. Finklea  
25 compared to Mr. Davis and what you see on the tape.

1 I believe, also, there's maybe some profile shots  
2 with a profile of the face, including the ears.

3 In addition to being able to see yourself, Your  
4 Honor, two witnesses got up on the stand and  
5 identified Mr. Finklea from the videos and said that  
6 that was him, people who have known him all of his  
7 life.

8 We know that he was there or most likely there.  
9 There was obviously strong evidence to show that he  
10 was. You have the clothing that was identified on  
11 the tape that would link back to him. You also have  
12 his ATM card that was found outside. And you also  
13 have, while not an exact match, you have a -- you  
14 have a probability that the blood on his shoe was  
15 Mr. Sykes' blood and that was the shoe that he was  
16 found wearing which places him at the scene.

17 As to trying to reconstruct the events,  
18 pursuant to Your Honor's order, we turned over a lot  
19 more than we had to in a normal case and what would  
20 have been required for the State to produce in  
21 discovery. I believe every person that we talked to  
22 under your order, we've typed up a summary of what  
23 they said and we turned it over. And they would  
24 have had the opportunity to talk to some of those  
25 people and I'm sure they probably did talk to some

1 of those people.

2 I believe that the information that related to  
3 the drug dealing was in there that we turned over.

4 MS. KIMBROUGH: Yes, Your Honor.

5 MR. GRAHAM: So I think that Your Honor  
6 actually directed us just to do guilt and I think we  
7 actually turned over evidence that related to guilt  
8 and penalty.

9 I know that Ms. Kimbrough talked about the  
10 character evidence as one of the things that they  
11 weren't able to rebut and I'm assuming that was  
12 specifically to the drug dealing. I don't know what  
13 much more they would have been able to do even if  
14 Mr. Finklea would have remembered anything.

15 We had people who said that he was dealing  
16 drugs. We had no physical proof. There was no  
17 convictions. We don't have any drugs that were  
18 found in his possession. We don't have records  
19 showing that he was dealing drugs. None of that  
20 kind of information was introduced.

21 You had the testimony of a couple of people  
22 saying that he had been involved in drug activity.  
23 They were able to cross-examine those people as  
24 effectively as they would have been, I believe. I  
25 don't know what -- unless Mr. Finklea told them he

1 was involved with drugs, I don't know what he would  
2 have been able to tell them that they would have  
3 been able to cross them anymore, than they knew that  
4 the people were going to testify about the drugs  
5 that testified about the drugs and they  
6 cross-examined them.

7 She also mentioned talking, I guess, about what  
8 Mr. Davis was going to say about the situation. I  
9 don't -- Mr. Davis didn't testify, so I'm not sure  
10 what Ms. Kimbrough meant when she was talking about  
11 that. And I don't know that -- I believe that  
12 Mr. Williams probably wouldn't have let them talk to  
13 him anyway. I don't know if they made an official  
14 request. I think they may have. And I think they  
15 were turned down on that. And that's obviously  
16 outside of our control of whether people want to  
17 talk to the defense or not.

18 I don't know what other elements, specifically,  
19 that I would need to address, Your Honor, but I  
20 believe, at least, that the State's case was strong.  
21 I don't believe that it was a weak case. And I  
22 don't believe that if he does have amnesia, that it  
23 impacted his ability to prepare for the trial either  
24 in the guilt phase or the penalty phase.

25 **THE COURT:** Ms. Kimbrough.

1           **MS. KIMBROUGH:** Just briefly, Your Honor. One  
2           thing that I think I need to stress here is that we  
3           had two people who were involved in this crime.. We  
4           had Theodore Davis and we had Ron Finklea. With Ron  
5           not being able to discuss their relative roles in  
6           the planning and execution of this crime, that to me  
7           was harmful at both phases. But under a hand of  
8           one, hand of all, I'll be the first person to  
9           concede that it was most relevant in the sentencing  
10          phase.

11                 So one thing that I would like to point out is  
12          that not having an accurate reconstruction from our  
13          client's point of view, I believe was extremely  
14          detrimental during the penalty phase. We couldn't  
15          discuss what the facts and circumstances of the  
16          crime were and that's critical in these cases.

17                 I think that with his wonderful record of  
18          military service and no prior criminal record and  
19          his absolutely spotless four years in the Lexington  
20          County Detention Center, that he was a genuine  
21          candidate for a life sentence.

22                 However, with absolutely no ability to show  
23          that he was not the ring leader and without a way to  
24          explain the facts and circumstances of the crime,  
25          all of those good things that worked in his favor



1 got greatly undercut. We had no way to explain how  
2 this crime might have occurred in any way other than  
3 what the State postulated, which is that Theodore  
4 Davis, despite the fact that he had previously been  
5 convicted of trying to kill another human being in  
6 his own home by shooting them in the back of the  
7 head, that despite that fact, that he was a  
8 follower. He was this weak, meek little guy and  
9 that Ron was some sort of monster.

10 You know, obviously, that's not a theory that  
11 we signed on to, but it's also a theory that we had  
12 to contend with and one that was very difficult to  
13 meaningfully rebut. I mean, my theory is just that.  
14 It's not evidence, it's me trying to do my job, but  
15 without Mr. Finklea's ability to tell us what  
16 Theodore Davis was like leading up to this time, and  
17 just speaking hypothetically, all of this stuff  
18 about drugs, for all we know, Theodore Davis could  
19 have been the one out there doing the drugs. He was  
20 certainly the person whose family members were  
21 involved in all of this stuff. And I think they  
22 were very protective of him. Ron couldn't tell us  
23 anything about any drug activity, period. So we do  
24 think that it hurt us in that way.

25 And, Your Honor, I believe that's all,

1 additionally, that we would have at this time. But  
2 again, you know, in neither phase could he have  
3 testified. It was just -- it was not possible.

4 Oh, I'm sorry. There's one other thing, the  
5 standard. Amnesia can never be proven 100 percent,  
6 that was the whole point of the testimony. That  
7 doesn't mean that amnesia is never a basis for  
8 incompetence, that's not what that means. Amnesia  
9 is real, but it's the sort of thing that there is no  
10 bright line test for.

11 And I would point out that we didn't have a  
12 burden a hundred percent or even to beyond a  
13 reasonable doubt, the standard is preponderance of  
14 the evidence, which is 51 percent. And given that  
15 the only testimony on the record is that there's no  
16 evidence that he's faking anything, his injury is  
17 consistent with amnesia, I believe we've met that 51  
18 percent. I understand that it's not --

19 **THE COURT:** Fifty-one percent burden of proving  
20 what?

21 **MS. KIMBROUGH:** That he's incompetent, that he  
22 cannot assist. And I'm assuming, and maybe I'm  
23 wrong about this, I may be stepping into an area  
24 that I don't know enough about, but I'm assuming  
25 that if the test is 51 percent, that that means each

1 part of your picture of incompetence would have to  
2 be proven by at least 51 percent.

3 **THE COURT:** You're arguing that if you prove  
4 amnesia, you've proven incompetence.

5 **MS. KIMBROUGH:** No, absolutely not, no. My  
6 argument is that the only evidence as to the amnesia  
7 is that he has it. There's no evidence, there's  
8 absolutely nothing on the other side to discredit or  
9 call into question the amnesia. And I think once  
10 you get the amnesia part, that's part of competency,  
11 but, obviously, it's not the whole thing. We  
12 understand that. There are no bright line rules.

13 We're not asking for a bright line rule that  
14 every time you're amnesic, then you're incompetent  
15 because that's not the law and we're not asking to  
16 change the law. We just think under these facts and  
17 circumstances, that his ability to assist us was  
18 zilch. I mean, he's a great client. He stayed out  
19 of trouble. He can beg for his life, which he did  
20 to no avail.

21 **THE COURT:** So you're expanding the period of  
22 amnesia from -- for how long? I believe that Mr. --

23 **MS. KIMBROUGH:** What he testified to. I'm not  
24 expanding it. I mean, it was six weeks, I believe.  
25 Wasn't it right before and then --

1           **THE COURT:** And you're expanding it to how many  
2 years?

3           **MS. KIMBROUGH:** None. No, I mean, he could  
4 tell us what happened after the crime and he could  
5 tell us what happened, you know, up to two weeks  
6 before the crime. I'm not expanding the period of  
7 amnesia. I believe it was like a four week window.

8           **THE COURT:** When you said he could not assist  
9 you with regard to --

10          **MS. KIMBROUGH:** Well, insofar as the facts of  
11 the crime.

12          **THE COURT:** Well, with regard to the evidence  
13 presented during the trial in the issue of drug  
14 dealing, the lady testified that he started -- that  
15 as soon as -- the first night or first day he got  
16 there, they caught him trying to sell drugs to some  
17 Mexicans, that wasn't within two weeks of the crime  
18 or two weeks after the crime, that was a significant  
19 period of time. You had the witnesses testify that  
20 he went to Alabama and picked up drugs.

21          **MS. KIMBROUGH:** And I understand all that, Your  
22 Honor, but there's still that four week period --

23          **THE COURT:** Well, when you said he can't assist  
24 you, I'm wondering what period of time you're  
25 attempting to expand this to include.

1           **MS. KIMBROUGH:** I'm not attempting to expand it  
2           at all, Your Honor. I'm just simply saying that if  
3           he was doing drugs around this time and that's what  
4           they're -- I think some of that testimony was that  
5           he was still allegedly this big drug dealer. I  
6           don't see how that -- how we could have rebutted  
7           that.

8           If he doesn't remember two weeks before the  
9           crime and two weeks after -- obviously, we did what  
10          we could with the allegations relating to the  
11          Alabama stuff and the older stuff, I didn't mean to  
12          muddle it together, but the point is the facts  
13          surrounding the crime itself, the facts and  
14          circumstances of the crime, leading up to the crime  
15          and immediately thereafter. So I did not intend to  
16          expand the time. Obviously, that's not the  
17          testimony.

18          **THE COURT:** All right.

19          **MS. KIMBROUGH:** And that would be all.

20          **MR. GRAHAM:** The only thing I would like to  
21          clarify for the record, Your Honor, I'll ask the  
22          defense to correct me, is Mr. Davis pled to assault  
23          and battery with intent to kill. I believe he  
24          received a time served sentence with probation or  
25          something very similar to that.

1 I don't believe that the facts in that case or  
2 his plea indicate that he was the shooter. When Ms.  
3 Kimbrough refers to him trying to take another  
4 person's life, under the hand of one, hand of all,  
5 yes, but as the person with a gun, I don't believe  
6 that the facts of that case show that. The person  
7 who was actually convicted, I believe, who was  
8 identified as the trigger person got like a 15 year  
9 sentence, whereas Mr. Davis did not.

10 Additionally, we did disclose after speaking  
11 with Mr. Davis the last time, he denied actually, he  
12 said that he pled to get out of jail and that he  
13 actually never had any involvement. So as far as  
14 he's concerned, he's not even guilty of that. But  
15 I'll just make that part of the record because later  
16 on people will be reading this who don't know the  
17 facts of that case.

18 **MS. KIMBROUGH:** Well then, Your Honor, I'd be  
19 more than happy to submit, you know, whatever  
20 documents concerning the assault and battery with  
21 intent to kill. But our whole point is Mr. Davis,  
22 once again, pointed the finger at his co-defendant.

23 You're right, even though he pleaded guilty,  
24 he's now saying, I didn't have anything to do with  
25 it, I just pled to get out. But he was still

1 involved in a potential homicide in his own home  
2 where somebody was shot from the back in the head.

3 THE COURT: But Mr. Davis did not testify.

4 MS. KIMBROUGH: You're right, he did not.

5 THE COURT: The State didn't call him. The  
6 defense didn't call him. He didn't testify. So  
7 his -- whereas he made statements that were part of  
8 the investigation of the case and counsel might have  
9 brought in Mr. Davis' allegations, Mr. Davis was not  
10 brought in to testify. Mr. Davis wasn't -- you  
11 didn't ask Mr. Davis any questions under oath, so --

12 MS. KIMBROUGH: No, Your Honor.

13 THE COURT: -- for the Court to base any ruling  
14 on Mr. Davis and Mr. Davis did not testify.

15 MS. KIMBROUGH: Your Honor, I was simply  
16 responding to the State's version of Mr. Davis'  
17 prior assault and battery with intent to kill.

18 THE COURT: I understand.

19 Well, this case, the case of State versus  
20 Finklea, will go down in the annals of human history  
21 as a very sad and tragic case. By all accounts, you  
22 have a fellow, Mr. Davis -- Mr. Finklea that is, not  
23 Mr. Davis, Mr. Finklea, who grew up in Alabama on  
24 hard times, seemed to work his way from there out to  
25 west -- the north west, ended up in, I guess, in the

1 Seattle, Washington area, got married, had a child  
2 and family out there.

3 And then, at some point, is in the service, did  
4 an excellent job in the service, became a leader of  
5 men in the service and won the friendship and  
6 confidences of a lot of excellent officers in the  
7 service and appeared that he was an excellent  
8 officer as well.

9 Then left the service, ended up here in South  
10 Carolina. Apparently, in a distraught, dejected,  
11 depressed state or some sad state because of  
12 whatever he -- whatever joys and successes that he  
13 had experienced in the military, he no longer  
14 experienced here in Columbia and ended up working  
15 these temporary service jobs, including the job at  
16 Selectron. It appeared that he missed the military,  
17 wanted to get back in the military, could not get  
18 back into the military and resorted to criminal  
19 activity. And based on the testimony of the case,  
20 the criminal activity included dealing drugs.

21 And it appears he spent his wife's money while  
22 she was in Iraq and decided that he needed to try to  
23 get some money and thought he could get money at  
24 Selectron and was willing to do any and everything  
25 to get that money, including robbery and killing,



1 which he did.

2 Then left South Carolina, went back to Alabama  
3 after participating in the killing of Mr. Sykes and  
4 burning his body. And then was arrested in Alabama,  
5 brought back to South Carolina where he tried to  
6 kill himself and was almost successful in killing  
7 himself and suffered serious, permanent injuries,  
8 including what has been testified to to be amnesia  
9 concerning for the period of time of about a month  
10 or -- a few weeks before the killing of Mr. Sykes to  
11 a few weeks after.

12 But the window of opportunity of this amnesia  
13 was -- it wasn't that long. So, in many ways, his  
14 case is not unlike a lot of cases of people who come  
15 to court and cannot account for the actual criminal  
16 offense that they're accused of doing either because  
17 they were high on drugs, passed out, blocked it out  
18 of their minds, refused to allow themselves to  
19 remember, blotted it out for whatever reason. And  
20 in most instances, it's not as significant a  
21 situation as that of Mr. Finklea.

22 But courts are often confronted with situations  
23 where the defendant is represented by counsel and  
24 the defendant is telling his lawyers, I don't  
25 remember, I don't know what y'all are talking about,

1 I don't remember any of that. So the court has to  
2 figure out ways to address that concern by ensuring  
3 that the defendant, despite not being able to  
4 remember or recall events, that the defendant  
5 nevertheless is afforded a fair trial.

6 And, in this case, taking everything in the  
7 light most favorable to Mr. Finklea as far as  
8 whether or not he had amnesia, the Court fashioned a  
9 remedy on the assumption and presumption that he did  
10 have amnesia. And that remedy was to have the State  
11 turn over all of its evidence, that it intended to  
12 open its files to give discovery to the defense to  
13 help the defense reconstruct any defense and to make  
14 certain that the evidence in the case negated all  
15 reasonable hypotheses of innocence.

16 The State did that. We conducted the trial.  
17 The defense moved for a continuance. The Court  
18 denied the motion for a continuance, but instructed  
19 the defense that should the State call any witness  
20 that you have not had an opportunity to interview  
21 that you want to talk to, that you think that you're  
22 being surprised by the testimony, the Court will  
23 recess the trial, if necessary, give you an  
24 opportunity to talk with those witnesses to be sure  
25 that the defendant, Mr. Finklea, is being adequately

1 represented.

2           There were no requests during the trial for any  
3 recess, stopping early for the Court to give the  
4 defense an opportunity to talk to any witness. In  
5 fact, all of the witnesses who were called, I  
6 believe, other than law enforcement officers, were  
7 people who were known by Mr. Finklea or by the  
8 defense.

9           They included co-workers, people who worked at  
10 Selectron, either worked with Mr. Finklea. The one  
11 guy who says that Finklea threatened someone on the  
12 job, he was a co-worker of Mr. Finklea, something  
13 that Finklea would have had no problem of recalling  
14 because this was far in advance of this alleged  
15 amnesia.

16           The other co-workers who testified involved the  
17 security people at Selectron. These were people who  
18 the defense certainly, through all of thousands of  
19 dollars that the State invested in helping the  
20 defendant, ensuring the defendant would have an  
21 adequate defense, including investigators and  
22 medical witnesses, the defense certainly had an  
23 opportunity to investigate and learn all they might  
24 want to be -- should have learned about the  
25 Selectron security officers, one of whom Mr. Finklea

1 killed. And those folks included people who were  
2 there as fellow workers around the time that  
3 Mr. Sykes was killed or the supervisors.

4 The other witnesses who testified were people  
5 well known to Mr. Finklea well in advance of this  
6 period of alleged amnesia included his  
7 sister-in-laws and close family people or people he  
8 either lived with, traveled with or knew well. And  
9 they testified concerning events well in advance for  
10 the most part of the -- of this period of alleged  
11 amnesia, except perhaps the lady who said that she  
12 went with him to Michigan, I believe it was, to pick  
13 up this gun, but that witness also testified to  
14 other events involving Mr. Finklea and what he was  
15 doing at around the time.

16 And that Mr. Finklea's period of amnesia is  
17 what he said it was and the doctors said it was,  
18 then evidence concerning those other witnesses were  
19 witnesses that he certainly could have shared with  
20 his counsel.

21 Mr. Finklea had an opportunity to address the  
22 jury during the course of the trial and made his  
23 plea to the jury in a clear fashion.

24 I don't know what more the defense could have  
25 been able to do had Mr. Finklea told you everything

1       that he did during that period of time that he says  
2       he cannot remember. For the most part, his steps  
3       were retraced by his own folks and by the State and  
4       by law enforcement.

5             It's clear that he went to the airport and  
6       rented a car. It's clear that he went by Selectron  
7       the night before the murder and talked with the  
8       people there and asked them questions that he  
9       already knew the answers to or questions that  
10      involve -- that helped him in planning this murder.

11            He was caught on tape that night wearing a  
12      jacket which was the same jacket he wore when he  
13      worked there and took his job picture, his photo  
14      I.D., they had him in the computer system, they  
15      easily identified him. He dropped that I.D. the  
16      night of the murder.

17            And what was represented initially to be these  
18      blurry photographs ended up being quite clear to me,  
19      particularly the photographs that were presented  
20      during the penalty phase. The photographs -- the  
21      video that was taken not by the ATM machine, but by  
22      the overhead Selectron security system and the  
23      witnesses who identified Mr. Finklea as being the  
24      person in the video, I think the evidence was  
25      overwhelming that that was, in fact, Mr. Finklea in

1 the video and that was, in fact, Mr. Finklea who  
2 shot Mr. Sykes twice, that is Mr. Finklea who set  
3 him on fire and that is Mr. Finklea who could have  
4 assisted him and had some opportunity to come to his  
5 senses, but never did. He left him to die after  
6 shooting him and setting him on fire.

7 Now, the fact that he had no prior record and  
8 the fact that in some other venues, he may have  
9 gotten a life sentence, didn't work for him here in  
10 Lexington County where he got a death sentence.

11 I believe that he had a fair trial from the  
12 Court's perspective of what the Court could do.  
13 Whether or not he had the best advocacy on his own  
14 behalf, that's a PCR question for someone else to  
15 determine whether his lawyers were effective in  
16 representing him.

17 But from the Court's perspective in providing  
18 money for his defense, making sure that he got a  
19 fair trial, and I can't think of anything else the  
20 Court could have done to make the playing field  
21 anymore level for Mr. Finklea considering the hand  
22 that he dealt himself when he tried to kill himself.

23 There were witnesses that the State paid for  
24 for the defense or investigators, including the  
25 forensic -- Doctor Donna Schwartz-Watts, forensic

1       psychiatrist, other psychiatric people, medical  
2       people, neurological people and criminal  
3       investigator, none of those folks testified during  
4       the trial for him, though some of them were present  
5       in the courtroom during portions of the trial.

6               So I think that the model set forth for dealing  
7       with the -- with situations similar to this through  
8       this Wilson case was a good guide by the Court to  
9       follow in trying to assure a fair trial. And having  
10      taken this opportunity to review the trial to  
11      determine whether or not the amnesia affected his  
12      ability to have a fair trial, I find that he had a  
13      fair trial based on the Court's pretrial orders and  
14      also based on the apparent lack of prejudice to him  
15      and based on the overwhelming evidence of his guilt.

16             It's -- this case of Mr. Finklea's guilt and  
17      Mr. Finklea being the trigger man who killed  
18      Mr. Sykes was one of the strongest cases I've ever  
19      seen, the evidence was overwhelming. I don't  
20      believe -- well, I'll be amazed if anyone in the  
21      courtroom had any doubt that the jury would find him  
22      guilty based on the overwhelming evidence presented  
23      that showed his guilt, not only his guilt of being  
24      involved in the crime, but his guilt in being the  
25      trigger man.

1           Of course, he offered a defense to say that the  
2 co-defendant was wearing his clothes and hid murder  
3 -- hid those clothes behind his mother's house in  
4 Alabama and none of that appeared to have any  
5 credibility.

6           It was fairly clear based on the evidence  
7 presented that based on the video, the clothing, the  
8 DNA evidence, other forensic evidence and all the  
9 evidence taken as a whole, that Mr. Finklea killed  
10 Mr. Sykes and that there are very aggravating  
11 circumstances that would cause the jury to impose  
12 the death penalty despite the fact that he did not  
13 have prior criminal convictions.

14           Of course, the jury was given an instruction  
15 concerning mitigating circumstances to include the  
16 circumstances of his health and just the overall  
17 situation that he found himself in at that time of  
18 trial.

19           So based on all of that, I deny the motion for  
20 a new trial. I reaffirm the Court's prior rulings.  
21 And I find that having conducted this hearing  
22 post-trial, I find that the amnesia that he claimed  
23 did not affect his ability to get a fair trial in  
24 this case and I find that he did, in fact, have a  
25 fair trial. And that's the order of the Court.



1 Other than that how are you doing, Mr. Finklea?

2 DEFENDANT FINKLEA: I'm doing well, sir. How  
3 are you doing today?

4 THE COURT: I'm doing pretty good. What does  
5 the green uniform mean?

6 DEFENDANT FINKLEA: Death row, sir.

7 THE COURT: And how many people brought you  
8 here?

9 DEFENDANT FINKLEA: Four.

10 THE COURT: I hope y'all have a save trip back.

11

12

13 END OF PROCEEDINGS

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## C E R T I F I C A T E

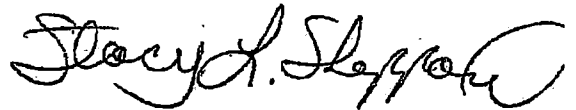
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 27th of August, 2007.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 7, 2008



Stacy L. Sheppard  
Circuit Court Reporter

WITNESSES

LSCD

Frier

2412

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

*Susan J. Batton*

oreperson of Grand Jury

ate:

5/25/04

VERDICT

*Guilty*

*John P. Infante*

oreperson of Petit Jury

ate:

8/31/07

2332

DOCKET NO. 2004-02-2259

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 141.

Indictment for

ATTEMPT TO COMMIT  
SAFECRACKING

§16-11-340 (390)

DONALD V. MYERS, SOLICITOR

A TRUE COPY  
*RSCL*  
Lex. Co. C.D.C.P., G.S. & P.O.

2418333

STATE OF SOUTH CAROLINA )

INDICTMENT FOR  
ATTEMPT TO COMMIT SAFECRACKING  
§16-11-390

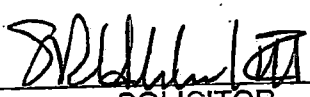
COUNTY OF LEXINGTON )

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**ATTEMPT TO COMMIT SAFECRACKING****§16-11-390**

That **RON O'NEAL FINKLEA**, together with Theodore Davis, did in Lexington  
County on or about August 2, 2003, willfully and unlawfully use explosives, tools, or any  
other implement in or about a safe used for keeping money or other valuables with the  
intent to commit larceny or any other crime, in violation of §16-11-390 of the South  
Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
SOLICITOR

Dep.

WITNESSES

LCSD

Peake

ARREST WARRANT NUMBER

3-501546

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-C-32- 2260

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 116

Indictment for

MURDER

§16-3-10

DONALD V. MYERS, SOLICITOR

A TRUE COPY  
Lex. CC, C.O.C.E., C.S. & H.O.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

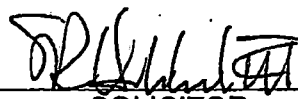
INDICTMENT FOR  
MURDER  
§16-3-10

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**MURDER §16-3-10**

That **RON O'NEAL FINKLEA**, did in Lexington County, on or about August 2,  
2003, willfully, feloniously and with malice aforethought kill the victim, **Walter Sykes,  
Sr.**, by means of gun shot wounds to the head and neck with a pistol and by setting him  
on fire, and the victim, Walter Sykes, Sr. died in Lexington County on or about August 2,  
2003, as a result of a fatal, penetrating, gunshot wound to the right side of the face,  
and/or a fatal, perforating gunshot wound to the left side of the neck, both shots  
resulting in bleeding and aspiration of blood into the airways, and/or as a result of first,  
second and third degree thermal burns involving approximately thirty percent of the  
victim's total body surface area, in violation of Section 16-3-10 of the South Carolina  
Code of Laws of (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
SOLICITOR  
Rep.

WITNESSES

LCSD

Peake

2416

ARREST WARRANT NUMBER

3-501547

ACTION OF GRAND JURY

TRUE BILL

*Susan J. Batson*

Foreperson of Grand Jury

Date:

5/25/04

VERDICT

*Guilty*

*Don P. Infante*

Foreperson of Petit Jury

Date: 8/31/07

2336

DOCKET NO. 2004-G-2-2261

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 2550

Indictment for

ARSON FIRST DEGREE

§16-11-110 (A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY  
Lex. Co. C.O.C.L., G.S. § 10.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

INDICTMENT FOR  
ARSON FIRST DEGREE  
§16-11-110 (A)

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**ARSON IN THE FIRST DEGREE**  
**§16-11-110(A)**

That **RON O'NEAL FINKLEA**, did in Lexington County on or about August 2, 2003,  
willfully and maliciously cause an explosion, set fire to, burn, or cause to be burned, or aid,  
counsel or procure the burning of a building, to wit: The Selectron Electronics plant located  
1000 Technology Drive in Lexington County, SC and which resulted, either directly or  
indirectly, in the death of the on-duty security guard, Walter Sykes, Sr., in violation of §16-  
11-110(A) of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
SOLICITOR

Dep.



WITNESSES

LCSD

Frier

2418

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

*Dusan J. Batson*

Foreperson of Grand Jury

Date: 5/25/04

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: 8/31/07

2338

DOCKET NO. 2004-G-2-2263

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 49

Indictment for

CRIMINAL CONSPIRACY

§16-17-410.

DONALD V. MYERS, SOLICITOR

A TRUE COPY  
Lex. Co. C.C.C.E., C.S. & F.C.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

INDICTMENT FOR  
CRIMINAL CONSPIRACY  
§16-17-410

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**CRIMINAL CONSPIRACY**  
**§16-17-410**

That **RON O'NEAL FINKLEA**, did in Lexington County on or about August 2,  
2003 unlawfully and willfully unite, combine, conspire, confederate, agree and have a  
tacit understanding with **Theodore Davis**, for the purpose of accomplishing criminal  
acts, to wit: Murder, Arson First Degree, Safecracking and/or Larceny, in violation of  
§16-17-410 of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
SOLICITOR

WITNESSES

LCSD

Peake

2420

ARREST WARRANT NUMBER

3-501548

ACTION OF GRAND JURY

TRUE BILL

*Susan J. Batson*

Foreperson of Grand Jury

Date:

5/25/04

VERDICT

*Guilty*

*Don V. Myers*

Foreperson of Petit Jury

Date: 8/31/07

2346

DOCKET NO. 2004-G-2-2264

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

VS.

RON O'NEAL FINKLEA

CDR# 549

Indictment for

POSSESSION OF A FIREARM WHILE IN  
THE COMMISSION OF A VIOLENT

CRIME

§16-23-490.

DONALD V. MYERS, SOLICITOR

A TRUE COPY

*[Signature]*  
Lex. Co. C.C.C.P., G.S. & F.Q.

CC# 2421341

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

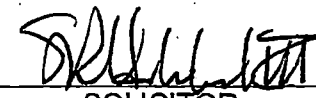
INDICTMENT FOR  
POSSESSION OF A FIREARM WHILE IN THE  
COMMISSION OF A VIOLENT CRIME  
§16-23-490

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**POSSESSION OF FIREARM OR KNIFE  
DURING COMMISSION OF A VIOLENT CRIME  
§16-23-490**

That **RON O'NEAL FINKLEA**, did in Lexington County on or about August 2,  
2003, willfully and unlawfully have in his possession, or did visibly display, a firearm  
during the commission of a violent crime or crimes, to wit: Murder and/or Arson First  
Degree, as defined in §16-1-60, all in violation of Section 16-23-490 of the South  
Carolina Code of Laws of (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
SOLICITOR  
Dep.

2342

072411  
C. 2422/1

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

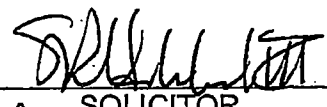
INDICTMENT FOR  
POSSESSION OF A FIREARM WHILE IN THE  
COMMISSION OF A VIOLENT CRIME  
§16-23-490

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**POSSESSION OF FIREARM OR KNIFE  
DURING COMMISSION OF A VIOLENT CRIME  
§16-23-490**

That **RON O'NEAL FINKLEA**, did in Lexington County on or about August 2,  
2003, willfully and unlawfully have in his possession, or did visibly display, a firearm  
during the commission of a violent crime or crimes, to wit: Murder and/or Arson First  
Degree, as defined in §16-1-60, all in violation of Section 16-23-490 of the South  
Carolina Code of Laws of (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
\_\_\_\_\_  
Dep. SOLICITOR

2422343

WITNESSES

LCSD

Peake

ARREST WARRANT NUMBER

G-501548

ACTION OF GRAND JURY

TRUE BILL

*Susan Z Batson*

Foreperson of Grand Jury

Date:

5/25/04

VERDICT

*Guilty*

*Don P. Myers*

Foreperson of Petit Jury

Date: 8/3/07

DOCKET NO. 2004-GS-32- 2264

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 549

Indictment for

POSSESSION OF A FIREARM WHILE IN  
THE COMMISSION OF A VIOLENT

CRIME

§16-23-490

DONALD V. MYERS, SOLICITOR

A TRUE COPY

*JNC*  
Lex. Co. C.O.C.P., G.S. 17-10.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

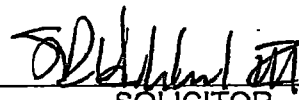
INDICTMENT FOR  
CRIMINAL CONSPIRACY  
§16-17-410

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of LEXINGTON County present upon their oath:

**CRIMINAL CONSPIRACY**  
**§16-17-410**

That **RON O'NEAL FINKLEA**, did in Lexington County on or about August 2, 2003 unlawfully and willfully unite, combine, conspire, confederate, agree and have a tacit understanding with **Theodore Davis**, for the purpose of accomplishing criminal acts, to wit: Murder, Arson First Degree, Safecracking and/or Larceny, in violation of §16-17-410 of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR  
Rep

24252345

WITNESSES

LCSD

Frier

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

*Dwain J. Batson*

Foreperson of Grand Jury

Date: 5/25/04

VERDICT

*Guilty*

Foreperson of Petit Jury

Date: 8/3/07

DOCKET NO. 2004-GS-32- 2263

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 49

Indictment for

CRIMINAL CONSPIRACY

§16-17-410

DONALD V. MYERS, SOLICITOR

A TRUE COPY  
Lex. Co. C.C.C.P., G.B. & F.C.



STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

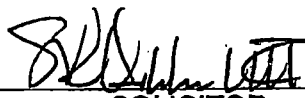
INDICTMENT FOR  
ARSON FIRST DEGREE  
§16-11-110 (A)

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**ARSON IN THE FIRST DEGREE  
§16-11-110(A)**

That **RON O'NEAL FINKLEA**, did in Lexington County on or about August 2, 2003,  
willfully and maliciously cause an explosion, set fire to, burn, or cause to be burned, or aid,  
counsel or procure the burning of a building, to wit: The Selectron Electronics plant located  
at 1000 Technology Drive in Lexington County, SC and which resulted, either directly or  
indirectly, in the death of the on-duty security guard, Walter Sykes, Sr., in violation of §16-  
11-110(A) of the South Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
SOLICITOR  
Dep.

2422347

WITNESSES

LCSD

Peake

ARREST WARRANT NUMBER.

G-501547

ACTION OF GRAND JURY

TRUE BILL

*Susan J. Batson*

Foreperson of Grand Jury

Date:

5/25/04

VERDICT

*Guilty*

*Mr. P. Sanford*

Foreperson of Petit Jury

Date:

8/3/07

DOCKET NO. 2004-GS-32- 2261

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 2550

Indictment for

ARSON FIRST DEGREE

§16-11-110 (A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.D.C.L., U.S. & S.D.

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

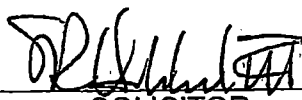
INDICTMENT FOR  
MURDER  
§16-3-10

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of LEXINGTON County present upon their oath:

**MURDER §16-3-10**

That **RON O'NEAL FINKLEA**, did in Lexington County, on or about August 2, 2003, willfully, feloniously and with malice aforethought kill the victim, **Walter Sykes, Sr.**, by means of gun shot wounds to the head and neck with a pistol and by setting him on fire, and the victim, Walter Sykes, Sr. died in Lexington County on or about August 2, 2003, as a result of a fatal, penetrating, gunshot wound to the right side of the face, and/or a fatal, perforating gunshot wound to the left side of the neck, both shots resulting in bleeding and aspiration of blood into the airways, and/or as a result of first, second and third degree thermal burns involving approximately thirty percent of the victim's total body surface area, in violation of Section 16-3-10 of the South Carolina Code of Laws of (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR  
Dep.

2422349

WITNESSES

LCSD

Peake

5-8-07 Def. Arraigned at 11:20 AM

Wayne Fitch

Deputy Clerk

ARREST WARRANT NUMBER

G-501546

ACTION OF GRAND JURY

TRUE BILL

*Susan J. Bateman*

Foreperson of Grand Jury

Date:

5/25/04

VERDICT

Guilty

*John P. Infante*

Foreperson of Petit Jury

Date:

5/8/07

DOCKET NO. 2004-GS-32- 2260

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

CDR# 116.

Indictment for

MURDER

§16-3-10

DONALD V. MYERS, SOLICITOR

ATTEST  
Lex. Co. C.O.C.B. C.B. J.M.

2350

2430

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

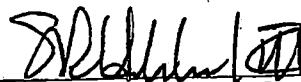
INDICTMENT FOR  
ATTEMPT TO COMMIT SAFECRACKING  
§16-11-390

At a Court of General Sessions, convened in MAY, 2004 the Grand Jurors of  
LEXINGTON County present upon their oath:

**ATTEMPT TO COMMIT SAFECRACKING**  
**§16-11-390**

That **RON O'NEAL FINKLEA**, together with Theodore Davis, did in Lexington  
County on or about August 2, 2003, willfully and unlawfully use explosives, tools, or any  
other implement in or about a safe used for keeping money or other valuables with the  
intent to commit larceny or any other crime, in violation of §16-11-390 of the South  
Carolina Code of Laws of 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case  
made and provided.

  
Dep. SOLICITOR

2432351

WITNESSES

LSCD

Frier

DOCKET NO. 2004-GS-32- 2259

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

vs.

RON O'NEAL FINKLEA

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

*Susan J. Batson*

Foreperson of Grand Jury

Date:

*5/25/04*

VERDICT

*Guilty*

CDR# 141.

Indictment for

ATTEMPT TO COMMIT  
SAFE CRACKING

§16-11-390 (390)

A TRUE COPY

Lex. Co. C.O.C.E., G.S. & F.C.

*Don V. Myers*

Foreperson of Petit Jury

Date:

*8-10-07*

DONALD V. MYERS, SOLICITOR

2352

State of South Carolina  
Office of the Solicitor  
Eleventh Judicial Circuit

2432

COUNTIES  
EDGEFIELD / LEXINGTON  
McCORMICK / SALUDA  
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER  
205 E. MAIN ST. • THIRD FLOOR  
LEXINGTON, SOUTH CAROLINA 29072  
TELEPHONE: (803) 785-8352

**DONALD V. MYERS***Solicitor*

May 8, 2006

Stephen R. Soltis, Jr., Esquire  
101 East Main Street  
Lexington, SC 29072

Melissa Kimbrough, Esquire  
1720 Main Street, Suite 106  
Columbia, SC 29201

Re: State v. Ron O. Finklea

Dear Mr. Soltis & Ms. Kimbrough:

Pursuant to § 16-3-20, ci. scq. of the South Carolina Code of Laws, as amended, this is to notify and inform you and Mr. Finklea that the State will seek the death penalty in the above-entitled case, if the defendant is found guilty on the charges of Murder presently pending against him. This, of course, refers to the death of Walter Sykes, Sr., which occurred in Lexington County on or about August 2, 2003 at the Selectron Plant located at 1000 Technology Drive in the West Columbia area of Lexington County.

You will be notified at a later date of the aggravating circumstances upon which the State will rely in seeking the death penalty.

If you have any questions concerning this matter, please contact me at your earliest convenience.

Very truly yours,

Donald V. Myers

DVM/tkg

Beith A. Carrigg  
Clerk of Court  
Lexington, SC

2006 MAY -9 AM 10:37

Filed

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF GENERAL SESSIONS

FILED

ORIGINAL

THE STATE 2007 JUN -5 A 8:13)

v.

BETH A. CARRIGG )  
CLERK OF COURT )  
LEXINGTON, SC )

Ron Finklea,

Defendant.

NOTICE OF EVIDENCE IN  
AGGRAVATION OF THE PUNISHMENT  
§16-3-20 (B)

Indictment # 2004-GS-32-2260

TO: RON FINKLEA, DEFENDANT AND HIS ATTORNEYS OF RECORD, STEVE SOLTIS, ESQUIRE, AND MELISSA KIMBROUGH, ESQUIRE.

PLEASE TAKE NOTICE that during the guilt trial or during any sentencing proceeding conducted in the above-entitled capital murder case to determine whether the Defendant, RON FINKLEA, should be sentenced to death or life imprisonment, the State will seek to introduce as evidence in aggravation of the punishment to be imposed upon the Defendant the evidence as listed herein below:

- (1) The State alleges that the murder of WALTER SYKES was committed while in the commission of burglary in any degree. §16-3-20(C)(a)(1)(c), Code of Laws of South Carolina, 1976 as amended.
- (2) The State alleges that the murder of WALTER SYKES was committed while in the commission of robbery while armed with a deadly weapon. §16-3-20(C)(a)(1)(d),
- (3) The State alleges that the murder of WALTER SYKES was committed while in the commission of larceny with the use of a deadly weapon. §16-3-20(C)(a)(1)(e),

VM  
94



- (4) The State alleges that the murder of WALTER SYKES was committed while in the commission of physical torture. §16-3-20(C)(a)(1)(h), Code of Laws of South Carolina, 1976, as amended.

Further, the State will present evidence as to the Defendant's adult and juvenile character, characteristics, mentality, intelligence, background and life; Prior and subsequent adult and juvenile crimes, unlawful acts, and crimes of violence and bodily harm, sentences and punishment, parole, probation, and other unlawful acts and conduct; Prior and subsequent adult and juvenile violations of laws, rules, regulations, ordinances and infractions; Prior and subsequent adult and juvenile crimes, criminal records and sentences, the nature, details and circumstances of said crimes, acts and conduct, propensity to commit or attempt to commit crimes, acts and conduct, disregard for peace and good order, violent or bodily harm to others, and other similar characteristics of RON FINKLEA as an adult and a juvenile prior and subsequent to the murder of WALTER SYKES. The above will be shown by the testimony of victims, witnesses, law enforcement officers and others, statements by the defendant, and other relevant testimony, photographs, video or audio tapes, diagrams and exhibits. Lockett v. Ohio, 438 U.S. 586 (1978); State v. Shaw, 255 S.E.2d 799 (1979). The State will also reintroduce or incorporate all items of evidence, testimony and exhibits that were admitted during the guilt phase into the sentencing phase. State v. Huggins, 519 S.E.2d 574 (1999).

The State will further present evidence, testimony, and exhibits of the circumstances surrounding the above indicted murder and crimes. Evidence will also be presented relating to acts, crimes, the character, and characteristics of RON FINKLEA, before, during and after the murder and crimes. The State will also present evidence as to any prior acts of violence or injuries committed upon the victim. Evidence will further be presented to show the cause and/or manner in which the murder and crimes were committed, including, but not limited to, testimony of the pathologist, officers and others, photographs, video tapes, other tapes, and diagrams of the

crimes, murder scene and victim, statements by the defendant, and other testimony related thereto. State v. Goolsby, 268 S.E.2d 31 (1980); State v. Shaw, *supra*.

The State will further present evidence, testimony and exhibits as to the Defendant's crimes, character, characteristics and conduct while incarcerated in jails and/or prisons as an adult and a juvenile and disciplinary actions before and after the indicted crimes and murder were committed; infractions, disregard and violation of rules, regulations, laws and/or ordinances as an adult and a juvenile and disciplinary actions; disrespectful, disruptive and uncooperative actions and conduct as an adult and a juvenile; and all other such acts and conduct while incarcerated as an adult and juvenile and disciplinary actions, before and after the indicted murder and crimes.

The State will further present evidence, testimony and exhibits as to the Defendant's character, statements and conduct relating to his release or parole from jails and/or prisons as an adult and a juvenile and probationary evidence; mental or physical evaluations of the Defendant as an adult and a juvenile; testimony and opinions as to the Defendant's character, propensity for violence and unlawful conduct, disregard for peace and good order and to commit such acts in the future.

30m  
344  
The State will further present detailed evidence of circumstances surrounding arrests and apprehensions of RON FINKLEA, including but not limited to, weapons, photographs, recordings, diagrams, exhibits, threats and statements by the Defendant and testimony related thereto.

The State will further present evidence as to the victim WALTER SYKES, "Victim Impact" evidence, evidence of the emotional and resulting impact of the crimes on the families and friends of the victim, the consequences of the crimes on the families and friends of the victim, and arguments relating thereto. Payne v. Tennessee, 501 U.S. 808 (1991); State v. Byram, 485 S.E.2d 360 (1997); State v. Ivey, 481 S.E.2d 125 (1997); State v. Humphries, 479

S.E.2d 52 (1996); Riddle v. State, 443 S.E.2d 557 (1994); State v. Rocheville, 425 S.E.2d 32 (1993); Lucas v. Evatt, 416 S.E.2d 646 (1992); State v. Johnson, 410 S.E.2d 547 (1991); State v. Hughey, 529 S.E.2d 721 (2000); State v. Kelly, 540 S.E.2d 851 (2001).

  
Donald V. Myers, Solicitor  
Eleventh Judicial Circuit

Lexington, South Carolina  
June 4, 2007

Don  
4/4

STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

2004-GS-32-2259--2264

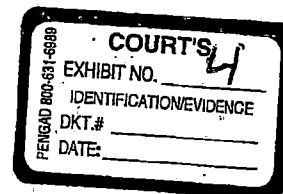
The State,

v.

Ron O'Neal Finklea,

Defendant.

## STATUTORY INSTRUCTIONS



In determining whether to recommend that the Defendant, Ron O'Neal Finklea, be sentenced by the Court to Life Imprisonment or to Death, you may consider the following

## STATUTORY AGGRAVATING CIRCUMSTANCES:

1. The murder was committed while in the commission of burglary while armed with a deadly weapon.
2. The murder was committed while in the commission of robbery while armed with a deadly weapon.
3. The murder was committed while in the commission of physical torture.

## You may also consider the following STATUTORY MITIGATING CIRCUMSTANCES:

1. The defendant has no significant history of prior criminal conviction involving the use of violence against another person.
2. The age or mentality of the defendant at the time of the crime.

## You may also consider any NON-STATUTORY mitigating circumstances, including:

1. The Defendant's honorable service in the military.
2. The Defendants adaptability to prison life.

*Clifton Newman*  
 Clifton Newman  
 Presiding Judge

Lexington, South Carolina

September 6, 2007.

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS )

COUNTY OF LEXINGTON )

2004-GS-32-2259--2264 )

The State )

v. )

Ron O'Neal Finklea, )

RECOMMENDATION OF SENTENCE )

Defendant. )

LIFE IMPRISONMENT )

We, the jury in the above-titled case recommend to the Court that the Defendant, Ron O'Neal Finklea, be sentenced to life imprisonment.

---

Foreman

Lexington, South Carolina

September \_\_\_\_, 2007

STATE OF SOUTH CAROLINA )

24302359

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON )

The State, )

) 2004-GS-32-2259--2264

vs. )

) NO FINDING OF STATUTORY  
) AGGRAVATING CIRCUMSTANCES

Ron O'Neal Finklea )

) Defendant.  
)  
\_\_\_\_\_ )

We, the jury in the above-entitled case, are unable to unanimously agree on the  
existence of any statutory aggravating circumstance(s).

\_\_\_\_\_  
Foreperson

Lexington, South Carolina

September \_\_ 2007

2360

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

2440

COUNTY OF LEXINGTON

The State,

2004-GS-32-2259--2264

vs.

STATUTORY AGGRAVATING

Ron O'Neal Finklea,

CIRCUMSTANCES

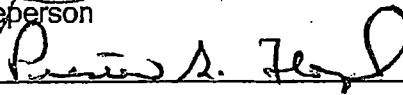
Defendant.

We, the jury in the above-entitled case, find beyond a reasonable doubt the following statutory aggravating circumstance(s):

1. The murder was committed while in the commission of a burglary while armed with a deadly weapon
2. The murder was committed while in the commission of robbery while armed with a deadly weapon
3. The murder was committed while in the commission of physical torture.



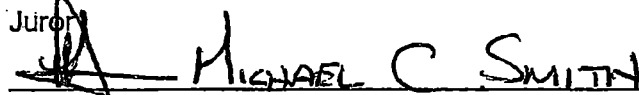
Foreperson



Juror



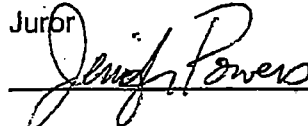
Juror



Juror



Juror



Juror

2441  
2361

Margaret Herdman

Juror

Shiranne S. Patterson

Juror

Cari Amoy

Juror

Linda Beendrick Brown

Juror

Bobbi M<sup>c</sup>Lee

Juror

Roxann Harris

Juror

Lexington, South Carolina

September 6, 2007



2362

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

2442

COUNTY OF LEXINGTON

The State,

2004-GS-32-2259--2264

vs.

RECOMMENDATION OF SENTENCE

DEATH PENALTY

Ron O'Neal Finklea,

Defendant.

We, the jury in the above-entitled case, having found beyond a reasonable doubt

the existence of the following statutory aggravating circumstance(s), to wit:

1. The murder was committed while in the commission of burglary while armed with a deadly weapon.
2. The murder was committed while in the commission of robbery while armed with a deadly weapon.
3. The murder was committed while in the commission of physical torture.

now recommend to the Court that the Defendant, Ron O'Neal Finklea, be sentenced to death.

Foreperson

Juror

Juror

Juror

Juror

Jeff Kowas  
Juror

2448363

Marquise Herstung  
Juror

Angela S. Patterson  
Juror

Cari Hmoyr  
Juror

Linda Sundreak Brown  
Juror

Bobbie M<sup>c</sup>Lee  
Juror

Roxanne H. Harris  
Juror

Lexington, South Carolina

September 6, 2007

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS )

COUNTY OF LEXINGTON )

2004-GS-32-3359--2264 )

The State )

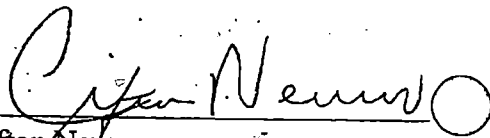
v. )

AFFIRMATION OF DEATH SENTENCE )

Ron O'Neal Finklea, )

Defendant. )

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, Ron O'Neal Finklea, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.

  
Clifton Newman  
Presiding Judge

Lexington, South Carolina

September 6, 2007**A TRUE COPY**  
Lex. Co. C.C.O.P., G.S. & H.C.

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON )

2004-GS-32-2259--2264

The State, )

v. )

SENTENCE

Ron O'Neal Finklea, )

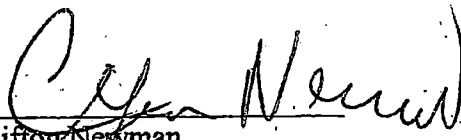
Defendant. )

Beih A. Ching  
Clerk of Court  
Lexington, SC

2007 SEP 20 3:44

FILED

The Defendant Ron O'Neal Finklea, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death. It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Ron O'Neal Finklea, be taken to the Lexington County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 5<sup>th</sup> day of November, 2007, upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon the Order of Execution issued by the South Carolina Supreme Court, the Defendant, Ron O'Neal Finklea, shall suffer death by electrocution or by lethal injection in the manner provided by law.

  
Clifton Newman  
Presiding Judge

Lexington, South Carolina  
September 6, 2007

2366

2446

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LexingtonSTATE Ron O'Neal Finklea

AKA: \_\_\_\_\_

Race: B Sex: M Age: 33

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: St Matthews, SC 29135

DL# \_\_\_\_\_ SID# \_\_\_\_\_

INDICTMENT/CASE# 2004-GS-32-2259A/W#: STRAIGHTDate of Offense: Aug 2 2003S.C. Code §: 16-11-390CDR Code #: 141

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Attempt to Commit Salecrackingin violation of § 16-11-390 of the S.C. Code of Laws, bearing CDR Code # 141☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ \$17-25-45 w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS

Recipient: \_\_\_\_\_

|                                        |         |          |
|----------------------------------------|---------|----------|
| *Fine:                                 | \$      |          |
| §14-1-206 (Assessments 107.5%)         | \$      |          |
| §14-1-211(A) (1) (Conv. Surcharge)     | \$100   | \$100.00 |
| §14-1-211(A) (2) (DUI Surcharge)       | \$100   | \$       |
| §56-5-2995 (DUI Assessment)            | \$12    | \$       |
| §35.13 (Public Def/Prob)               | \$500   | \$       |
| §73.3, 1B TP (Law Enforce. Funding)    | \$25    | \$25.00  |
| §33.7, 1B TP (Drug Court Surcharge)    | \$100   | \$       |
| §50-21-114(BU) Breath Test Fee)        | \$50    | \$       |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$       |
| 3% to County (if paid in installments) | \$      | \$       |
| TOTAL                                  |         | \$125.00 |

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, §35.13.TP  
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: \_\_\_\_\_

Sentence Date: Sept 6, 2007Court Reporter: Sherry Sheppard

Clerk of Court/Deputy Clerk

2447367

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington  
 STATE OF South Carolina  
 VS.  
Bon O'Neal Finklea  
 KA:  
 Race: B Sex: M Age: 33  
 OB: [REDACTED] SS#: [REDACTED]  
 Address:  
 City, State, Zip:  
 L#: SID#

INDICTMENT/CASE# 2004-GS-32-2261  
 A/W#: G 501547  
 Date of Offense: 8-2-03  
 S.C. Code §: 16-11-110 (A)  
 CDR Code #: 2550

## SENTENCE SHEET

disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

to: Arson First Degree

violation of § 16-11-110 (A) of the S.C. Code of Laws, bearing CDR Code # 2550

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45  
 w/minor 1<sup>st</sup> or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, \_\_\_\_\_ (Defendant initial)  
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which  
 are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
 Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

|                                       |         |       |
|---------------------------------------|---------|-------|
| Fine:                                 | \$      |       |
| 14-1-206 (Assessments 107.5%)         | \$      |       |
| 14-1-211(A)(1) (Conv. Surcharge)      | \$100   | \$100 |
| 14-1-211(A)(2) (DUI Surcharge)        | \$100   | \$    |
| 56-5-2995 (DUI Assessment)            | \$12    | \$    |
| 35-13 (Public Def/Prob)               | \$500   | \$    |
| 73.3, 1B TP (Law Enforce. Funding)    | \$25    | \$25  |
| 33.7, 1B TP (Drug Court Surcharge)    | \$100   | \$    |
| 50-21-114(BUI Breath Test Fee)        | \$50    | \$    |
| 56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$    |
| % to County (if paid in installments) | \$      | \$    |
| TOTAL                                 | \$      | \$125 |

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP  
 Requires \$500 be paid to Clerk during probation.

Beth A. Carriag  
 Clerk of Court/ Deputy Clerk  
 Court Officer: Shary Sheppard

PRESIDING JUDGE

Judge Code:

Sentence Date:

R. Nunn  
2/1/2007

2368

2448

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Ron O'Neal Finklea

AKA:

Race: BSex: MAge: 33SS#: [REDACTED]Address: [REDACTED]City, State, Zip: St. Matthews, SC, 29155

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2004-GS-32-2263AW#: StraightDate of Offense: 8-2-03S.C. Code §: 16-17-410CDR Code #: 49

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Criminal Conspiracyin violation of § \_\_\_\_\_ of the S.C. Code of Laws, bearing CDR Code # 49☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45 w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |       |
|----------------------------------------|---------|-------|
| \$14-1-206 (Assessments 107.5%)        | \$      | \$    |
| \$14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$100 |
| \$14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$    |
| \$56-5-2995 (DUI Assessment)           | \$12    | \$    |
| \$35.13 (Public Def/Prob)              | \$500   | \$    |
| \$73.3; 1B TP (Law Enforce. Funding)   | \$25    | \$25  |
| \$33.7; 1B TP (Drug Court Surcharge)   | \$100   | \$    |
| \$50-21-114(BUI-Breath Test Fee)       | \$50    | \$    |
| \$56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$    |
| 3% to County (if paid in installments) | \$      | \$    |
| TOTAL                                  |         | \$125 |

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP  
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21111277Sentence Date: Sept 6, 2007Court Reporter: Stacy Sheppard

Clerk of Court/ Deputy Clerk

SCCA/217 (9/2006)

2442369

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

OUR Lexington  
STATE VSKA: Ron O'Neal Finklea  
Age: 33  
Sex: Male  
DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]  
City, State, Zip: [REDACTED]  
L# [REDACTED] SID# [REDACTED]INDICTMENT/CASE# 2004-GS-32-2264  
A/W#: G 501548  
Date of Offense: 8-2-03  
S.C. Code §: 16-23-490  
CDR Code #: 549

## SENTENCE SHEET

Disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSto: Possession of a Firearm during Violent Crimeviolation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 549  
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45  
w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of NO sentence imposed due to death on mother charge days/months/years or ☐ under the Youthful Offender Act not to exceed        yearsand/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or payment\$       ; plus costs and assessments as applicable; the balance is suspended with probation for         
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which

are indicated by reference:

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:       ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered  
Total: \$        plus 20% fee: \$       

Payment Terms:

☐ set by SCDPPPSRecipient:         
Fine:         
14-1-206 (Assessments 107.5%) \$100 \$ 100.00  
14-1-211(A)(1) (Conv. Surcharge) \$100 \$         
14-1-211(A)(2) (DUI Surcharge) \$12 \$         
56-5-2995 (DUI Assessment) \$500 \$         
35.13 (Public Def/Prob) \$25 \$ 25.00  
73.3, 1B TP (Law Enforce. Funding) \$100 \$         
33.7, 1B TP (Drug Court Surcharge) \$50 \$         
50-21-114(BUI Breath Test Fee) \$40/ea \$         
56-5-2942(J) (Vehicle Assessment) \$         
% to County (if paid in installments) \$ 125.00  
TOTAL

PTUP

days/hours Public Service Employment

Obtain GED  
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning         
Substance Abuse Counseling         
Random Drug/Alcohol Testing         
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$        beginning         
\$        paid to Public Defender Fund  
Other:       ☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter: Sherry SheppardPRESIDING JUDGE: G. H. [Signature]Judge Code: 8-1-1-2-1-7Sentence Date: Sept 6, 2007



STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

State of South Carolina, )

vs. )

Ron O. Finklea,  
Defendant. )

IN THE COURT OF GENERAL SESSIONS

2004-GS-32-2259--2264

MEMORANDUM OF LAW  
IN RE: DEFENDANT'S  
INCOMPETENCE TO  
STAND TRIAL

FILED

2007 AUG 10 A 9 18

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SCIntroduction

Ron O. Finklea, by and through counsel undersigned, hereby moves this Court to declare that he is incompetent to stand trial for the murder of Walter Sykes, Jr. Counsel's motion is based upon the unique facts and circumstances of Mr. Finklea's cognitive impairment which prevents him from being able to assist counsel due to his total memory loss for the period leading up to, and including, the victim's homicide, Mr. Finklea's near-successful suicide attempt by hanging, and continuing until his release from medical care and discharge back to the Lexington County Detention Center.

In preparation for the trial of Mr. Finklea's case, counsel employed three medical experts: Dr. Donna Schwartz-Watts, a forensic psychiatrist, Dr. Kenneth Gaines, a neurologist, and Dr. Tora Brawley, a neuropsychologist. Drs. Watts, Gaines, and Brawley found evidence the Mr. Finklea suffers from memory impairment. Specifically, Mr. Finklea has amnesia for the time period prior to and including the crime giving rise to his current charges of murder and related crimes until sometime after his release from the hospital after attempting suicide by hanging.

Counsel for Mr. Finklea believes he is unable to assist in the preparation of his own defense. Mr. Finklea's complete memory loss bears directly on counsel's ability to

render effective assistance of counsel. Moreover, Mr. Finklea's memory loss will prevent him from being able to testify in his own defense and to enter a plea of guilty. Further Mr. Finklea is unable to provide counsel with the names of witnesses who could aid in his defense or help counsel establish a reliable timeline of events leading up to, and including, the commission of the crime.

Theodore Davis, Mr. Finklea's co-defendant, has made self-protective statements, placing the blame for Mr. Sykes' death on Mr. Finklea. Likewise, Robin Gripper, who is Theodore Davis' sibling, has made statements implicating Mr. Finklea in the planning of the robbery of the Solectron plant. In discovery provided by the state, counsel has been supplied with videotapes documenting the rental of a vehicle later used in the crime and another video documenting that two black males were involved in the robbery of Solectron and murder of Walter Sykes. This second video does not, however, provide any information concerning the actual shooting of the victim, nor does it provide evidence as to the identity of the shooter. Discovery has been provided that Mr. Finklea's Solectron employee identification card was found on the ground outside of the Solectron plant on the night of the murder.

While the information contained in the state's discovery places Mr. Finklea at the crime scene, it does nothing to resolve the question of who actually shot Mr. Sykes, and why, and/or who planned the robbery that led to Sykes' murder. Counsel is left either to accept the self-serving statements of the co-defendant and his sister, Robin Gripper, laying blame on Mr. Finklea, or to hypothesize as to some other version of events more favorable to the defense. Neither of these scenarios is satisfactory, as it utterly precludes Mr. Finklea receiving the effective assistance of counsel and due process. Mr. Finklea's

life hangs in the balance, and he deserves a fair, reliable, and just adjudication of both his innocence or guilt and, if the latter be established, sentence.

Counsel believes that Mr. Finklea is incompetent to stand trial under both the state and federal constitution and laws. Further, counsel believes any trial conducted under the present circumstances would violate Mr. Finklea's Fifth, Sixth, Eighth, and Fourteenth Amendment rights. Finally, counsel moves this Court, based on the testimony presented by Drs. Schwartz-Watts, Gaines and Brawley, as well as for the reasons set forth below, to find Mr. Finklea incompetent to stand trial.

**The United States Supreme Court opinions on the issue of Competency**

In the seminal case of *Dusky v. United States*, 362 U.S. 402 (1960), the United States Supreme Court set forth that the constitutional standard for competency to stand trial. The test is whether the accused "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." The Court further held "that it is not enough for the district judge<sup>1</sup> to find that "the defendant (is) oriented to time and place and (has) some recollection of events." *Id.*

Fifteen years later in *Drope v. Missouri*, 420 U.S. 162 (1975), the United States Supreme Court addressed competency to stand trial within the context of a capital criminal trial.<sup>2</sup> Holding the prohibition to be fundamental and building on *Dusky's* foundation, the Court held "[i]t has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the

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<sup>1</sup> This case arose from an Eighth Circuit federal criminal trial proceeding.

<sup>2</sup> James Edward Drope was indicted for rape, which was, in 1969, a death-eligible offense in Missouri.

proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.” *Id.*, 420 U.S. at 171. Citing to the English common law and the commentary of William Blackstone, the Court analogized trying an incompetent person to a trial in absentia, as the defendant “...though physically present in the courtroom, is in reality afforded no opportunity to defend himself.” *Id.* Complicating matters further was the fact that Drope’s mental state “may be relevant to more than one legal issue, each governed by distinct rules reflecting quite different policies.”<sup>3</sup> *Id.*, 420 U.S. at 176. The Court reversed Drope’s conviction.

In *Riggins v. Nevada*, 504 U.S. 127, 144 (1992) (Kennedy, J., concurring), the Supreme Court addressed the forced administration of antipsychotic medication to induce competency in an otherwise incompetent defendant. In grappling with the question of whether competency could be chemically forced upon the accused, the Court focused on the necessity of the accused’s ability to cooperate with his counsel, finding this was “essential,” and that the right to effective assistance of counsel is “impaired when he cannot cooperate in an active manner with his lawyer.” In particular, a client must “be able to provide needed information to his lawyer and to participate in the making of decisions on his own behalf.” *Id.*; (citing *Massiah v. United States*, 377 U.S. 201 (1964) and *Geders v. United States*, 425 U.S. 80 (1976). Among those decisions the accused must make are “whether to testify, whether to waive a jury trial, and whether to cross-examine witnesses for the prosecution.” *Godinez v. Moran*, 509 U.S. 389, 390 (1993).

In *Godinez*, the United States Supreme Court resolved the long-standing conflict

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<sup>3</sup> Though not set forth in the opinion, presumably multiple legal issues were present because Drope faced a sentence of death. Drope’s mental condition was, therefore, relevant as to both the guilt-or-innocence and sentencing phases of trial.

among the federal and state courts as to the level of mental functioning required to waive the right to counsel and/or plead guilty. The Court held that *Dusky* set forth the correct standard to be applied to waivers of counsel and waivers of trial necessary to plead guilty. The Court reiterated the decisions a defendant pleading guilty must be capable of making in order to be deemed competent: whether to testify, whether to waive trial by jury, and, "in consultation with counsel, he may have to decide whether to waive his 'right to confront [his] accusers.'" *Godinez*, 509 U.S. at 398.

Likewise, the Court reaffirmed that defendant's pleading not guilty must also be capable of making other, equally important, "strategic choices." *Id.* In particular, the Court noted a defendant who pleads not guilty "in consultation with his attorney, may be called upon to decide, among other things, whether (and how) to put on a defense and whether to raise one or more affirmative defenses." *Id.* Moreover, the *Dusky* standard applies *ab initio* in a criminal matter, "from the time of arraignment through the return of a verdict." *Godinez*, 509 U.S. at 403 (Kennedy, J., with whom Scalia, J., joins, concurring).

*Cooper v. Oklahoma*, 517 U.S. 348 (1996), held unconstitutional, as a violation of due process, Oklahoma's rule requiring that incompetence be established by the defendant with clear and convincing evidence. Earlier, the Court ruled in *Medina v. California*, 505 U.S. 437 (1992), that the burden of proof necessary to establish a defendant is incompetent is that of a preponderance of the evidence. Relying on historical antecedents, as well as modern day practice, the Court concluded that a more likely than not, or "preponderance of the evidence," standard must be applied to decisions of competence to ensure due process of law.

"The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact[-]finding, is to 'instruct the fact[-]finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" *Cooper v. Oklahoma*, 517 U.S. at 362 (citing *In re Winship*, 397 U.S. 358, 370). Due process requires that the state bear a heightened burden of proof when the interests at stake are " 'particularly important' and 'more substantial than mere loss of money.'" *Id.*, 517 U.S. at 362-363 (citing *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)).

"For the defendant, the consequences of an erroneous determination of competence are dire." *Cooper v. Oklahoma*, 517 U.S. at 364. His inability to communicate with counsel precludes true participation before and during trial, and impedes counsel's ability to provide effective assistance of counsel. In summary, trial of incompetent defendant 'threatens "a fundamental component of our criminal justice system"- the basic fairness of the trial itself.' *Id.*

More than three decades after *Dusky*, the United States Supreme Court continues to reaffirm in its decisions the fundamental importance of having a reliable determination of the accused's competence to stand trial. As guaranteed by the Fifth and Fourteenth Amendments, the Court has repeatedly, unambiguously, and jealously guarded the core feature of what it means to be competent for trial, and that is the ability to have a rational understanding of the proceedings and to actively participate in one's own defense. The Sixth Amendment guarantee of effective assistance of counsel likewise is abridged when counsel is forced to defend an incompetent client, who "though physically present in the courtroom, is in reality afforded no opportunity to defend himself." *Drope*, 420 U.S. at

171. The defendant's competency is a fundamental requirement of a fair trial, and "[i]t is not enough...that 'the defendant (is) oriented to time and place and (has) some recollection of events.'" *Id.*, 362 U.S. 402 (1960). Finally, an incompetent defendant facing a potential death sentence if convicted will also suffer a violation of their rights under the Eighth Amendment. *See Ford v. Wainwright*, 477 U.S. 399 (1986)(execution of incompetent person violates Eighth Amendment).

#### The Fourth Circuit's Opinions on the Issue of Competency

In *Lyles v. United States*, 254 F.2d 725 (1958), the United States Court of Appeals for the District of Columbia addressed claims of "insanity." The court divided the concept of insanity to include three distinct legal stages: (1) insanity at the time of the offense (analogous to a plea of not guilty by reason of insanity); (2) insanity at the time of trial (analogous to competency to stand trial), and, (3) insanity at the time of the defendant's release after a verdict of acquittal due to a finding of insanity. The court ruled that competency to stand trial was purely a judicial determination, of which the jury should be kept completely ignorant.

The test applied by the court in *Lyles* was "[a]s of the time of the trial in question...whether the accused is mentally competent to understand the nature of the charges against him and to assist in his defense." *Id.*, 254 F.2d at 729. The assistance prong was held to include "such phases of a defense as a defendant usually assists in, such as accounts of the facts, names of witnesses, ect. (sic)" *Id.*, 254 F.2d at 730. Moreover, "[t]he standard of measurement of competency to stand trial is different from the standard of measurement for responsibility of a criminal act." *Id.* While the court did not specifically say what it meant by a different "measurement," it is clear that the court

was referring to the fact that competence to stand trial involves the defendant's ability to recount facts related to the crime and assist counsel in identifying relevant witnesses so as to ascertain what, if any, defense to raise at trial.

In *James v. Boles*, 339 F.2d 431 (1964), the United States Court of Appeals reaffirmed the standard it set forth in *Lyles*. In *James*, the court found that the defendant was competent to stand trial. Relying on the *Lyles* formulation of "assistance," the court found significant to its determination that the defendant "was thoroughly able to assist his attorney in his own defense and to actively and helpfully participate in it." *Id.*, 339 F.2d at 433.

In *Wilson v. United States*, 391 F.2d 460 (1968), the court addressed a situation strikingly similar to that present Mr. Finklea's case. Robert Wilson was a criminal defendant on trial for assault and robbery. After a high-speed car crash, Mr. Wilson lay unconscious for three weeks, and, after regaining consciousness, suffered "from permanent retrograde amnesia," and could not recall any of the events surrounding his criminal charges. *Id.*, 391 F.2d at 461.

The trial judge held that the defendant's total amnesia "should bar prosecution only when its presence would in fact be crucial to the construction and presentation of a defense and hence essential to the fairness and accuracy of the proceedings." *Id.*, 391 F.2d at 462. The "rule" to be applied in cases of amnesia was "whether insufficient information concerning the events at the time of the commission of the crime and evidence relating thereto is available to the defense so that it can be said that the presence of such an amnesia as we have here precipitates a situation in which (the) defendant's memory is indeed a faculty crucial to the construction and presentation of his defense."



*Id.* In Robert Wilson's case, the trial judge ruled there was sufficient extrinsic evidence from which counsel could reconstruct the crime.

On Appeal, the court remanded Wilson's case to the trial court for the purpose of having the court make more detailed "findings on the question of whether the appellant's loss of memory did in fact deprive him of the fair trial and effective assistance of counsel to which the Fifth and Sixth Amendments entitle him." *Id.*, 391 F.2d at 463. The Court dismissed the government's argument that amnesia, without some other disease or defect, can never be sufficient to produce incompetency to stand trial. Rather, "the question must come down to whether, 'in light of the personal intellectual or emotional deficiencies of the accused he can perform the functions essential to the fairness and accuracy of the particular proceedings in which he is presently involved.'" *Id.* (internal citations omitted).

Co-morbidity consisting of amnesia and some other mental defect or disorder is not required to render a defendant incompetent to stand trial. Relying on *Pouncey v. United States*, 349 F.2d 699, 701 (1965), the court held that even substantial evidence of guilt is not enough to produce a fair trial when the defendant cannot perform those "functions which are essential to the fairness of and accuracy of a criminal proceeding."

*Id.* In *Pouncey*, the defendant displayed evidence of paranoia about his attorney, stating he believed counsel was in league with the prosecution and was trying to send him to jail.

*Id.* The court agreed with the government that competency "denotes the intellectual and emotional capacity of the accused to perform the functions which are essential to the fairness and accuracy of a criminal proceeding," including the "present ability to consult with his lawyer with a reasonable degree of rational understanding...and a reasonable

ability to understand the proceedings and comprehend the effect of his actions upon them." *Id.* The court concluded that the defendant's actions cast serious doubt on his ability to consult with his lawyer, and remanded the case for a hearing on Pouncey's competency.

In *Wilson*, the court set forth factors to be used when assessing the competence to stand trial of an amnesic defendant, and held that the trial court should make findings of fact both before trial and afterward. Specifically, the trial judge must predict the amnesic defendant's ability to perform those functions (essential to the fairness and accuracy of the proceedings) at a competency hearing. At the end of the trial, "the trial judge should determine whether the defendant has in fact been able to perform these functions. He should, before imposing sentence, make detailed written findings, after taking any additional evidence deemed necessary, concerning the effect of the amnesia on the fairness of the trial." *Wilson*, 391 F.2d at 463.

In determining whether the amnesic defendant received a fair trial, the Court held that the trial judge must consider the following factors:

- (1) The extent to which the amnesia affected the defendant's ability to consult with and assist his lawyer.
- (2) The extent to which the amnesia affected the defendant's ability to testify in his own behalf.
- (3) The extent to which the evidence in suit could be extrinsically reconstructed in view of the defendant's amnesia. Such evidence would include evidence relating to the crime itself as well as any reasonably possible alibi.
- (4) The extent to which the Government assisted the defendant and his counsel in that reconstruction.
- (5) The strength of the prosecution's case. Most important here will be whether the Government's case is such as to negate all reasonable

hypotheses of innocence. If there is any substantial possibility that the accused could, but for his amnesia, establish an alibi or other defense, it should be presumed that he would have been able to do so.

(6) Any other facts and circumstances which would indicate whether or not the defendant had a fair trial.

*Id.*, 391 F.2d at 463-464. Based on the above factors, and considering the defendant's amnesia, the court must determine "whether, under applicable principles of due process, the conviction should stand." *Id.* Should the trial judge determine that the conviction should be overturned, then the government will have an opportunity to retry the case.

#### The South Carolina Law on Competency

Pursuant to S.C. Code Section 44-23-410 (A), South Carolina empowers trial judges with the authority to order a competency evaluation: "[w]henever ... [there is] reason to believe that a person on trial before him...is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of lack of mental capacity." Competency is assessed relying on the factors set forth in *Dusky v. United States, infra*, "whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him." *State v. Bell*, 293 S.C. 391 (1987); *Carnes v. State*, 275 S.C. 353 (1980). A defendant "whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel and to assist in preparing his defense may not be subjected to trial. *State v. Bell*, 293 S.C. at 396 (citing *Drope v. Missouri, infra*, and *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981)).

The issue of competency to stand trial has been addressed in various factual circumstances. By and large, most reported South Carolina cases involving a defendant challenging his competence to proceed to trial have been premised on the defendant's psychiatric disorder and/or psychosis. *Hughes v. State*, 367 S.C. 389 (2006) (inability to communicate with counsel primary reason for defendant's incompetency); *State v. Bell*, 293 S.C. 391 (1987); *State v. Blair*, 275 S.C. 529 (1981). However, not all challenges to competence involve a psychiatric condition.

Several cases involving challenges to the defendant's competence have been based on cognitive deficits, including mental retardation, *State v. Davis*, 309 S.C. 326 (1992), as well as head injury, resulting in memory loss, or amnesia. *State v. Hill*, 361 S.C. 297 (2005) (gunshot wound to head that effectively gave defendant a frontal lobotomy); *Matthews v. State*, 358 S.C. 456 (2004) (anoxic brain injury due to automobile accident); *State v. Proctor*, 348 S.C. 322 (2002) (brain damage and memory impairment due to high-speed car crash). Mr. Finklea suffers from an anoxic brain injury, resulting in amnesia, due to his self-inflicted suicide attempt by hanging; therefore, the following discussion will focus exclusively on those cases dealing with head injury, anoxia, and amnesia.

*State v. Proctor*, 348 S.C. 322 (2002) involved a single defendant charged with numerous sexual offenses. Duncan Proctor sustained a serious head injury, resulting in impaired memory, concentration and thought, after he crashed his automobile during flight from law enforcement. Proctor was initially found incompetent to stand trial. Three years after his arrest, Proctor was re-evaluated for competency and found competent to stand trial. *Id.*, 348 S.C. at 335.

The defense presented evidence from an independent psychiatric expert who opined Proctor was incompetent due to his severe short-term memory impairment. Proctor's impairments caused him to quickly forget what had been presented in court, and thus hampered his ability to assist counsel in his defense. The trial court noted, however, that Proctor's memory seemed to improve during the course of the trial. On direct review, the Court of Appeals upheld the trial court's ruling, finding that Proctor had failed in his burden to prove incompetence by a preponderance of the evidence. *Id.*, 348 S.C. 338.

In *Matthews v. State*, 358 S.C. 456 (2004), the Supreme Court granted to certiorari to review the circuit court's order denying post-conviction relief. The issue was whether trial counsel was ineffective for raising the issue of Matthews' competence to stand trial prior to having him enter a guilty plea. In addition to his having been a "slow learner," Matthews had been involved in a car accident approximately one year prior to the crime, and, as a result, suffered from "anoxia, which causes cerebral damage resulting from lack of oxygen." *Id.*, 358 S.C. at 459. Based on the "severe frontal lobe brain damage," Matthews' psychiatrist concluded he was incompetent "and could not participate in his own defense." *Id.* The Supreme Court held that, based on the evidence, counsel was ineffective for failing to raise the issue of Matthews' competency because there was a "reasonable probability" that he was incompetent at the time of his guilty plea. *Id.*, 358 S.C. at 460.

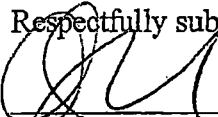
*State v. Hill*, 361 S.C. 297 (2005), involved a capital murder defendant with memory impairment stemming from a self-inflicted, unsuccessful suicide attempt, resulting in *some* memory loss. The trial court found Hill competent to stand trial, after

which he was convicted and sentenced to death. On appeal, the South Carolina Supreme Court upheld the trial court's ruling, noting that even Mr. Hill's psychiatric expert who found Mr. Hill had memory loss for the time period immediately preceding the crime "admitted 'it is possible [appellant] does remember what happened during the crime.'" *Id.*, 361 S.C. at 302-303.

### Conclusion

Under the foregoing legal principles, as applied to the facts of his case, Ron Oneal Finklea is incompetent to stand trial. Mr. Finklea suffers from an anoxic brain injury and resulting memory loss. Mr. Finklea's memory impairment includes the time period of approximately one month prior to the crime for which Mr. Finklea is accused, through the crime, his flight to Alabama, arrest, extradition and continuing until three weeks after his suicide attempt. Mr. Finklea's case is unique in many respects. Allowing Mr. Finklea to be tried in his current condition would violate his Fifth and Sixth Amendment rights to due process of law, a fair trial, and the effective assistance of counsel. Further, should he be sentenced to death, Mr. Finklea's sentence would constitute cruel and unusual punishment in violation of the Eighth Amendment.

Respectfully submitted,

  
Melissa J. Kimbrough, Esquire  
Stephen R. Soltis, Jr., Esquire  
ATTORNEYS FOR DEFENDANT.

This 10<sup>th</sup> day of August, 2007.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 STATE OF SOUTH CAROLINA )  
 )  
 )  
 )  
 v. )  
 )  
 RONALD FINKLEA, )  
 )  
 )  
 )  
 DEFENDANT )  
 )

IN THE COURT OF  
 GENERAL SESSIONS  
 G501546; 501547  
 501548; 501549

**MOTION TO ESTABLISH AND  
 PRESERVE DEMONSTRATIVE  
 EVIDENCE USED AT TRIAL**

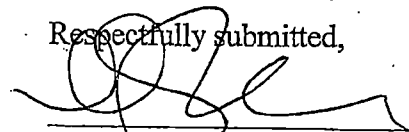
Belh A. Carriga  
 Clerk of Court  
 Lexington, SC

2007 SEP 17 AM 10:51

Filed

Counsel hereby moves this Court to conduct a hearing or otherwise, possibly by photographing the exhibits, establish and preserve for appellate review those items allowed in as demonstrative exhibits: a 9 mm. handgun, a red gas can filled half-way with fluid, and a long-handled metal fire-starter. Over objection these items were used during the State's closing argument to the jury; however, because they were not admitted as evidence, the demonstrative objects have not been maintained by the Clerk's Office. Counsel therefore believes that the items must be documented in order to allow for appellate review of this issue.

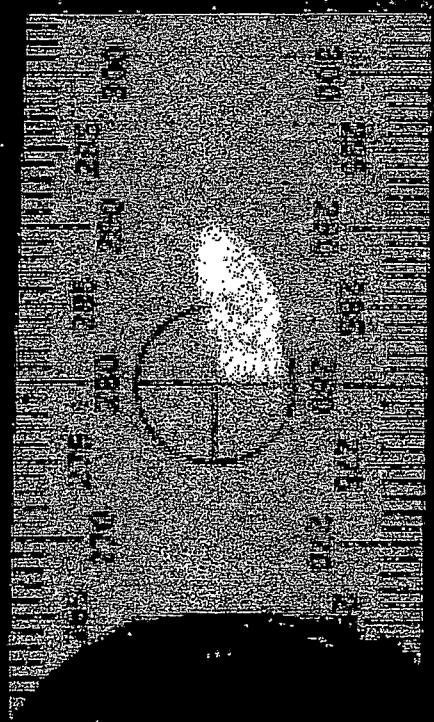
Respectfully submitted,



Melissa J. Kimbrough  
 Attorney for Defendant.

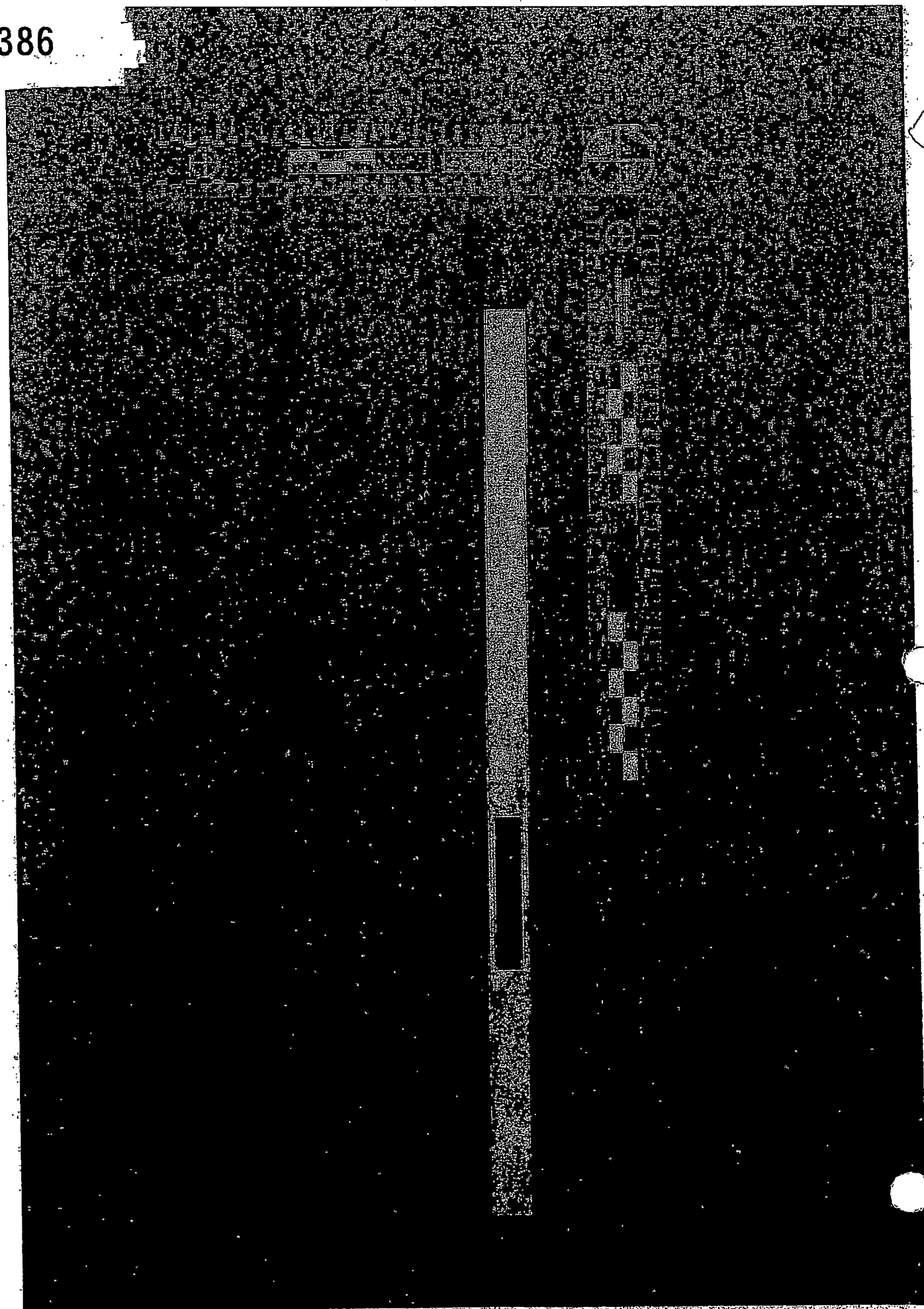
This 13<sup>th</sup> day of September, 2007.

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## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 18, 2009

\_\_\_\_\_  
Joseph L. Savitz, III  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Clifton Newman, Circuit Court Judge

RECEIVED

OCT 01 2009

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

RON O. FINKLEA,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III  
Senior Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The trial judge erred by holding that, even though Finklea had amnesia and could not recall his involvement in Sykes' murder, he was nevertheless competent to assist in his own defense at sentencing.

2. The trial judge erred by allowing the Solicitor to ignite an incendiary device during his closing argument at sentencing, as this tactic, taken in context, so infected the jury's sentencing determination with passion and prejudice that the death sentence must be vacated.

STATEMENT OF THE CASE

On August 27 through September 6, 2007, following several pretrial hearings, Ron O'Neal Finklea stood trial in Lexington County, before Judge Clifton Newman and a jury, on indictments (04-GS-32-2259 through 2264) charging him with the murder of security guard Walter Sykes, 56, as well as first-degree arson, attempted safecracking, possession of a firearm during the commission of a violent crime and criminal conspiracy. The State sought the death penalty, relying on the statutory aggravators of burglary, armed robbery, and physical torture. See *S.C. Code Section 16-3-20(C)(a)(1)(c), (d) and (h)*.

Although Finklea, 33, suffered from amnesia - the result of an attempted suicide by hanging following his arrest - and had no recollection of the crimes, the defense conceded that he was involved with his brother-in-law, Theodore Davis, then 22, in shooting Sykes in the face and neck, pouring gasoline over him and then setting him on fire during a botched ATM robbery the early morning of August 2, 2003. (Finklea's ATM card was found at the scene and Sykes' death, including his flight from the building while in flames, was recorded by two surveillance cameras.) At a pretrial hearing, defense counsel conceded, "[M]itigation is ... probably going to be dispositive. .... I don't think we're going to prevail in the guilt phase, I guess is what I'm trying to say." ROA p. 269, line 14 - p. 270, line 20.

Finklea did not testify or address the jury at the guilt phase. They found him guilty of Sykes' murder and the other charges contained in the indictment after deliberating approximately 2 ½ hours.

Finklea had no prior criminal record (ROA p. 1463, lines 3-18), so the State's case in aggravation of punishment at the sentencing phase focused primarily on victim impact evidence, Sykes' exemplary career in the Army and the horrific details of his death. The



defense emphasized Finklea's own model service as a Marine, the likelihood of his favorable adaptability to prison, his amnesia and testimony from his family. Finklea did not testify at sentencing, but did address the jury to express remorse as best he could, given his amnesia:

I wish I could remember, so I could give this family closure as to what happened on that night to their loved one. I wish I could remember. I really do, but I can't. ... I do not know what happened that night. I wish I did, so I could explain what happened that night, but I can't. But I am so sorry that it happened.

ROA p. 2262, line 24 – p. 2265, line 25.

In addition to the three statutory mitigators previously noted, the judge instructed the jury on two statutory mitigators:

The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

The age or mentality of the defendant at the time of the crime.

*S.C. Code Section 16-3-20(C)(b)(1)* and (7). He further informed the jury that it could consider as mitigating Finklea's "honorable military service and his adaptability to prison life," as well as "any other non-statutory mitigating circumstances that you find to exist."

ROA p. 2280, line 15 – p. 2281, line 11. Finally, the judge told the jury, "[Y]ou may recommend a sentence of life imprisonment for no reason at all." ROA p. 2284, lines 12-15.

The jury deliberated approximately 7 hours and 15 minutes and recommended that Finklea be sentenced to death for Sykes' murder, having found the three statutory aggravators advanced by the State. As to the remaining charges, the judge sentenced

Finklea to imprisonment for 30 years for safecracking, 10 years for arson and 5 years for criminal conspiracy.

ARGUMENT

## 1.

The trial judge erred by holding that, even though Finklea had amnesia and could not recall his involvement in Sykes' murder, he was nevertheless competent to assist in his own defense at sentencing.

“You must remember,” remarked the King, “or I’ll have you executed.” Lewis Carroll, *Alice’s Adventures In Wonderland* (1865)

As a result of his failed effort to hang himself, Ron Finklea has amnesia and no recollection of his involvement in the murder of Walter Sykes and related crimes. The judge himself concluded early on “that he does, in fact, have amnesia.” ROA p. 388, lines 19-24. The State introduced no expert testimony to the contrary. “However,” as the judge also observed, “having amnesia and being competent, those are two separate issues.” ROA p. 388, line 24 – p. 389, line 1.

Prior to trial, defense counsel informed the trial judge that “Mr. Finklea may be incompetent to stand trial” because of these “memory deficits.” ROA p. 182, lines 7-25. A defense neuropsychiatrist testified that Finklea’s amnesia concerning the incident was genuine. ROA p. 191, line 24 – p. 192, line 2. She believed it was consistent with a loss of oxygen to the brain during the suicide attempt. ROA p. 198, lines 2-12.

A defense neurologist concurred in this diagnosis. ROA p. 206, lines 11-15. “He was severely impaired neurologically,” he concluded. ROA p. 207, lines 1-7. For several days after the suicide attempt, Finklea was in a coma and nearly brain dead. ROA p. 207, lines 7-21. In addition to oxygen loss, Finklea’s brain had swollen. ROA p. 207, lines 21-

25. The neurologist believed Finklea's amnesia was permanent and irreversible. ROA p. 209, lines 5-9.

A defense forensic psychiatrist also concurred (ROA p. 237, lines 5-14), but felt that Finklea "clearly has a rational and factual understanding of these proceedings" and "a present capacity to assist [defense counsel] in his defense." ROA p. 241, line 12 – p. 242, line 21. Nevertheless, she was concerned that Finklea's amnesia "may limit some of your trial strategies. ... [H]e is not giving you details about what happened before, during and after this crime, and it will limit you." ROA p. 245, line 20 – p. 248, line 12. Moreover, she observed, "it's a capital case." ROA p. 256, line 13 – p. 257, line 9.

A forensic psychiatrist who testified for the State found "evidence of this amnesia" but observed that the law does not consider amnesia "a bar to competency per se." ROA p. 422, lines 3-12. He pointed out that Finklea was exhibiting behavioral indicia of oxygen deprivation "right here today." ROA p. 422, line 13 – p. 424, line 21. Also, "at one point in the hospital, the neurologist found that Mr. Finklea's pupils were fixed and dilated – meaning non-reactive to light – and that's something that Mr. Finklea couldn't have controlled." ROA p. 424, line 22 – p. 425, line 14. He concluded that Finklea was competent to stand trial for Finklea's murder but had not considered whether he was competent for the purposes of capital sentencing. ROA p. 442, line 14 – p. 443, line 10. (This witness later testified for the defense at sentencing. ROA p. 2166, line 12 – p. 2167, line 19.)

Finklea himself testified that he had no recollection of approximately two months prior to his suicide attempt – in other words, that his short-term memory had been obliterated. ROA p. 313, line 16 – p. 314, line 7. (Finklea tried to hang himself

approximately one week after the murder.) For example, the last time Finklea remembered seeing his codefendant, Theodore Davis, was approximately 2 ½ months before Sykes' murder. ROA p. 318, line 20 – p. 319, line 8. He would be unable to assist his lawyers “[a]s far as like giving them information as to when the event happened, what did I do before that, you know, questions that I’d been asked by mental health personnel, I can’t help them do that.” ROA p. 326, lines 15-23.

The defense conceded that “80% of our mitigation” could be developed “without any assistance from Mr. Finklea.” On the other hand:

If you don’t know what you did or didn’t do, how do you get up there with any credibility and stand in front of the jury with any level sincerity and say anything? I mean, he can arguably apologize in a hypothetical way – “I don’t remember it, but if I did it, I’m really sorry.”

ROA p. 400, line 20 – p. 401, line 13. Counsel specifically argued that Finklea was not competent to assist them at sentencing. ROA p. 447, line 5 – p. 456, line 23.

As to competency, the State consistently argued that there was no difference between “a regular case or a death penalty case.” ROA p. 271, lines 20-23. Defense counsel responded that the distinction was “critical,” particularly at sentencing. ROA p. 303, lines 1-13.

As a matter of policy, the judge was concerned with allowing a capital defendant to “avoid punishment by suicide.” ROA p. 367, line 21 – p. 368, line 4. Defense counsel pointed out that “the question of competency ... if not contingent upon whether or not the defendant was responsible for it or not.” ROA p. 368, line 14 – p. 369, line 11. The judge ultimately found Finklea competent to assist counsel during both phases of trial. ROA p.

462, line 19 – p. 465, line 17. Defense counsel unsuccessfully renewed the motion after Finklea was sentenced to death. ROA p. 2307, lines 20-24; ROA p. 2329, lines 19-25.

Initially, it is important to note that, in the context of the Sixth and Fourteenth Amendments, competency for one purpose is not necessarily competency for another. See *Indiana v. Edwards*, 128 S.Ct. 2379 (2008). The two cases that set forth the Constitution's competent standard, *Dusky v. United States*, 362 U.S. 402 (1960) (*per curiam*), and *Drope v. Missouri*, 420 U.S. 162 (1975), specify that it does not permit the trial of an individual who lacks "mental competency." *Dusky* defines the competency standard as including both (1) whether the defendant has "a rational as well as factual understanding of the proceedings against him" and (2) whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding." 362 U.S. at 402 (quotation marks omitted). *Drope* reiterates that standard, stating that it "has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial." 420 U.S. at 171.

In South Carolina, "the appropriate test" is two-pronged:

The first prong is the cognitive prong, which can be defined as: whether a convicted defendant can understand the nature of the proceedings, what he or she was tried for, the reason for the punishment, or the nature of the punishment. The second prong is the assistance prong, which can be defined as: whether the convicted defendant possesses sufficient capacity or ability to rationally communicate with counsel.

*Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53, 58 (1993); see, also, *State v. Passaro*, 350 S.C. 499, 567 S.E.2d 862 (2002), and S.C. Code Section 44-23-410. The defendant bears

the burden of proving his lack of competence by a preponderance of the evidence. *State v. Weik*, 356 S.C. 76, 587 S.E.2d 683 (2003).

Amnesia alone is not sufficient to render an accused incompetent to stand trial. *State v. Hill*, 361 S.C. 297, 604 S.E.2d 696 (2004), and *State v. Proctor*, 347 S.C. 587, 556 S.E.2d 418 (Ct. App. 2001); *see, also, State v. Bradshaw*, 269 S.C. 642, 239 S.E.2d 652 (1977). As the trial judge in Finklea's case recognized, this rule is primarily a reflection of policy concerns:

A contrary rule would unduly hamper the State's interest in the prosecution of violators of its criminal laws and jeopardize the safety and security of other citizens.

*Davis v. State*, 354 So.2d 334, 339 (Ala. Cr. App. 1978). (Obviously, these concerns are of lesser import in Finklea's case, as he is not challenging his convictions for murder and related offenses.)

The leading case on this issue, *Wilson v. United States*, 391 F.2d 460, 129 U.S. App. D.C. 107 (1968), suggests that the following factors should be considered when determining the effect of amnesia on the fairness of a trial:

- (1) The extent to which the amnesia affected the defendant's ability to consult with and assist his lawyer.
- (2) The extent to which the amnesia affected the defendant's ability to testify in his own behalf.
- (3) The extent to which the evidence in suit could be extrinsically reconstructed in view of the defendant's amnesia.
- (4) The extent to which the Government assisted the defendant and his counsel in that reconstruction.
- (5) The strength of the prosecution's case.

- (6) Any other facts and circumstances which would indicate whether not the defendant had a fair trial.

391 F.2d at 463-4 (footnote omitted). *Compare Council v. Catoe*, 359 S.C. 120, 597 S.E.2d 782 (2004). *Wilson*, of course, dealt with guilt or innocence, not life or death.

Again, it is important to note that Finklea would not have “avoid[ed] punishment” for Sykes’ murder had he been found incompetent to assist counsel at sentencing due to his amnesia. The argument that incarceration for life in a South Carolina prison does not constitute punishment is ludicrous on its face.

Nor was the evidence of Finklea’s amnesia conflicting. Every expert who testified arrived at the same conclusion: Finklea’s amnesia is a medical fact.

As defense counsel noted, that amnesia precluded Finklea from assisting counsel in developing evidence in mitigation existing at the time of the murder and precluded him from expressing genuine remorse for that murder at sentencing itself. “A capital jury can recommend a life sentence for any reason or no reason at all.” *State v. McClure*, 342 S.C. 403, 537 S.E.2d 273, 275 (2000).

The Court should vacate Ron Finklea’s death sentence and remand for resentencing.



2.

The trial judge erred by allowing the Solicitor to ignite an incendiary device during his closing argument at sentencing, as this tactic, taken in context, so infected the jury's sentencing determination with passion and prejudice that the death sentence must be vacated.

In *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335, 339 (1981), the Court succinctly summarized the already well-established strictures circumscribing a Solicitor's closing argument in this State:

While the solicitor should prosecute vigorously ... his duty is not to convict a defendant but to see justice done. ... The solicitor's closing argument must, of course, be based upon this principle. The argument therefore must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice. ... The trial judge is vested with a broad discretion in dealing with the propriety of the argument of the solicitor to the jury. ... Once the trial judge has allowed the argument to stand ... the defendant must bear the burden of demonstrating that the argument in effect denied him a fair determination of his guilt or innocence. On appeal, this Court will review the alleged and propriety of the argument in the context of the entire record. [Citations omitted.]

See, also, *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974), and *State v. Northcutt*, 372 S.C. 207, 641 S.E.2d 873 (2007).

The Court must also evaluate a Solicitor's sentencing phase closing argument in light of *S.C. Code Section 16-3-25(C)(1)* to determine "[w]hether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor." See, for example, *State v. Burkhardt*, 371 S.C. 482, 640 S.E.2d 450 (2007). Moreover, as the Court itself has noted:

[T]he evaluation of the consequences of an error in the sentencing phase of a capital case are more difficult because of the discretion that is given to the sentencing jury. A capital jury can recommend a life sentence for any reason or no reason at all.

*State v. McClure*, 342 S.C. 403, 537 S.E.2d 273, 275 (2000). *Section 16-3-25(C) (1)* does not limit reversal to death sentences that are “produced by” or imposed “because of” passion or prejudice. It requires the Court to determine only whether the sentence was imposed “under the influence of” such improper factors.

As previously indicated, one of the three statutory aggravators advanced by the State was that Ron Finklea had tortured Walter Sykes by dousing him with gasoline after shooting him in the face and neck and then setting him aflame. See *S.C. Code Section 16-3-20(C)(a)(1)(h)*. To this end, in addition to the somewhat milder evidence it had introduced during the guilt phase, the State provided the jury with gruesome autopsy photos (accompanied by the pathologist’s commentary) and a surveillance camera video showing Sykes running from the building in flames and collapsing to the ground. ROA p. 1964, line 1 – p. 1973, line 24 (State’s Exhibits 109 [DVD of surveillance video] and 111 [stills from surveillance video]); ROA p. 2000, line 3 – p. 2005, line 5 (State’s Exhibits 119 through 126 [photographs]). The Solicitor also dressed a dismembered mannequin in the charred remains of Sykes’ uniform and paraded it before the jury. ROA p. 1900, line 22 – p. 1904, line 22; ROA p. 1932, line 19 – p. 1934, line 10 (State’s Exhibit 103 [burnt uniform]). The pathologist testified that Sykes would have been in “a lot of pain” before he died because “[he] was on fire and trying to run out of that fire and it seems like he was running very fast and he did not last for long before he collapsed.” ROA p. 1999, line 18 – p. 2000, line 2.

In his closing argument at sentencing, the Solicitor asked the jury to “imagine the horror” that Sykes must have felt “seeing a bullet, the flash of the gun, and it coming right into his lip.” ROA p. 2240, lines 10-20. He continued:

And we’re just getting started, now comes the real thing: Gasoline pouring on another human being and the fire, the fire, the burning. When you’re cooking sometimes and you touch the stove or the frying pan, or you reach in the oven and you touch that hot thing or you’re grilling – Whoo! Oh, it hurts, it’s painful! Grabs your attention, you probably run to the sink, want to put some water on it. Probably the most painful thing that a person can do is to be lit on fire.

ROA p. 2240, line 21 – p. 2441, line 7. Then the Solicitor (in the words of defense counsel) “ignited some sort of fire device, appears to be some sort of lighter. It’s extremely large.”

ROA p. 2241, lines 9-11. Counsel objected that these pyrotechnics were meant solely to prejudice the jury. ROA p. 2241, lines 11-13. The Solicitor responded, “Talking about the circumstances of this crime ... physical torture.” ROA p. 2241, lines 14-16. The judge overruled the objection, believing that “[t]he use of these things for demonstrative purposes is allowed.” ROA p. 2241, lines 17-19. The Solicitor continued with his argument:

For that feeling and you can’t get away from it. What about when you’re burning trash and you got a bunch of limbs and leaves out there, and you pour a little gasoline on it and you throw a match in there – Whoof! The concussion just blows you back, sometimes it may singe your eyes. Well, what if it’s all over your body and you can’t get away from it, its engulfed you? ... The last of the life of a good man, Walter Sykes. He’s been skinned alive by the flames and gasoline of Ron O’Neal Finklea.

ROA p. 2241, line 21 – p. 2242, line 20.

In *State v. Northcutt*, which involved the murder of an infant, the same Solicitor also resorted to a gratuitously prejudicial demonstration:

[H]e concluded his argument by producing a large black shroud and draping it over the baby's crib. He wheeled the crib from the courtroom in a staged funeral procession.

641 S.E.2d at 881. Vacating the death sentence, the Court wrote:

While it is difficult to determine the impact of the evidence on the jury ... it is clear the solicitor was overly zealous in his argument. *State v. White*, 246 S.C. 502, 507, 144 S.E.2d 481, 483 (1965) ("In view of the absolute discretion of the jury with regard to the issue of mercy, it is impossible to determine whether the argument actually had a prejudicial effect upon the verdict.") We conclude the solicitor's closing argument requires reversal of Appellant's death sentence because the sentence was imposed under the influence of passion and prejudice in violation of *S.C. Code Ann. Section 16-3-25(C)*.

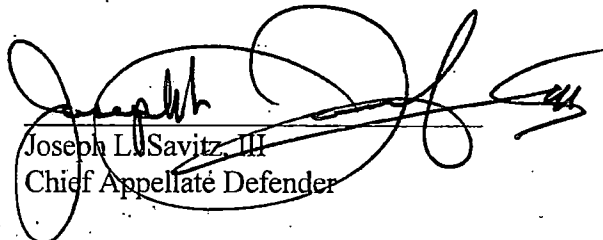
*Id.* at 882. The tactics employed by the Solicitor in this case, taken in context, were also a transparent appeal to passion and prejudice.

The Court should vacate Ron Finklea's death sentence because of the Solicitor's improper closing argument and remand for resentencing.

CONCLUSION

Based on the foregoing two arguments counsel for Ron Finklea asks the Court to vacate Finklea's death sentence and remand for resentencing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joseph L. Savitz, III', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Chief Appellate Defender

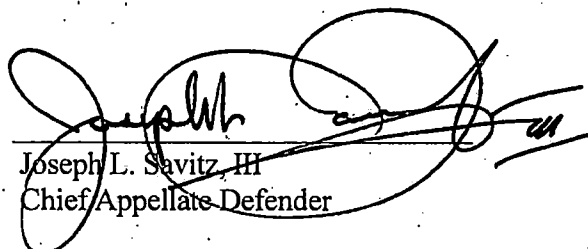
ATTORNEY FOR APPELLANT

This 1st day of October, 2009.

## CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 1, 2009



Joseph L. Savitz, III  
Chief Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Lexington County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

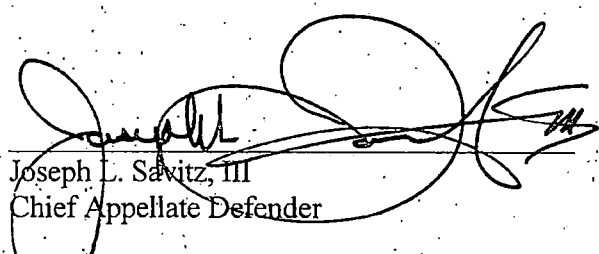
V.

RON O. FINKLEA,

APPELLANT

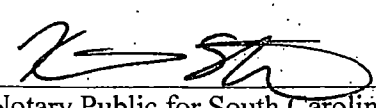
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 1st day of October, 2009.

  
Joseph L. Savitz, III  
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 1st day of October, 2009.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: July 1, 2009.

**STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT**

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**Appeal from Lexington County  
Clifton Newman, Circuit Court Judge**

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**THE STATE,**

Respondent,

v.

**RON O. FINKLEA,**

Appellant

---

**FINAL BRIEF OF RESPONDENT**

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**HENRY D. McMASTER**  
Attorney General

**JOHN W. McINTOSH**  
Chief Deputy Attorney General

**DONALD J. ZELENKA**  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, SC 29211  
(803) 734-6305

**DONALD V. MYERS**  
Solicitor, Eleventh Judicial Circuit

205 East Main Street  
Lexington, SC 29072  
(803) 359-8352

**ATTORNEYS FOR RESPONDENT**



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**APPELLANT'S STATEMENT OF ISSUES ON APPEAL**

1. The trial judge erred by holding that, even though Finklea had amnesia and could not recall his involvement in Sykes' murder, he was nevertheless competent to assist in his own defense at sentencing.
2. The trial judge erred by allowing the Solicitor to ignite an incendiary device during his closing argument at sentencing, as this tactic, taken in context, so infected the jury's sentencing determination with passion and prejudice that the death sentence must be vacated.

**RESPONDENT'S STATEMENT OF THE CASE**

The Appellant, Ron O. Finklea, was indicted by the Court of General Sessions for Lexington County for murder (04-GS-32-2260), arson in the first degree (04-GS-32-2261), attempting to commit safecracking (04-GS-32-2259), criminal conspiracy (04-GS-32-2263) and possession of a firearm while in the commission of a violent crime (04-GS-32-2264). ROA 2332-2351. The charges arose from an incident beginning on August 2, 2003 which resulted in the death of Walter Sykes, a fifty-six (56) year old security guard employed at the Selectron Plant. The prosecution served a notice of intent to seek the death penalty on and before June 8, 2007. On the same date, the indictments were served. R.p., Tr. p. 70-71.

On August 27, 2007, the case was called to trial before the Honorable Clifton Newman, Presiding Judge. The Appellant was present and represented by Melissa J. Kimbrough and Stephen R. Soltis, Jr. The prosecution was handled by the Honorable Donald V. Myers, Solicitor of the Eleventh Circuit, and Assistant Solicitors David Shawn Graham and Samuel R. Hubbard, III. On August 31, 2007, at 8:40 p.m. the jury returned verdicts of guilty for murder, arson in the first degree, attempting to commit safecracking, criminal conspiracy and possession of a firearm during the commission of a violent crime. R., Tr. 1804-08.

On September 4, 2007, the sentencing proceeding began. ( R., Tr. 1815). The prosecution asserted it was seeking death on the following statutory aggravating circumstances:

1. The murder of Walter Sykes was committed by the defendant while in the commission of a burglary. [ R., Tr. p. 1819, ll. 2-8].
2. The murder of Sykes was committed while in the commission of robbery while armed with a deadly weapon. [ R., Tr. p. 1819, ll. 9-15].

3. The murder of Sykes was committed while in the commission of larceny while armed with a deadly weapon. [ R., Tr. p. 1819, ll. 16-19].
4. The murder of Sykes by the defendant was committed and accompanied by physical torture. [ R., Tr. p. 1819, l. 20 - p. 1820, l. 1].

At the conclusion of the phase, the trial judge charge three (3) of the above statutory aggravating factors. R., Tr. 2271-75.

- a) murder was committed while defendant was in the commission of a burglary. [ R., Tr. 2271-2272].
- b) murder was committed while in the commission of a robbery while armed with a deadly weapon. [ R., Tr. 2272-2273].
- c) murder occurred while in the commission of physical torture. [ R., Tr. 2273-2274].

Judge Newman further instructed concerning mitigating circumstances:

1. The defendant has no significant history of prior criminal convictions involving the use of violence against another person.
2. The age or mentality of the defendant at the time of the crime.

R., Tr. 2279-2280. Judge Newman further instructed that:

You may also consider any nonstatutory mitigating circumstances, including, but not limited to: ... the defendant's honorable service in the military ... and his adaptability to prison life.

R., Tr. 2280-81. Deliberations began at 1:12 p.m. R., Tr. 2286. The jury returned its verdict at 8:26 p.m.

The jury found the existence of each of the three (3) charged statutory aggravating

circumstances. R., Tr. 2287-88. The jury recommended a sentence of death. R., Tr. 2288-2290.

Judge Newman found that the verdict was supported by the evidence. R., Tr. 2290-91.

Judge Newman further found as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not the result of prejudice, passion, or corrupt motive. R., Tr. 2291.

Judge Newman sentenced Finklea to ten (10) years for arson in the first degree, five (5) years for criminal conspiracy, and death for murder.

This appeal follows.



## ARGUMENT

- I. The trial court properly concluded that the Appellant was competent to stand trial, despite his claimed memory loss of one month allegedly due to an attempted suicide subsequent to his arrest where the record reveals evidence the defendant had sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and he had a rational as well as a factual understanding of the proceedings against him.**

In his trial and appeal before this Court, Ronald Finklea claims that his alleged amnesia requires that his death sentence be vacated and the case remanded for resentencing. *Initial Brief of Appellant*, p. 10. He claims that the alleged memory loss "precluded Finklea from assisting counsel in developing evidence in mitigation existing at the time of the murder and precluded him from expressing genuine remorse for that murder at sentencing itself." *Initial Brief of Appellant*, p. 10.<sup>1</sup> However, the Appellant expresses no basis as to why he believes he is entitled

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<sup>1</sup>This is interesting because Finklea made a *pro se* statement to the jury at sentencing. R., Tr.p. 2261-2265. Therein he stated:

**Mr. FINKLEA:** . . . I am not an animal. I am not a drug dealer. I am not a drug user, I never have been.

You've heard testimony of my traveling to Alabama, trafficking in get drugs, but there's no proof to that, no proof to that.

You've heard that I moved in with an in-law, when I first moved in, the first thing I started doing was selling crack to Mexicans, there's no proof to that, all right.

You heard that I talked to Mr. Sykes seven to ten times at work. Well, how is that possible because of the time that I got off from work and the late hours --

**MR. MYERS:** I'll have to object to him testifying now, Your Honor.

**THE COURT:** All right. Counsel approach and Mr. Finklea.

(Whereupon, a bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)

**THE COURT:** You may proceed.

**DEFENDANT FINKLEA:** You've heard about -- you've heard testimony about my military career and about my patriotism to Lady America, all right. Growing up, to me, there was nothing more prestigious than serving this country. To be an 'ambassador as a soldier for this country was the most important thing to me in my life. For me to actually have something else outside of the immediate family that I was willing to give my life for and it's this, it's this.

I am not an animal. I'm not an animal, all right.

to such a remedy of a new sentencing proceeding other than to implicitly suggest that he cannot be sentenced to death. There is no legal basis for such a suggestion. As noted at trial and within, the Appellant was competent to stand trial. A cautious trial judge ensured that his conclusion satisfied the constitutional mandates and took additional steps to guarantee that Finklea received a fair trial. His claims must be denied.

His claim is grounded in his assertion that he suffers from amnesia induced from blood loss to the brain during an unsuccessful suicide attempt by hanging which resulted in memory deficits. R., Tr.p. 182, l. 7-25. As set forth herein, the trial court properly concluded in his pretrial hearings that Finklea was competent to stand trial. Further, the trial court took the extraordinary

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I've lost family members to violent crimes, does that mean that I know how this family feels? No, it doesn't. I've seen the video. It jogs no memories.

Does an animal have a heart? No, it doesn't. **I'm sorry for what happened. I'm very, very sorry for what happened, all right.** I never had a father, so I don't know what it's like to lose a father, **all right. I'm sorry. I'm very, very sorry, all right. I cannot stress and explain it enough how sorry I am.**

The State would have you believe that my amnesia and my brain damage is fake. It isn't. I wish I could remember so I could give this family closure as to what happened on that night to their loved one. I wish I could remember. I really do, but I can't. I can't. So what I'm asking from the family --

**MR. MYERS:** Objection, he's now talking to someone other than the jury.

**THE COURT:** You must address the jury, Mr. Finklea.

**DEFENDANT FINKLEA:** Yes, sir. Sorry, sir. I'm asking you please, please, consider the expert testimony, the testimony of character witnesses that came in on my behalf, Doctor Cherry, okay, family members, friends. I'm not that person. I do not know what happened that night. I wish I did so I could explain what happened that night, but I can't. **But I am so sorry that it happened.**

I was raised to be responsible, respectable and respectful. I am not standing here trying to drop responsibility on anyone else, I'm not. I am not, all right.

The only thing I'm asking you to do as a jury is to look at me, me, Ron, Ron, not just the individual that the State is trying to make me out to be, me, and spare my life, please. I have a 13-year-old son myself who I will not get to see grow up. Please, please, just spare my life, that's all I'm asking, that's all I'm asking, please, please. Thank you.

R., Tr.p. 2262, l. 25- 2265, l. 25. (emphasis added)

steps of mandating that the state re-create the time period subject to the memory loss and provide it to the defense. Finally, in reliance upon *Wilson v. U.S.*, 391 F.2d 460 (D.C. Cir. 1968), the trial judge entered a post-verdict order confirming his conclusions that the alleged amnesia did not deprive Appellant of a fundamentally fair trial.

#### STANDARD OF REVIEW

The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him. *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960); *State v. Weik*, 356 S.C. 76, 81, 587 S.E.2d 683, 685 (2002), *cert. denied*, 539 U.S. 930, 123 S.Ct. 2580, 156 L.Ed.2d 609 (2003); *State v. Bell*, 293 S.C. 391, 395-96, 360 S.E.2d 706, 708 (1987); *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). Competency is required to ensure that [the defendant] has the capacity to understand the proceedings and to assist counsel. *Godinez v. Moran*, 509 U.S. 389, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993). The defendant bears the burden of proving his lack of competence by a preponderance of the evidence, and the trial judge's ruling will be upheld on appeal if supported by the evidence and not against its preponderance. *State v. Reed*, *supra.*; *Weik*, 356 S.C. at 81, 587 S.E.2d at 685. The trial judge's decision as to whether the defendant is competent to stand trial will be upheld if supported by any evidence. *Id.* See *State v. Hill* (David Mark), 361 S.C. 297, 302-303, 604 S.E.2d 696, 698 - 699 (S.C., 2004) (appellant failed to prove by a preponderance of the evidence that his alleged memory loss rendered him incompetent. The evidence, which indicated that appellant understood the charges and the proceedings, supported